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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCJ 7396/10**

In the matter of:

1. \_\_\_\_\_ a-Z'atari, ID No. \_\_\_\_\_  
**Resident of the Occupied Palestinian Territories**
2. **HaMoked – Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - Registered Association**

Represented by counsel. Adv. Ido Blum (Lic. No. 44538) and/or Elad Cahana (Lic.No. 49009) and/or Hava Matras- Iron (Lic. No.35174) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No.41065) and/or Leora Bachor (Lic. No. 50217)

of HaMoked – Center for the Defence of the Individual founded by Dr. Lotte Salzberger, Abu Obeida Street 4, Jerusalem Tel: 02 - 6283555; Fax: 02 – 6276317

**The Petitioners**

**V**

**Military Commander of the West Bank**

**The Respondent**

## **Petition for Order Nisi**

A petition for an *order nisi* is hereby filed, which is directed to the Respondents ordering them to appear and show cause:

- A. Why they should not approve the departure of Petitioner 1 from the West Bank to Jordan, through the Allenby Bridge, in order to begin medical studies at Taiz University in Yemen.
- B. Why he should not provide the reasons for his refusal to approve the Petitioner's departure and present the rationale for the refusal and the nature of the proof upon which it is based.

## **Request to Schedule an Urgent Hearing**

The Honorable Court is requested to schedule an urgent hearing on this petition.

In order to begin his studies, the Petitioner must present himself at the university in Yemen no later than October 10, 2010. Consequently, the Petitioner must leave for Jordan **on October 19 2010 at the latest**.

However, despite the urgency of the matter, the Respondent delays in providing a response to the Petitioner's appeals.

It is noted that the academic year has already begun but because of the circumstances the university has agreed to make an exception and extend the date of the Petitioner's arrival until the date mentioned above.

### **The factual base**

#### **The parties**

1. Petitioner 1 (hereinafter: **the Petitioner**) is a young Palestinian, born in 1991, from the city Bethlehem. To his great delight, the Petitioner was accepted to the Taiz University medical school in Yemen. As described below, the academic year has begun but, in light of the circumstances, the Petitioner received exceptional approval to arrive for completion of registration and beginning of studies by October 20, 2010.

A copy of the confirmation of acceptance to medical school from Taiz University is attached and marked **P/1**.

A copy of the notification from the University, dated October 2, 2010, stating he must arrive for beginning of studies within two weeks is attached and marked **P/2**.

2. Petitioner2 (hereinafter: **HaMoked**) is a registered organization located in Jerusalem, dedicated to promoting the human rights of Palestinians in the Occupied Palestinian Territories (OPT).
3. The Respondent is the military commander, who is responsible for the West Bank on behalf of the State of Israel which has been holding the West Bank under military occupation for more than forty years

#### **The "Prior Inquiry" regarding Travel Abroad by OPT Residents**

4. The Respondent has prevented many of residents of the OPT from leaving their country for many years. This is done without providing the right to plead and without prior notification. In most cases, the person is told that he is "precluded from travel " only when he reaches the Allenby Bridge border crossing, having packed his suitcases and made his plans.
5. In the framework of a general petition submitted on this issue (HCJ 8155/06 **the Association for Civil Rights in Israel v. Commander of IDF forces in Judea and Samaria**), the Respondent has established a procedure which was meant to enable a resident of the OPT who wishes to go abroad inquire ahead of time at the District Coordination Office (DCO) and, if needed, appeal the refusal.
6. According to the procedure, appeal processing time is eight weeks **at most**. **One of the central problems of the procedure is it has no provisions suitable for urgent cases similar to the case of the Petitioner.**

