

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.

At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 5168/90
Set for 4 Feb. 1991

In the matter of:

A. Qarish

represented by attorney Andre Rosenthal
whose address for the purpose of service of court documents is
HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Salzberger (Reg. Assoc.)
4 Abu Obeidah Street, Jerusalem
Tel. 02-6283555 Fax 02-6276317

The Petitioner

v.

Commander of the IDF Forces in Judea and Samaria

represented by the State Attorney's Office
Ministry of Justice, Jerusalem

The Respondent

Response on Behalf of the State Attorney's Office

1. This petition is directed against the Respondent's decision not to grant the Petitioner permission to leave the region for Jordan.

The Respondent will argue that his decision is well grounded in law and security considerations, and that there is no basis, legal or substantive, to interfere with his decision.
2. As appears from the petition, the Petitioner, a resident of Nablus, requested, on 15 August 1990, a permit to leave the region for Jordan, and on 25 September 1990, she was notified that the Respondent denied her request.

In a subsequent letter, it was mentioned that the grounds for the refusal were the Petitioner's involvement in hostile terrorist activity.

3. (a) In accordance with the Order Regarding Closed Areas (West Bank Region) (No. 34), 5724 – 1967, and Section 90 (previously Section 70) of the Order Regarding Defence Regulations (Judea and Samaria) (No. 378) 5730 –1970, the region is a closed area, entry and departure from which require the permission of the military commander, or of a person authorized by him for such purpose.
 - (b) Declaring the region a closed area, and in any event the considerations made in granting entry and departure permits to and from it, are grounded on security considerations, i.e., preventing the security danger that is liable to occur from allowing free entry and departure to and from the region, which are liable to be used to maintain relations with terrorist organizations (recruitment, transfer of information, commands, missions, and so on).
 - (c) In light of the above, the Respondent generally does not allow the entry into, or departure from, the region where there is concern that the individual will contact, outside of the region, members of terrorist organizations and act to promote their subversive objectives.
 - (d) Free movement of persons of this kind to and from the region entails, as mentioned, security risk, particularly when the departure is to an enemy county. In such cases, the exit permit requested in accordance with the said military legislation is not granted.
4. The common law provides that,

When an administrative agency in the area of the military administration examines a request to leave the region or enter it, it may take into account the security dangers entailed in granting the request. For this purpose, it is sufficient that there be reasonable suspicion to form a basis for refusing to grant a permit, and it is not a pre-condition to exercising power that the said agency have before it evidence that could be grounds for conviction by a court. The respondent is charged with the welfare and safety of the region, and doubt regarding the trustworthiness and

reliability of the Petitioner regarding his contacts with terrorists can tip the scales against him when the matter involved is a permit allowing an individual free movement to places where he can meet with agents of terrorist organizations. HCJ 66/80, *Abu-Aqil v. Commander of IDF Forces in Judea and Samaria* (unpublished)

This principle has been consistently affirmed by the Honorable Court.

- * HCJ 515/84, *Basiso v. Commander of the Gaza Strip* (unpublished).
- * HCJ 318, 417/85, *Khaled Daud v. Head of the Civil Administration* (unpublished).
- * HCJ 709/99, *Rafat Duasi v. Head of the Civil Administration* (unpublished).

Photocopies of the judgments are attached hereto and marked R/1A-1C.

5. The refusal to allow the Petitioner to depart from the region is based on security considerations. The Petitioner's husband, A. Q., is a senior Fatah activist in Nablus and is linked with Fatah activists outside the region. Also, he was administratively detained for six months, commencing on 25 November 1990.

There is information about the Petitioner whereby her leaving the region assists her husband's involvement in hostile terrorist activity, and is liable to impair the security of the region and the state and the safety of IDF forces.

This information and its sources are classified for reasons of state security, but it may be disclosed solely to the Honorable Court, if the Petitioner's counsel consents thereto.

A copy of the certificate of classified material, signed by the Minister of Defence, is attached hereto and marked R/2.

6. (a) In accordance with the defence legislation mentioned above and in accordance with the common law, and also pursuant to the rules of international law, whereas the region is under military administration and is a closed area according to the defence legislation, there is no right – fundamental or other – to freedom of movement to or from it. Quite the opposite: leaving an area under military administration, particularly to an enemy country, is a superior right left to the discretion of the military commander of the region.

See HCJ 318, 417/85, cited above, at page 3.

Article 48 of the Fourth Geneva Convention Relating to the Protection of Civilians in Time of War, 1949.

See, also, J.S. Pictet, *Commentary on the Fourth Geneva Convention* (Geneva, 1958) p. 276.

- (b) It should be mentioned that, pursuant to Section 5 of the Emergency Regulations (Departure to Abroad), 5708 – 1948, an Israeli citizen also does not have “freedom of movement” to an enemy country.

See: HCJ 658/80, *Piskei Din* 35 (1) 249.

HCJ 488/83, *Piskei Din* 37 (3) 722.

HCJ 368/85, *Piskei Din* 39 (3) 54.

7. Under the circumstances, the medical treatment required by the Petitioner does not entitle her to a permit to leave the region and thus endanger the safety and security of others, not does this refusal prevent her from obtaining medical care in the region or in Israel.
8. Therefore, the Honorable Court is requested to deny this petition.

Today: Shvat 5751 (January 1991)

[signed]
Shaul Gordon
Deputy to the State Attorney