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At the Supreme Court
Sitting as the High Court of Justice

HCI 2387/08

- In the matter of:**
1. _____ Zabach, Identity No. _____, resident of the Palestinian Authority, of the Ramallah district Minor
 2. _____ Zabach, Identity No. _____, resident of the Palestinian Authority, of the Ramallah district Minor
 3. _____ Zabach, Identity No. _____, resident of the Palestinian Authority, of the Ramallah district Minor
 4. _____ Zabach, Identity No. _____, resident of the Palestinian Authority, of the Ramallah district Minor
- All of whom are represented by their father:**
_____ Zabach, resident of the Palestinian Authority, of the Ramallah district
5. HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Saltzberger (R.A.)

Represented by attorneys Ido Blum (Lic. No. 44538) and/or Abeer Jubran (Lic. No. 44346) and/or Yossi Wolfson (Lic. No. 26174) and/or Yotam Ben-Hillel (Lic. No. 35418) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Alon Margalit (Lic. No. 35932) and/or Yadin Elam (Lic. No. 39475)

**of HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Saltzberger
4 Abu Ovadiah St., Jerusalem 97200
Tel: 02-6283555; fax: 02-6276317**

The Petitioners

- Versus -

1. **The Commander of the IDF Forces in the West Bank**
2. **The Supervisor of the Population Registry in the Civil Administration**
3. **The State of Israel**

The Respondents

Petition for the Granting of an *Order Nisi*

A petition is hereby filed for the granting of an *order nisi*, which is directed at the Respondents, and ordering them to appear and show cause:

- a. Why they will not correct the registered address of the Petitioners 1-4 in the copy of the Palestinian population registry which is held by Israel in accordance with their true and correct address which is in the Ramallah district, where they in fact reside with their parents and in accordance with the Palestinian Authority's notifications.
- b. Why they will not record in the copy of the Palestinian population registry which is held by Israel the registration details of Palestinian residents in accordance with notifications and updates which are relayed to them by the Palestinian Authority, such that the copy of the population registry which is held by them will correspond to the original registry.
- c. Why they will not cease from their policy not to accept updates, from the Palestinian Authority, pertaining to the registration details of Palestinian residents (in the address item).
- d. Why they will not refrain from entering data which does not originate from notifications and updates as aforesaid and which contradicts the records in the Palestinian population registry, into the copy of the population registry which is held by Israel.

Motion for an Interim Order

The Honorable Court is hereby moved to issue an interim order, which will prohibit the institution of any steps against the Petitioners 1-4 – all children, aged four to eleven – due to their erroneous address, as the same is registered in the copy of the Population Registry held by the Respondent 1, including removing them from their home in the Ramallah district.

The Petition does not concern the legality of the Petitioners' residence in the Ramallah district – the Petitioners do not need a remedy from the Respondent in this matter. The Petition concerns the correction of the registered address in the copy of the registry which is held by the Respondent 1, and the grounds therefore are, *inter alia*, the difficulties which the Respondents create for people in the Petitioners' condition, *inter alia* in receiving various services, in leaving to Jordan and sometimes, also in expelling them from their homes.

Any harm to the family life of the petitioner Children will cause irreparable suffering and damage. Conversely, no interest of the Respondents will be prejudiced by the continued stay of the Petitioners with their parents in their home in the Ramallah district.

The Facts

The parties and the facts

1. **The Petitioners 1-4 (hereinafter: the "Petitioners" or the "Children") are the children of Mr. _____ Zabach (I.D. _____) and Ms. _____ Zabach (I.D. _____), residents of the Palestinian Authority, who were married in 1994 and have since been residing in the Ramallah region.**

2. **The Petitioners were all born in the region of Ramallah in the West Bank.**

Petitioner 1, _____, born in Al-Bira, near Ramallah, aged eleven, studies in the sixth grade in the Nur Alhudah girls' school in Bitunyah.

Petitioner 2, _____, also born in Al-Bira, aged ten and studies in the fifth grade in the girls' school, Nur Alhudah.

Petitioner 3, _____, also born in Al-Bira, aged seven and studies in the second grade in the boys' school, Nur Alhudah.

Petitioner 4, _____, born in Ramallah, is four years old and studies in the Nur Alhudah kindergarten.

3. **Immediately after the birth of each one of the Petitioners, his parents registered him in the Palestinian population registry. The Petitioners were registered, as customary, based on the birth notices that are issued by the hospital. Upon his/her registration in the population registry, a birth certificate was issued for each one of the Petitioners.**

The Petitioners' birth notices noted their correct address at such time – Um Zafa in the Ramallah district.

The Petitioners were so registered also in the Palestinian Authority's population registry, with the address box showing "Um Zafa".

The Petitioners' birth certificates, which constitute a data printout from the population registry, also show the address of each of them as "Um Zafa".

Copies of the Petitioners' birth notices are attached and marked p/1-p/4.

Copies of the Petitioners' birth certificates are attached and marked p/5-p/8.

