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At the Supreme Court
Sitting as the High Court of Justice

HCJ /09

- In the matter of:
1. _____ Nababteh ID No. _____
Resident of East Jerusalem
 2. _____ Nababteh ID No. _____
Resident of East Jerusalem
 3. _____ Nababteh ID No. _____
Minor, through her parents, Petitioners 1 and 2
 4. _____ Nababteh ID No. _____
Minor, through his parents, Petitioners 1 and 2
 5. **HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger**

all represented by counsel, Att. Ido Bloom (Lic. No. 44538) and/or Abeer Jubran-Daqwar (Lic. No. 44346), 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 Nirit Hayim (Lic. No. 48783) and/or Daniel Shenhar (Lic. No. 41065) and/or Leora Bechor (Lic. No. 50217)
Of HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

GOC Southern Command

The Respondent

Petition for *Order Nisi*

A petition for an *order nisi* is hereby filed which is directed at the Respondent ordering him to appear and show cause why he will not permit Petitioners 1-4 to enter the Gaza Strip in order to participate in the weddings of two sisters of Petitioner 1. The first wedding will be held on 1 July 2009 and the second wedding will be held on 16 July 2009.

Request to Schedule an Urgent Hearing

The Court is requested to schedule an urgent hearing in the petition considering the date of the first event and considering the Respondent's protracted delay, for many weeks, in processing the Petitioners' request.

As stated, the first wedding will be held on 1 July 2009. Therefore, the Petitioners must enter the Gaza Strip **on 30 June 2009**.

The factual foundation

The sides

1. Petitioner 1 (hereinafter: **the Petitioner**) is a resident of East Jerusalem. Petitioner 2 is her husband and Petitioners 3 and 4 are their young children. Petitioner 3, _____, is a two-year-old toddler; Petitioner 4 is a two-month-old baby.
2. The Petitioner's two sisters are residents of the Palestinian Authority who live in the Gaza Strip. Both their wedding ceremonies will be held this coming July:

The wedding of Ms. _____ Wahaba (ID No. _____), will be held on **1 July 2009**.

The wedding of Ms. _____ Wahaba (ID No. _____), will be held two weeks later, on **16 July 2009**. (It shall be noted that the wedding was due to take place at the end of last December, but the couple have had to postpone it due to the war in Gaza).

Copies of the marriage contract of Ms. _____ Wahaba and a wedding invitation are attached and marked **P/1** and **P/2**.

3. Copies of the marriage contract of Ms. _____ Wahaba and a wedding invitation are attached and marked **P/3** and **P/4**.
4. Petitioner 5 (hereinafter: **HaMoked: Center for the Defence of the Individual** or **HaMoked**) is a human rights organization which is located in Jerusalem and handles, *inter alia*, the issue of Israelis who wish to visit their families in the Gaza Strip.

The Respondent, GOC Southern Command, is empowered to authorize the entry of Israelis into Gaza on behalf of the State of Israel which has controlled the Gaza Strip's borders and crossing points for over forty years.

In the past, the Respondent held this power pursuant to a military order which determined the territories of the Palestinian Authority in the Gaza Strip were a closed military zone. The Respondent currently exercises that same power according to his interpretation of Article 24 of the Implementation of the Disengagement Plan Law, 5765-2005.

Entry of Israelis into the Gaza Strip

5. The principles of the Respondent's policy regarding Israelis' entry into the Gaza Strip were presented in the Respondents' response to a petition filed by HaMoked on this matter (HCJ 10043/03 **Abajian v. Commander of IDF Forces in the Gaza Strip** (unpublished)).

In that petition, as in the present one, the Respondents were requested to allow an Israeli resident to enter the Gaza Strip in order to visit a relative who is a resident of Gaza.

