At the Jerusalem District Court
Sitting as a Court for Administrative Affairs **AP 7112-10-11**

In the matter of:

1. ____ Hadri, ID No. _____
2. ____ Hadri, ID No. _____
3. ____ Hadri, ID No. _____ (minor)
4. ____ Hadri, ID No. _____ (minor)
5. _____ Hadri, (minor, not yet registered)
6. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA

Petitioners 3-5 represented by their parents (natural guardians)

Petitioners 1 and 2 represented by counsel Adv. Noa Diamond (Lic. No. 54665) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Elad Kahana (Lic. No. 49009) and/or Ido Blum (Lic. No. 44538) and/or Hava Matras-Irron (Lic. No. 35174) and/or Daniel Shenhar (Lic. No. 41065) and/or Nimrod Avigal (Lic. No. 51583)
Of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **The Minister of Interior**

2. **Head of the Population Administration**

3. **Director of the East Jerusalem Population Administration Bureau**

4. **Israel Prison Service**

Represented by the Jerusalem District Attorney

7 Mahal St., Jerusalem

Tel: 02-5419555; Fax: 02-5419581

The Respondents

Administrative Petition

This honorable court is hereby requested to order the respondents to appear and show cause why they do not enable petitioner 2 to enter Israel, after his illegal deportation, in order to enable him to exhaust his rights under the law *vis-à-vis* respondents 1-3.

Motion for an Urgent Hearing

The honorable court is hereby requested to schedule an urgent hearing in the petition, in view of the forced separation of Mr. Hadri (hereinafter: the "**petitioner 2**" or the "**husband**") from his home and family on July 28, 2011, when he was illegally deported to the Gaza Strip, by the employees of respondent 4.

Introduction

1. This petition concerns petitioners' difficult human case and respondents' clear bad faith.

2. Petitioner 1 (hereinafter: "**petitioner 1**"), who resides in Jerusalem, is a permanent resident of the State of Israel. She is married to petitioner 2, who is registered in the Gaza Strip but has not been living in the Strip for eleven years, and raises their children with him, in Jerusalem. Petitioner 1 submits a family unification application for her husband, and waits for the decision of the Ministry of Interior. While the application is pending, after serving a very short prison sentence, petitioner 2 is deported to the Gaza Strip by the representatives of respondent 4. Upon his deportation, the husband states that he should not be deported for as long as his family unification application is pending. He tells respondent's representatives, that his wife and three young children are waiting for him at their home, in Jerusalem, but to no avail. Today, the husband is in Gaza, torn from his wife and children, the victim of a deportation which was carried out illegally.

3. In response to requests of the spouses' counsel, the family unification application is denied, *post factum*, in view of a government resolution regarding family unification with residents of the Gaza Strip. The respondent goes further and refuses to respond to petitioners' claims concerning the reasons for the denial, on the "grounds" that these are legal arguments. Nevertheless, the respondent refers the petitioners to the humanitarian committee.

4. According to petitioner's procedures, for as long as the application and appeal proceedings have not been exhausted, petitioner 2 should not be

deported from Israel. Despite this, the respondent refuses to remedy the injustice caused as a result of the deportation of petitioner 2 to the Gaza Strip by the representatives of respondent 4.

5. **This petition is filed for the purpose of obtaining a very limited remedy only**: to re-instate the state of affairs that existed prior to the illegal deportation of petitioner 2, in order to enable the petitioners to realize their family life while the respondent reviews their application. The law, respondent's procedures and the balance of convenience between the parties – all support the grant of the requested remedy.

The Parties to the Petition

6. Petitioner 1 is an Israeli resident. Since 2007 she has been married to petitioner 2, a resident of the Occupied Palestinian Territories (OPT) whose registered address is in Gaza. From their marriage the spouses have three children, petitioners 3-5 (born in 2008, 2009 and 2011, respectively).

7. Petitioner 6 is a registered association, that has taken upon itself to assist victims of cruelty or deprivation by state authorities, including by defending their rights in court, either in its own name as a public petitioner or as counsel to persons whose rights were violated.

