[Emblem of the State of Israel]

At the Supreme Court Sitting as the High Court of Justice

HCJ 2088/10
HCJ 4019/10

Before:	**Honorable President (retired) D. Beinisch** **Honorable Justice M. Naor** **Honorable Justice E. Hayut**
The Petitioners in HCJ 2088/11:	**HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger and 12 others.**
The Petitioners in HCJ 4019/10	**HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger and 15 others.**
	v.
The Respondents in HCJ 2088/10:	1. **Military Commander of the West Bank** 2. **Military Commander of the Gaza Strip** 3. **Coordinator of Government Activities in the Territories** 4. **Minister of Interior** 5. **Minister of Defense** 6. **Deputy Minister of Defense** 7. **State of Israel**
The Respondents in HCJ 4019/10	1. **Military Commander of the West Bank** 2. **Coordinator of Government Activities in the Territories** 3. **Official in charge of the population registry in the Civil Administration**

Petitions for Order Nisi

Session dates:	2 Nissan 5771 (April 6, 2011) 16 Kislev 5772 (December 13, 2011)
Representing the Petitioners in HCJ 2088/10 and HCJ 4019/10:	Adv. Elad Cahana; Adv. Nimrod Aviagl
Representing the Respondents in HCJ 2088/10:	Adv. Tzili Naeh
Representing the Respondents in HCJ 4019/10:	Adv. Hila Gorny

(Partial) Judgment

President (retired) D. Beinisch:

1. Two petitions, the hearing of which has been joined, are before us. The petitions concern two complementary aspects of the policy employed by the military commander toward Palestinian residents who are registered in the Palestinian population registry as residents of Gaza and who wish to relocate to the Judea and Samaria Area.

   The petition in HCJ 2088/10 relates to individuals who are present in the Gaza Strip and seek approval for travel to the West Bank for the purpose of relocating thereto. The policy applied to their matter has been expressed in the "Procedure for Handling Applications by Gaza Strip Residents for Settlement in the Judea and Samaria" (hereinafter: **the procedure**), on which the petition focuses.

   The petition in HCJ 4019/10 addresses the matter of Palestinians who are registered in the population registry as Gaza residents but have been living the Judea and Samaria Area for some time. According to the petition, these Palestinians are considered by the military commander to be illegal aliens in the Judea and Samaria Area and face the danger of expulsion to the Gaza Strip. However, and as the respondents have submitted to us, the policy of removing Gaza Strip residents from the West Bank does not apply to individuals who relocated to the West Bank prior to the outbreak of violence in 2000 and with respect to whom there is no negative security information.

2. According to the petitioners, the two petitions are distinct in view of the essence of the remedies sought therein. The petitioners note that they maintain that the petition in HCJ 2088/10 presumes the respondents have the power to prevent or restrict movement by Palestinians into the Judea and Samaria Area, but that the procedure that has been formulated for exercising this power and the criteria stipulated therein fail to meet the tests of reasonableness and proportionality. On the other hand, the petitioners claim that the petition in HCJ 4019/10 is different in essence, as it raises the question of the petitioners' competence to update particulars in the Palestinian population registry under the law in effect in the Area.

Due to the thematic similarity between the petitions, we thought it appropriate to consider them together. However, having reviewed parties' arguments, we have come to the conclusion that the decision in the petitions should be severed.

HCJ 2088/10

3. With respect to the petition in HCJ 2088/10 and the procedure on which it focuses, we did not find that cause for intervention in the respondents' position has been established and we have therefore decided to dismiss the petition, subject to a number of comments that will be detailed below. We shall now briefly address aspects relating to this petition.

General background and parties' positions

4. In 1967, when the IDF entered the Judea and Samaria Area and the Gaza Strip and these came under military rule, the two areas were declared "closed zones" pursuant to Order regarding the Closure of an Area (Gaza Strip) (No. 144) 5728 – 1968 and Order regarding Closed Zones (No. 34) (West Bank Area) 5727 – 1967. In the past, residents of the Gaza Strip were granted a general permit to enter the Judea and Samaria Area pursuant to General Entry Permit (residents of held territories) (No. 5) (Judea and Samaria) 5732 – 1972. This Order was issued in conjunction with a general permit to exit the Gaza Strip which allowed Gaza residents to exit.