7. The Respondent's notice in the above HCJ 8155/06 dated February, 11 2010 indicates that after a decision is reached, the appellant will receive an early response in writing or by telephone.
8. The procedure also establishes that an additional appeal can be submitted to the Respondent no earlier than nine months after submission of the original objection; a new request for approval of departure can be submitted, according to the procedure, only for cases of "special humanitarian need"
9. At issue is a long, cumbersome, exhausting, and tiring procedure. Many of the residents of the OPT are not aware of it because the Respondent has not done enough to make it known. The result is that actually a very small few of those planning to go abroad, and for whom the procedure is intended, (since they do not know whether the Respondent has decided to prevent their departure or not) are indeed familiar with the procedure and follow it: of more than a **half million** residents of the OPT who depart from the West Bank annually, the number who apply to the Respondent according to the procedure is **a total of 150**.
10. Thus, the Respondent prevents the departure of residents of the OPT to Jordan **for an unlimited period**, based on his unilateral decision and without giving the person whose departure is prohibited a real opportunity to argue against this decision.
11. It is to be noted that since in the aforementioned HCJ8155/06 no remedy regarding the procedure which was established within its framework was requested, the Petitioners requested to have their petition deleted, which was done on February 21, 2010 "while retaining the Petitioners' right to return to the Court regarding individual issues relating to the procedure."

### **Exhaustion of procedures**

12. On September 9, 2010, the Petitioner reached the Allenby Bridge on his way to his studies, but Respondent's representatives refused to allow his passage and told him in a laconic manner that he was "prevented". In his great distress, the Petitioner tried his luck on the next day, September 21, and also on September 24, in the hope that his departure would be approved, but in vain. Each time he was told that he was "prevented" and he was forced to turn back.
13. Therefore, on September 26, 2010, the Petitioner applied to the Israeli DCO in Bethlehem in order to find out why the Respondent was preventing his departure and submit an objection if required. The soldier at the DCO repeated what he had been told previously: that he was "prevented". The Petitioner attempted to clarify why and requested to submit an appeal. However, despite his explanation regarding the importance and urgency of the issue, the DCO soldier adamantly refused to accept the objection form from him.
14. Only on September 28, 2010, following a telephone call from HaMoked to the Bethlehem DCO explaining the urgency of the issue, did the DCO soldier consent to admit the Petitioner's objection for processing.  
  
A copy of the form for handling the objection dated September 28, 2010 is attached hereto and marked **P/3**.
15. At the same time, the Petitioner had to ask the university to postpone the date of the beginning of his studies. On October 2, 2010 he was told by the university in writing

that he must arrive for studies no later than within two weeks – that is, by October 16, 2010 (the letter is attached as Attachment P/2).

Fearing he would not meet the date, the Petitioner telephoned the secretariat of the university and requested that the date for his arrival be postponed as much as possible. He was notified by the university that he would exceptionally be allowed to arrive for the beginning of his studies by **October 20, 2010 and no later** .

16. Because of the urgency of the matter, HaMoked sent a letter to the Bethlehem DCO, describing the sequence of events and, in light of the clear urgency, requesting to fast track processing of the objection. A copy of the letter was also sent to the legal advisor to the Respondent.

A copy of HaMoked's letter to the head of the Bethlehem DCO, dated October 3, 2010 is attached hereto and marked **P/4**.

17. Because a response was not received, and because of the urgency of the issue, HaMoked sent a reminder to the Bethlehem DCO on October 6, 2010 and again emphasized the urgency of the matter. In its letter, HaMoked emphasized that, considering the urgency of the matter, if a response was not received by October 11, 2010, the Petitioners would consider turning to the court of law.

A copy of HaMoked's letter to the Bethlehem DCO dated October 6, 2010 is attached hereto and marked **P/5**.

18. On October 10, 2010, HaMoked telephoned the Bethlehem DCO. An officer by the name of Danny informed her that the issue was still being "processed"
19. The deadline is rapidly approaching and still, there is no response. Under these circumstances, the Petitioners have no choice but to turn to take legal action.

### **The Legal Argumentation**

#### **The Respondent's obligation to respond with the urgency required by the circumstances of the case**

20. It is the obligation of the Respondent, as an administrative authority, to respond to requests submitted to him within a reasonable time. The term "reasonable time" depends on the circumstances of the case. In the circumstances of the case before us, the Respondent is required to address the matter relatively quickly, taking into account the sensitivity of the Petitioner's predicament.
21. At issue is a person who wishes to begin his studies. The original date for beginning of studies has passed some time ago, and the Petitioner has repeatedly acted to postpone it as much as possible. If he is late he will be unable to begin his studies this year.