8. Respondent 1 is the minister authorized under the Entry to Israel Law, 5712-1952, to handle all matters associated with this law, including applications for family unification and for the arrangement of the status of children submitted by permanent residents of Israel residing in East Jerusalem.

9. Respondent 2 is the head of the population administration in Israel. In accordance with the Entry to Israel Regulations, 5734-1974, respondent 1 has delegated to respondents 2 and 3 some of his powers to handle and approve applications for family unification and for the arrangement of the status of children submitted by permanent residents of Israel residing in East Jerusalem. In addition, respondent 2 takes part in establishing policy concerning applications for status in Israel under the Entry to Israel Law and the regulations promulgated pursuant thereto.

10. Respondent 3 is the director of the East Jerusalem population administration bureau. In accordance with the Entry to Israel Regulations, 5734-1974, responden1 has delegated to respondents 2 and 3 his powers to handle and approve applications for family unification and for the

arrangement of the status of children submitted by permanent residents of Israel residing in East Jerusalem.

11. Respondent 4 is the national imprisonment organization of Israel. As such, it is responsible for holding prisoners in custody and releasing them. In this case, it is the party that – contrary to its authority –removed petitioner 2 to the Gaza Strip.

12. For the sake of convenience, respondents 1-3 will be hereinafter referred to as: the "**respondent**".

Petitioners' Case

13. Petitioners 1 and 2 (hereinafter also: the "**spouses**") have been married to each other since June 2007 and have been residing in Jerusalem since their marriage.

    Copy of the marriage certificate of petitioners 1 and 2 is attached and marked **P/1**.

14. It should be noted that the registered address of petitioner 2 is indeed "Gaza", but the petitioner has not been to Gaza during the last eleven years, until his deportation thereto. **Meaning, petitioner 2's connection to the strip is quite loose**.

15. On January 2, 2008 petitioner 1 submitted a family unification application for her husband, at the bureau of respondent 2 in East Jerusalem. The application was numbered 3/08 (hereinafter: the "**application**").

    Payment receipt for the family unification application is attached and marked **P/2**.

16. During 2008, petitioner 2 does not remember exactly when, he was orally told by the bureau of respondent 2 in East Jerusalem, that he must close all criminal files pending against him. Petitioner 2 was never told that the application had been denied and he never received any written document in that regard.

17. As will be further described below, **the family unification application was not denied until August 16, 2011**. As indicated in respondent's letters, attached hereto and marked P/6 and P/8, on May 27, 2008 the **decision** in the application was **postponed** until all criminal proceedings

which were pending against petitioner 2 were closed; meaning, that the application **was not denied** on May 27, 2008.

18. It should be noted that when it was resolved to postpone the decision in the family unification application (May 27, 2008), **only one criminal proceeding** was pending against petitioner 2. This proceeding was ED17171/2008 (offense dated January 13, 2008), which was eventually closed due to lack of public interest (closed on November 17, 2010). It should be noted that at that time petitioner 2 had older criminal files, all of which had already been closed.

19. In the meantime, the spouses were waiting for the decision of the Ministry of Interior in their family unification application, a process which, as is well known, may take a long time. It should be pointed out that during that period, petitioner 2 made attempts to close the police investigation file which was pending against him. He consulted with two lawyers, and was told that it was preferable to wait until the files were closed than to actively act in that matter.

20. While the spouses were waiting, Mr. Hadri was sentenced, on June 13, 2011, to a period which was referred to by the court as "short and symbolic" – thirty three days – for driving in Israel without an Israeli driving license.

    Transcripts of the hearing, the judgment and verdict dated June 13, 2011 are attached and marked **P/3**.

21. Petitioner 2 was imprisoned in the Dekel prison.

22. After serving his sentence in Dekel prison, petitioner 2 was taken, on July 28, 2011, by the employees of respondent 4 to the Erez crossing, and was **expelled from there to Gaza**, although petitioner 2 repeatedly told the representatives of respondent 4, throughout that day, that he was living with his family in Jerusalem and that a family unification application was pending in his matter. Mr. Hadri reiterated, time and again, to the employees of respondent 4 that he had a wife and three young children in Jerusalem and that he had no security issues whatsoever, but no one took any notice of him.