   The general entry permit was suspended pursuant to the Provision regarding Suspension of the General Entry Permit (residents of held territories) (No. 5) (temporary order), 5748 – 1988. This Provision remains valid today and pursuant thereto, any Gaza resident seeking to enter and remain in the Judea and Samaria Area must obtain a personal permit from the military commander.

   As emerges from the material before us, over the years – at least until the outbreak of the incidents in 2000 – the military commander granted permits for travel through Israel to Gaza residents. These permits allowed their entry into the Area. These travel permits, which were often given for the purpose of a visit, were time limited, such that upon expiry, the Gazan was to return to his place of residence. It appears that many Gaza residents often remained in the Judea and Samaria Area after the permits they had been granted expired. The material before us indicates that the interim agreements of September 28, 1995 did not alter this factual reality and the military commander continued to issue travel permits as stated subsequent to their signing.

5. The material before us further indicates that a significant change in the policy on granting permits occurred with the outbreak of violence in 2000. Following these events, the respondents decided to restrict the policy on travel between the Gaza Strip and the Judea and Samaria Area and permit the same only in exceptional and humanitarian cases.

   The respondents professed this policy in different contexts, but it was not enshrined in procedure and its scope and limits remained vague. Over the years, many petitions by Palestinian residents of Gaza who wished to travel to the Judea and Samaria Area for various individual reasons were brought before this court. They were examined on an ad-hoc basis by the court. Even if there were individual cases in which the court believed that travel by one person or another should be permitted, it usually refrained from intervening in the overall policy relating to travel by Palestinians from Gaza to the Judea and Samaria Area.

6. However, this reality, wherein the respondents' policy on allowing Palestinians to travel from Gaza to the Judea and Samaria Area and its criteria remained vague necessitated change. This change came in the course of a number of petitions filed in 2008 (HCJ 2905/08, 3592/08 and 3911/08). In the hearing we held in these petitions, it came to light that a procedure that would regulate the issue of travel by Palestinians from Gaza to the Judea and Samaria Area, including aspects relating to couples living in

the two areas, was going to be formulated. We therefore awaited the formulation of a procedure prior to issuing a decision in the aforesaid petitions, as indicated in our decision of June 11, 2008 given at the hearing of the petition in HCJ 3592/08:

> Ahead of the scheduled hearing on the issues of principle, the respondents will submit a response detailing the procedure with respect to couples in which the spouse living in the Gaza Strip wishes to unite with his or her spouse in the Judea and Samaria Area and the reasons for the policy formulated in the procedure.

Following a few further delays, on March 8, 2009, the procedure which is the subject of the present petition, "Procedure for Handling Applications by Gaza Strip Residents for Settlement in the Judea and Samaria", was presented to this court. The petition at bar was filed on March 15, 2010 and it seeks the revocation of said procedure.

The procedure and its major points

7. The procedure contains two parts – **the first general part**, in which it is stressed that "Against the backdrop of the security/political situation in the Gaza Strip it has been decided on State level to limit the movement of residents between the Gaza Strip and the Judea and Samaria Area to the necessary minimum." This part also clarifies that the deputy defense minister has established that the policy would be reduced to extremely exceptional humanitarian grounds, with family ties *per se* not meeting this criterion. It was further clarified that a yearly quota may be placed on applications and that processing thereof may be ceased or altered on the basis of a political/security assessment which would be carried out from time to time.

8. The **second part** of the procedure addresses the manner in which applications are processed and the criteria for their review. In this context, it is first clarified that applications for settlement in the Judea and Samaria Area by Gaza residents must be transmitted by the director general of the office for civilian affairs in the Palestinian Authority directly to the coordinator of government activities in the Territories. The applications must be detailed and must include all relevant documents supporting the humanitarian grounds on which they are based.