4. **At the end of 2005, following a relocation of the family within the Ramallah region, the father of the family sought to update his registered address and his children's addresses and submitted an updating notice to the Palestinian Ministry of the Interior. On 8 December 2007, the Palestinian Ministry of the Interior relayed a notice on the update to the Israeli side in accordance with the interim agreement which was anchored in Manifest No. 7. However, consequently it became clear that in the copy of the registration held by Israel, the Children are registered in an erroneous address, in Rafah!**

The Petitioners, as aforesaid, never lived in Rafah, and never registered in Rafah. Their address, as it was, and as it was originally registered, is "Um Zafa". It is unclear by virtue of what authority someone on the Respondent's behalf decided to register the children in the copy of the population registry that is held by Israel in the address, "Rafah".

5. On 21 March 2007, the Palestinian Ministry of the Interior approached the Israeli side once again for the purpose of amending the error and relayed address update notices to it, for the four Children.

But the error was not corrected and the Children remained registered in an erroneous address in Rafah.

6. The Petitioner 5 (hereinafter: the "Center for the Defence of the Individual" or "HaMoked") is a human rights organization residing in Jerusalem.
7. The Respondent 3 occupies the West Bank territories under belligerent occupation. The Respondent 1 (hereinafter: the "Respondent") is the military commander, who is responsible for the West Bank region on its behalf.
8. The Respondent 2 is the responsible party, on behalf of the Respondent 1, for the maintenance of a copy of the Palestinian population registry which is held by the Israeli side, in accordance with the interim agreement between Israel and the Palestinian Authority and the military legislation anchoring it in the territories.

The Palestinian population registry and registration of the address of the Palestinian Authority's residents

9. The legal situation, prior to the execution of the Oslo Accords, pertaining to the updating of the registered address, was anchored in Article 13 of the Order on Identity Cards and Population Registry (Judah and Samaria) (No. 297), 5729-1969, according to which it is the obligation of a resident of the territories to notify the competent authority of a change in his address within 30 days after the actual change:

If one of the details listed in Article 11 was changed or corrected, a resident who received an identity card is obligated to notify of a change within 30 days to the population registry bureau in whose jurisdiction his place of residence is located, as the same will be determined by the competent authority.

10. It shall be emphasized that this is only a retroactive reporting obligation on a change in the address of a Palestinian residing in the territories, similar to the obligation which applies to Israelis inside Israel, and it was not contingent upon the military commander's approval either before or after the fact.

11. **In the interim agreement between Israel and the Palestinian Authority (the "Oslo Accords") the authorities in this area were transferred to the Palestinian Authority, and it was determined that the Palestinian Authority will maintain the population registry of the residents of the territories. The registry maintained by the Authority is the determining registry.**

At the same time, updating procedures were set forth, the purpose of which being:

...to avoid discrepancies and with a view to enabling Israel to maintain an updated and current registry.

One of the procedures, which is explicitly set forth in the agreement in Article 28 of Annex III, is that:

The Palestinian side shall inform Israel of every change in its population registry, including, inter alia, any change in the place of residence of any resident.

Regarding the registration of children, it was determined that:

The Palestinian side shall have the right to register in the population registry all persons who were born abroad or in the Gaza Strip and West Bank, if under the age of sixteen years and either of their parents is a resident of the Gaza Strip and West Bank.

12. **It shall be noted that the Oslo Accords, and Article 28 of Annex III, constantly speak of "the residents of the Gaza Strip and the West Bank" in one breath, and refer to one registry and not to two population registries. There is no special reference made to a change of address between the two parts of the territories in accordance with the basic principle set forth in the agreement according to which the Gaza Strip and the West Bank constitute one territorial unit.**
13. **Manifest on the implementation of the interim agreement (Judah and Samaria) (No. 7), 5756-1995 (hereinafter: "Manifest No. 7"), anchored the Oslo Accords, including Annex III, into the military legislation. Article 5 of the manifest states the following:**

The transfer of the powers and the fields of responsibility in accordance with Annex III of the interim agreement include the transfer of all the rights, obligations and undertakings pertaining thereto, and the provisions of the interim agreement shall apply in this matter.

14. **The statements are explicit and clear: the authority to register the details of children who are born in the territories as well as the authority to update the registered address of a resident of the Palestinian Authority, was transferred to the Palestinian side. In order to ensure that Israel will have an exact copy of the Palestinian population registry, it was determined that the Palestinian side must update the Israeli side on any change made thereby in the registry – whilst the obligation to notify of a change in the registered address is especially emphasized. In this context, it is clear that if the Israeli side intentionally refrains from updating the copy of the registry held thereby in accordance with the notices of the Palestinian side, it has only itself to blame.**
15. **It shall be emphasized that in the past, the Respondent explicitly acknowledged that the authority with regard to changes of address – including changes of address between Gaza and the West Bank – was entirely transferred to the Palestinian Authority.**

On 4 December 1995, MK Naomi Hazan approached Brig.-Gen. Oren Shahor, then Coordinator of Activities in the Territories, and raised several questions regarding the transfer from Gaza and the West Bank, and *inter alia*:

A change of address from the West Bank to the Gaza Strip or vice versa; is it possible to change address? Which authority is the application submitted to, and how long will the process of adopting the decision take?

