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At the Supreme Court

**HCJ 2786/09**

**Sitting as the High Court of Justice**

In the matter of:

1. \_\_\_\_\_ **Salem**
2. \_\_\_\_\_ **Salem**
3. \_\_\_\_\_ **Salem**
4. \_\_\_\_\_ **Salem**
5. **HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

All represented by counsel, Att. Ido Bloom et al.

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**

- Versus -

**Military Commander of the West Bank**

represented by the State Attorney's Office

Ministry of Justice Jerusalem

Tel: 02-6466289; Fax: 02-6467011

**The Respondent**

## **Response on behalf of the Respondent**

1. In accordance with the decision of Honorable Justice Meltzer dated 29 March 2009 and the request for an extension, the Respondent hereby respectfully submits his response to the petition.
2. The petition concerns Petitioners' request that the Honorable Court order the Respondent to refrain from removing Petitioner 1 (hereinafter – **the petitioner**), who is registered in the Palestinian population registry as a resident of the Gaza Strip from his home in the Judea and Samaria Area (hereinafter – **the Area**) to the Gaza Strip.

Petitioners further requested a temporary injunction be issued instructing the Respondent to refrain from removing the Petitioner pending a decision on the petition.

3. In accordance with the decision of Honorable Justice Meltzer, on 29 March 2009, an interim injunction was issued prohibiting the removal of the Petitioner to the Gaza Strip until decided otherwise.
4. The Respondent is of the opinion that the petition must be rejected due to lack of grounds for intervention in the Respondent's decision to remove the Petitioner, whose registered address is in the Gaza Strip, to the Gaza Strip.

Information pertaining to the Petitioner indicates that the Petitioner **is a Tanzim activist and there is information regarding his involvement in a shooting at an IDF base in 2001 and in establishing a military Tanzim cell between the years 2004-2005. There is additional negative security information regarding the Petitioner which relates to a later period.** Furthermore, at the time of the Petitioner's arrest, weapons were found in his home.

The Respondent shall argue that the continued presence of the Petitioner in the Judea and Samaria Area may pose a threat to the security of the Area and the State.

5. As for Petitioners' request for a temporary injunction preventing his removal to the Gaza Strip pending a decision in the petition, the Respondent is of the opinion that there is no room to issue a temporary injunction preventing the removal of the Petitioner to the Gaza Strip. In light of the information obtained by the Respondent, based on examinations carried out by security agencies, **the Petitioner faces no danger in the Gaza Strip.** In these circumstances, in view of the negative security information in the Petitioner's matter, and in view of the fact that, inasmuch as the petition is accepted, there will be no difficulty in relocating the Petitioner back to the Judea and Samaria Area, the Respondent is of the opinion that the balance of convenience does not lean in favor of the Petitioners.

In any event, it shall be clarified, that in the circumstances of the matter, in view of the negative security information pertaining to the Petitioner, the Respondent insists he continue to be kept in custody. Inasmuch as a temporary injunction prohibiting the Petitioner's removal (and, as stated, the Respondent is of the opinion that there is no room for this), the Respondent shall request the Honorable Court to clarify that the Petitioner shall remain in custody until the petition is decided.

#### **The Main Relevant Facts**

6. The Petitioner, aged 34, is a Gaza Strip native. **The Petitioner's registered address** in the Palestinian population registry **is in the Gaza Strip.**

Petitioner 2 is the wife of the Petitioner, her registered address in the Palestinian population registry is in the Judea and Samaria Area. Petitioners 3-4 are the children of Petitioners 1-2 whose registered address is in the Judea and Samaria Area.

An examination in the Respondent's computerized system reveals that **the Petitioner's parents and most of his brothers live in the Gaza Strip.** The

Respondent even mentioned, in a questioning he underwent, that his parents and brothers live in the Gaza Strip.