   With respect to criteria, a prerequisite for entering the process was established – the absence of a security preclusion with respect to both the Gaza resident and the Judea and Samaria Area resident, to be determined by security officials. An additional prerequisite was established – entering the process for approval would be possible only if the applicants are first degree relatives: spouses, a parent of minor children, minor children, parents of Judea and Samaria Area residents who are over 65 years of age and with respect to whom there are objective humanitarian reasons that impede them from continuing to live n the Gaza Strip and these needs can only be met in the Judea and Samaria Area.

   On the assumption that the application meets these prerequisites, the procedure stipulates that it may be approve only if it meets one of the following criteria:

   - The person in question is a Gaza resident who has an ongoing medical condition which requires care from a relative who is a resident of the Judea and Samaria Area and there is no other relative who is a resident of Gaza (not necessarily a first degree relative) who can care for the patient.

   - The person in question is a minor who is a resident of Gaza (under 16 years of age) one of whose parents, a Gaza resident, passed away and the other parent is a resident of the Judea and Samaria Area and there is no other relative who is a resident of Gaza who can take the minor under his wings.

- An elderly person (over 65 years of age) who is a resident of Gaza and who requires nursing care by a first degree relative who is a resident of the Judea and Samaria Area and there is no other relative who is a resident of the Gaza Strip who can provide nursing care for said person.

The procedure also contains a "basket" clause which grants the coordinator of government activities in the Territories discretion to consider any application on its merits according to its individual circumstances, even if it does not come under one of the aforesaid alternatives, but does fulfil the prerequisites.

9. We shall complete and state that the procedure sets a multi-phased process for acquiring status in the Judea and Samaria Area whereby the applicant would first be granted a stay-permit for six months, at the end of which, subject to meeting the conditions stipulated in the procedure, the permit would be extended for a further six months. Subsequently, upon request and subject to meeting the conditions stipulated in the procedure, the permit would be extended for periods of one year. At the end of seven years, the authorities would consider granting a permit for settlement and change of address.

Parties' arguments

10. According to the petitioners, the procedure must be voided for a number of reasons. As stated, as a premise, the petitioners do not dispute that the respondents hold the power to permit travel between the Gaza Strip and the Judea and Samaria Area. They take issue with the manner in which this power is exercised, as expressed in the procedure. So, for example, they claim that the procedure is tainted by unlawfulness owing to the fact that its point of departure is that an application for travel for the purpose of marriage does not constitute humanitarian grounds *per se*. Such a determination violates the right to family life as it prevents couples who are residents of Gaza and the Judea and Samaria Area from realizing their relationship and living together in the Judea and Samaria Area. This violation, it is claimed, contravenes Israeli domestic law and international humanitarian law (whose main sources are the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 and Article 43 of the Hague Regulations, 1907). On the question of the right to family life, the petitioners sought to draw a parallel between their matter and the findings in the judgment rendered in HCJ 7052/03 **Adalah v. Minister of Interior**, IsrSC 61(2) 292 (2006), wherein the Nationality and Entry into Israel Law (Temporary Order) 5763 – 2003 was challenged.

It was further argued that the procedure breaches the respondents' duty to uphold the interests of helpless individuals – children, the elderly and the sick, a duty which is allegedly recognized both in international law and Israeli constitutional law.

In addition, it was argued that the procedure violates freedom of movement and the right to travel between Gaza and the Judea and Samaria Area. According to the petitioners, the premise is that Gaza and the Judea and Samaria Area are a single territorial unit, both under the interim agreements and other treaties signed by Israel and the Palestinian Authority, as well as this court's finding in HCJ 7015/02 **Ajuri v. IDF Commander in Judea and Samaria**, IsrLR [2002] (hereinafter: **Ajuri**). According to the petitioners, the disengagement from the Gaza Strip has not altered this reality. However, petitioners do recognize that travel between the Gaza Strip and the Judea and Samaria Area may be restricted to some extent with attention to concrete circumstances and individual security considerations.