Regarding the general aspect, the Respondent notified in that petition that:

In view of the desire to consider, to the extent possible, the needs of the residents of the Palestinian Authority, as well as the desire of the citizens and residents of Israel to visit their relatives who reside in the Gaza Strip Area, the Respondent allows, also during the armed conflict, and in the absence of an individual security preclusion, the entry into the Gaza Strip Area of immediate family who wish to visit the Gaza Strip Area due to the existence of an exceptional humanitarian need (a **wedding**, an engagement, serious illness, funeral etc.). In addition, in the absence of an individual security preclusion, entry into the Gaza Strip Area by Israelis who are married to a person who resides in the Gaza Strip Area is also permitted. (emphasis added, I.B.)

6. These arrangements remained in effect after the implementation of the “disengagement” plan, after the violent outbreak in the Gaza Strip in June of 2007 and after the recent war in Gaza (operation “Cast Lead”).

A copy of the notice by the Gaza DCO dated 18 July 2008 regarding criteria for entry of Israelis into the Gaza Strip is attached and marked **P/5**.

7. As stated, even recently, after the war in the Gaza Strip ended, HaMoked: Center for the Defence of the Individual has continued to receive affirmative responses to Israelis’ requests to visit their relatives in the Gaza Strip in accordance with said criteria. At times, permits are given following a letter and at times only after a petition to the Court.

Exhaustion of remedies

8. On 30 April 2009, some two months before the date of the first wedding, HaMoked: Center for the Defence of the Individual contacted the Israeli Desk at the Gaza Strip District Coordination Office (hereinafter: **the Gaza DCO**), requesting to issue the Petitioners with permits to enter the Gaza Strip in order to attend the two weddings.

A copy of HaMoked’s letter to the Gaza DCO dated 30 April 2009 is attached and marked **P/6**.

9. A month later, when no response on the merits of the request was forthcoming, HaMoked sent another letter to the Israeli Desk on 31 May 2009.

A copy of HaMoked’s letter to the Gaza DCO dated 31 May 2009 is attached and marked **P/7**.

10. Two more weeks have since passed. The first application was submitted 45 days ago. The dates of the wedding are fast approaching. Yet, despite all this, no response has been received, other than laconic statements over the telephone that the matter was “being processed”.

The Legal Argument

The Respondent's duty to respond to applications expeditiously

11. The Respondent is delaying processing of the Petitioners' application. This, despite the importance of the matter and the fact that the application clearly meets the criteria that has been established.
12. It is a well known rule that "the duty to act expeditiously is one of the primary concepts of good governance" (Y Zamir, **Administrative Authority** (Vol. B. Nevo, 5756), 717).

See on this issue:

HCJ 6300/93 **The Institute for Rabinnical Pleader's Training v. Minister of Religion**, *Piskey Din* 48(4) 441, 451 (1994);

HCJ 7198/93 **Mitral LTD. v. Minister of Industry and Commerce**, *Piskey Din* 48(2) 844, 853, (1994);

HCJ 5931/04 **Mazursky v. State of Israel – Ministry of Education**, *Piskey Din* 59(3) 769, 782 (2004);

HCJ 4212/06 **Avocats sans Frontieres v. GOC Southern Command**, *Takdin Elyon* 2006(2) 4751 (2006).

13. It has already been ruled that when it comes to human rights the concept of a "reasonable timeframe" has special meaning (HCJ 1999/07 Galon v. The Governmental Commission for the Inquiry of the Events of the Lebanon Campaign 2006, *Takdin Elyon* 2007(2) 551, 569 (2007));

And that in matters pertaining to human rights –

There is room to expect a speedier resolution of the matter [...] a protracted infringement on human rights often exacerbates the extent of the infringement and its result could be an erosion of the right as well as severe and ongoing harm to the individual.

(HCJ 8060/03 **Q'adan v. Israel Land Administration**, *Takdin Elyon* 2006(2) 775, 780 (2006).

See also HCJ 10428/05 **'Aliwa v. Commander of IDF Forces in the West Bank**, *Takdin Elyon* 2006(3) 1743, 1744 (2006); HCJ 4634/04 **Physicians for Human Rights v. Minister of Public Security**, *Takdin Elyon* 2007(1) 1999, 2009 (2007).

14. Thus, despite the general duty to act expeditiously, despite the circumstances and the apparent urgency, the Respondent unreasonably delays processing the Petitioner's case.