23. Today, petitioner 2 is torn from his family – his wife and young children, stranded in Gaza with no way to leave. Due to the fact that petitioner 2, who was the sole provider for his family, is not at home and cannot work,

petitioner 1 and the children, petitioners 3-5, have had to leave their home and move to live with the family of petitioner 1**. The expulsion of petitioner 2 has cruelly torn apart an entire family and left his wife and children without income and support**.

24. On August 14, 2011 the undersigned, on behalf of the spouses, sent an urgent letter to respondent 3 describing the expulsion, which was carried out contrary to law and procedure. In the letter the undersigned claimed that due to the fact that the spouses' family unification application was never been denied, the expulsion of petitioner 2 **while the application in his matter was still pending**, was contrary to respondent's procedure. It was further argued that the expulsion by respondent 4 was carried out illegally and contrary to the provisions of the **Entry to Israel Law**, 5712-1952. Finally, the undersigned referred respondent 3 to the judgment in **AP 17012-04-11 Abu Dheim v. The Minister of Interior** (hereinafter: "**Abu Dheim**"), which concerned the prohibition to deport while an application was pending before the respondent.

    The letter dated August 14, 2011 is attached and marked **P/4**.

25. On August 16, 2011 respondent's response was received (hereinafter: the "**response**"), through Ms. Liat Melamed from the bureau of respondent 2 in East Jerusalem. In view of the importance of the matter, the response is cited in its entirety:

> The family unification application for Mr. Hadri, a resident of the Gaza Strip, was submitted at our office on January 2, 2008. On May 27, 2008, **the decision** in the application **was postponed** until such time as the criminal proceedings pending against Mr. Hadri were concluded. Soon thereafter, on June 15, 2008, Government Resolution No. 3598 was passed, followed by a Minister of Interior directive pursuant to section 3D of the Nationality and Entry into Israel Law (Temporary Order) was issued. According to this directive, the Gaza Strip was declared as an area in which activity that may put the security of the State of Israel or its citizens at risk was carried out that no permit to remain in Israel would be granted to residents of the Gaza Strip as specified above.
>
> In view of the above, Mr. Hadri's application for status in Israel within the framework of the above referenced family unification application is hereby **denied**.

(Emphases, N.D.)

Respondent's response dated August 16, 2011 is attached and marked **P/5**.

26. Several points arise from respondent's response: firstly, the application was denied only on August 16, 2011 (see the wording of the denial in the present tense); secondly, the application was never denied prior thereto (since the decision was simply **postponed** but **no decision was made** until August 16, 2011); and thirdly, the application was denied in view of Government Resolution 3598 (hereinafter: the "**government resolution**").

27. An appeal against the denial of the family unification application dated August 16, 2011, and the refusal to let Mr. Hadri return to Israel, was submitted on August 21, 2011 (hereinafter: the "**appeal**"). In the appeal it was argued that when Mr. Hadri was expelled, his application had not yet been denied (the denial was rendered, according to the response, only on August 16, 2011), and therefore his expulsion was contrary to law and procedure. In addition, the petitioners presented their position that **the denial itself** was contrary to law and procedure, since according to the provisions of section 3D of the Nationality and Entry into Israel Law (Temporary Order), 5763-2003 (hereinafter: the "**temporary order**") discretion should be exercised before an application is denied. According to AAA 1038/08 **The State of Israel v. Ghabis (**published in Nevo, hereinafter: "**Ghabis**") and the procedure which was established following this judgment, a hearing must be held prior to the denial of a family unification application for security reasons; the "place of residence" of petitioner 2 is not in Gaza; respondent's decision violates petitioners' right to family life.

The appeal is attached and marked **P/6**.