On the aspect relating to the purpose of the procedure, the petitioners added and emphasized that the respondents have failed to provide any explanation as to why the procedure is necessary for security and did not establish a factual infrastructure in support thereof. On the other hand, so according to the petitioners, the procedure was born of inappropriate considerations rooted in the political relations among the respondents, the Palestinian Authority and the Fatah and Hamas organizations and the

individuals to whom the procedure applies are the victims of this relationship. The petitioners also claim that the procedure discriminates against the Palestinian population as compared to Israeli settlers in the Judea and Samaria Area and that it constitutes an extreme departure from the principle of proportionality: it serves inappropriate purposes, it is motivated by extraneous considerations and it does not meet the three subtests [of proportionality].

11. The respondents, on their part, claim that the petition must be rejected. First, the respondents insist that even if the petition speaks of "travel", it effectively concerns travel from the Gaza Strip to the Judea and Samaria Area for the purpose of permanent settlement. Moreover, it is claimed that the petition must be rejected *in limine* in view of its general nature and in the absence of individual petitioners who seek relief in the context thereof. On the merits, the respondents refer to the position they presented in other petitions which raised general arguments regarding the policy on applications by Palestinian residents of Gaza to permanently settle in the Judea and Samaria Area. According to the respondents, the procedure that was put in writing simply enshrines a reality that has been in effect for many years, wherein, since the events of October 2000, travel by Palestinians from Gaza to the Judea and Samaria Area is permitted only in singular rare cases. The respondents emphasize that the procedure which is the subject of the petition, like the purpose of proclaiming the Area a closed zone, is based on security considerations; concern regarding potential security risks that may occur as a result of allowing free entry and exit from the Area, as such may be used for maintaining contacts with hostile organizations for various purposes including military training, recruiting, transmitting information, missions, orders etc. This view, according to respondents, also underlies the interim agreements. The respondents stress that the petitioners' position according to which the Gaza Strip and the Judea and Samaria Area must be seen as a single territorial is no longer valid following the disengagement which effected a significant legal-political-security change in the Gaza Strip. Israel no longer controls all that transpires in the Gaza Strip and therefore, preventing the possibility of controlling those who enter the Judea and Samaria Area involves far reaching political and security risks, so according to the state..

    The respondents also point out that petitions of this sort have been brought before the court many times and the court has not found cause to intervene in the respondents' policy of denying travel by Gaza residents to the Judea and Samaria Area based on security considerations, at times even based solely on a risk profile. According to the respondents, the current security situation and the situation in the Gaza Strip strengthen the justification to employ a restrictive travel policy. In this context, the respondents stressed that Gaza is home to an elaborate terror network that puts a great deal of effort into sending a human terror network out of the Judea and Samaria Area in order to harm the security of the State of Israel and its residents. This is all the more so since June of 2007, when Hamas took over the Gaza Strip. Therefore, security officials estimate that Hamas is highly motivated to transfer the fight against Israel to the Judea and Samaria Area, including by way of transferring information, military capabilities and explosives experts from the Gaza Strip. This motivation promotes a common practice of recruiting Gaza residents who live in the Judea and Samaria Area or who intend to travel to that area. In this state of affairs, so according to the respondents, allowing free travel between Gaza and the West Bank might be abused by Gaza's elaborate terror network, which has a difficult time achieving its goals solely from within the Gaza Strip. According to security officials, all the aforementioned justify a restrictive policy with respect to permitting travel and settlement by Gaza Strip residents in the West Bank. This policy is rescinded only in exceptional humanitarian cases, as expressed in the procedure. This position, so according to the respondents, is reasonable and appropriate and does not give rise to cause for intervention.

    Furthermore, the respondents stress the fact that the issue which is the subject of the petition is predominantly a political issue relating to Israel's relationship with the Palestinian Authority and as such is not the sort of issue in which the court tends to intervene.