7. As emerges from the petition, the Petitioner entered the Judea and Samaria Area in 1995 via the Erez Crossing. An examination in the Respondent's computerized system reveals that the Petitioner entered the Judea and Samaria Area in August 1996 and that **he was never granted a permit to remain in the Judea and Samaria Area.**

Contrary to Petitioners' claims, as if the Petitioner has been lawfully present in the Judea and Samaria Area and his registered address in the population registry is erroneous, and as shall be detailed below, settlement of persons not registered as residents of the Judea and Samaria Area in the Judea and Samaria Area requires a permit from the military commander. **Since no permit was issued by the military commander in the Judea and Samaria Area for the permanent settlement of the Petitioner, who is registered in the Palestinian population registry as a resident of the Gaza Strip, indeed, his presence in the Judea and Samaria Area is illegal.**

It is not superfluous to note that an examination in the Respondent's computerized system reveals that **the Petitioner did not file an application for settlement in the Judea and Samaria Area** throughout the years during which he remained in the Judea and Samaria Area illegally.

8. The Petitioner was arrested by security forces on the evening of 26 March 2009, after the accumulation of a substantial amount of negative security material against him which indicated that he posed a threat to public security and after his matter was reviewed by the Office of the Legal Advisor for the Judea and Samaria Area. As stated above, information pertaining to the Petitioner indicates that the Petitioner **is a Tanzim activist and there is information regarding his involvement in a shooting at an IDF base in 2001 and in establishing a military Tanzim cell between the**

**years 2004-2005. There is additional negative security information regarding the Petitioner which relates to a later period.**

A copy of a translation of suspect statements made by Ria Nazal which implicate the Petitioner in involvement in a shooting at an IDF military base in 2001 and in establishing a military Tanzim cell in the year 2004-2005 is attached and marked **R/1A**

If the Honorable Court sees fit, the Respondent shall present the entire intelligence dossier in the matter of the Petitioner *ex parte* and behind closed doors.

9. Shortly after his arrest, on 27 March 2009, the Petitioner was questioned by military forces, prior to the final decision on returning him to his registered place of residence in the Palestinian population registry – the Gaza Strip. A preliminary arrest order for 96 hours on suspicion of illegal presence in a closed military zone was also issued against him. The Petitioner did not claim that his life would be in danger in the Gaza Strip, but rather asked to remain in the Judea and Samaria Area as he had property in the Judea and Samaria Area and as he had borrowed money from people.

Copies of the questioning forms dated 27 March 2009 are attached and marked **R/1**

10. On 29 March 2009, the Petitioner was interrogated by ISA officials. In this interrogation too, the Petitioner did not make claims regarding danger to his life in Gaza, but said that he had monetary debts to people in the Bethlehem area, after he had bought a plot of land and began to build a house and that his wife and daughter studied in Beit Sahur.

Copies of the questioning from dated 29 March 2009 and the unclassified section of the interrogation the Petitioner underwent are attached and marked **R/2**

11. As indicated by the questioning forms conducted by military forces and ISA officials, the Petitioner mentioned that **he did not have a valid permit to remain in the Judea and Samaria Area** (one of the forms indicates that the Petitioner did not have a permit to enter the Judea and Samaria Area at the time he entered the Judea and Samaria Area and the other indicates that he did have such a permit); the Petitioner requested to remain in the Judea and Samaria Area since, so he claimed, he had property in the Judea and Samaria Area; he had bought land in the Bethlehem area and began building on it, his wife attends university in Beit Sahur and his daughter goes to school in Beit Sahur; and he wants to repay 30,000 NIS worth of debts to people in the Bethlehem area.

In the questioning conducted for the Petitioner by ISA officials, he was told that there was negative security information pertaining to him, and the Petitioner denied the allegations.

It shall be emphasized that, contrary to the claims made in the petition, the Petitioner never claimed during the hearings held for him that he was afraid to return to the Gaza Strip and that there was any danger to his life there.

Following the questionings held for the Petitioner, it was decided to remove him to the Gaza Strip.

12. On 29 March 2009, Att. Bloom appealed to the Office of the Legal Advisor for the Judea and Samaria Area in a “request to halt procedures for the expulsion [of the Petitioner] to the Gaza Strip”, since his “address is erroneously registered in the Gaza Strip”.

It shall be emphasized that in that letter too, no claim was made regarding danger to the Petitioner in the Gaza Strip.

A copy of the appeal was attached as exhibit **P/1** to the petition.

