

Translation Disclaimer: The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Hebrew language. In the event of any discrepancies between the English translation and the Hebrew original, the Hebrew original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Hebrew original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

In the Supreme Court
Sitting as the High Court of Justice

HCJ 9657/07

1. _____ Jarbo`a
2. _____ Jarbo`a
3. _____ Jarbo`a
4. _____ Jarbo`a
5. _____ Jarbo`a
6. **HaMoked: The Center for the Defence of the Individual**
Represented by Adv. Ido Blum from HaMoked: The Center for
the Defence of the Individual
Tel: 0262835555; Fax: 026276317

The Petitioners

- Versus -

1. **Commander of the Army Forces in the West Bank**
2. **Commander of the Southern Command**
3. **Minister of the Interior**
4. **The State of Israel**
Represented by the State Attorney's Office,
The Ministry of Justice
Tel: 02-6466305; Fax: 02-6467011

The Respondents

Respondent's Preliminary Reply

Pursuant to the decision by the honorable Justice Joubran dated 14 November, 2007, and pursuant to the extension decisions, the respondents respectfully file their response to the petition.

1. The petition is concerned with the application by petitioners 1-5 (hereinafter: the "**petitioners**"), residents of the Gaza Strip, **to allow their entry into Israel for the purpose of their passage into the Judea and Samaria Area.** This, they claim, is for the purpose of visiting the adult children of petitioner 1, who reside in the Judea and Samaria Area. An application of this nature, which was filed with the respondents at the end of January 2007, was already dismissed in February 2007 by dent of the fact that the petitioners do not comply with the current criteria, under which the respondents would permit

the entry of residents of the Gaza Strip into Israel, for the purpose of passage into the Judea and Samaria Area.

2. The respondents are of the opinion that the petition should rightly be dismissed, since it provides no cause for intervening in the respondents' decision. The petitioners have no inherent right, neither pursuant to Israeli law nor pursuant to the general principles of international law, to leave the Gaza Strip, a region that is no longer under Israeli military control, and go to the Judea and Samaria area, which is a closed area by order of the military commander. The respondents will argue that the discretion that is given to them in cases such as these is very broad and there is thus no place for the honorable court's intervention. This is *a fortiori* so when dealing with passage through Israel.

Factual basis

3. According to that which is alleged in the petition, petitioner 1 was married to Mr. _____ Kato'a, and together they had eight children. It has also been alleged in the petition, that in 1997 the couple divorced, and petitioner 1 remained in the Gaza Strip with her two daughters, while Mr. _____ relocated to the Judea and Samaria region with their six sons. In 1998, according to the petition, petitioner 1 remarried, and from this marriage four more children were born, who are listed as petitioners 2-5. It should be noted that according to information received from the international law department at the military advocate general, petitioner 1 is currently married to an Israeli resident of Tel Aviv – Yafo.
4. According to the petitioners' claims, since 2005 petitioner 1 has not seen three of her children from her first marriage, who reside in the West Bank. It should be noted that currently the children's ages are 23, 19 and 17. At the end of January 2007 the petitioners filed an application, which already by February 2007 was dismissed, and a notice informing them of this was delivered to the petitioners, as has emerged from appendix p/2 to the petition.
5. According to that which is alleged in the petition, in July 2007 HaMoked: the Center for the defence of the Individual petitioned the legal adviser of the District Coordinator's Office of Gaza. When HaMoked discovered, as alleged, that its application had been dismissed it made further applications at the end of August 2007, and again during the month of October 2007. The petitioners' applications were transferred to the most senior personnel in the office of the Coordinator of Government activities in the territories.
6. The petition before us was filed in November 2007. On 17 February, 2008 the Coordinator of Government Activities dealt with the matter and decided that under present policy, which was determined, inter alia, from a cabinet decision and from the security reality that currently exists, leaving the region of the Gaza Strip should be severely restricted, and should only be permitted under exceptional circumstances, that are exclusively of a humanitarian and medical nature, and therefore the petitioners' application was refused.

The respondents' position – passage from the Gaza strip to the Judea and Samaria region