28. On September 11, 2011, respondent's rejection of the appeal dated September 8, 2011 was received (hereinafter: the "**appeal rejection**"). The appeal rejection stated that: "On May 27, 2008 a decision was made by our office to postpone the application until the criminal proceedings pending against Mr. Hadri were terminated (emphasis in original, N.D.). It was further stated that although, *prima facie*, the criminal proceedings against Mr. Hadri had terminated, the application was denied in view of the government resolution. This was followed with respondent's position that the directive issued by respondent 1 based on section 3D of the temporary order, concerned the entire Gaza Strip and not a particular

application (and therefore, respondent's position was that respondent 1 was not required to exercise discretion in specific cases). In section 5 of the appeal rejection, the respondent stated as follows: "Your arguments concerning the legality of the resolution of the Government of Israel **is a legal argument and therefore we shall not respond to it** in this letter"(!!) (emphasis added, N.D.). Finally, it was argued that with respect to the application to hold a hearing for petitioner 2, respondent's position was that the "agency comments" procedure did not apply to this application, since it was denied in accordance with the government resolution.

The letter concluded with a note that petitioner 2 may apply to the professional committee that consults respondent 1 (the "**humanitarian committee**") which was established pursuant to the temporary order.

The appeal rejection letter is attached and marked **P/7.**

29. Parenthetically, it should be noted that within the next few days, the petitioners intend to submit an application to the humanitarian committee, which was established pursuant to the temporary order, in accordance with respondent's recommendation in his response to the appeal.

    Hopefully, the application to the humanitarian committee shall bring forth a solution to petitioners' matter, and in any event the petitioners' position is that this proceeding should be given a chance, before an appeal is filed on the decision of the Ministry of Interior in response to the appeal. Filing an appeal and submitting an application to the humanitarian committee at the same time seems inappropriate, particularly in view of the heavy load which is anyway imposed on the system.

    In view of the above, on October 2, 2011, the petitioners filed a motion for an extension of up to 30 days in order to challenge respondent's decision in response to the appeal to commence on the date on which the decision of the humanitarian committee in their matter is delivered to them.

Expulsion Contrary to Respondent's Procedure

30. The appeal rejection indicates that **the family unification application was denied on August 16, 2011, i.e., after the expulsion of petitioner 2 from Israel**. Such expulsion, when a family unification application is still pending, is contrary to respondent's procedure, as specified below.

31. Respondent's internal protocol known as " General protocol for receipt of any application and appeals against decisions (hereinafter: the "**protocol**") provides that "until a decision is made in the application/appeal which was submitted, **no enforcement action should be taken against the applicants**." The purpose of this provision is to enable the applicants to be protected from deportation while their case is being reviewed by the Ministry of Interior.

    Respondent's protocol is attached and marked **P/8**.

32. In this case, the respondent exceeded his powers and acted contrary to said protocol. As specified above, the spouses did not receive a denial of their family unification application, until August 16, 2011, when the respondent notified that the application was denied in view of the government resolution. This means that at the time of the deportation, the application was pending.

33. The provision of the procedure, pursuant to which an applicant should be allowed to remain in Israel, even without permit, until a final decision is made in his/her application, reflects a correct interpretation of the law. For as long as an applicant's case is pending, the balance of convenience requires to enable him/her to continue to remain in Israel and conduct his/her communications with the respondent from here.

34. The deportation of petitioner 2 from Israel was, therefore, carried out contrary to respondent's protocol and contrary to the law, as established in protocol. As specified below, it was not carried out by the respondent and was executed without authority.

    The above is still valid now, when the respondent has referred the petitioners to one of his additional branches, i.e., the humanitarian committee. In accordance with respondent's protocol, at this stage as well, no enforcement action should be taken against an applicant. Therefore, there is no merit to respondent's attempt to retroactively validate the deportation based on the argument that in any event the application is now denied, in view of the government resolution. **The protocol provides that an applicant should not be deported at this stage as well. By leaving the deportation in place at this stage, the respondent has deprived the petitioners of the right to be heard to which they were entitled, and has not allowed them to exhaust their rights and make their case against the denial, prior to the deportation of petitioner 2**.

35. It should be mentioned that in this case, petitioner 2 told the representatives of **respondent 4** that his application was pending before the respondent and that he should not be deported until a decision was made in his matter. But his words **fell on deaf ears**.

36. **Instead of remedying the injustice caused as required and as soon as possible, and acting in accordance with the law and respondent's procedures, the respondent is trying to rely on the illegal act and perpetuate it.**

37. **Therefore, the deportation should be voided and petitioner 2 should be allowed to return to Jerusalem immediately**.