13. On the same day, 29 March 2009, the response of the Office of the Legal Advisor to the West Bank was sent. The response noted that the illegal presence of the Petitioner in the Judea and Samaria Area through the years cannot justify his continued presence in the Judea and Samaria Area, that an inquiry with security agencies revealed that the Petitioner “has taken substantial action against the security of the State of Israel and its citizens”, and that, primarily based on the negative security material which exists in the Petitioner’s case, there is sufficient justification to remove him to the Gaza Strip. The letter further noted that the removal of the Petitioner to the Gaza Strip was due to take place on 30 March 2009.

A copy of the response of the Office of the Legal Advisor for the Judea and Samaria Area was attached to the petition as exhibit **P/2**.

14. Also on 29 March 2009, the petition at hand was filed, which requests refraining from removing the Petitioner from the Judea and Samaria Area to the Gaza Strip.

15. On 30 March 2009, following the decision of Honorable Justice Meltzer to issue an interim injunction, an order for the expulsion of the Petitioner from the Judea and Samaria Area was issued in accordance with sections 3 and 6 of the Order regarding Prevention of Infiltration 5729-1969, which also serves as a reference for holding him in custody pending his removal to the Gaza Strip.

A copy of the expulsion order is attached and marked **R/3**.

### **The Respondent’s Position**

16. The Respondent is of the opinion that the petition must be denied due to lack of grounds for intervention in the Respondent’s decision to remove the Petitioner to the Gaza Strip, his registered address in the Palestinian population registry, and this in light of the information in the possession of the security agencies which indicates that the Petitioner’s continued presence of in the Judea and Samaria Area may pose a threat to the security of the Area and the State.

According to the information in the possession of the security agencies, the Petitioner **is a Tanzim activist and there is information regarding his involvement in a shooting at an IDF base in 2001 and in establishing a military Tanzim cell between the years 2004-2005. There is additional negative security information regarding the Petitioner which relates to a later period.**

According to the Respondent's position, the Petitioner, who is a resident of Gaza, **is illegally present in the Judea and Samaria Area**, since he was never granted a permit to settle in the Judea and Samaria Area by the military commander.

In this state of affairs, where the Petitioner's registered address is in the Gaza Strip **and the Petitioner is illegally present in the Judea and Samaria Area** and where **the Petitioner's continued presence in the Judea and Samaria Area may pose a threat to the security of the Area and the State**, there are no grounds to intervene in the Respondent's decision to remove the Petitioner to the Gaza Strip.

**The Respondent's position regarding settlement of Gaza residents in the Judea and Samaria Area**

17. As indicated in the petition, Petitioners claim that the Petitioner is legally present in the Judea and Samaria Area and that his address in the population registry is erroneous.
18. The Respondent's position is that entry into the Judea and Samaria Area, and *a fortiori* permanent relocation to and **settlement** in the Judea and Samaria Area of persons not registered in the population registry as Judea and Samaria Area residents **require a permit from the military commander**.
19. This position of the Respondent stems from the Judea and Samaria Area's being **a closed military zone**, which, in accordance with the Order regarding Closed Zones (Judea and Samaria Region) (No. 34) 5727-1967, entry and remainder therein require an **individual permit** from the military commander, and *a fortiori*, settlement –



permanent residency – in Judea and Samaria requires a permit from the military commander.

Over the years, this Honorable Court has heard many petitions concerning the military commander's authority to prevent entry and exit from the Judea and Samaria Area (and in the past, until issuance of the proclamation announcing the termination of military rule on 12 September 2005, also in the Gaza Strip Area). In its rulings, the Honorable Court sanctioned the legal validity of the security legislation and, while doing so, considered the framework of the discretion of the military commanders in the Area and the substance of the security considerations they weigh when making decisions regarding movement of residents out of or into the Area (see for example H CJ 9293/01 **MK Muhammad Barakeh v. Defense Minister**, *Piskey Din* 56(2), 509, pp. 515-516, and H CJ 709/88 **Ra'fat Subhi Muhammd Tayeb v. Head of Civil Administration**, *Takdin Elyon* 88(3), 138, p. 139 (1988)).