On 9 January 1996 (after the issuance of Manifest No. 7, which, as aforesaid, anchored Annex III of the agreement in the internal military legislation of the territories), a reply was received from the assistant to the Coordinator of Activities in the Territories, Lt. Colonel Shmulik Ozenboy, according to which:

Regarding your question pertaining to a change of address from the West Bank to the Gaza Strip, I hereby inform you that the handling of the matter has been transferred to the responsibility of the Palestinian Authority and therefore they should be approached on this matter.

A copy of MK Hazan's letter dated 4 December 1995 is attached and marked p/9.

A copy of the letter of the assistant to the Coordinator of Activities in the Territories dated 9 January 1996 is attached and marked p/10.

16. **Furthermore, also today the Respondent acknowledges that the maintenance of the population registry is in the sole authority and responsibility of the Palestinian Authority. The Respondent himself also**

emphasized the importance of the credibility and intactness of the copy of the registry which is held in the hands of Israel.

So, for example, on 14 May 2007, a letter was received at the Center for the Defence of the Individual from the office of the legal adviser for the Respondent 1, explicitly stating that:

The Palestinian registry is in the direct authority of the Palestinian Authority which maintains it. A copy of this registry is also found in the possession of the Israeli side, in accordance with Article 28 of the civil annex of the interim agreement. The Israeli side, as an orderly administrative authority, is obligated to ensure that its registrations are credible, proper and meet the requirements of the security legislation, the case law and proper administration.

[...]

One sided updating of the registry by the Israeli side is not possible since the entire registry is maintained and administered by the Palestinian side in accordance with the provisions of the agreement.

A copy of the letter from the office of the legal adviser for the Respondent is attached and marked p/11.

The policy of "freezing" the Palestinian population registry

17. **In the year 2000, the Respondents decided to "freeze" the updating of the addresses in the Palestinian population registry between the Gaza Strip and the West Bank, as part of a general trend of creating a separation between the Gaza Strip and the West Bank. The information registered at such time in the population registry was not checked and not examined, but frozen as is – without a possibility to change, correct or challenge the verity thereof.**
18. **As aforesaid, the authority to update the addresses in the population registry was transferred to the Palestinian side and only a copy thereof remained in the possession of Israel and therefore, the Respondents could only "freeze" the updating of the copy of the registry held thereby, and so they did.**
19. **At first, the Palestinian side continued to update the registered address of Palestinians in the registry in accordance with the interim agreement and to notify the Israeli side thereof, and also to register the same in the identity cards issued thereby – whilst the Israeli side ignored the updates and left the copy of the registry held thereby as is, "frozen".**
20. **However, the freezing of the copy of the registry is also a very powerful tool, since as arises from many approaches which were made to the**

Center for the Defence of the Individual, the Respondent instructed the army in the West Bank – in the barriers, border passages etc. – to rely solely on the copy of the registry, and to treat those who are registered in it in addresses in Gaza, as foreigners, and to go so far as to declare them "illegal residents". The result was that very difficult problems were caused to those whose addresses were not updated in the copy of the registry held by Israel, until the Palestinian side ceased almost completely from updating the original registry also.

21. The Respondents who seemingly sought to prevent – or decrease – the passage of Palestinians between the two parts of their country and the establishment of permanent residence by them in its other part, did not bother to create any legal construction which will explicitly define and determine the separation which they resolved to create. They did not change the military legislation and did not issue any order on the subject. Furthermore – they also continued to allow the passage of Palestinians between the two parts of the territories, sometimes at a lesser extent and sometimes at a greater extent, without imposing any conditions or limitations pertaining to their stay in one part or another.
22. The result is, of course, utter chaos. Many Palestinians who moved from the Gaza Strip to the West Bank with permits and according to the law, found themselves suddenly declared by the Respondents as "illegal residents" in their homes. In extreme cases, even people who lived in the West Bank for many years and were sometimes even born in the West Bank were declared "illegal residents" exposed to the risk of expulsion – just because their address is erroneously registered in the population registry due to the freezing.
23. In the matter of a Palestinian who sought to update her registered address in the context of an agreement in the High Court of Justice (HCJ 2680/07 Amer v. Commander of the IDF Forces in the West Bank), the director of the civil committee in the Palestinian Ministry of the Interior described the freezing policy and the meaning thereof. *Inter alia* it was stated (translated into Hebrew) that:

Since the year 2000, the Israeli side refuses to accept notifications of address changes which the Palestinian Authority submits thereto, particularly a change of address from Gaza to the West Bank...it shall be noted that as a result of the freezing policy in the past we received complaints from many Palestinians who were detained and questioned for many hours when crossing the military barriers, because of the existence of a difference in the address found in the computer on the Israeli side, since the Israeli side did not change the addresses according to the Palestinian side's notifications.

Therefore, we did not change the address of Ms. Aisha Amar in the attachment of the card, in order

to spare her problems she may encounter when crossing the barriers in the West Bank, until we receive a sign from the Israeli side that it changed the address on the Israeli computer in accordance with the notification which was dispatched thereto.

A copy of the letter of the Palestinian Ministry of the Interior is attached and marked p/12.

