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At the Supreme Court
Sitting as the High Court of Justice

HCJ 5034/09

_____ **Nababteh et al.**
by counsel, Att. Ido Bloom et al.
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

GOC Southern Command
by the State Attorney's Office
Ministry of Justice Jerusalem
Tel: 02-6466513; Fax: 02-6467011

The Respondent

Preliminary Response on behalf of the Respondent

1. In accordance with the decision of the Honorable Vice President A. Rivlin dated 16 June 2009, and in accordance with the request for an extension, the Respondent hereby respectfully submits his response to the petition.
2. The petition concerns the application of Petitioners 1-4, residents of the State of Israel, to enter the Gaza Strip in order to participate in the weddings of the two sisters of Petitioner 1 (hereinafter – **the Petitioner**).
3. The Respondent will argue that the petition must be rejected. According to information received from security officials, second degree relatives of the Petitioner are deeply involved in hostile terrorist activities. In these circumstances, the Petitioner's exiting Israel to the Gaza Strip may put public safety at risk.

The Respondent is of the opinion that in the case at hand, the balance of interests requires, at this time, not to allow the Petitioners' entry to the Gaza Strip.

The normative foundation

4. According to common law, the legal premise is that **no Israeli has a right to enter the territory of the Gaza Strip**, and that the entry of Israelis into the territory of the Gaza Strip is prohibited unless

they receive a special permit to do so.

5. Beginning in the Six Day War and until October of 2000, a general entry permit allowing Israelis to enter the Gaza Strip, a territory proclaimed a “closed zone” as early as in 1967, was in force. In October 2000, following the outbreak of the “Ebb and Tide” events, the commander of the IDF forces in the Area proclaimed the territories of the Palestinian Council off limits to Israelis, unless they received a special permit to enter.
6. According to common law, Israelis did not have a right to enter the Gaza Strip as Israelis’ freedom of movement does not include the right to enter a territory which has been proclaimed a “closed zone” (see para. 12 of the opinion of the Honorable President Barak in H CJ 9293/01 **Barakeh v. Minister of Defense**, *Piskei Din* 56(2) 509 (2002)). The military administration in the Gaza Strip terminated on 12 September 2005 and the Respondents no longer exercise powers under security legislation in the Gaza Strip.

Today, the entry of Israelis into the territory of the Gaza Strip is prohibited pursuant to the provision of Article 24(A) of the Disengagement Plan Implementation Law, 5765-2005 (hereinafter - **the Disengagement Plan Implementation Law**) which stipulates the following:

“As of the day of the evacuation of an evacuated area, no Israeli shall enter that area or remain in it except pursuant to a permit granted to him by the commander and in accordance with the terms thereof”.

It shall be noted that Article 1 of the Order Implementing the Disengagement Plan (Gaza Area) 5765-2005, issued pursuant to the provision of Article 22 of the Disengagement Plan Implementation Law determines that “**the evacuated area is the entire Gaza Strip**”, and Article 2 of the Order established that “**the day of the evacuation**” is 15 August 2005. We shall further add that Article 2 of the Disengagement Plan Implementation Law establishes, relevant to the Gaza Area, that the “**commander**” is the GOC Southern Command (whose office today is “commander of the Southern Command”) and persons delegated by him.

7. Therefore, until the day of the evacuation, according to the Disengagement Plan Implementation Law, the entry of Israelis into the territories of the Palestinian Council in Gaza was restricted under security legislation, whereas today entry **is prohibited** unless a permit for this purpose is issued by the “commander” – and this pursuant to a clear provision in a law enacted by the Knesset.

It shall be noted that in accordance with the provisions of Article 1 of the Disengagement Plan Implementation Law, an “Israeli”, is a person registered in the population registry in accordance with the Population Registry Act, 5725-1965, and under Article 23(e) of the Disengagement Plan Implementation Law, for the purpose of the prohibition on entering and remaining in the Gaza Strip, an “Israeli” is also anyone granted a permit to reside in Israel under the Entry into Israel Law 5712-1952.

The Respondent’s current policy regarding entry of Israelis to the Gaza Strip

8. According to the consistent policy over recent years, in general, the entry of Israelis into the territories of the Palestinian Council in the Gaza Strip is not permitted, this due to purely security related reasons. According to common law, the security consideration is a relevant and central consideration regarding permitting Israelis to enter the area of the Palestinian Council in the Gaza Strip. We shall further add that according to the policy established after the beginning of the “Ebb and

Tide” events in October 2000, in light of the desire to consider, to the extent possible, particularly important interests, including visits with immediate family due to a special humanitarian necessity etc., Respondent 1 has allowed, subject to the absence of an individual security preclusion, the entry of Israelis into Gaza.

9. However, due to the special security situation currently in effect in the Gaza Strip **and particularly since the Hamas takeover of Gaza** (a takeover which has political aspects as well), since the summer of 2007, there has been a substantial change in Israel’s policy regarding movement of people between Israel and the Gaza Strip.

Thus, for example, movement through the Erez Crossing, is usually limited, even today, as a general rule, to humanitarian cases including mostly urgent medical cases, life saving, passage of international organizations’ staff, passage of Israeli “split family” spouses (where the other spouse lives in the Gaza Strip), passage of foreign journalists in small numbers and passage of a few Palestinian merchants on whom Gaza’s economy depends – and this too subject to the discretion of the State of Israel which is under no obligation on this matter.

10. As stated, the entry of Israelis to the Gaza Strip is prohibited unless they receive a permit to do so. Permits to enter the Gaza Strip are granted to Israeli citizens and residents sparsely and in exceptional cases only, in which special humanitarian grounds are found, **and in the absence of an individual security preclusion**. This is so, among other things, due to the existence of a real concern that attempts will be made to enlist Israeli citizens and residents to the various terrorist organization, whether with the Israeli’s knowledge or by fooling him. The aforementioned is doubly true regarding the current security situation, after the Hamas takeover of Gaza, and the intelligence assessment regarding the existence of an extremely strong motivation on the part of Palestinian terrorist organizations in the Gaza Strip to perpetrate severe terrorist attacks in Israel.

The fact that the exit of Gaza residents in general and their exit to Israel in particular is very limited at this time, makes recruiting Israeli residents and citizens who enter Gaza particularly attractive to terrorists.

We shall emphasize that such use of Israeli citizens does not necessarily have to take place with the Israeli’s knowledge. There are various ways to use Israeli citizens and residents for the purpose of terrorism without their knowledge and, it follows, without their consent.

11. As indicated in the petition, the Petitioners seek a permit to enter the Gaza Strip in order to participate in the Petitioner’s sister’s wedding. However, as stated, according to information received from security officials, second degree relatives of the Petitioner are deeply involved in hostile terrorist activity, and in these circumstances, the Petitioner’s exit from Israel to the Gaza Strip may put public safety at risk.
12. In light of all the aforesaid, the Respondent will argue that the petition must be rejected, and this due to lack of grounds for the Honorable Court’s intervention in the decision of the Respondent to deny the Petitioners’ entry into the Gaza Strip.

Today,
30 Sivan 5769
22 June 2009

[signed]
Ro’i Shweika

Assistant to the State Attorney