The Honorable Court has also approved, time and again, the Respondent's position which prevents the passage of Gaza residents to the Judea and Samaria Area. On this issue, see for example the judgment given in H CJ 7960/04 **Muhammad Musa Al-Razi et al. v. Commander of IDF Forces – Gaza Strip**, *Takdin Elyon* 2004(3), 3384, in which the petition of Gaza residents requesting their passage to the Judea and Samaria Area for the purpose of their studies be permitted, which established, *inter alia*, as follows:

“... the Respondent's decision not to accede the Petitioner's request was based on the evaluation of security officials that their leaving their area – and particularly their intent to remain in Bethlehem for purposes of their studies – present risks to the security of the State and the Areas. In a written response on his behalf, the Respondent clarified that his position was not based on individual screenings relating to each and every one of the Petitioners personally, but on the evaluation of security officials that the “risk profile” which the Petitioners fit suffices to raise grounds for suspecting that terrorist organizations operating in the Gaza Strip Area

would use their exit to Bethlehem to carry out terrorist attacks in Israel and in the Judea and Samaria Area...  
We have reached the conclusion that in the difficult circumstances currently in effect, there is no reason to intervene in the Respondent's decision. We are prepared to assume that at least some of the Petitioners requested to exit to Bethlehem for the purpose of studying therein and for no other purpose. However, we have been convinced that permitting their exit from the Gaza Strip Area involves a substantive risk to public safety in Israel and in the Areas..." [emphases added]

20. Additionally, persons whose **entry** into the Judea and Samaria Area was permitted and who wished to **permanently** change their place of residence to the Judea and Samaria Area were required to obtain the Respondents' permission thereto and only after the same was granted, did the change of place of residence effectively materialize and the permanent presence in the Judea and Samaria Area became legal.

The validity of a permit for passage granted to persons who are not residents of the Judea and Samaria Area and **whose visit to the Judea and Samaria Area** for one purpose or another was approved by the military commander, expires upon expiration of the permit, or once the purpose for which the permit was granted has been fulfilled and when a closure is imposed. At such time, the resident holding the permit for passage is required to return to the Area from whence he came and his presence in the Judea and Samaria Area is no longer permitted.

21. Following the outbreak of security events in September 2000, the Respondents ceased permitting passage of Palestinians from Gaza to the Judea and Samaria Area as well as changes of place of residence to the Judea and Samaria Area, other than in extraordinary and humanitarian cases.

The Respondents' policy at this time, is not to approve a change of place of residence of Palestinians from Gaza to the Judea and Samaria Area, other than in exceptional humanitarian cases (listed in the "Protocol for Processing Requests for Settlement of

Gaza Strip Residents in the Judea and Samaria Area” presented to the Honorable Court on 8 March 2009 and attached below as exhibit R/5), and in accordance with an official appeal from the higher echelons of the Palestinian Authority. It is the Respondents’ position that this policy duly balances security needs on the one hand and the need to consider exceptional humanitarian cases on the other hand and that this is a reasonable and appropriate policy.

22. It shall be noted that a number of petitions are pending before the Honorable Court (HCJ 660/08, HCJ 2905/08 and HCJ 3911/08 hereinafter – **the principled petitions**) in which the principle issue of the settlement of Gaza Strip residents in the Judea and Samaria Area is being reviewed. The Respondent wishes to refer to the response filed in the principled petitions on 2 December 2008, in which his position regarding settlement of Gaza residents in the Judea and Samaria Area is elaborated.

In a hearing held in the principled petitions on 8 December 2008, the Honorable Court ruled as follows:

We have heard today, from counsel for the State, that a written protocol addressing both the manner in which applications for passage from the Gaza Strip to the Judea and Samaria Area are to be filed and the issue of setting criteria for issuance of the permit itself, is being formalized. The State has agreed that the cases which are the subject matter of the cases being heard today will be examined on their merits, upon submission of the appropriate application and this prior to the formalization of the protocol.

An updating notice shall be submitted to us within 90 days. Petitioners shall have the right to respond within 30 days thereafter. Upon reading the notices, we shall decide the manner in which the cases are to be processed.”

It is not superfluous to note that in the hearing held in the principled petitions on 8 December 2008 the question of the military commander’s authority to approve or

deny applications for settlement of Gaza residents in the Judea and Samaria Area was not addressed, but rather the hearing focused on the manner in which the authority is exercised and the formalization of the protocol regulating this issue.