24. It shall be noted that in that case, the petition was consensually dismissed without prejudice after the remedy sought therein – the move of the petitioner from the Gaza Strip to the West Bank – was granted and currently, an additional petition is pending before the court, in the matter of that same petitioner, which directly concerns the issue of updating her registered address and like this petition, seeks to put an end to the freezing policy that is customary at the Respondents (HCJ 660/08 Amer v. Commander of the IDF Forces in the West Bank, the petition was filed on 21 January 2008).

Exhaustion of the Proceedings

25. On August 16, 2007, the Center for the Defence of the Individual approached the legal adviser for the Respondent and asked to correct the error in the Children's registered address, so that the correct address would also appear in the copy of the registry which is held by Israel. Copies of the birth certificates as well as the birth notifications of the Children were attached to the letter.

A copy of the letter dated 16 August 2007 is attached and marked p/13.

26. The letter was not granted with any reply and on 16 October 2007, HaMoked sent a reminder to the legal adviser for the Respondent in which it asked that the matter be handled without delay and that the error be corrected as soon as possible.

A copy of the reminder dated 16 October 2007 is attached and marked p/14.

27. However, the letter remained unanswered. After another month, on 15 November 2007, HaMoked approached the legal adviser for the Respondent for the third time and requested a response to its letter. The letter stated that:

Such a long period of time of absolutely disregarding our letter exceeds all bounds of reason. As you are certainly aware, you are legally obligated to answer letters addressed to you with the appropriate promptness and no later than forty five days from the date of the letter. At the very least, you are required to update us on the status of the

handling of our approach and on the reason for the delay in issuing a response.

A copy of the letter dated 15 November 2007 is attached and marked p/15.

28. **On 29 November 2007 – approximately three and a half months after the first letter – the response of the legal adviser for the Respondent was finally received. The response stated that:**

The file of the population registry which is in the hands of the Israeli side is updated from time to time in accordance with applications transferred on behalf of the Palestinian Authority. Insofar as the Zabach family's children are registered as living in the Gaza Strip, the reason therefore is that they were so registered initially.

In the event that your clients claim that the registration of their children as living in the Gaza Strip was erroneously performed, then they must refer such claims to the Palestinian Authority and insofar as the same will choose to handle the subject, a request will be made to the Israeli side accordingly.

As can be seen, the response completely ignores the documents which were attached to the first approach which attest that when the Children were born, they were registered in their correct address.

It is important to note that the procedure presented by the Respondents in their letter, according to which a copy of the registry that is held by the Israeli side is updated in accordance with the Palestinian Authority's requests, corresponds to the law and the provisions of the interim agreement. The Respondents do not argue that there is an obligation to receive prior consent from the Israeli side, according to its discretion, to a change of address, as was argued by them later on and in other cases. More about this later.

A copy of the response dated 28 November 2007 is attached and marked p/16.

29. **On 5 December 2007, HaMoked replied to the letter of the legal adviser for the Respondent. The letter emphasized that the erroneous address appears solely in the copy of the registry which is held by Israel, and this also arises clearly from the documents which were attached to the first approach. HaMoked emphasized that the Petitioners already approached the Palestinian Authority on the issue of the error, and specified the notifications which were relayed by the Palestinian side to the Israeli side.**

HaMoked attached to its letter, the letter of the Deputy Director of the Palestinian Civil Committee in the Ministry of the Interior, which specifies the approaches made by the Palestinian side to the Israeli side on the matter, and emphasizes that the Petitioners were born in the Ramallah district, reside in the Ramallah district, and are registered, in the Palestinian registry, in the Ramallah district.

A copy of the letter dated 5 December 2007 is attached and marked p/17.

A copy of the letter of the Deputy Director of the Palestinian Civil Committee as well as the Hebrew translation thereof are attached and marked p/18.

30. On 18 December 2007, the legal adviser for the Respondent announced that "we were not able to locate any request or approach on the subject on behalf of the Palestinian Authority" and that "the correct address to which the issue must be referred is the Palestinian Authority"

A copy of the letter of the legal adviser for the Respondent dated 18 December 2007 is attached and marked p/19.

31. On 23 December 2007, HaMoked approached the legal adviser for the Respondent once again and this time attached to its letter the Palestinian side's notifications pertaining to the updating of the registered address which were relayed to the Israeli side on 21 March 2007.

A copy of the letter dated 23 December 2007 is attached and marked p/20.

Copies of the Palestinian side's notifications dated 21 March 2007 are attached and marked p/21-p/24.

32. On 23 January 2008, the answer of the legal adviser for the Respondent was received. The Respondent went even further this time and argued that the Palestinian side's requests "are not explained and do not clarify why this is a mistake which requires correction" (in those very words!).

As we can see, all of the Respondent's arguments at the outset, according to which the Israeli side indeed updates the copy of the population registry in accordance with what is relayed thereto by the Palestinian side and that the only problem is that such a notification was not relayed thereto, dissipated as soon as the Palestinian side's notification was indeed received by the Israeli side as required.

A copy of the response of the legal adviser for the Respondent dated 22 January 2008 is attached and marked p/25.

