

Petition for the Granting of a Decree Nisi and an Interim Order

A petition is hereby submitted for a decree nisi addressed to the Respondents and ordering them to come and give cause:

For Respondent 1 – why it should not decide that the hearings in the Restriction of Place of Residence Order issued against Appellants 1 and 2, should not take place in open court, in the open part thereof.

To Respondent 2 – why he should not instruct Respondent 1 that it is within its authority to decide on the matter of open court in the committee's hearings, in the open part thereof.

Alternatively, why he should not annul the provision of Article 86A, which claims to deny the Committee the authority to decide to hold its hearing in open court, insofar as the said provision is unreasonable in the extreme and/or contrary to any law.

Request for the Granting of an Interim Order

The Court is respectfully asked to grant an interim order instructing Respondent 1 to delay the hearings pending the granting of a decision in this petition.

Grounds for the Request for an Interim Order

Respondent 1 has scheduled the continuation of the hearings for Sunday morning at Ofer Camp, and has determined that, at this stage, the hearings will take place in camera. If the continuation of the hearings is not delayed pending the granting of a decision in the petition, the requested relief will become theoretical, and Appellants 1 and 2 will effectively be denied their right to turn to the High Court of Justice and to seek relief therefrom.

Grounds for the Petition

The Facts

1. Respondent 2 has issued Restriction of Place of Residence Orders (hereinafter “the Orders”) against Appellants 1 and 2, in which it orders that each thereof “shall be required to reside in the Gaza Strip area, within the areas of the council as understood in the Interpretation Order (Gaza Strip Area) (No. 300), 5729-1969.” The Orders further state that the Orders may be appealed, and that they shall be valid for a period of two years. The orders were forwarded to the Appellants’ attorneys on August 1, 2002 at 11:00 pm.

The Orders are attached to this petition and labeled **P1**, **P2** respectively.

2. For the purpose of hearings in the Orders, Respondent 2 established an Appeals Committee by law (hereinafter “the Committee”).
3. On the morning of August 2, 2002, Appellants 1 and 2 contacted Respondent 2, through the Legal Adviser for Judea and Samaria, and requested that the Committee’s hearings be held in open court. The request was denied.

The letter of the Appellants’ attorneys to the Legal Adviser for Judea and Samaria dated August 2, 2002 is labeled **P3**. The letter of denial from the Legal Adviser is labeled **P4**.

4. At noon on August 2, 2002, Appellants 1 and 2 submitted an appeal to Respondent 1 against the Orders issued against them, and asked Respondent 1 in writing that the hearings be held in open court. The military prosecutor’s office opposed the request in writing. The hearing before Respondent 1 was scheduled for the same day at 2:00 pm at Ofer Camp. Respondent 1 decided, as recorded in the minutes: “At this stage, the hearing shall be held in camera. We shall consider our position during the course of the hearing. The grounds for our decision shall be given at the next session.”

5. The Appellants' attorneys requested, both in their written request to hold the hearing in open court, and during the course of the hearing after receipt of the above-mentioned decision, that they be granted stay to submit a petition to this Court prior to the recommencement of the hearings of Respondent 1. Despite these requests, the continuation of hearings was scheduled for August 4, 2002, at 9:30 am at Ofer Camp.

Attached to the petition:

The request that the hearing be held in open court, labeled **P5**.

The reply of the military prosecutor to the request, labeled **P6**.

The minutes of the Committee's hearing, including the decision to hold the hearing in camera, labeled **P7**.

The Committee's decision, including on the matter of the continuation of the hearing on Sunday, labeled **P8**.

The Legal Aspect

6. In Article 86A of the Security Provisions Order (Judea and Samaria), 5730-1970 (hereinafter "the Security Provisions Order"), Respondent 2 instructed, with regard to Section E of the Security Provisions Order: "The hearing in the proceedings in accordance with this Section shall take place in camera."

Amendment 83 to the Security Provisions Order is attached and labeled **P9**.

The provisions of Article 86A of the Security Provisions Order should not be interpreted as binding the Committee, restricting its authority to determine its legal proceedings, and denying it consideration in deciding whether or not its hearings should take place in open court even if a request in the said matter has been placed before it.