Expulsion without a Removal Order

38. Not only did respondent 4 act contrary to respondent's internal procedure, but it also did so without authority and contrary to the provisions of the Entry into Israel Law, 5712-1952 (hereinafter: the "**law**"). Due to the importance of the matter, we shall refer to the relevant provisions of the law.

39. Section 13(10) of the law provides for the "removal" from Israel of a resident of the Area as follows:

    (a) In this section –

    "The agreement" - the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip signed in Washington D.C. between the State of Israel and the Palestinian Liberation Organization, on 4 Tishrei 5756 (September 28, 1995) including its exhibits and ancillary documents;

    "Area" – Judea and Samaria and the Gaza Strip excluding the areas of the Palestinian Council;

    "Areas of the Palestinian Council" – the areas included from time to time under the territorial authority of the council in accordance with the agreement;

"Police officer" – a police officer holding the rank of chief inspector and higher, authorized by the police commissioner for the purpose of this section;

"Permit" – as defined in the Order on the Entry of Residents of the Area or Areas of the Palestinian Council into Israel, as amended in accordance with section 17(b).

(b) In addition to any prevailing law, **a police officer or the border control official may order in writing** to remove from Israel a resident of the Area or a resident of the Areas of the Palestinian Council, who are not Israelis (hereinafter – a resident) who is present in Israel without a permit or in breach of the terms of the permit, or who has been convicted of an offense in accordance with section 12.

(c) A police officer or border control official shall not make such removal decision unless he has given the resident an opportunity to be heard; The police officer or the border control official, as the case may be, **shall draft a written report specifying the resident's arguments and the grounds for the decision**.

(Ibid., emphases added, N.D.)

40. The above section indicates that there were some severe deficiencies in the acts of respondent 4 when it "removed" petitioner 2 from Israel:

a. Petitioner 2 was expelled to Gaza by representatives of respondent 4, the Israel Prison Service. As the above cited sections of the law clearly indicate, the representatives of the Israel Prison Service **are not authorized** to "remove" residents of the Area from Israel. The only officials authorized to do so are a police officer (holding the rank of chief inspector and higher who has been specifically authorized to do so) or a border control official.

b. Since the "removal" was done without authority, it is clear that the entire procedure involving the "removal" was illegal. Contrary to the law, no **order** for the removal of petitioner 2 from Israel was issued and a no written **report containing the grounds for the decision** was drafted by a **police officer**.

41. The conditions specified in the above sections of the law are not provided merely for procedural reasons. Their purpose is to safeguard material

rights of a person suspect of illegal presence in Israel, and ensure that before he is removed from Israel, a thorough investigation, **including a hearing**, is conducted by a high ranking officer (see reference made by the court to the section of the law in AP (Jerusalem) 9051/08 **Bitar Sidawi v. The Minister of Interior**. Also see reference made by the court in AP (Tel Aviv) 2252/05 **Rashuan v. The Ministry of Interior** where it was held that even if the suspect had a hearing prior to his deportation, it did not mean that the deportation was carried out in good faith).

42. It should be remembered, that the general rule is that deportation from Israel is done only pursuant to an order issued by the Minister of Interior, and subject to a number of procedures and assurances set forth in the Entry into Israel Law. Removal from Israel pursuant to a removal order is an unusual arrangement whereby certain police officers are granted powers which are normally vested in a minister in Israel. In view of the unusual nature of the arrangement, it is doubly important to strictly and meticulously uphold every detail of the provisions thereof.

43. All of the above indicate that the removal of petitioner 2 from Israel was carried out **without authority and in grave breach of the law**.

The Judgment in the Abu Dheim Matter

44. Recently, in a judgment in AP 17012-04-11 **Abu Dheim v. Minister of Interior** (delivered on June 6, 2011, published in Nevo) the court referred to the importance of following the removal procedure as provided by the law:

> **I do not see eye to eye with the Respondent that these are "procedural" or "technical flaws", as he puts it. These statutory provisions were designed to ensure that discretion to remove a resident of the Area of the Palestinian Authority is exercised by an official who was specifically authorized to do so and who holds a rank that is senior enough. The obligation to hold a hearing and provide a decision stating the grounds thereto in writing also ensures discretion is exercised in an appropriate manner**. The flaws in the procedure used in the case of Petitioner 2 were material and related to the fundamental characteristics of the procedure. In fact, no procedure took place, but rather simply the collection of a statement with respect to suspected illegal

> presence and a removal from the country without any review of the Petitioner's arguments**. It is not unreasonable to assume that the competent official would have held the position that any removal from the country should be postponed until these claims were clarified. My conclusion is that the police staff sergeant major made the decision *ultra vires* and in breach of statutory provisions and that it is therefore void.**
>
> (Ibid., emphases added, N.D.)