These circumstances should have been taken into account by the Respondent when he received the request, especially noting the Petitioner's conduct under the schedule forced upon him: the Petitioner, who had never encountered difficulty traveling abroad, was notified of the existence of a preclusion to his departure only on the actual day of departure, owing to the Respondent's position that he is not obligated to notify persons precluded from travel of the preclusion. After he was notified that he could not go abroad, on the day of departure, , he acted quickly to submit an

objection. After submission of the objection, the Petitioners acted to speed processing of the request by contacting the legal advisor to the Respondent and the DCO.

22. It is a known rule that "the obligation to act with suitable speed is one of the basic tenets of good governance" (Y. Zamir, **Administrative Authority** (Volume 2, Nevo, 5756),717.

On this issue see:

HCJ 6300/93 **Institute for Training Female Rabbinical Pleaders v. Minister of Religion**, IsrSC 48(4)441,451(1994);

HCJ 7198/93 **Mitral Ltd. v. Minister of Industry and Commerce**, IsrSC48(2)844,853 (1994);

HCJ 5931/04 **Mazoursky v. State of Israel – Ministry of Education**, IsrSC 59(3)769,782 (2004);

HCJ 4212/06 **Avocats Sans Frontieres v GOC Southern Command**, TakSC 2006(2) 4751 (2006).

23. Judgment has been issued indicating that when speaking of human rights the concept "reasonable time" has special meaning (HCJ 1999/07 **Galon v. Government Committee for Investigating Events of the Campaign in Lebanon 2006** TakSC 2007(2)551,569 (2007));

On issues concerning human rights –

There is room to expect very rapid resolution of the issue [...] Continuous harm to human rights often intensifies the scope of the injury and its results are liable to be erosion of rights and also harsh and continuous harm to the individual.

(HCJ 8060/03K'adan v. Israel Land Administration, TakSC 2006(2)775,780 (2006)

See also:

HCJ 10428/05 **'Aliwa v. Commander of IDF Forces** in the West Bank, TakSC 2006(3)1743, 1744 (2006); HCJ 4634/04 **Physicians for Human Rights v. Minister of Public Security**, TakSC 2007(1)1999, 2009 (2007).

### **The Respondent's obligation to ensure normal life for OPT residents**

24. As commander of the occupied territory, the Respondent has an active responsibility for protecting the rights of the residents, ensure their normal life and uphold their rights. Article 43 of the Hague Regulations determines that:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the **measures in his power** to restore and ensure, as far as possible, public order and safety... [emphasis added]

25. The obligation to ensure order and normal life and to act for the needs of the society are valid for all areas of civilian life:

The first clause of Article 43 of the Hague Regulations grants the military government authority and imposes upon it the obligation to restore and ensure order and safety...the Article does not limit itself to a particular aspect of public order and safety. It extends to all aspects of public order and safety. **Therefore, this authority applies – alongside security and military issues – to a variety of "civilian" issues** such as the economy, society, education, education, , welfare, sanitation, health, transportation and similar issues to which human life in modern society is linked.

(HCJ 393/82 **Jam'iat Iscan v. Commander of IDF Forces in the Area of Judea and Samaria**, IsrSC 37(4)785, 797 (1983) [emphasis added]).

### **The scope of the Military Commander's power to prohibit departure from the OPT**

26. As has been ruled on many occasions, the Respondent is the trustee of the OPT, not the sovereign. His powers in the occupied territory are vested in him by international law and subject thereto. Among other things, the Respondent is bound by the provisions of customary international law, both humanitarian, as established in the Regulations concerning the Laws and Customs of War on Land of 1907, annexed to the Hague Convention (IV) of 1907, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War; as well as human rights law.
27. It is clear that the Respondent does not receive his authority from the military legislation which he himself enacts, but rather from the totality of international law which is the sole normative basis for exercising his authority (HCJ 2150/07 **Abu Safiyya v. Minister of Defense** (not published, December 29, 2009))
28. Since this is so, one must examine the Military Commander's power to prevent the departure of a protected person from the OPT, its scope and the conditions for exercising of this power according to the authority vested in him by **international law**.
29. According to international law, the normative point of departure is that the Respondent has an obligation to allow OPT residents to depart from their country. As this described by the scholar Zilbershatz:

The combined application of the general laws relating to human rights and humanitarian law established in the Hague and Geneva Conventions leads to the conclusion that the right to leave a country, granted to every person in accordance with international conventions, is also granted to residents of areas held under belligerent occupation, whether or not they are citizens of the nation from whom the territory was taken.