An interpretation of Article 86A as denying the said authority is unreasonable in the extreme, impairing basic values of our legal system, the dignity of the Committee and the constitutional and fundamental rights of Appellants 1 and 2; contradicts the basic principles of international customary law and the legal systems of the enlightened nations; and is contrary to the rulings of the High Court of Justice.

7. Respondent 2 has charged the Committee with a most important task; determining and advising it as to whether it is proper and fitting to uproot Appellants 1 and 2 from their homes and determine their place of residence far and in isolation therefrom; to weigh complex legal considerations relating to the fundamental rights of Appellants 1 and 2; and to evaluate the ramifications of the execution or non-execution of the Limitation Orders on the security situation in Judea and Samaria and in the Gaza Strip.

Article 85(G) of the Security Provisions Order states: “As chairperson of the Committee shall serve a judge appointed in accordance with this Order, and who may be appointed as a jurisprudential judge at the military appeals courts in Israel.”

The interpretation of Article 86A as denying the Committee’s authority to determine whether or not its hearings shall take place in open court is inconsonant both with the importance of its tasks and the high standing of its chairperson.

8. The interpretation of Article 86A as denying the Committee’s authority to decide to hear appeals in open court is contrary to the Appellants’ fundamental right to a public hearing in their case, and to their right thus to argue before the Committee.

The right to a public hearing is a fundamental right intended to ensure the maintenance of due process of law. This right shall be denied solely in extreme cases and for grave grounds. It is immaterial whether this relates to a criminal proceeding or to a proceeding in another judicial or quasi-judicial instance

authorized to impose a sanction or to discuss a sanction imposed by an administrative authority impairing a fundamental right.

9. Respondent 2 has recognized the importance of the right to a public hearing. In Article 11 of the Security Provisions Order, whose title “The Publicity of the Hearing” speaks for itself, it states: “A military court shall hold hearings held before it in open court.” The question of an in camera hearing is delegated to the consideration of the court, and its considerations are limited to security grounds.

In light of the above-mentioned Article 11, the interpretation of Article 86A as denying the Committee’s authority to decide on the matter of a public hearing would be unreasonable in the extreme.

10. Respondent 2, like any authority, is presumed to act lawfully. The interpretation of Article 86A as dictating to the Committee that the hearing be held in camera, and as denying its consideration in deciding on a public hearing, is contrary to this presumption.

The Israeli legislature and the Supreme Court have recognized the importance of the right to a public hearing.

The Supreme Court declined to find proper reason for holding in camera hearings in the Consultative Committee established to discuss deportation orders. Moreover, the Supreme Court ruled that “a hearing in open court (in that part that is not confidential, as noted) shall only serve the public interest and assuage the concerns inherent in the Appellants’ arguments... concerning the lack of independence of the Consultative Committees and the slander concerning their considerations, mode of operation and the properness of the proceedings before them.”

This ruling by the Supreme Court relates to the open part of the Committee's hearings, and is not intended to impair its authority to hold a confidential and ex parte hearing as required for security grounds.

It would be unreasonable in the extreme to interpret the provision of Article 86A as contradicting such an explicit and clear ruling by the High Court of Justice.

HCJ 1361/91, 1378 Mesallem v Commander of IDF Forces in the Gaza Strip et al., Piskei Din 45(3), 444, 449.

HCJ 103/92, 120 Bulus et al. v The Consultative Committee, Piskei Din 56(1), 466, 468-469.

11. As emerges from the attached material, with an emphasis on the above-mentioned rulings of the High Court of Justice, Article 86A is to be interpreted as intended to permit the lawful pursuit of an in camera hearing in the confidential part of the committee's hearings. From this provision, the Committee shall draw its authority and obligation to hear confidential material other than in the presence of the appellants.

A sweeping interpretation of Article 86A as denying the Committee's authority to decide whether to hear an appeal in camera or in open court shall lead to its annulment.

Accordingly, the Court is respectfully asked to grant a decree nisi as requested at the head of this petition and, after receiving the Respondents' response, to make this absolute.

The Court is further respectfully asked to oblige the Respondents to bear the legal costs.

Tel Aviv, August 3, 2002

Tamar Peleg-Shrik

Attorney for the Appellants