7. The respondents will argue that the petition should rightly be dismissed in that it does not provide any cause for the honorable court's intervention in the respondents' decision. The petitioners have no inherent right, neither pursuant to Israeli law nor pursuant to the general principles of international law to leave the Gaza Strip, a region that is no longer under Israeli military occupation, and go to the Judea and Samaria region, which is a closed area by order of the military commander. The respondents will argue that the discretion that is given to them in cases such as these is very broad and there is thus no place for the honorable court's intervention. This is *a fortiori* the case when dealing with passage through Israel.
8. Upon the IDF's entry into the Judea and Samaria area and the Gaza Strip area, these territories were proclaimed as closed territories, where entry and exit are regulated by a permit from the commander of the IDF forces in the area, in accordance with the Closure of the Area Order (Gaza Strip Area) (No. 144). 5728-1968 and the Order on Closed Territories (West Bank Area) (No. 34), 5727 – 1967.
9. With respect to anything related to the Judea and Samaria area, the situation remains the same and with respect to the prevailing security legislation this area is sealed territory whereto and wherefrom entry and exit are only permitted by an individual permit issued by the area commander of the IDF forces, or someone who has been authorized by him (see section 90 of the Security Provisions Order (Judea and Samaria) (No. 378) 5730–1970). This provision provides that every soldier, policeman or authorized body in the area that was thus appointed has the authority to deport a resident of the area of the Gaza Strip who resides in the area of Judea and Samaria without a permit, and remove him outside the boundaries of that area.
10. With respect to anything related to the Gaza area, it is a well known fact that over the course of the months of August and September 2005 the State of Israel implemented the disengagement plan from the Gaza Strip area. Upon the completion of the plan and after the last IDF soldier left the Gaza Strip on 12 September, 2005, the proclamation by the Area Commander of the IDF Forces announcing the termination of military administration in the area, entered into force.
11. **With respect to passage through Israel, the honorable court has held on more than one occasion that it is the State's sovereign right to establish who may enter its gates, and the scope of discretion that is given to the authorities in this respect is of the broadest nature.**

This position of the court has been consistently held in rulings of the distant and recent past. See, for example, in this respect: H CJ 482/71 **Clerk v. Minister of the Interior** *Piskei Din* 27(1), 113.

12. In this respect we would like to clarify that the position of the honorable court accords with international law, as well as with the law practiced by most of the

nation states, in terms of which every state reserves for itself the absolute right to determine which foreigners may enter it, and as a rule, it is not obligated to provide reasons to any alien person, why it refuses the latter permission to enter its territory.

13. See also the judgment in HCJ 7277/94 **John Doe v. The Military Administrator of the Gaza Strip** *Takdin Elyon* 95(2), 889, where residents of the Gaza Strip petitioned the court to receive an exit permit from Israel, where the following was established:

“None of the petitioners have an inherent right to enter Israel in order to work there. The decision whether to allow entry into Israel, for work purposes or for any other purpose whatsoever is at the discretion of the respondent ...” (emphasis added R.S.)

And compare: HCJ 7475/05 **Ka`abneh v. Commander of the IDF Forces in the West Bank** *Takdin Elyon* 2005(3) 2662. See also: HCJ 11809/05 **'Omar Alsid v. The Attorney General** *Takdin Elyon* 2006(1), 2314; HCJ 2875/06 **Kawazbeh v. Minister of Defence** (unreported); HCJ 4283/06 **Osteh v. The State of Israel – Ministry of the Defence** (unreported); HCJ 11764/05 **Kara'an v. Commander of the IDF Forces in the West Bank** *Takdin Elyon* 2006(1), 2040; HCJ 5108/05 **'Odeh v. The Israel Police** *Takdin Elyon* 2005(3), 3546; HCJ 2475/06 **John Doe v. Commander of the IDF Forces in the West Bank** (unreported).

14. From the aforesaid it clearly emerges that the petitioners have no right under the law *a fortiori* an inherent right, to receive an entry permit into Israel, even if it were not for the purpose of passage to the Judea and Samaria area, since at the outset residents of the Gaza Strip have no right to enter Israel, and at best we are dealing with the non granting of that which is solely a privilege. In this regard see, for example HCJ 11120/05 **Asama Mahmud Hamadan v. General of the Southern Command** *Takdin Elyon* 2007(3), 2071.
15. It should be noted that over the course of the years the honorable court has dealt with many petitions that are concerned with the authority of the military commander to prevent entry to, and exit from territories of the area. In their rulings the honorable court confirmed, time and again, the legal validity of security legislation, while approving the security considerations considered by the area military commanders when making a decision on the movement of residents outside of the area or within it.

See for example HCJ 9293/01 **MK Muhammad Barka v. Minister of Defence** *Piskei Din* 56(2), 509, 515-516, where it states as follows:

“In the Sealing of the Area ordinance (Gaza Strip Area) (No. 144), 5768-1968, which was issued by the Area Commander of the IDF Forces, it was established that for the sake of “establishing a proper administration and security in the area”, “the entire area shall be a sealed area” (section 1 of the Ordinance). It has thus been

established that: “a person shall not enter an area and shall not exit from it, unless he receives a permit from him or from anyone who is authorized to do so in writing by me, or pursuant to the provisions of a general permit that has been issued by me” ... **Indeed no one disputes that in the petition before us relating to the authority of the area commander to issue ordiancne of this kind or to prevent the entry to or exit from territories of the sealed area**” (Emphasis added).