The right to leave a country is also recognized as a customary norm in international law. Therefore, it has become a part of Israel's domestic law. The military government in the Territories, which is subject to Israeli administrative law and customary international law, has an obligation to allow residents of the Territories to realize this important basic right.

(Y. Zilbershatz, "The Right to Leave a Country" **Mishpatim**, Vol. 3 69,86 (5754)).

30. Article 12 of the International Covenant on Civil and Political Rights 1966 establishes that:

Everyone shall be free to leave any country, including his own.

31. The source of the Military Commander's authority to limit the right of OPT residents to leave their country is found, therefore, in the Fourth Geneva Convention. The final clause of Article 27 of the Convention, which establishes the obligations of the military commander towards protected persons in an occupied territory, determines that:

The Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of war.

32. The commentary of the Red Cross on this Article states:

The various security measures which States may take are not specified; the Article merely lays down a general provision...

What is essential is that the measures of constraint they [the States; I.B.] adopt should not affect the fundamental rights of the persons concerned. As has been seen, those rights must be respected even when measures of constraint are justified.

See: <http://www.icrc.org/ihl.nsf/COM/380-6000?OpenDocument>

33. Article 78 of the Convention defines and limits the scope of the Military Commander's discretion when he is applying security measures against protected residents:

If the Occupying Power considers it necessary, for **imperative reasons of security**, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment [added emphasis; I.B.]

34. The right of protected residents to depart the area is anchored also in Article 35 of the Fourth Geneva Convention (1949)

**All protected persons who may desire to leave the territory...may be entitled to do so...The applications of such persons to leave shall be decided in accordance with regularly determined procedures and the decision shall be taken as rapidly as possible...if any such person is refused to leave the territory he shall be entitled to have such refusal reconsidered...**

[emphasis added; I.B.]

35. The scholar Pictet clarified in his commentary that:

It should be noted that the **right to leave the territory is not in any way conditional, so that no one can be prevented from leaving** as a measure of reprisals...It is therefore essential for States to safeguard the basic principle by showing moderation and **only invoking these reservations when reasons of the utmost urgency so demand.**

(Pictet, J.S. Commentary: IV Geneva Convention – Relative to the Protection of Civilian Persons in Time of War. P.235-236 (Geneva, 1958))

[emphases added; I.B.]

36. In other words, the Convention authorizes the military commander to limit an individual's freedom **only if it is necessary from clear security considerations** and while striking a suitable balance and on condition that it does not violate the individual's basic rights.

37. It should be noted that the military legislation enacted by the Military Commander **contains no provisions** on the authority to prevent departure from the West Bank.

According to military legislation (Section 318 of the Order regarding Security Provisions (integrated version)(Judea and Samaria)(No.1651) 5770-2009), if the military commander is interested in preventing departure from a certain area, he must generally declare it a "closed area". He must **additionally**, establish explicit instructions including a definite prohibition on **leaving** the closed area. That is, the very declaration of a closed area has no meaning *per se*. The meaning depends on the provisions attached thereto which establish the relevant prohibitions in each case. However, the military commander **has not done so and has not instituted a provision that limits departure from the Bank.** As aforesaid, the general declaration of the Bank as a "closed area" is entirely irrelevant relevancy to the issue.

The Oslo Agreement has also not established provisions that authorize the military commander to prevent departure from the West Bank due to a general "security" preclusion but only in very specific cases, such as prevention of travel which is the result of a person's arrest.