Deliberation

12. The premise for the petition at bar – accepted by both parties – is that the respondents hold the power to permit or prevent travel by Palestinians to the Judea and Samaria Area. The dispute focuses on the manner in which this power is exercised, as expressed in the procedure. While the petitioners believe that the policy that has been formulated in the procedure does not meet reasonableness and proportionality requirements, the respondents argue that it contains no flaw that would justify the intervention of the court.

13. As detailed above, the territories of the Area were declared closed zones many years ago, such that entry and exit require an individual permit from the military commander. The court addressed this issue in HCJ 9293/01 **Barakeh v. Minister of Defense**, IsrSC 56(2) 509, 514 (2002):

> There is indeed no dispute in the petition at bar regarding the military commander's competency to issue such orders to prevent entry to and exit from the closed zone. Thus, the dispute revolves around the question of the respondents' discretion when denying a permit to enter an area declared as closed.

14. The declaration of the territories of the Area as closed zones is clearly based on considerations relating to the security of the Area and public order therein, as expressed by the court many years ago. So, for example, in HCJ 709/88 **Ra'fat Subhi Muhammad Tayeb v. Head of the Civil Administration** (unreported, November 8, 1998):

> When an administrative authority within the area of the military government examines an application to leave the area or enter it, it may consider the security risks attached to acceptance of the application. For this purpose, reasonable concern is sufficient grounds for denying a permit. Having access to evidence that might establish a conviction in a court of law is not a precondition for issuing such refusal. The respondent is entrusted with the peace and security of the Area and doubts regarding the petitioner's legitimacy and reliability in matters concerning his ties with terrorists could tip the scale to his detriment when it comes to a permit for free travel to locations that could serve as meeting places with agents of terror organizations. It is therefore entirely impossible to claim that the considerations that were weighed in the case at hand do not constitute relevant considerations or that stronger proof is required to make an administrative decision of the type reviewed herein.

The logic behind this concept is clear – in the difficult security situation in which we live, at a time when terrorist organizations in the Gaza Strip and the Judea and Samaria Area continue to make efforts to harm the State of Israel and its residents, permitting free travel between the two areas raises real concern about the potential use of this platform for maintaining contacts with terror activists in the different areas – military training, recruiting, transmitting information, orders and the like. This reality requires Israel to hold on to its discretion with respect to permitting travel between the areas, whether for temporary or permanent purposes. These matters were enshrined in the interim agreements signed in 1995, which are also subject to the principle that Israel is generally responsible for security on the borderline of the Area and the crossings. As emerges from the response of the respondents, and it seems that even the petitioners do not dispute this, Israel has a responsibility to protect against external threats and the overall responsibility for the security of Israelis and of the territories under belligerent occupation.

Following this concept, over the years, the State of Israel designed its policy with respect to travel between the two areas in a manner that answers the security needs and considerations of the Area and its residents. This policy and the central role security considerations play in formulating it have been examined by this court many times. The court has not found cause to intervene in the general holding regarding the role these considerations play in decisions made with respect to allowing travel between the areas. According to the respondents, the major change in this policy occurred after the October 2000 incidents, following which a decision was made to stop allowing travel by Palestinians from Gaza to the Judea and Samaria Area other than in exceptional humanitarian cases. During these years too, the court repeatedly upheld the role security considerations played in allowing travel between the areas and did not find cause to intervene in individual decisions made by the respondents not to allow travel based on these considerations. So, for example, in HCJ 7960/04 **Muhammad Musa al-Razi v. IDF Commander – Gaza Strip** (unreported, September 9, 2004) which concerned applications made by a number of young adults from Gaza who sought to travel to the Judea and Samaria Area to study:

> In making his decision not to grant the petitioners' request, the respondent relied on the assessment of security officials that their exiting the area of the Gaza Strip – primarily their intention to remain for the purposes of their studies in Bethlehem – endangers state security and the security of the areas. In a letter sent on his behalf in response to the request, the respondent explained that his position is not based on an individual examination relating to each of the petitioners individually, but on the assessment of security officials that the "risk profile" to which the petitioners belong is sufficient to form a basis for the fear that terrorist organizations operating in the Gaza Strip will exploit their leaving for Bethlehem to carry out terrorist attacks in Israeli territory and in the area of Judea and Samaria.
>
> …We have concluded that, under the grave circumstances presently prevailing, we should not interfere in the decision of the respondent.
>
> … [W]e are convinced that permitting them to leave the Gaza Strip entails significant danger to public safety in Israel and in the areas.