33. Thus, for more than five months, the Respondent is trying, in every possible way, to renounce his obligation and to refrain from updating the Petitioners' address in the copy of the population registry held by him, each time with different excuses:

Initially, the Respondent elected to simply ignore, for months, the Petitioners' approaches to him;
 Later, he argued that the mistake is in the Palestinian registry and therefore, the Palestinian side must be approached;
 After it was clarified (again) that the mistake is only in the Israeli copy, he argued that no notification was relayed from the Palestinian side;
 After it was made clear that such a notification was in fact relayed, he claimed that "he could not locate it";
 And after the notifications were relayed directly thereto, he argued that the same do not clarify why this is a mistake".

Is there no limit to cynicism?

The practical importance of updating the registered address in the population registry and in the copy thereof – previous cases

34. **The Center for the Defence of the Individual was forced to handle many cases of Palestinians which, due to the Respondents' policy, ran into various difficulties and problems – up to expulsion from their homes by the Respondents – just because their registered address in the population registry was "frozen", erroneously, by the Respondents.**
35. **HCJ 5504/03 Kahlot v. Commander of the IDF Forces in the West Bank (not published), concerned the case of a 30 year old Palestinian, born in Gaza, who settled in Ramallah and also married a resident of Ramallah. That petitioner updated his address as Ramallah in the Palestinian population registry, however, in accordance with the freezing policy, Israel ignored the change and did not update it in the copy of the registry held thereby. After 11 years in which he permanently resided in the West Bank, the man was arrested at the Allenby Bridge and, to his astonishment, expelled to the Gaza Strip. Pursuant to the petition, the respondent chose not to put its stance under legal scrutiny and enabled the return of the petitioner to his home in the West Bank. It shall be noted that his passage through Israel and the continuation of his stay in the West Bank were made possible through one permit only: a permit to enter Israel.**

Also after permitting his return to the West Bank, the respondent continued to object to changing the registered address in the copy of the registry held by Israel. In order to try and reduce the problems which may arise therefrom, the respondent equipped the petitioner with a letter according to which the petitioner will be able to receive complete services from the authorities in the West Bank. The petitioner is registered to this day in an erroneous address in Gaza.

36. **HCJ 3555/05 Navahin v. Commander of the IDF Forces in the West Bank, and HCJ 4465/05 Gdili v. Commander of the IDF Forces in the West Bank, again concerned the cases of Palestinian residents who were expelled from their homes in the West Bank to the Gaza Strip, solely because of the fact that their registered address at the time of the freezing was "Gaza".**

37. **The first petition, HCJ 3555/05, concerned a person born in Kalkilya, who due to the fact that his family is originally from Gaza, his address was registered in a fictitious address in the Gaza Strip. He was caught by the Border Police and expelled to Gaza.**
38. **The second petition, HCJ 4465/05, concerned the case of a Palestinian resident who lived in Jericho. He accidentally found himself in the wrong place at the wrong time and was arrested by IDF forces which were looking to arrest other people. He was freed after several days – and was transferred to Gaza with all due respect.**
39. **In both of the aforesaid cases, after the filing of the petition the respondent preferred to enable the return of the petitioners to the West Bank, and not to put his legal thesis under legal scrutiny. They both crossed from the Gaza Strip to the West Bank via Israel using a "permit to enter Israel" and both received a similar letter to the letter issued in HCJ 5504/03 in order to enable them to receive services even though their address is erroneously registered because of the freezing. Until now they are living in the West Bank, without being able to correct the registration.**
40. **HCJ 5463/06 Effendi v. Commander of the IDF Forces in the West Bank, concerned the case of a Palestinian who resides in the territories. In 1991, the petitioner moved to live with his family members in Bir Naballah in the West Bank. 15 years later, on 4 February 2006, he was caught near his home in Bir Naballah and immediately expelled to the Gaza Strip due to the fact that his registered address is in Gaza. Only pursuant to the petition, the respondents agreed to permit his return to his home through a one day entry permit to Israel. He too still resides in the West Bank, whilst his registered address erroneously remains in the Gaza Strip.**
41. **HCJ 9951/06 Abu Batihan v. Commander of the IDF Forces in the West Bank, concerned the case of a Palestinian, resident of the territories. In 1998, the petitioner moved to live in the West Bank where he met his wife and built a family for himself. 8 years later, in January 2006, the petitioner's brother passed away in the Gaza Strip, and the petitioner crossed to the Gaza Strip, via Israel, with his wife who was then pregnant, and with their eighteen months old son – in order to take part in his brother's funeral. In August 2006, a permit to cross from Gaza to the West Bank, through Israel, was issued to his wife and son only, in view of her pregnancy and difficult medical condition, and since her registered address is Tul Karem in the West Bank. The petitioner's application for a permit was refused. Only pursuant to the petition did the respondents agree to issue the entry permit to Israel, as requested, and the man returned to his home and family in the West Bank. His registered address remained erroneous and "frozen".**
42. **HCJ 810/07 Abu Sha'aban v. Commander of the IDF Forces in the West Bank, concerned the case of a young Palestinian who lived most of his life in Hebron in the West Bank, but because of the freezing, his registered address remained in Gaza. In 2005, due to an argument which broke out between him and his father, the young man fled to Gaza and has since not**

been able to receive an entry permit to Israel for the purpose of returning to his father's home. Only after the filing of the petition, the respondents agreed that he return to his parents' home and an entry permit to Israel, for one day, was issued to him.