**Extreme and disproportionate harm: a sweeping "prohibition against departure" with no reasoning, hearing or specified duration**

38. It must be remembered that the implication of denying the Petitioner's right to go abroad, while severely violating his liberty and dignity as a human being, is his **effective confinement to the area of the West Bank for an unknown length of time.**

39. On this issue, it must be emphasized that the duration of the limitation is bears significant weight in exercising the right to leave a country. In this sense, the right to leave is granted to anyone at any time, and therefore, when the right to leave is

limited, **its legitimacy is continually reduced the longer the limitation is in place. Limiting a right for several days is not tantamount to limiting it for months, years, or indefinitely.**

The larger the geographic area over which the limitation spans, the harsher its other conditions and the **longer it is in place, the greater the harm it causes** and the more difficult and complicated it is to balance between it and the opposing value. (emphases not in the original)

(Vanunu, above)

See also the words of the scholar Yaffa Zilbershatz in her article "**The Right to Leave the Country**":

The limitation of the right to leave should be time specified, since the limiting departure for days is not equal to limiting it for months or years. How should the duration be determined? First, **it should be strictly established that the person should be allowed to exercise his right to leave the country the moment the interest no longer exists** [...] Restricting the duration of the limitation on the right to leave is in concert with the requirement in Section 8 of Basic Law: Human Dignity and Liberty, that the restriction of a right shall not be to an extent greater than is required (emphasis not in the original)

(Yafa Zilbershatz "The Right to Leave the State", **Mishpatim**, Vol.3 69, 5754)

40. Furthermore, the Petitioner, whose rights were limited due to the Respondent's decision, is entitled to have the decision on his matter made following proper administrative procedures and to have the Respondent reveal the reasons for the limitation placed on his right. The rationale is clear: **In the absence of an explanation for the refusal, the person harmed by the decision cannot deny the allegations against him and his protected rights are liable to be limited without any review or examination.** Even where the scope of the reasoning is classified for security reasons, it does not necessitate preventing all disclosure.

Release from disclosing reasons, facts, or documentation when such disclosure may harm national security or foreign relations is acknowledged by the legislator and the court in various contexts. And if there is room here for amazement, it is not because of the very exemption itself but rather the scope of the exemption. Indeed, on the one hand, it is reasonable that a public servant not be obligated to reveal the rationale for his decision if it would harm the security of the nation or its foreign relations. However, on the other hand, **this does not necessitate preventing all disclosure**

(Y. Zamir, **Administrative Authority** (Volume 2, Nevo, 5756), 917, emphasis added)

41. The importance of rationale also arises from those few cases in which the Respondent actually agreed to provide some details regarding the reasons for the refusal.

42. In some of those cases, the "refused" succeeded to prove that the claims against them were not grounded relatively easily, thus causing the withdrawal of the refusal.

For example, HCJ 8857/08 '**Asfour v. Military Commander of West Bank**; HCJ 25/09 **Ghanem v. Military Commander of West Bank** ; HCJ 4819/09 **Dr. al-Hor v. Military Commander of West Bank** .

43. It is obvious that the "privilege" of providing a person the opportunity to prove his innocence, is denied as long as the Respondent conceals the reasons for his decision to place limitations on that person.

### **The Right to Freedom of Movement**

44. The Respondent is preventing the Petitioner from leaving to go abroad. In so doing, he is violating the Petitioner's basic right to dignity and autonomy, and to freedom of movement and all the rights derived thereof.

45. The right to freedom of movement is the factor that underlies the web of human rights, the factor that enables a person to exercise his autonomy and choices. This "factor" is impeded when freedom of movement is restricted and, as a result, some of the individual's options and rights are impeded and may even cease to exist. This is the reason for the great importance ascribed to freedom of movement.

46. The right to freedom of movement is among the norms of customary international law and is well anchored in Israeli law.

On this issue, see:

Article 12 of the International Covenant on Civil and Political Rights 1966;

Article 2 of Protocol 4 of the European Convention on Human Rights 1950;

Article 13 of the Universal Declaration of Human Rights 1948;

HCJ 6358/05 **Vanunu v. GOC Home Front Command**, TakSC 2006(1) 320, para. 10 (2006);

HCJ1890/03 **Bethlehem Municipality v. State of Israel**, TakSC 2005(1) 1114, para. 15 (2005);

HCJ 5016/96 **Horev v. Minister of Transportation**, IsrSC 51(4)1(1997).