16. In light of the aforesaid the respondents’ position is that the military commander is charged with the security and public order in the area and across all the crossings and, pursuant thereto, he has the authority to prevent or to approve the exit from or entry to the area of Judea and Samaria.

The Hostile Entity that rules over the Gaza Strip

17. Another aspect that pertains to the entry of residents of the Gaza Strip into Israel, even for the purpose of passage into the Judea and Samaria Region is the violent rule by Hamas, which is a terrorist organization, over the Gaza Strip, and the government’s decision, that has established that the Palestinian Authority is a terrorist authority which is hostile to the State of Israel.
18. In this regard the respondent would like to quote the most recent pronouncement by the honorable Chief Justice Beinisch in H CJ 9132/07 **Gabar Albassiuni Ahmed v. The Prime Minister** *Takdin Elyon* 2008(1), 1213:

“...[i]n conclusion, it should be reemphasized that the Gaza Strip is ruled by a murderous terrorist organization, which tirelessly works to harm the State of Israel and its residents, and it violates every possible law of international law with its violent activities, which are indiscriminately directed toward civilians – men, women, and children...”

Currently the Hamas effectively rules over the territory of the Gaza Strip as well as over the crossings between Israel and the Gaza Strip that are on the Palestinian side. As a result thereof current policy is to limit to an absolute and essential minimum any activity along the crossings.

19. The State of Israel, by virtue of its absolute right to self defence acted in the past and continues to currently act to defend its towns, its citizens and its residents from the abominable acts of terror organizations. Included in this activity, the State of Israel has acted to frustrate the intentions of terror organizations to carry out shooting attacks and attacks on the crossings between the Gaza Strip and the sovereign territory of the State of Israel.
20. Also because of this special security situation, the passageway from the Gaza Strip to Israel via the Erez crossing is now routinely limited, as a rule, to

exceptional humanitarian situations, and even these are subject to the discretion of the State of Israel, which is not bound by any commitment in this respect.

21. In this respect we would like to refer the honorable court to dicta that were recently pronounced in HCJ 5429/07 **Physicians for Human Rights v. The Minister of Defence** *Takdin Elyon* 2007(2) 5055(2007), which included the following:

“...according to the respondents’ argument one must remember that – as aforesaid – any opening of the Erez crossing entails a danger to the lives of soldiers and Israeli citizens, and recently an event occurred – for example – where pregnant Palestinian women who were meant to be allowed to cross on humanitarian grounds were in fact suicide bombers. **Therefore, it is necessary to limit the opening of the gate to cases when it is essential, in order to avoid a situation in which a sick individual may act in a manner suggestive of the verse “O! that my soul shall perish with ...”**”

22. It is the respondents’ contention, in light of the dissolution of the military administration in the Gaza Strip, that there is no obligation upon them under security legislation, Israeli law or the general principles of international law to grant entry permits to residents of the Gaza Strip, who are in a territory that is not under Israeli military control, to enter the territory of the Judea and Samaria area, a sealed territory which is held under belligerent occupation by the State of Israel and where the responsibility for security and public order are given over to the military commander.
23. As aforesaid, because of this special security situation, passage from the Gaza Strip to Israel via the Erez crossing, is currently routinely limited, as a rule, to exceptional humanitarian cases, primarily life saving emergency medical situations, to the passage of employees of international organizations, to the passage of an Israeli spouse from a “split family” (where the other spouse resides in the Gaza Strip), to the passage of a limited number of foreign journalists, to the passage of individual senior merchants upon whom the Gaza economy is dependent – and also to all those who are subject to the discretion of the State of Israel, which is not bound to any obligation whatsoever.
24. It does not go without say that the honorable court, before which the respondents’ policy has been presented, did not find any cause for intervening with it. In this regard see HCJ 5429/07 **Physicians for Human Rights v. The Minister of Defence** *Takdin Elyon* 2007(2) 5055 (2007).
25. As stated at the beginning of this document, the petition before us is not concerned with those cases that fall within the exceptional cases for which entry into Israel has been allowed for the express purpose of passage into the Judea and Samaria area. The particular case of the petitioners was raised before the Coordinator of Government activities in the territories, and the

latter also decided that the petitioners' case is not included among those exceptional cases in which entry of residents of the Gaza Strip into Israel would be allowed, for the purpose of passage into the Judea and Samaria Area.

26. Therefore, the respondents are of the opinion that there is no cause of action whatsoever for any intervention in this decision, and therefore the petition should rightly be dismissed.

**Today,
21 Adar I 5768**

27 February 2008

**Ro'i Shwieka
(signed)**

Assistant to the State Attorney