43. In HCJ 9386/07 Pirani v. Commander of the IDF Forces in the West Bank, the Center for the Defence of the Individual petitioned on behalf of a Gaza born Palestinian who moved, with his parents, to live in El ram in the West Bank at the age of 11. At 16 he approached the Palestinian Ministry of the Interior to issue an I.D. card and asked to update his registered address, but he was told that that due to the Israeli freezing it cannot be done. In 2006, the petitioner travelled with his pregnant wife and his daughter to visit his ill brother in the Gaza Strip. His wife and children returned to their home in the West Bank, but because of his erroneous registered address the respondents refused to permit him to return to his home. For ten months the petitioner was trapped in the Gaza Strip, far from his home. Only pursuant to the petition the respondents agreed to enable his return to his home.
44. As demonstrated, "freezing" the updating of addresses has far reaching meanings and causes severe harm to the lives of innocent Palestinians. In addition to the severe cases of actual expulsion, one must also remember all the "lucky" ones who were not expelled, but are daily facing enormous problems in all of life's areas, and are living in constant fear of expulsion from their homes and families just because they cannot correct the erroneous registration of their address.

Furthermore – those who were "fortunate" to update their registered address in the Palestinian registry after the Israeli copy was frozen (and before the Palestinian side ceased, because of the freezing, to update the original registry also) do not even conceive that they are exposed to the risk of expulsion.

45. The Petitioners in our case discovered the mistake by accident, in a routine approach to the Ministry of the Interior, but at the same time, the matter could have been discovered in other circumstances – if, for example, the Petitioners' father would have taken his children to visit relatives in the Gaza Strip and discovered at the end of the visit that his children are no longer entitled to return to their home.

The Legal Part

The military commander's authority: security needs vis-à-vis the best interests of the protected population

46. The military commander is obligated to protect the order and public life in the occupied territories. In doing so, the military commander's discretion is limited to two poles – military needs on the one hand, and the best interests of the protected population on the other:

The Hague Convention authorizes the commander of the region to act in two central fields: the one – ensuring the legitimate security interest of the occupier of the region, and the other – ensuring the needs of the local population in the region under war occupation... the one need is military and the other is a humanitarian-civil need. The first focuses on the concern for the safety of the military force occupying the region, and the second – on the responsibility for maintaining the residents' welfare. In the latter field, the commander of the region is responsible not only for keeping the order and the security of the residents but also for the protection of their rights, and in particular, the constitutional human rights which are granted to them. The concern for human rights is at the center of the humanitarian considerations which the commander must weigh. According to Regulation 43 of the Hague Convention, on the force occupying an occupied region lies the responsibility to institute all the means possessed thereby to rehabilitate and thus ensure, insofar possible, public order and security in the region, whilst respecting the law that is effective in the region insofar possible. In performing his role in keeping the order and the security, the commander of the region must thus ensure the essential security interests on the one hand, and to protect the interests of the civil population in the region on the other.

(HCJ 10356/02 Hess v. GOC Central Command, *Piskei Din* 58(3) 443, 455-456).

47. The military commander is not entitled to consider state, political and other considerations and is limited to security considerations in their narrow meaning. Any other consideration weighed by the military commander would constitute an irrelevant consideration:

The military commander's considerations are in ensuring his security interests in the region on the one hand and the interests of the civil population in the region on the other. Both are directed at the region. The military commander is not allowed to consider the social, economic, national interests of his own state, insofar as the same have no ramification on his security interests in the region or on the local population's interests. Even the army's needs are its military needs and not needs of national security in its broad meaning.

(HCJ 393/82 Jamait Askan Alma'almon v. Commander of Army Forces *Piskei Din* 37(4) 785, 793-794).

48. In our case, there are no security reasons behind the freezing policy, and there are certainly no security reasons pertaining to the petitioner Children. Such a policy is unreasonable and contradicts the military commander's obligations.

The scope of the discretion with respect to the registration in the population registry

49. **The starting point with respect to the population registry is that the population registry is a documentary – statistic registry, which at most constitutes *prima facie* evidence to the verity thereof (apart from specific details as provided by the law). This was already ruled forty five years ago, in the Funk Schlezinger case:**

It is clear and above all doubt that the role of a registering officer, according to the aforesaid ordinance, is just a role of a collector of statistic material for purposes of keeping the residents' book.

(HCJ 143/62 Funk Schlezinger v. Minister of the Interior *Piskei Din* 17(1), 225, 243).

50. **Since the Funk Schlezinger case, the Supreme Court stated and re-stated that the role of the registering officer is just a role of collecting statistic material, and no judicial authority was conferred upon him. Therefore, the official is obligated to record what the citizen says to him, unless it is a matter of "clearly incorrect registration concerning which there is no reasonable doubt".**

See:

HCJ 3045/05 Ben Ari v. Director of the Population Registry, *Takdin Elyon* 2006(4), 1725, 1731;

HCJ 1779/99 Jane Doe v. Minister of the Interior *Piskei Din* 54(2), 368, 375-376;

HCJ 2901/97 Na'amat v. Minister of the Interior, *Takdin Elyon* 2002(1), 634, 640;

HCJ 2888/92 Goldstein v. Minister of the Interior *Piskei Din* 50(5), 89, 93-94.