45. Subsequently, after the court found that an appeal filed by the petitioner was pending before the Minister of Interior when deported, the court determined:

> And if this is the case, then according to said protocol, the Petitioner should not have been removed from Israel before a decision was given either on the appeal or on the request for a hearing.

46. The court ultimately accepted the petition in the sense that it instructed the Ministry of Interior to allow the petitioner to enter Israel until a decision was made in his appeal.

47. The above applies to our case as well. The application was denied only after the expulsion of petitioner 2, thus depriving him of the ability to exhaust his rights and confront the arguments for the denial while he was in Israel. Petitioner's stay in Israel, until the expulsion, was legal, since an application in his matter was pending before the respondent. His stay in Israel now, if the petition is accepted, will also be legal for as long as his application to the humanitarian committee is pending.

Violation of Family Life and the Rights of the Children

48. The hasty and illegal decision of respondent 4 tore apart the petitioners' family, broke the livelihood of the family and left petitioner 1 without a spouse and her children without a father.

49. In view of theses harsh consequences, the respondent should have acted without delay to bring petitioner 2 back home.

50. Furthermore: although respondent's procedure provides that an applicant should not be removed from Israel while his application is pending, and this applies to all cases and circumstances, this is all the more so when fundamental principles of our system are on the balance - the right to family life and a child's best interests.

51. The harsh consequences of respondent's decision on petitioners' life cannot be overstated. With a single stroke of a pen, their family was broken. The father was torn away from his three young children and from his wife, and it is not clear when and how they will meet again. Petitioner 1 remained alone in Jerusalem with a three-year-old boy, a two-year-old girl and a six-month-old baby. Each day of separation increases the tension and anxieties in petitioners' family.

52. Today, in the post HCJ 7052/03 **Adalah et al. v. The Minister of Interior et al**. (TakSC 2006(2) 1754, hereinafter: "**Adalah**") era, there is no longer any dispute that the right to family life is a basic constitutional right in Israel, included in the right to human dignity. This position received a sweeping support by eight out of the eleven justices who presided in the case.

53. The status of constitutional right granted to the right to family life, directly affects the violation of this right and the denial of a family unification application submitted by a citizen or a resident of Israel for his spouse or children. Granting the right to family life the status of a constitutional right is followed by the determination that any violation of this right should be made in accordance with Basic Law: Human Dignity and Liberty. It must be based on substantial considerations and supported by a solid evidentiary infrastructure attesting to these considerations. This determination imposes upon the respondent a heightened obligation to maintain an administrative apparatus that ensures that the discretion to deny family unification applications, a discretion which violates a protected constitutional right, is exercised only where such denial is fully justified.

54. Relevant to our case are the remarks made by President (retired) A. Barak, who cited in his judgment in **Adalah** (paragraph 26 of his judgment) statements made by justices and legal scholars concerning the connection between parents and their children:

> ‘[T]he right of the parents to raise their children is a natural, basic right, whose importance can hardly be exaggerated’ (P. Shifman, Family Law in Israel, vol. 2, 1989, at p. 219). ‘The

connection between a child and his parents who gave birth to him is one of the fundamentals on which human society is based' (LFA 377/05 A v. Biological Parents [21], at para. 46). As my colleague, Justice A. Procaccia, said:

'**The depth and strength of the parental bond, which contains within it the natural right of a parent and his child to a bond of life between them, has made family autonomy a value of the highest legal status, and a violation of this is allowed only in very special and exceptional cases. Every separation of a child from a parent is a violation of a natural right**' (LCA 3009/02 A v. B [22], at pp. 894-895). (Emphases added – N.D.).

