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At the Supreme Court
Sitting as the High Court of Justice

HCJ 8155/06
(Scheduled for 28 September 2008)

1. **The Association for Civil Rights in Israel**
2. **HaMoked: Center for the Defence of the Individual**
3. **Physicians for Human Rights**
by counsel, Att. Limor Yehuda
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The Petitioners

v.

1. **Commander of IDF Forces in Judea and Samaria**
2. **Head of the Civil Administration**
3. **Head of the Israel Security Agency**
4. **Legal Advisor for the Judea and Samaria Area**
by the State Attorney's Office
Ministry of Justice Jerusalem

The Respondent

Updating Notice on behalf of the Respondents

1. Ahead of the hearing on the petition scheduled for 28 September, the Respondents hereby respectfully submit an updating notice on their behalf.
2. In this notice, the Respondents wish to update the Court on the factual and legal situation relating to the procedure which is the subject matter of the petition. The Respondents will refer to two central aspects in this context:

In the first part of the notice we wish to address the Petitioners' claims in their last notice – claims most of which must be rejected. We shall further emphasize in this part that the percentage of Palestinian residents of the Area whose travel abroad is prevented for security reasons is minute, such that the claims raised by the Petitioners in this context must be examined with due proportions.

The second part of the notice will detail amendments which will be made to the procedure in the near future in order to improve it, as a result of an evaluation held recently after a number of months

during which the procedure has been operative. These amendments will, *inter alia*, redress some of the claims made by the Petitioners.

The Petitioners' claims

The decision of the Honorable Court of 1 August 2007 regarding deletion of all but one of the remedies sought in the petition

3. We shall remind again that this petition began as a general and broad petition, as ruled by the Honorable Court, seeking 6 remedies in total. **On 1 August 2007, the Honorable Court ordered the deletion of all sought remedies and left only one matter for review:** the procedure for travel abroad which was being formulated at the time. In the words of the Honorable Court:

The petition before us is general and broad and it is impossible to review all its aspects simultaneously. Individual petitions are pending regarding some of the issues. **As far as a procedure for travel abroad, the Respondents shall submit a supplementary notice presenting the procedure which is currently being formulated.** ..

Regarding the rest of **the** issues raised in the petition, the questions must be divided into concrete petitions focusing on the issues relating to each of the questions separately. A distinction between the issue of entry into Israel and freedom of movement within the Territories must be made. Therefore, if the Petitioners find that they have cause to petition on one of the aforesaid issues, an individual petition regarding that issue shall be submitted.

Subject to the aforesaid regarding the procedure for travel abroad, the remaining parts of the petition will be deleted without prejudice.

(Emphases added, G.S)

4. In these circumstances, the Respondents wish to reject any attempt made by the Petitioners to discuss the remedies already deleted (see for example, sec. 2-3 of the Petitioners' last notice).

The Petitioners' ignoring of the fact that the procedure shall continue to take effect in tandem with the prior situation

5. In their arguments, the Petitioners ignore the simple fact that the procedure at issue will continue to take effect **in tandem** with the prior situation rather than **in its stead**. That is: a resident of the Judea and Samaria Area wishing to travel abroad will be able to follow the procedure in order to find out **in advance** whether his travel has been precluded for security reasons. However, if he is not interested in doing so, he may act in the same way he has acted thus far and arrive at the border crossing. **We shall emphasize that over 99% of the population of the Judea and Samaria Area is not precluded from traveling abroad for security reasons,** such that the vast majority of the Area's residents can get to the border crossing, where they will be able to cross.

As such, the existence of the procedure has not made matters worse for residents of the Judea and Samaria Area and, in the opinion of the Respondents, has significantly improved their situation: Residents of the Judea and Samaria Area now have the possibility of inquiring **in advance** whether their travel abroad is precluded and if so – they may object thereto through an administrative procedure.

6. The fact that this is a procedure which will continue to take effect in tandem with the prior situation has been expressed in the decision of the Honorable Court of 18 May 2008, in which the Petitioners' request to halt the entry into force of the procedure was denied. The Honorable Court ruled, *inter alia*, as follows:

“...[W]e have not found it necessary to issue a temporary injunction preventing the implementation of the new procedure during this time. This, for two main reasons: First, this is a voluntary procedure. Only residents wishing to follow it may do so and it does not require every resident wishing to travel abroad to follow its provisions. Second, in accordance to the Respondents' response, the existence of the new procedure has not revoked the option of appealing to the office of the legal advisor to the Judea and Samaria Area for processing and intervention in urgent cases, as was the practice prior to the new procedure's entry into force”.