47. An **individual's right to leave his country** forms a central part of freedom of movement:

A person's right to leave his country and return to it is a "natural right". It is one of the basic human rights. Restricting this right severely impairs his rights.

(HCJ4706/02 **Salach v. Minister of the Interior**, IsrSC 56(5) 695, 704(2002)

48. The words of His Honor Justice Bach in **Dahar** are relevant to the issue at hand:

Restricting a citizen's movement in the sense that he is forbidden to leave the country to go to other countries is a severe violation of individual rights. And no one is more obligated to be sensitive to this issue than the Israeli public, for obvious and understandable reasons .

Justice Silberg expressed the same feeling when he determined in his verdict in HCJ 111/53, Kaufman v. Minister of Interior, et.al, IsrSC 7 534, referred to by my honored colleague, the Vice-President, as follows: "The citizen's freedom to travel abroad is a recognized natural right. It is self-evident..."

(HCJ 448/85 Dahar v. Minister of the Interior, IsrSC 40(2) 701, 721(1986)).

49. This right exists in wartime also, as established in Article 35 of the Fourth Geneva Convention (1949):

**All protected persons who may desire to leave the territory... may be entitled to do so... The applications of such persons to leave shall be decided in accordance with regularly determined procedures and the decision shall be taken as rapidly as possible...** if any such person is refused to leave the territory he shall be entitled to have such refusal reconsidered...[emphasis added]

The scholar Pictet clarified in his commentary that:

It should be noted that the **right to leave the territory is not in any way conditional, so that no one can be prevented from leaving** as a measure of reprisals...It is therefore essential for States to safeguard the basic principal by showing moderation and **only invoking these reservations when reasons of the utmost urgency so demand** [emphasis added]

(Pictet J.S. Commentary: IV Geneva Convention – Relative to the Protection of Civilian Persons in Time of War, P.235-236 (Geneva,1958)).

50. The right to leave the country of residence is also recognized as a fundamental right in a considerable number of international conventions and declarations. Article 13 of the Universal Declaration of Human Rights (1948) and Article (2)12 of the International Covenant on Civil and Political Rights (1966) establish that every person is entitled to leave his country:

Everyone shall be free to leave any country, including his own.

### **Violation of the Petitioner's right to education and acquisition of knowledge**

51. The refusal to allow the Petitioner to depart for Jordan severely impairs his ability to acquire education and knowledge as well as his ability to fulfill and support himself; a violation that extends beyond the Petitioner's right to choose where he receives his

education. This is a violation of his right to education and to acquire knowledge – recognized as a basic right both in international law and Israeli law.

On this issue, see the following:

Article 26 of the Universal Declaration of Human Rights 1948;

Article 13 of the International Covenant on Economic, Social and Cultural Rights 1966;

General Comment No.13 on Implementation of the Covenant 1999;

HCJ 2599/00 **Yated v. Ministry of Justice**, IsrSC 56(5) 834, 843-842(2002));

HCJ 11163/03 **The High Follow Up Committee for the Arabs in Israel v. Prime Minister of Israel**, TakSC 2006(1) 2562 (2006);

HCJ6914/06 **National Parents' Organization v. State of Israel**, TakSC 2007(3) 2525 (2007);

HCJ4363/00 **Poriya Ilit Council v. Minister of Education**, TakSC 2002(2) 1008, 1010,(2002)

52. This right is also upheld in wartime and forms part of the basic obligations – active and passive – of the occupying force towards the occupied population. This right is anchored, *inter alia*, in the intention and spirit of Article 46 of the Hague Convention 1907:

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected ...

On the issue of the right to education within the framework of the implementation of human rights law and the active obligations of the occupying power, see also:

Horowitz J.T. "The right to education in OPT: Making more room for human rights in occupation law." *Yearbook of International Humanitarian Law*, Vol 7, 2004. pp. 233-277;

Mottershaw E. "Economic, Social and Cultural rights in Armed: International Human Rights law and International Humanitarian law." *International Journal of Human Rights*, Vol 12, No 3, June 2008. pp. 449-470; and

Lubell N. "Challenges in Applying Human Rights law to Armed Conflict." *International Review of the Red Cross*, Vol 87, No 860, Dec. 2005. pp. 761-763.