On 8 March 2009, an updating notice was filed on behalf of the State, to which a “Protocol for Processing Requests for Settlement of Gaza Strip Residents in the Judea and Samaria Area” was attached.

A copy of the Respondents’ response in HCJ 660/08 and HCJ 2905/08 (without the exhibits) in which the Respondents’ position regarding settlement in the Judea and Samaria Area is detailed is attached and marked R/4.

A copy of the notice submitted to the Court on 8 March 2009 is attached and marked R/5.

23. It shall be emphasized that this issue of the settlement of Gaza residents in the Judea and Samaria Area, an issue whose resolution may have wide implications on thousands of Palestinian residents who, according to the estimates of Civil Administration officials, are illegally present in the Judea and Samaria Area despite their registered place of residence being Gaza is **a political question which is inextricably linked to the political relationship between Israel and the Palestinian Authority**. According to the Respondent’s position, there is no room for the Honorable Court’s intervention in these matters which relate to the foreign affairs of the State of Israel, the management of which is a prerogative of the government of Israel (regarding the Court’s intervention in issues of a manifestly political nature, see for example, HCJ 4395/00 **Terror Victims Headquarters v. Government of Israel**, *Takdin Elyon* 2000(2), 2243 (2000) and see also, with the necessary changes, the judgments of the Honorable Court in HCJ 2231/03 **Al-Shalalda v. Commander of the Binyamin Brigade** and in HCJ 5957/02 **I’itdal v. Commander of the Binyamin Brigade** *Takdin Elyon* 2002(3), 881 (2002) and other judgments by the Honorable Court in which it found no cause to intervene in Israeli policy regarding admitting applications for visitor permits and family unification in areas under the control of the

Israeli military, since the matter formed part of the political relationship between Israel and the Palestinian Authority and the questions were political questions).

**Removal of Gaza residents illegally present in the Judea and Samaria Area**

24. The Respondent is of the opinion that the military commander is vested with the power to order the removal of illegal aliens from the Judea and Samaria Area, which is a closed military zone. This is all the more relevant in a situation involving illegal aliens whose continued presence in the Judea and Samaria Area may pose a threat to the security of the Area and of the State.

25. According to evaluations made by security officials, **terrorist organizations in the Gaza Strip are highly motivated to transfer fighting against Israel to the Judea and Samaria Area, this including by way of transferring knowledge, military capabilities and explosives experts from the Gaza Strip to the Judea and Samaria Area in order to promote and upgrade this activity.** In order to further these goals there is a common phenomenon of **recruiting Gaza Strip residents who are in the Judea and Samaria Area and Gaza Strip residents planning to arrive there, who have access to civilian and military targets in Israel and in the Judea and Samaria Area,** access they naturally did not have in the Gaza Strip, for the purposes of military activity, including suicide attacks, kidnappings and more.

Unlike the situation in the Judea and Samaria Area, in view of the Gaza Strip's being a separate, fenced off territory and in view of the efforts of the security agencies, terrorist organizations find it difficult to send terrorists from inside the Strip toward Israel for the purpose of carrying out terrorist attacks and other activities which pose a threat to the security of the State of Israel and its residents.

Hence, the risk posed in the Gaza Strip by persons involved in terrorist activities is lower than the risk posed by the same in the Judea and Samaria Area.

26. The Honorable Court has ruled time and again, in a number of petitions that **there is no room for intervention in the decision of the Respondent to remove to the Gaza Strip Palestinians whose registered address in the population registry was in the Gaza Strip and who had been illegally present in the Judea and Samaria Area.**

Thus for example, in H CJ 10735/03 **Al-Nabahin v. Israel Prison Service**, *Takdin Elyon*, 2003(4), 1227 (2003), the Honorable Court ruled as follows:

“The Petitioner is about to finish a prison term. He requests that upon the end of his prison term he be deported to the Judea and Samaria Area and not Gaza. The material before us indicates that his place of residence is in Gaza. We were also informed that his release to the Judea and Samaria Area may pose a risk to public safety, this in view of the fact that passage from the Judea and Samaria Area into Israel is easier than passage from Gaza to Israel. With this information as the background, the Respondent has notified us that the Petitioner would be deported, upon serving his sentence, to Gaza. We cannot intervene in this decision. The petition is denied.” [emphases added]

In this judgment, the request of the Petitioner, who had been illegally present in the Judea and Samaria Area for some three years prior to his arrest, to be released to the Judea and Samaria Area after serving his sentence, was denied.