The Petitioners' claims ignore the relevant figures

7. A person reading the Petitioners' claims might erroneously conclude that a security preclusion for travel abroad applies to a substantial percentage of the Area' residents. We therefore wish to re-clarify the relevant scopes:

Less than one percent of the Area's residents are currently defined as precluded from travel abroad. Hence, **the vast majority** of the Judea and Samaria Area residents who arrive at the Allenby Crossing – do travel abroad.

This is relevant also regarding residents of the Area who decide to follow the new procedure: When a Judea and Samaria Area resident decides to follow the procedure and inquire whether there is a security preclusion for travel in his case in advance, there is more than a 99% chance that at the very first time he arrives at the DCO, he will be told, **then and there**, that he is not precluded from traveling abroad, such that there will be no need for him to arrive at the DCO again (this, in accordance with the amendments that will soon be made to the procedure on the basis of a recently conducted evaluation. We shall elaborate on this below).

8. The figures relating to travel abroad by Area residents in the time that has elapsed since the procedure entered into force best demonstrate the issue:

The Petitioners present ten cases in which, they claim, the procedure did not function well in recent months.

For comparison only, we shall note that the civil administration has indicated that in February, 23,448 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in March, 20,681 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in April, 33,632 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in May, 30,303 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in June, 62,766 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in July, 99,117 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in August, 81,186 people left the Judea and Samaria Area for abroad through the Allenby Crossing.

Thus, since the new procedure has been implemented, more than 350,000 individuals have left the Judea and Samaria Area for abroad through the Allenby Crossing (the vast majority of them used the

“old” method rather than the new procedure). In the same period, the Petitioners found 10 cases in which, they claim, the procedure did not function properly and even if there are presumably other cases, **it is clear that this is a very small population within the general population of residents of the Area wishing to travel abroad.** This of course, does not mean that the situation is perfect – and as detailed below, the Respondents have recently decided on amendments with the purpose of improving the procedure. Yet, the figures clearly indicate that the arguments raised in the petition, though some are worthy of review, are numerically marginal. The Respondents will therefore argue that the matter should be examined with due proportions.

Implementation of the procedure thus far

9. In the months that have passed since the procedure came into effect, 20 residents of the Area turned to the regional DCOs as per the procedure. These applications were made after the applicants were prevented from traveling for security reasons and all appealed the preclusion as per the procedure.
10. In 4 cases the objections were accepted and the preclusion was removed. In 8 cases, security officials maintained their position. 8 objections are still in processing.

Amendments to be made to the procedure

11. The procedure which is at the heart of this petition is a new procedure. Naturally, at the early stages some problems have occurred in its implementation.
12. Some of the Petitioners’ claims relate to the fact that soldiers stationed at the DCOs and personnel on the Palestinian side did not know how to implement the procedure properly. As such, the rules of the procedure and the manner of its implementation shall be promptly clarified to DCO and Palestinian Coordination personnel.
13. A different section of the Petitioners’ claims relates to the procedure’s substance. A meeting of all the relevant officials has recently been held in the undersigned’s office for the purpose of evaluating and examining possible improvements to the procedures, *inter alia*, noting the Petitioners’ claims. Reducing the number of times a resident of the Area is required to arrive at the DCO in person was particularly highlighted.
14. At the conclusion of the meeting a decision was made to make some amendments to the procedure such that the procedure’s main points are as follows:
 - a. A resident of the Judea and Samaria Area wishing to inquire whether his travel abroad is prevented for security reasons may arrive in person at the regional DCO, fill out an application of inquiry regarding preclusion for travel abroad and submit it to the civil administration representative at the DCO.
 - b. If a security preclusion against the resident is not recorded, he will receive a response **then and there**. Since, as aforesaid, security preclusions for travel abroad are not on record regarding more than 99% of the residents of the Area, it is clear that processing will terminate at this stage for the vast majority of applicants.
 - c. If a security preclusion is on record regarding the resident, his case will be forwarded for renewed, extensive reevaluation by security officials. This reevaluation will take no more than six weeks and during this time, security officials may, of course, call the applicant in for questioning.