51. **The case law emphasized that the discretion conferred upon the registering official upon registering the details of a person in the population registry is technical and limited:**

The margin of action of the registering official and even that of the chief registering official, insofar as the matter pertains to the first registry and to changes to the registry is not unlimited, because the legislator stated the subjects to be registered, the

scope of the registering official's discretion, the duty to notify of the changes and such instructions. The registering official or the chief registering official or the Minister of the Interior have no authorities over and above the classifications and the registration methods that are set forth in the law, or in the regulations promulgated by virtue of explicit authorization in the law.

(HCJ 230/86 Miller v. Minister of the Interior *Piskei Din* 40(4), 436, 444-445).

And in the Funk Schlezinger matter, Justice Zussman emphasized that:

It is inappropriate from the administrative perspective that a citizen who comes to provide details for statistic purposes...will stand before a suspicious official who will dig into his past.

(Funk Schlezinger matter above, on page 252).

52. It is clear that for purposes of updating a person's address in the population registry, he is not required to present any "clarifications", "explanations" or "reasons" in detail. It is sufficient that he notified of his address.

The logical failures in the Respondent's stance, as the same was presented in his answers and argued in the past

53. From the Respondent's answers it arises that he claims that in order to update or correct any person's registered address in the copy of the population registry, such a person is required to relay to the Israeli side, via the Palestinian side, an "application with reasons", whilst the Israeli side has broad discretion to decide whether to permit the Palestinian side to update or correct the registered address or rather to instruct it to leave the erroneous address in the registry.

54. However, the Respondent's thesis is doubly flawed:

Firstly, by this, in fact, the Israeli side seeks to return an explicit authority which passed to the Palestinian side in accordance with the interim agreement and Manifest No. 7 into its hands without any explicit legislation, without an order determining the same, and obviously, without publicizing it.

Secondly, in any case, the authority to update the registry or to correct it is an authority which includes very limited discretion, primarily technical, and does not include broad authority for various material considerations.

55. Thus, the Respondent not only appropriated, with no legal basis, a technical authority which was explicitly taken from him – but also

"expanded" this authority based on nothing, over and above, and turned it into a material and significant authority which enables broad material discretion.

56. **The Respondent claimed in the past that his authority to do so derives from Article 6(b) of Manifest No. 7 which determines that:**

The determination of the commander of the IDF forces in the region that powers and areas of responsibility continue to be in his hands shall be decisive in this matter.

57. **However, clearly this instruction does not enable the Respondents to appropriate, by the commander's mere words, any authority, also if the same was never anchored in an order. And it is clear that the provision concerns the decision who has a specific authority, which is already anchored in the law, and not the creation of authorities. The idea according to which this provision enables the Respondents to transfer authorities between the parties, at their will, at any time, back and forth, is an absurd idea which voids Manifest No. 7 and the entire interim agreement of any content.**

58. **The argument as if there was no intention in the interim agreement to transfer this authority into the hands of the Palestinian side is particularly absurd, in view of the extra emphasis made in the agreement with regard to the Palestinian side's obligation to notify the Israeli side on corrections that shall have been performed in the registered address of residents.**

59. **As aforesaid, the Respondent himself also acknowledged in the past that the authority with regard to address changes – including an address change between Gaza and the West Bank – was entirely transferred to the Palestinian Authority. Only in retrospect, the Respondent is trying to return to himself, without any explicit anchoring, the authority which was transferred as if the same was in his possession all the time and as if there was never any intention to transfer it.**

The legality of a "secret agreement" between the Israeli and the Palestinian sides, insofar as there is such an agreement

60. **Previously, the Respondent argued that there is allegedly an "agreement", between himself and the Palestinian Authority, which was not published, is not anchored in an order and it is not known where it is written – if at all, and that sets forth special rules for changing the registered address between the parts of the territories.**

61. **If such an agreement indeed exists, then it is in fact an international agreement which replaces the rules agreed upon in the interim agreement, and which were validated by virtue of the military legislation. And it shall be emphasized: we are not dealing with technical agreements pertaining to the manner of implementing the rules which were**

determined in the interim agreement, but with an absolute change of explicit clauses.

62. The Respondent did not point to any written source in which this arrangement appears (if the same even exists) and did not reveal by even a hint, where and when the procedure was made public and where it was explicitly anchored or finally approved. Thus, this is – according to this argument – a secret international agreement, by virtue of which the Respondent wishes to impose conditions, restrictions and also various sanctions on the residents of the territories.
63. On this issue it is important to emphasize: there is no value to the Respondents' attempts to rely on secret agreements (assuming such indeed exist), privileged arrangements (if any) and procedures which were never published (assuming that the same were even written). A basic principle of the administration is that the norms determining the citizens' rights and regulating the conduct of the government must be clear, explicit and especially – made public.
64. As known, political agreements and arrangements, as well as international agreements and treaties, do not become a part of the Israeli law or military legislation if the same were not adopted in explicit legislation. Just as it was determined that the effect of the interim agreement derives solely from the explicit legislation that anchors it, so too, "agreements" which change or replace the provisions thereof require explicit anchoring by legislation. From this, the military commander's "agreements" with the Authority have no effect by themselves – all the more so when they are secret "agreements".