Also in H CJ 7880/03 **Ghanim v. Israel Prison Service**, *Takdin Elyon* 2003(3), 2362 (2003), the petition of the Petitioner to be released to the Judea and Samaria Area where he claimed to be living with his wife, instead of the Gaza Strip in accordance with his registered address, was denied. In the judgment, it was ruled, *inter alia*, as follows:

“1. The Petitioner is serving a prison sentence of three months due to offences of falsifying an official document and exiting a closed military zone without a permit. For the purpose of the exit and entry into Israel – to

find work – the Petitioner used a fake identity card. The Petitioner is due to be released from prison on 14 October 2003 and in his petition he requests to be released to the city of Qalqiliya rather than the city of Gaza which is his residential address according to his identity card. In his petition, he claims that he has been living in Qalqiliya since 2 September 2002 with his wife who is a resident of Qalqiliya. He also claims that he is in mortal danger in Gaza due to a family feud. Counsel for the State claims that the Petitioner is not registered as being married and that despite the extension he had been given at the hearing held in Court on 29 September 2003, he did not produce medical documents attesting to his marriage, nor his wife's identity number in order to enable an inquiry into the matter. She further argues that his claim that he is in mortal danger in Gaza has been examined by security officials and no indications thereof were found. On this matter, she adds that in a similar request filed by the Petitioner in the Shomron military court, he did not mention that he was in mortal danger in the Gaza Strip.

Counsel for the State further claims that the Petitioner's release in the Judea and Samaria Area may pose a threat to public safety considering his prior convictions of illegal entry into Israel and exiting a closed military zone with no permit.

2. In the hearing before us, counsel for the Petitioner was unable to convince us of his claims and the Petitioner himself – who added his own remarks – was also unable to convince us thereof. Therefore, there is no choice but to deny the petition and so we order.

We have taken note of the notice of counsel for the State that should the Petitioner produce further details to support his claims, the persons in charge of the matter will reconsider his claims, subject to the information being produced in due time before the abovementioned release date of 14 October 2003.” [emphases added]

In the judgment in HCJ 3519/05 **Ward v. Military Commander of the West Bank, Takdin Elyon**, 2006(3), 1057 (2006), another petition where the Petitioner who was released from administrative detention to the Gaza Strip – his registered address in the population registry, requested that the Respondent allow him to return to the Judea and Samaria Area, where his family lived, the Honorable Court ruled as follows:

“5. In the framework of this petition, the Petitioners have raised substantial questions of principle, which we have reviewed. According to the sequence of their claims, one must first examine these questions, and particularly, one must determine whether the Respondents had lawfully acted within the scope of their authority when they removed the Petitioner to the Gaza Strip. The individual balance in the matter of the Petitioner, including the examination of the risk posed by him will arrive, thus according to the Petitioners, only in the second stage and after their position on the issue of principle is accepted and the Court orders the removal null and void and the Petitioner be returned to the Judea and Samaria Area. Only then, will it be possible to conduct a proper administrative procedure in his matter, which includes issuance of the appropriate order for assigning his residence, with all the guarantees incorporated therein.

In the special circumstances of the case at hand, and particularly in view of recent developments in the matter of the Petitioner, we cannot accept the hearing sequence proposed by the Petitioners. The immediate relief sought by the Petitioner is, as stated, the issuance of an order absolute instructing the immediate return of the Petitioner from Gaza to Jenin, without examining, at this stage, the security risk posed by him, and in any event, without the Court having the opportunity to examine, *ex parte*, the current intelligence material on which the Respondents base their position that the Petitioner poses a substantive security threat to the extent of his being declared wanted by security agencies. This, despite the fact that



counsel for the Petitioners himself stated in a hearing on 12 June 2006 that in response to the information regarding the Petitioner's being considered a wanted man, in the situation that has ensued, it is doubtful that the Petitioner would wish to return to the Judea and Samaria Area at this time. Counsel for the Petitioners is of the opinion, however, that it is appropriate to decide the petition on its merits, due to the questions of principle it raises and regardless of the Petitioner's individual matter. We find this approach difficult to accept.

