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At the Jerusalem District Court
Sitting as the Court for Administrative Affairs

AP 1106/09

**HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger**

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HaMoked: Center for the
Defence of the Individual

Received

28 May 2009
46067

[stamp]
Jerusalem District Court (53)

26 May 2009

Received/Screened
At _____

The Petitioner

v.

- 1. Minister of Interior**
- 2. Official in Charge of Freedom of Information at the Ministry of Interior**

represented by the Jerusalem District Attorney
7 Mahal St., Maalot Dafna
Jerusalem POB 49333
Tel: 02-5419555; Fax: 02-5419581

The Respondents

**Response on behalf of the Respondents to the Motion for Fee
Reimbursement and Costs**

According to the decision of the Honorable Court, the Respondents hereby respectfully submit their response as follows. The Respondents shall argue that the motion for a costs order must be rejected in full as detailed below:

The Facts in Brief

1. On September 24, 2008, the application which is the subject matter of the petition in the title was sent to Respondent 2. The application concerns information regarding the officials authorized by the Minister of Interior under the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 and the officials authorized by the Minister of Interior under the Entry into Israel Order (Exemption of Gaza Strip Residents) Temporary Order 5765-2005. The application was attached to the petition as Exhibit P/1.

2. On October 5, 2008, Respondent 2 sent notice that the application had been received and was under review. A copy of the Respondent's letter dated October 5, 2008 was attached to the petition as Exhibit P/2.
3. On November 6, 2008, a reminder was sent to Respondent 2. A copy of the reminder was attached to the petition as Exhibit P/3.
4. On November 9, 2008, Respondent 2 notified that the application was still in processing and that he would send notice shortly after responses are received. A copy of the Respondent's notice was attached to the petition as Exhibit P/4.
5. On December 1, 2008, Respondent 2 wrote a letter of response to the Petitioners which stated that the authorization of officials was underway. Due to an error on the part of Respondent 2, the response was not sent. A copy of the Respondent's unsent letter is attached hereto as **Exhibit A**.
6. Instead, on December 5, 2008, Respondent 2 once again notified the Petitioner that the application was still in processing and once a response was obtained from the relevant unit, he would notify the Petitioners promptly.
7. On January 29, 2009 the petition in the title was filed.
8. On February 2, 2009, unrelated to the above petition, the two authorizations required by the Petitioner in its application were published. It should be noted that the process of authorizing these officials was prolonged and suffered delays, *inter alia*, due to the need to obtain the consent of the Minister of Defense, which is required under the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003.
9. Shortly after obtaining the consent of the Minister of Defense, which required certain clarifications, the authorizations were transferred for publication by the Ministry of Justice on January 22, 2009, namely, before the petition was filed. These authorizations were published in the *Rashumut* [official gazette] on February 2, 2009, which is also the date on which Respondent 2 first learned of the submission of the petition, such that it cannot be said that there is a connection between filing the petition and publishing the authorization.
10. Immediately after publication of the authorizations, the Respondent conveyed the information to the State Attorney's Office and on February 15, 2009, counsel for the Petitioner was sent notice of the publication of the above authorizations from the State Attorney.
11. Another clarification required by counsel for the Petitioner following publication of the authorizations was provided within two days, such that following publication of the authorizations, information and responses were sent without delay.
12. Having satisfied the Petitioner, the State Attorney filed a notice and motion to delete the petition on March 23, 2009.
13. Following this notice, the petition was deleted without a hearing and with no need for further submissions, until the Petitioner's motion for a costs order. In the absence of this motion, neither the Court nor parties would have addressed the issue further.

The Respondent's position

14. The Respondent will argue that the Petitioner's motion for a costs order must be rejected. In the motion for costs, the Petitioner attempts to throw sand in the eyes of the Honorable Court by painting a picture that the Respondent gave no response and ignored its request. So for example, in

section 8 of the motion for a costs order, the Petitioner writes: “**for close to four months no response has been forthcoming from the Respondents**”. The Petitioner sends a similar message in section 10 of the motion for a costs order in writing “**in ignoring the Petitioner’s application for a prolonged period of time, the Respondents have acted disproportionately and unreasonably**”. In light of the chain of events as described above and as described by the petition submitted by the Petitioner, this allegation seems baseless and it is unfounded. The Respondent sent three letters indicating the application was in processing. This means that the Petitioner’s application received several interim responses and it cannot be said that [the Petitioners] met with no response.

15. The Respondent argues that the Petitioners hastened and rather than waiting a little while longer for a pertinent response to their request, turned to this Honorable Court. It should be noted that in light of the Respondents’ responses, it was not difficult to conclude that the application was being processed and reviewed and that the Respondent was not idle on the Petitioner’s matter.
16. It should be noted that it is unclear why the Petitioners hastened to take legal action as the issue is neither urgent nor is it a matter of life or death. The Erez DCO has been operating in coordination with staff at the Ministry of Interior and the Coordinator of Government Activities in the Territories, including on the issue of permits, even prior to publication of the authorizations.
17. Moreover, as noted above, publication of the authorizations required the approval of and coordination with additional state agencies, including the Ministry of Defense and the Ministry of Justice. The need to obtain these agencies’ positions and cooperation also affected the timing of the publication of the authorizations; that is, the Respondent had neither influence nor capability in this matter.

To compare, the Respondents cite AP 8058/08 **Joulani Ibrahim v. Ministry of Interior** (not yet reported), which involved a motion for a costs order against the Respondent with respect to the time taken to approve a family unification application in which it required the position of security agencies, for which the Respondent often has to await for extended periods of time:

Having considered all the issues, I have found no default in the Respondent’s conduct. As the Respondent argues, its delay in providing a response was the result of circumstances over which he had no control, such as open criminal files against the applicant and the need to obtain the position of security officials. The interest of public safety and state security necessitate such applications be examined by the police and security officials. This examination may take an extended period of time which should not be held against the Respondent. In the matter at hand, once the positions of the police and security officials were obtained, the Respondent acted promptly and accepted the application. In these circumstances, I see no cause to issue a costs order against him. (emphases added)

18. These statements are relevant in the matter at hand. Once the Respondent was in possession of the legally required consent of the Minister of Defense, he contacted the Ministry of Justice, which is entrusted with publication in the official gazette. Immediately after the authorizations received publication, the Petitioners were so notified. It is clear that in this state of affairs there is no cause to impose costs on the Respondent.
19. Therefore and in light of the foregoing, there is no choice but to conclude that the Respondent was not delinquent in processing the application.

In light of the foregoing, the Petitioner's motion for a costs and fees order against the Respondent must be rejected. The Honorable Court is requested to order the Respondent to pay the costs of this response.

[signed]

Tzipi Quint, Adv.
Chief Assistant to Jerusalem
District Attorney (civil)

2 Sivan 5769, 25 May, 2009