An agreement made between the State of Israel and another state, by itself, is not law, not in Israel and also not in Judah and Samaria. Following are the statements made by the Substitute Chief Justice Shamgar in the Abu Itah case, on page 234:

"The rules of international convention law are not automatically absorbed and do not become part of the applicable law in Israel, so long as they were not adopted or incorporated by way of legislation and became part of the law which applies in Israel by virtue of the provisions of the law or of secondary legislation"...

So too with regard to international agreements in general, and so too pertaining to the interim agreement. The interim agreement does not have, from a legal aspect, a higher status or greater effect than an agreement which was made between the State of Israel and another state. That is, the interim agreement does not constitute, by itself, part of the law which applies in Israel or part of the applicable

law in Judah and Samaria. In order to validate the same as part of the law which applies in Israel, an Israeli Parliament's law is required... similarly, in order to validate the interim agreement as part of the applicable law in Judah and Samaria, an order of the military commander in the region is required.

(HCJ 2717/96 Ali v. The Defence Minister *Piskei Din* 50(2), 848, 852-853).

65. And even if we will assume that there is a written international agreement, which was somehow anchored in the internal military legislation, the military commander is still obligated to publish the legislation and the procedure to the entire public and to anchor such an agreement in an explicit order. Especially since the harm which derives from not updating a registered address is very severe and the ramifications thereof have multiple meanings, as stated above.
66. Imposing obligations, restrictions and sanctions on citizens, by virtue of secret provisions and hidden directives stands in polar contrast to the legal-super principle which determines that there is no hidden legislation, and that "hidden legislation prejudices the foundations of the rule of law and the heart and soul of democracy" (as stated by Justice Barak (according to his title then) in HCJ 4950/90 Parnas v. The Defence Minister *Piskei Din* 47(3) 36, 42).
67. The statements from more than fifty years ago made by Justice Sharshevsky are relevant to our case:

There is no law unless it was made public in the manner the law itself determined, otherwise a state of chaos will be created where no one will be able to know what is permitted and what is prohibited, and hence it will not be possible to demand from a person to abide by the law and not perform an illegal act.

(HCJ 220/51 Aslan v. The Military Governor of the Galilee *Piskei Din* 5(2), 148).

Justice H. Cohen similarly stated that:

Any legislation, and for this matter it is irrelevant whether it is law or secondary legislation, requires to be made public... and also if the law contains an explicit provision which exempts such legislation from publishing in the Official Gazette. There are no hidden laws in the State of Israel. When there is a provision in the law which exempts a law from publishing in the Official Gazette it is permitted not to publish the same in the Official Gazette but this

does not mean that it is permitted not to publish it at all. Laws which are secretly legislated and kept deeply hidden are one of the trademarks of a totalitarian regime and it is inconsistent with the rule of law.

(C.A. 421/61 The State of Israel v. Haz PDI 15 2193, 2204).

68. **The obligation of the military commander, as an administrative authority, is to demonstrate that there is an explicit source of authority which points to his authority pertaining to the updating of the registered address. If he is arguing an international agreement between Israel and the Palestinian Authority on the matter he must present such agreement or arrangement, the procedure which was set forth, and the legislation which applies it and confers lawful effect thereto in the territories.**

If he is arguing that the authority to register a person's address also confers authority to consider broad material considerations with regard to the mere dwelling of a person in this address – he must point to the legal basis conferring such an authority upon the registration official.

So long as he shall not have done so, he must act in accordance with the existing law, which is known and published, and he is not entitled to impose obligations, restrictions or sanctions on anyone who shall have acted according thereto.

Conclusion

69. **The policy of "freezing" the updating of the registered address of Palestinians which is instituted by the Respondents for more than seven years, critically harms the lives of Palestinians who are living in the West Bank. It prevents them from receiving daily services in DCOs, it causes endless delays and exhausting questioning at barriers and also places them under a constant threat of expulsion from their homes.**

All of the above, without having committed any crime, in an arbitrary and sweeping manner, whilst blindly relying on their registered address which was "frozen" in the population registry erroneously, and without any security reasons.

This policy contradicts the obligations imposed on the Respondent in his position as the military commander of the region, collides head-on with the Respondent's obligations as an administrative authority, and contradicts the law and the international agreements which were anchored therein.

This petition is supported by an affidavit which was executed before an attorney in the West Bank and dispatched to the undersigned via facsimile, with telephone

coordination. The Honorable Court is moved to accept this affidavit and the powers of attorney which were also issued via facsimile, considering the objective difficulties regarding a meeting between the petitioners and their attorneys.

In view of all of the aforesaid, the Honorable Court is moved to issue an *order nisi* as requested, and after hearing the Respondents' answer, to render the order absolute. The Court is also moved to charge the Respondent with the Petitioners' expenses and legal fees.

March 13, 2008

**Ido Blum, Adv.
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[T.S. 51556]