55. President Barak has further determined, in paragraphs 27-28 of his judgment:

> The right to family life is not exhausted by the right to marry and to have children. The right to family life means the right to joint family life. This is the right of the Israeli spouse to lead his family life in Israel. This right is violated if the Israeli spouse is not allowed to lead his family life in Israel with the foreign spouse. He is thereby forced to choose whether to emigrate from Israel or to sever his relationship with his spouse...
>
> **The right to family life is also the right of the Israeli parent that his minor children will grow up with him in Israel and the right of an Israeli child to grow up in Israel together with his parents**...
>
> Respect for the family unit has, therefore, two aspects. The first aspect is the right of the Israeli parent to raise his child in his country. **This is the right of the Israeli parent to realize his parenthood in its entirety, the right to enjoy his relationship with his child and not be severed from him. This is the right to raise his child in his home, in his country. This is the right of the parent not to be compelled to emigrate from Israel, as a condition for realizing his parenthood. It is based on the autonomy and privacy of the family unit. This right is violated if we do not allow the minor child of the Israeli parent to live with him in Israel**. The second aspect is the right of the child to family life. It is

based on the **independent recognition of the human rights of children**. These rights are given in essence to every human being in as much as he is a human being, whether adult or minor... The child has the right to grow up in a complete and stable family unit. His welfare demands that he is not separated from his parents and that he grows up with both of them. Indeed, it is difficult to exaggerate the importance of the relationship between the child and each of his parents. The continuity and permanence of the relationship with his parents are an important element in the proper development of children. **From the viewpoint of the child, separating him from one of his parents may even be regarded as abandonment and affects his emotional development. Indeed, 'the welfare of children requires that they grow up with their father and mother within the framework of a stable and loving family unit, whereas the separation of parents involves a degree of separation between one of the parents and his children**' (LCA 4575/00 A v. B [26], at p. 331).

(Ibid., emphases added, N.D.).

56. Therefore, separating petitioner 2 from his wife and their children, whose status in Israel has been arranged, constitutes a severe violation of the natural right of the parents and the children to family life. It seems that the courts, in determining that such a matter justifies a special humanitarian treatment, were aware of that. The respondent should have also considered this matter carefully.

57. Does respondent's decision, which so severely violates petitioners' right to family life, comply with this requirement? Can a decision, which is entirely based on the fact that petitioner 2 is registered in the population registry as a resident of Gaza counterbalance the right to family life and the harsh consequences of its violation in the case at hand? All of the above indicate that the answer to that is negative.

Respondent's Denial of the Family Unification Application

58. As indicated from the facts described above, respondent 4 deported petitioner 2 from Israel without authority, when, according to respondent's procedures, petitioner 2 was entitled to continue to remain in Israel. Now, in retrospect, the respondent perpetuates the injustice caused by respondent

4 and refuses to remedy it. Petitioners' position is that such conduct is unreasonable and is infected by extreme bad faith. This is aggravated in view of respondent's defective conduct in handling petitioners' application. We explain.

59. First, the "postponement of the decision" in the family unification application until termination of all criminal proceedings which were pending against petitioner 2. As described above, when the resolution to postpone the decision in the application was made, only one criminal file was pending against petitioner 2, which was eventually closed due to lack of public interest.

60. Postponing a decision in a family unification application, until all criminal files pending against the person being sponsored are closed, is not a duty imposed upon the respondent whenever he comes across a sponsored individual with pending police investigation files . The option to postpone the decision in the application under such circumstances does not appear at all in respondent's protocol regarding the positions of the agencies (Israel Security Agency and the police) in family unification applications. Respondent's protocol 5.2.0015 "protocol on agency comments in family unification applications" concerns situations in which criminal files are pending against the sponsored individual when the family unification application is submitted. Section 3.1.2 of the procedure provides as follows:

> When the agencies recommend to deny the application (this appears in the original, N.D.) for reasons having to do with files pending against the sponsored spouse and the Ministry of Interior has **exercised its discretion and concluded that the recommendation should be adopted and the application should be denied** (this appears in the original, N.D.) a letter shall be sent to the applicant informing him that his family unification application for his spouse was denied due to the fact that criminal files were pending against the sponsored spouse. The files shall be specified in the denial letter with an indication that he may submit the application for the sponsored spouse if and when these files are closed.
>
> (Emphasis added, N.D.).