15. Over the years during which Israel controlled the Gaza Strip and the Judea and Samaria Area, though the two were then considered a single territorial unit (see **Ajuri**), security considerations played a central role. Upon termination of the military government in the Gaza Strip in 2005 after the disengagement process, and more so since the Hamas takeover of the Gaza Strip in 2007, concern that travel between the areas would be used for terrorism has greatly increased, particularly in the absence of effective Israeli control over the Gaza Strip (in this context see, HCJ 9132/07 **Jaber al-Bassiouni v. Prime Minister** (unreported, January 30, 2008)). My colleague, Justice **E. Rubinstein** addressed the complex situation that was created in Gaza following the events of the disengagement in HCJ 11120/05 **Osama Mahmoud Hamdan v. GOC Southern Command** (unreported, August 7, 2007), which concerned an application by a number of students from the Gaza Strip who sought permission to travel to the Judea and Samaria Area to study occupational therapy:

> We are, unfortunately, unable to accept the petitions; the bottom line is that the situation between Israel and Gaza has deteriorated to its lowest point and issuing a decree absolute that would distinguish the petitioners would not be in line with the current, harsh, reality. Therefore, subject to a few comments – we cannot accept the petitions. The court does not live in a bubble and, as President Barak stated in HCJ 2056/04 **Beit Sourik Village Council v. Government of Israel** IsrSC 58(5) 807, 861: "Although we are sometimes

> in an ivory tower, that tower is in the heart of Jerusalem, which is not infrequently hit by ruthless terror. We are aware of the killing and destruction wrought by the terror against the state and its citizens. As any other Israeli, we too recognize the need to defend the country and its citizens against the wounds inflicted by terror." [§86]. Unfortunately, in the near three years that have passed since judgment was rendered in HCJ 7960/04 in the matter of the very same petitioners, their wish has not fared well, nor has the matter of peace seekers. The rise of Hamas, its later complete takeover of Gaza on one hand and the complicated situation, to put it mildly, that has been created following disengagement (which was seemingly unforeseen) on the other, have not brought Gaza and the Judea and Samaria Area closer to one another in the practical sense, nor have they brought Gaza closer to Israel in terms of their relations, despite the fact that geographic proximity has remained and always will. Therefore, we cannot ignore this and tell security officials 'life (the good life) goes on, please grant the petitioners' wish', when in fact life goes on, but it is a difficult life. This sort of approach would not conform to the law, including with respect to equality, as shall be explained in brief below, nor would it conform to common sense. We have also found no need to convene a hearing *ex parte* to consider the classified material as the general facts are known and accepted by all."

16. Indeed, as the respondents explained in detail in their response, their current policy, which was enshrined in the procedure which is the subject of this petition, is deeply rooted in the prevailing political-security reality. As the respondents clarified, in the reality that has been in place particularly since the disengagement process was completed and Hamas took over the Gaza Strip, and in view of the fact that the Gaza Strip is a separate territory enclosed by a fence, terrorist elements have difficulty dispatching terrorists from within this area to Israel. At the same time, Gaza is home to an elaborate terror network which puts a great deal of effort into sending a human terrorist network out of the area – to Israel and the Judea and Samaria Area. Security officials estimate that the Gaza Strip has become a center for information on terrorism, for developing military capabilities and for warehousing advanced weapons. Security officials estimate that terrorist organizations strive to transfer the fight against Israel to the Judea and Samaria Area, including by means of transferring knowledge, military capabilities and explosives experts. Therefore, recruiting Gaza residents who are in the Judea and Samaria Area or wish to travel thereto has become a common practice that may advance the goals of terrorist organizations. Security officials stressed that there is a real danger that explosives experts with expertise in manufacturing deadly explosives and projectile weapons would enter the Judea and Samaria Area.