6. Case law establishes that where a Petitioner objects to having confidential material presented *ex parte*, the authority enjoys a presumption that it had made a decision lawfully based on that same material and that the onus is on anyone wishing to disprove this presumption..." [emphases added]

The aforesaid indicates that in HCJ 3519/05 too, the Honorable Court considered the need to examine the security material on the basis of which the position of the Respondent regarding the security threat posed by the Petitioner's continued presence in the Judea and Samaria Area was formalized and did not accept the Petitioner's position that the Respondent lacks the authority to order the removal of persons who are illegally present in the Judea and Samaria Area.

**From the general to the specific – the matter of the Petitioner**

27. As detailed above, the Petitioner has been illegally present in the Judea and Samaria Area for many years, without having filed an application for settlement and without any attempt, on his part, to have his status in the Judea and Samaria Area legalized, this despite the fact that he was aware that he was present in the Judea and Samaria Area illegally.

28. The Petitioner was arrested by security officials after information indicating that he posed a threat to public security had accumulated. As stated, the information in the possession of security officials indicates that the Petitioner **is a Tanzim activist and**

**there is information regarding his involvement in a shooting at an IDF base in 2001 and in establishing a military Tanzim cell between the years 2004-2005. There is additional negative security information regarding the Petitioner which relates to a later period.** Additionally, at the time of the Petitioner's arrest, weapons were found in his home.

29. In this state of affairs, where the Petitioner has been illegally present in the Judea and Samaria Area for many years, and where there is information pertaining to him which indicates that his continued presence in the Judea and Samaria Area may pose a threat to the security of the Area and of the State, the Respondent is of the opinion that there are no grounds for intervention in the decision to remove him to the Gaza Strip, his registered place of residence in the Palestinian population registry, and where his parents and brothers live.

It shall be noted that the fact that his wife and children is not sufficient to permit the Petitioner's own presence in the Judea and Samaria Area [sic], particularly in view of the security information which exists in his matter and which points to a risk posed by him to public safety in Israel.

30. As for the Petitioners' claims regarding the danger faced by the Petitioner in the Gaza Strip, the Respondent wishes to clarify that **in light of information in his possession and based on examinations carried out by security officials, the Petitioner does not face danger in the Gaza Strip.**

It is not superfluous to note in this context, that **the Petitioner did not raise any claims regarding danger to his life in the Gaza Strip in the questioning he underwent upon his arrest and in the interrogation he underwent two days later,** which raises doubts regarding the reliability of this claim.

31. As for Petitioners' claims regarding procedural faults in the questioning held for the Petitioner, the Respondent wishes to clarify that the Petitioner was given two

opportunities to present his claims before security officials, who informed him that there was negative security material pertaining to him. The Honorable Court ruled more than once, regarding the right to be heard, that “the scope of the duty and the shape of the opportunity shall depend, of course, on the concrete circumstance of the issue at hand” (HCJ 3/58 **Berman v. Ministry of the Interior**, *Piskey Din* 12(2), 1493, p. 1508, 1509). In these circumstances, there is no dispute that the Petitioner was given the right to be heard by the authorities and it was made clear to him that he was a candidate for removal to Gaza. It shall be remarked that in the matter of the Petitioner, a preliminary review was conducted by the Office of the Legal Advisor for the West Bank, and therefore, there was no need to fill out the section regarding Civil Administration authorization. In any event, there is no dispute that the Petitioner did not, in fact, have a valid permit to remain in the Judea and Samaria Area.

32. In light of all the aforesaid, the Respondent is of the opinion that there is no fault in the decision to remove the Petitioner, whose continued presence in the Judea and Samaria Area, according to information pertaining to him, may pose a threat to the security of the State and the Area, to his registered place of residence in the Gaza Strip.

33. Hence the Honorable Court is requested to deny the petition.

Today, 13 Nissan 5769

7 April 2009

[signed]

Liora Weis-Bensky, Att.

Assistant to the State Attorney