53. The importance of education and learning to the personal advancement of a person cannot be exaggerated, nor can their central place in the normal life of society. In the words of this Honorable Court:

This is one of the most important functions of the government and the state. Education is vital for the existence of a living, free, and functioning democratic regime. It is a necessary foundation for the personal fulfillment of every person. It is vital for the success and thriving of every individual. It is necessary for the existence of a society whose members improve themselves and by so doing benefit the entire community.

(HCJ 1554/95 **Shocharei Gil't Association v. Minister of Education and Culture** IsrSC 50(3)2, 24 (1996)).

54. The right to education has been recognized in both Israeli law and international law as a basic right granted to every person qua person. The words of Her Honor Justice Procaccia are important for the matter at hand:

The right to education has been recognized in our law as a basic right that is granted to every person...The right to education has been guaranteed in the Declaration of Independence and it is anchored in various conventions in international law to which Israel is party or has ratified, as well as customary international law (Article 26 of the Universal Declaration of Human Rights (1948); Article 13 of the International Covenant on Economic, Social and Cultural Rights (1966); Articles 28 and 29 of the Convention on the Rights of the Child (1989); Y.Dinstein, "Cultural Rights", 9 Israel Yearbook on Human Rights (1979) 58; HCJ 4363/00 **Poriya Ilit Council v. Minister of Education**, IsrSC 56(4) 203, 213-215(2002)). The right to education is anchored in various statutes in the Israeli Statute Book (Yoram Rabin, *The Right to Education* (5762-2002), page 301 ff.)). The right to education is not new for us and it is deeply imbedded in Jewish values and heritage (**Yated**, , p. 842; **Movement for Quality Government**). The decisive importance of the right to education results from the fact that it is essential for exercising individual human rights and personal autonomy, as a factor in developing one's personality and capabilities. It provides the individual with the strength to cope and the possibility to realize equal opportunity in his society, both as a youth and as an adult. The right to education projects on other basic individual rights, such as freedom of expression and freedom of occupation. Realizing the right to education is intended to achieve social ends. Education is a link that connects between various and diversified sectors of society and a vital means of bridging gaps and constructing a harmonious social fabric. Education is an important means of promoting free democratic values. It is a vital condition for an individual's personal realization and for the maintenance of proper communal life...

[...]

Education, aside from its importance as an essential human right, is also important from the perspective of society in general. "Education shapes society and determines its character, not only in terms of the knowledge and expertise acquired, but also in forming the ethical and ideological foundation that characterizes it."(HCJ 6914/06 *National Parents' Organization v. State of Israel*, (not published, given on August 14, 2007)).

HCJ 4805/07 **Israel Religious Action Center v. Ministry of Education**, TakSC2008(3)1402,1421(228)

## Conclusion

55. The Respondent's refusal to allow the Petitioner to leave the West Bank in order to begin his medical education is a violation of his basic right to leave the country, his autonomy and his ability to fulfill and exercise the very basic right to education and acquisition of knowledge.
56. Freedom of movement is not like any other right. Freedom of movement is the key to the realization of basic human rights. A person's right to leave his country and go abroad is so important and fundamental that its restriction must be done in very exceptional cases and only for specific and essential security reasons.

This petition is supported by an affidavit signed in the presence of an advocate in the West Bank and sent to the undersigned by fax through telephone coordination. This Honorable Court is requested to accept this affidavit and the power of attorney which is also sent by fax, taking into consideration the objective difficulties with respect to a meeting between the Petitioner and his legal counsel.

In light of all of the above, this Honorable Court is requested to issue an order nisi as requested and after hearing the response of the Respondent to make it absolute. Moreover, the Court is requested to instruct the Respondent to pay the Petitioners' costs and attorney fees.

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Ido Blum, Adv.  
Counsel to the Petitioners

11 October, 2010