    This reality, thus according to the respondents, forms the foundation of the restrictive policy they formulated, a policy which, as stated, permits travel from Gaza to the Judea and Samaria Area only in exceptional humanitarian cases.

17. This court has addressed the respondents' restrictive policy a number of times, but found no cause to intervene therein, considering the current security situation. Thus, for example, in HCJ 9657/07 **Sabah Nimr 'Abed Jarbo'a v. Military Commander in the West Bank** (unreported, July 24, 2008) Justice **A. Grunis** (as was his title then) held as follows:

> The competent authority has decided that under the current circumstances, the aforesaid passage shall only be permitted in exceptional circumstances, and the case of petitioner 1 does not fall under this category. Taking into account the present security circumstances, especially those which exist in

> the Gaza Strip, we have not found any fault in the decision not to accede to the request of petitioner 1. The present case is qualitatively different from other cases in which there are exceptional medical circumstances and the like.

And Justice **M. Naor** noted in HCJ 4906/10 **Fatma Sharif v. Minister of Defense** (unreported, July 7, 2010):

> We have examined the matter of the petitioner and we are not persuaded that in the current political-security situation her personal circumstances justify intervention in the respondent's decision. The court has not intervened in the respondent's policy in a number of recent decisions and there is no justification for doing otherwise in the petitioner's matter.

See further: HCJ 1583/10 **Abu Hmeida v. Military Commander of the West Bank** (unreported, March 25, 2010); HCJ 5829/09 Mansour v. Military Commander of the West Bank (unreported, July 30, 2009); HCJ 8731/09 **Berlanti Jaris Boulous 'Azam v. Commander of the West Bank** (unreported, December 9, 2009).

18. As known, this court is not in the habit of putting itself in the shoes of the competent authorities when it comes to security expertise. These authorities bear full responsibility for maintaining security and public order – in our matter, both in Israel and in the Judea and Samaria Area. The difficult security situation in which we find ourselves is not new and it seems that, sadly, the respondents' description of the potential risk in allowing free travel between Gaza and the Judea and Samaria Area has not come out of thin air. In this state of affairs, and in view of the current reality, it seems that anyone can see that it is impossible to allow free travel between Gaza and the Judea and Samaria Area as the petitioners seek and that a restrictive policy on this issue does conform with the respondents' obligation to maintain the security of both Israel and the Area. In this state of affairs, we too have not found that the flaw of unreasonableness occurred in the formulation of a restrictive policy of permitting travel between Gaza and the Judea and Samaria Area *per se*.

19. However, we have no doubt that the restrictive policy that has been declared by the respondents has a particularly harsh result for residents who are not involved in terrorist activities and are forced to be separated from their relatives. Without elaborating in this context on the scope of the obligations and the source of the rights that are undermined as a result of its adoption, we clearly understand that this policy separates, sometimes artificially, between Palestinians who live in the two areas and who wish to maintain or create normal family relations. It is clear that the situation at issue is extremely complicated and requires the adoption of solutions that would not block the possibility of travel between Gaza and the Judea and Samaria Area entirely, but would maintain a proper balance with strong security considerations. At face value, the respondents are aware of the difficulty the situation creates and have entered a few very restricted exceptions to the travel policy in the procedure. These mostly rely on obvious medical needs, nursing care requirements and the age of minority. These exceptions are indeed appropriate, yet it seems that a restrictive approach was employed in selecting them, which, in certain circumstances, is overly rigid. This is all the more so considering that these exceptions mainly involve populations in need of special care and support (the sick, the elderly and minor children). Therefore, it is possible and appropriate to apply these exceptions in a manner that would allow these groups to maintain contact with their first degree relatives, even if there are more distant relatives in the Gaza Strip.