The right to freedom of movement

15. The right to freedom of movement is the foremost expression of a person's autonomy, his free choice, and his fulfillment of his capacities and rights. The right to freedom of movement is among the norms of customary international law.

And see:

HCJ 6358/05 **Vaanunu v. GOC Home Front Command**, *Takdin Elyon* 2006(1) 320, para. 10 (2006);

HCJ 1890/03 **City of Bethlehem v. State of Israel**, *Takdin Elyon* 2005(1) 1114, para. 15 (2005);

H CJ 3914/92 **Lev v. District Rabbinical Court**, *Takdin Elyon* 94(1) 1139, 1147 (1994).

16. The right to freedom of movement is the engine that drives the fabric of a person's rights, the engine which allows a person to fulfill his autonomy and choices. When freedom of movement is restricted, that "engine" is damaged, and as a result, some of a person's rights and opportunities cease to exist. His dignity as a human being is breached. Hence the great importance attributed to the right to freedom of movement.
17. The Respondent is infringing on the Petitioners' freedom of movement by forcing them to wait for approval of their entry into the Gaza Strip for a protracted period of time. The infringement on freedom of movement in our case signifies severe harm to the fabric of the family life of the Petitioner and her sisters who are in Gaza.

The right to family life

18. The right to family life, which includes the right of parents and children, grandparents and grandchildren and siblings to maintain their family ties is an acknowledged right in Israeli and international law. The Respondent's obligation to respect the family unit stems from this right.
19. **The Petitioners' right to participate in the wedding celebration of their close relations constitutes an inherent part of their right to family life.**

In the words of Justice Procaccia:

The expectation of every person to take part in events which carry a special meaning in the lives and deaths of their relatives is natural and self-evident. Taking part in close relatives' joyous occasions, as well as ones of mourning, is part of the realization of a person's expectation to family life, whether it is the nuclear family or the extended family.

(HCJ.ApA 844/07 **Ravizada v. Israel Prison Service**, *Takdin Elyon* 2007(1) 1161 (2007)).

20. Regulation 46 of the Hague Regulations, which constitutes customary international law stipulates:

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

And it has already been ruled that:

Israel is obligated to protect the family unit under international conventions. (HCJ 3648/97 **Stamka v. Minister of the Interior**, *Piskey Din* 53(2) 728, 787 (1999)).

See further: Article 10 of the International Convention on Economic Social and Cultural Rights 1966; Articles 17 and 23 of the International Convention on Civil and Political Rights, 1966; Articles 12 and 16(3) of the Universal Declaration of Human Rights, 1948; Article 12 of the European Convention on Human Rights; Article 27 of the IV Geneva Convention.

21. The Supreme Court has repeatedly emphasized the great importance of the right to family life in numerous judgments, and particularly in the judgment given in the **Adalah** case (HCJ 7052/03 **Adalah v. Minister of the Interior**, *Takdin Elyon* 2006(2) 1754 (2006)).

It is our main and basic duty to preserve, nurture and protect the most basic and ancient social unit in the history of mankind, which was, is and will be the element that preserves and ensures the existence of human society, namely the natural family

[...]

[T]he family relationship [...] lie[s] at the basis of Israeli law. The family has an essential and central role in the life of the individual and the life of society. Family relationships, which the law protects and which it seeks to develop, are some of the strongest and most significant in a person's life.

Conclusion

22. It seems that in this petition there is no need to elaborate on the Petitioner's right to participate in her sisters' weddings and the great importance of her presence on their joyous days as an inherent part of the right to family life.
23. This is a case which clearly meets the criteria set by the Respondent for Israelis' entry into the Gaza Strip. The Respondent has permitted Israelis to enter Gaza in similar cases according to these criteria and he must do so now.

In light of the aforesaid, the Court is requested to issue and *order nisi* as sought and render it absolute after hearing the Respondent. The Court is also requested to rule expenses and legal fees in favor of the Petitioners.

15 June 2009

Ido Bloom, Att.
Counsel for the Petitioners

[T.S. 14985]