- d. Inasmuch as the security preclusion is removed following the reevaluation, the applicant will receive a response over the telephone and in a letter forwarded to him through the Palestinian Coordination. Of course, if the applicant arrives at the DCO on his own initiative, he will be able to receive the letter, but this is not at all necessary.
 - e. Inasmuch as the security preclusion remains following the reevaluation, the applicant will receive a letter of refusal through the Palestinian DCO, stating that he may file an objection to the decision.
 - f. Filing of the objection may be carried out in one of two ways: the applicant's arriving at the DCO in person in urgent cases, or forwarding an objection through the Palestinian Coordination in "routine" cases.
 - g. Review of the objection will take no more than six weeks, as of the date the objection is received by the DCO. During this time, security officials may call the applicant in for questioning.
 - h. A response to the objection will be provided to the applicant in the same manner a response is provided for the original application.
 - i. As stated, there is a possibility that a resident of the Area will not follow the procedure, but rather arrive at the Allenby Crossing where he will be informed that his exit is prevented for security reasons. In this case also, the resident will be able to file an objection in accordance with the procedure.
15. The procedure will be amended in accordance with the abovementioned principles in the near future and it is safe to assume that the situation will improve.
16. Noting all of the above, the Respondents will claim that the petition has been exhausted and must be rejected. The procedure will be improved in accordance with the general principles stated above and after the Petitioners' claims have been taken into account. This is a reasonable procedure which improves matters for the residents of the Area as compared to the situation in effect previously.

Over 99% of the residents of the Judea and Samaria Area are not precluded from traveling abroad for security reasons. In light of the anticipated improvement in the procedure, it is clear that this population will receive an immediate response to that effect – whether at the time of arrival at the Allenby Bridge or at the time of their first appeal to the DCO as per the procedure. As for the **extremely limited** population of individuals who are precluded from traveling abroad for security reasons, the improved version of the procedure provides a reasonable resolution in the form of the reevaluation of the security preclusion, the review of objections etc. – all within a reasonable timeframe.

Needless to say, the response given to every applicant regarding the security preclusion is valid at the time given and derives from the security material available to security officials **at that time**. We shall further recall that **urgent humanitarian** cases will be given priority and it will be possible to turn to the office of the legal advisor for the Judea and Samaria Area in urgent humanitarian cases if the need arises and after due exhaustion of remedies.

17. In these circumstances, after the Honorable Court has already ordered the deletion of all but one of the other remedies sought in the petition in the previous hearing, the Respondents maintain that the amended version of the procedure must be allowed to be implemented, while the Petitioners may again appeal to the Honorable Court inasmuch as it becomes evident that the implementation of the

procedure is lacking.

As such, the Respondents will claim, as stated, that the petition must be rejected as it has been exhausted.

18. The facts detailed in this notice are supported by an affidavit by Lieutenant Colonel Wahid Hashan, Head of the Civil Coordination Division in the Civil Administration.

Today 24 Elul 5768
24 September 2008.

[signed]
Gilad Shirman
Deputy State Attorney

A F F I D A V I T

I, the undersigned, Lieutenant Colonel Wahid Hashan, Military Identification No. 4301064, after having been warned that I must state the truth and that if I do not do so I shall be subject to the penalties set forth in the law declare as follows:

1. I serve as Head of the Civil Coordination Division in the Civil Administration.
2. I make this affidavit in support of the updating notice on behalf of the Respondents in HCJ 8155/06.
3. The facts detailed in the updating notice are true to the best of my knowledge and belief. The Civil Administration intends to amend the procedure in accordance with the guidelines listed in sec. 14 of the updating notice.

[signed]
Wahid Hashan

C O N F I R M A T I O N

I, the undersigned, Ben Hamu Limor Att., hereby confirm that on 24 September 2008, Lieutenant Colonel Wahid Hashan, bearing Military Identification number 4301064 appeared before me and after I warned him that he must state the truth or be otherwise subject to all the penalties set forth in the law, signed his affidavit in my presence.

[signed]
Limor Ben Hamu, Att.
Military Identification No. 34140