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**At the Jerusalem District Court**  
**Sitting as the Court for Administrative Affairs**  
Before Vice President, Hon. Jus. Tzur

**AP 1106/09**

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

all represented by counsel, Att. Ido Bloom  
of 4 Abu Obeida St., Jerusalem, 97200  
Tel: 02-6283555; Fax: 02-6276317

**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**

### **Application for Leave to submit a Response on behalf of the Petitioner with Respondent's Consent**

The Honorable Court is requested to grant the Petitioner leave to file a response to the Response on behalf of the Respondents to the Motion for Fee Reimbursement and Costs which was received by counsel for the Petitioner on May 28, 2009.

Counsel for the Respondents, Adv. Quint, has graciously consented to the application.

#### **The Response:**

1. The Petition at bar concerns the Petitioner's application to the Respondent pursuant to the Freedom of Information Act 5758-1988 for information on powers regarding entry from the Gaza Strip to Israel.

2. As recalled, the petition was filed after the Petitioner's communication to the Respondents was unanswered for close to four months.
3. With respect to the allegation of prolonged failure to respond on their part, the Respondents argue in their response: "this allegation seems baseless and it is unfounded". The Respondents believe that their duties were discharged when Respondent 3 sent letters indicating that the application was still in processing and that "it is unclear why the Petitioners hastened to take legal action."
4. However, the Respondents' allegations contain nothing that may detract from the clear conclusion that the Respondents have severely breached clear and explicit statutory provisions. In fact, the Respondents entirely ignore this fact in their response.

#### **The Respondents' conduct and delay – a breach of statutory provisions**

5. As known, Sec. 7 of the Freedom of Information Act 5758-1988 sets forth:

The public authority shall notify a person applying for information of its decision on his application forthwith and in no longer than 30 days. The head of the public authority, or the official delegated for this purpose on his behalf, may extend the aforesaid period by 30 days, provided he notifies the applicant thereof in writing and lists the grounds for the extension.

6. In this case, there is no doubt, (and in fact, the Respondents do not dispute this) that the Respondents **did not follow the provisions of the law**.

The Respondents did not notify the Petitioner of their decision within 30 days.

The Petitioners did not notify the Petitioner in writing nor provided the grounds for the 30 day extension (even if they had, this additional period also expired).

7. The Respondents' attempt to obfuscate their deficient conduct and blatant breach of explicit statutory provisions by arguing that they discharged their duty by sending brief messages that the application was "in processing" over the course of four months is cynical and outright embarrassing.
8. Rather than making false accusations against Petitioner, the Respondents would have done well to examine their own actions and see to it that in future, **the provisions of the law are followed to the letter**, obviating the need to take legal actions in similar cases.

#### **The Respondents could have responded to the application shortly after its submission**

9. Beyond the fact that the Respondents expressly breached the provisions of the law, indeed, on the merits, it seems that in the present case, the Respondents were capable of providing a pertinent response to the Petitioner's application within much less than the 30 days allotted to them by the law.
10. As recalled, the Petitioner requested a list of authorizations issued by the Minister of Interior. There are two possibilities in this case:

One possibility is that the authorizations exist, as required by law and then there is obviously no reason for delaying providing them to the petitioner;

Another possibility is that the authorizations do not exist, in which case the only response is that the requisite information does not exist.

11. The Respondent's response indicates that the second possibility was in fact the situation and that until February 5, 2009, there were no authorizations.
12. It should be parenthetically noted that the aforesaid points to a very serious failure, as it means that for an extended period of time there was no person or agency empowered to permit entry from the Gaza Strip to Israel and the officials in charge of the issue acted *ultra vires*. It appears that the Respondents' contention (sec. 16 of their response) that "[t]he 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" does not serve to mitigate the gravity of this failure.
13. In any event, in these circumstances, the Respondents could have clearly responded to the Petitioner's application almost immediately and notify it that the information it sought did not exist **as there was no official authorized to allow entry from the Gaza Strip to Israel**.

In fact, it is difficult to imagine any request that would be less difficult and simpler to answer than a request involving information that does not exist.

14. Yet, for reasons known only to them, the Respondents preferred not to do so and not to admit that the requisite authorizations do not exist, but rather to "buy time" until the omission is corrected while notifying, in the mean time, that the request was "in processing".
15. Thus, the Respondents' prolonged delay in processing the Petitioner's application (while gravely breaching the law), was not the result of the application being complex or the information sought requiring in-depth examination. Their delay was simply the result of their own decision to refrain from speedily conveying the simple answer that the information did not exist, but rather to wait for many months, until they had a "better answer".

The Respondents have only themselves to blame for this decision and conduct.

16. In any event, we emphasize that, as aforesaid, in the case at hand, there is no doubt that the petition was filed due to prolonged delays by the Respondents in grave breach of explicit statutory provisions.
17. In light of the aforesaid, the Honorable Court is requested to instruct the Respondents to pay Petitioner's costs.

[signed]

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Ido Bloom, Adv.  
Counsel to the Petitioner

31 May, 2009  
[File 59504]