The "comments of agencies" procedure is attached and marked **P/9**.

61. Therefore, even if the respondent is authorized to "postpone the decision" in the family unification application, his authority is in any event **discretionary**. If the authority to **deny** a family unification application due to the fact that police investigation files are pending against the sponsored spouse is discretionary, it is obvious that the authority to **postpone the decision** in the application under such circumstances is also discretionary.

62. The petitioners never received a reasoned notice from the respondent, a product of the exercise of his discretion, about the resolution to postpone the decision in the family unification application until the police investigation files were closed. Had the respondent notified of his position in an orderly manner, the petitioners could have addressed it and presented their arguments in the matter. However, the respondent has never done so.

63. And so, the family unification application remained pending before the respondent, until his receipt of counsel's letter. Only then, did respondent notify that the family unification application was denied, in view of the government resolution. In other words: It makes no difference whether or not the respondent [*sic*] closed the police investigation files or not, and **it makes no difference that he was deported while the application was pending, because now – the application is denied regardless**.

64. This conduct is unacceptable. Had the application been processed in a proper and orderly manner, the denial would have been received while the petitioner was in Israel (as he is permitted to remain in Israel for as long as an application is pending in his matter), and he would have been given the opportunity to present his case against the denial within the framework of additional proceedings. Instead, petitioner 2 was illegally deported to Gaza; the respondent denied his application **after** his deportation, and by refusing to let the petitioner enter Israel to exhaust his rights, the respondent has deprived him of the proceeding to which he is entitled.

65. The respondent goes further and **refuses to respond to the arguments raised by the petitioners in the appeal, claiming that these are "legal arguments"**. This is an absurd claim and a clear attempt to avoid taking a position. In other words, in addition to the "late denial" of the family unification application, the respondent refuses to respond to petitioners' arguments against the denial itself!

66. As indicated by exhibit P/6 (the appeal letter), the petitioners have considerable arguments against the denial of their application. According

to the respondent himself, petitioners' case is unique, and warrants a referral to the humanitarian committee. According to the respondent's own procedure, an applicant should not be deported until the proceedings in his application are exhausted. In view of the above, the respondent should not rely on a situation which was illegally created by respondent 4, a situation whereby petitioner 2 was removed to the Gaza Strip. He should remedy the injustice that has been caused and allow the petitioners to exhaust the proceedings in their matter while petitioner 2 is in Israel.

Conclusion

67. The petitioners are spouses, and there is no dispute that they have lived together in Jerusalem with their young children. The petitioners' family unification application was pending when petitioner 2 was expelled to the Gaza Strip, and the proceedings therein still have not been concluded – as they have now been referred, **on the recommendation of the respondent**, to the humanitarian committee established in accordance with the temporary order.

68. According to respondent's procedure, petitioner 2 is entitled to remain in Israel for as long as the proceedings in the application are yet to conclude.

69. However, in this case, a third party has intervened - respondent 4. This party, which has never been authorized to remove a person from Israel, deported petitioner 2 from here – without authority, in breach of the rules and proceedings set forth in law and contrary to the procedure of the Minister of Interior, a procedure which reflects the proper balance between human rights and public interests.

70. This petition is directed solely to remedy this injustice, so that the petitioners will be able to continue to exhaust their rights *vis-a-vis* the Ministry of Interior, without having their family separated and torn apart while the proceedings take place – proceedings which may indeed terminate in the approval of the family unification application, given petitioners' substantial arguments and the fact that the matter was referred to the humanitarian committee.

In view of all of the above, the honorable court is hereby requested to accept the petition and order the respondents to approve the entry of petitioner 2 into Israel, in order to enable him to exhaust his rights vis-à-

vis the authorities. In addition, the court is hereby requested to order the respondent to pay petitioners' costs and legal fees.

Jerusalem, October 4, 2011

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Noa Diamond, Adv.

Counsel to the Petitioners

(File No. 69896)