    Furthermore, we note that the procedure contains a "basket clause" which grants the coordinator of government activities in the Territories discretion to consider any application on its merit, even if it

does not meet the criteria stipulated in the procedure but does meet the prerequisites regarding the absence of a security preclusion (sec. 8 of the procedure) and the applicant's being a first degree relative (sec. 9 of the procedure). It seems to us that subjecting the discretion of the coordinator of government activities in the Territories to the condition set in sec. 9 of the procedure, which requires that the person seeking to travel be a first degree relative, may, in the real world, turn this clause into a dead letter. Considering the severe injury caused by the application of the restrictive policy, it is appropriate that the coordinator of government activities in the Territories exercise the discretion granted in this clause in such a manner that would minimize the injury as much as possible within existing security constraints. So, for example, though we have not found cause to intervene in the general policy not to permit travel and settlement in the context of a marriage in which the spouses live in the two areas; it seems that there is no room to place a flat ban on all such applications. Thus, in the scope of the discretion of the coordinator of government activities in the Territories in this context, before making such a decision, the overall circumstances relating to the couple should be considered, including their age, the overall family relations and the location of the extended family unit. All these should receive their due place in reaching a final decision on the matter.

20. We conclude by saying that in view of the current security situation and subject to our comments with respect to examining the possibility of broadening the criteria stipulated in the procedure which is the subject of the petition to a certain degree, we have not found that cause for intervention in the respondents' policy on travel by Gaza resident to the Judea and Samaria Area has been established. In holding this, we have considered the fact that this policy includes dominant political aspects which are the sort of issue in which this court does not normally intervene. In view of the aforesaid, we have also not found that the petitioners' claims regarding the forum in which applications are processed establishes cause for intervention, as arguments of this sort lie at the heart of the relationship between Israel and the Palestinian Authority.

    This notwithstanding, we assume that this policy will be periodically revisited according to security assessments and that inasmuch as relaxations can be introduced with respect to these aspects, the respondents will act accordingly. We have therefore decided to dismiss the petition in HCJ 2088/10.

HCJ 4019/110

21. As far as HCJ 4019/10 is concerned, we have reached the conclusion that an *order nisi* should be issued therein instructing the respondents to appear and show cause why they will not apply the policy currently in effect toward residents of Gaza who entered prior to the outbreak of the October 2000 incidents and against whom there is no negative security information also to residents of Gaza who entered the Judea and Samaria Area up to the date on which the military administration of the Gaza Strip was terminated (**the disengagement process**) on September 12, 2005, and who are still present in the Judea and Samaria Area.

Conclusion

22. The petition in HCJ 2088/10 is rejected with no costs order. In the petition in HCJ 4019/10 an *order nisi* is issued as specified in paragraph 21. The petition shall be scheduled for further hearing following submission of the affidavits of response.

President (retired)

Justice M. Naor

I concur.

Justice

Justice E. Hayut

I concur.

Justice

Ordered as stated in the opinion of President (retired) **D. Beinisch**.

Given today, 3 Sivan 5772 (24 May 2012).

President (retired) Justice Justice

At the Supreme Court Sitting as the High Court of Justice

HCJ 4019/10

Before:	**Honorable President (retired) D. Beinisch** **Honorable Justice M. Naor** **Honorable Justice E. Hayut**
The Petitioners:	**HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger and 15 others.**
	v.
The Respondents:	**1. Military Commander of the West Bank** **2. Coordinator of Government Activities in the Territories** **3. Official in charge of the population registry in the Civil Administration**

Order Nisi

Based on the petition brought before this court, the court orders that an order nisi be issued which is directed at the respondents instructing them to appear and show cause why they will not apply the policy currently in effect toward residents of Gaza who entered prior to the outbreak of the October 2000 incidents and against whom there is no negative security information also to residents of Gaza who entered the Judea and Samaria Area up to the date on which the military administration of the Gaza Strip was terminated (**the disengagement process**) on September 12, 2005, and who are still present in the Judea and Samaria Area.

If they so wish, the respondents shall submit their response directly to the court and to parties within 60 days of issuance of this order.

Today, 3 Sivan 5772 (24 May 2012).

Sarah Lifschitz
Chief Secretary