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At the Supreme Court
Sitting as the High Court of
Justice

HCJ 527/12

- In the matter of:
1. _____ Hamadah, ID No. _____
Resident of East Jerusalem
 2. _____ Hamadah, ID No. _____
Resident of East Jerusalem
 3. _____ Dwayat, ID No. _____
Resident of East Jerusalem
 4. _____ Dwayat, ID No. _____
Minor, by his mother, petitioner 3
 5. _____ Dwayat, ID No. _____
Minor, by her mother, petitioner 3
 6. _____ Dwayat, ID No. _____
Minor, by her mother, petitioner 3
 7. _____ Hamidanh, ID No. _____
Resident of East Jerusalem
 8. _____ Hamadah, ID No. _____
Resident of East Jerusalem
 9. _____ Hamadah, ID No. _____
Minor, by his mother, petitioner 8
 10. _____ Hamadah, ID No. _____
Minor, by her mother, petitioner 8
 11. _____ Hamadah, ID No. _____
Minor, by his mother, petitioner 8
 12. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – R.A.**

Represented by Counsel, Adv. Nimrod Avigal (Lic. No. 51583) and/or Ido Blum (Lic. No. 44538) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No. 41065) and/or Elad Cahana (Lic. No. 49009) and/or Noa Diamond (Lic. No. 54665) and/or Benjamin Agsteribbe (Lic. No. 58008) and/or Talia Yehuda (Lic. No. 56918) 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.

GOC Southern Command

The Respondent

Petition for *Order Nisi*

A petition for an *oder nisi* is hereby filed which is directed at the respondent ordering him to appear and show cause why he does not reply to petitioners' applications in view of the urgency of the matter and allow petitioners 1-11 to leave Israel and go to the Gaza Strip, to take part in the wedding of the son of petitioners 1-2, who is the brother of petitioners 3, 7 and 8.

Request to Schedule an Urgent Hearing

The son of petitioners 1-2, who is the brother of petitioners 3-5, was released as part of the "Shalit deal" and deported to the Gaza Strip. The son is about to marry, in *bonne chance*, his loved one, and the petitioners, naturally, want to attend the wedding and take part in the family celebration. The wedding will take place in the Gaza Strip on January 24, 2012. Despite the urgency of the matter, respondent's reply to the applications submitted to him by the petitioners, has not yet been received. Therefore, and in order to enable the petitioners to take part in the wedding of their son, the honorable court is hereby requested to schedule an urgent hearing in the petition, before the marriage, which is scheduled, as foresaid, for January 24, 2012.

The Factual Infrastructure

The Parties

1. Petitioners 1-5 (hereinafter: the **petitioners**) are residents of East Jerusalem.
2. Petitioners 1-2 are spouses, born in 1953, and petitioners 3, 7 and 8 are their daughters, born in 1976, 1979 and 1986 (respectively). Petitioners 4-6 are the minor children of petitioner 3: _____ 12 years old, _____ 19 years old and _____ 4 years old. Petitioners 9-11 are the minor children of petitioner 8: _____ 5 years old, _____ 4 years old and _____ one year old.
3. Mr. _____ Hamadah, ID No. _____, is the son of petitioners 1-2, brother of petitioners 3, 7 and 8 (hereinafter: the **son**), born in 1977. He is also an Israeli resident from East Jerusalem. The son was released as part of the "Shalit deal" on October 18, 2011 and was deported to the Gaza Strip, where he has never been before and where he has no relatives, because he was born and has lived his entire life, until his imprisonment, in East Jerusalem.

4. On December 8, 2011 a marriage agreement was signed between the son and his loved one, Miss _____ 'Amudi, ID No. _____, and the wedding was scheduled for January 24, 2012.

A copy of the marriage agreement is attached and marked **P/1**.

A copy of the wedding invitation for January 24, 2012 is attached and marked **P/2**.

5. It is only natural that the petitioners wish to travel to the Gaza Strip from Israel to be with their son at his wedding, and to accompany him to the wedding ceremony. As is customary in Islam, the petitioners, the parents and siblings of the son, wish to come to the bride's house and ask her parents for her hand in marriage, to march together to the wedding and dance together in the family celebration.
6. The respondent, GOC Southern Command (hereinafter: the **respondent**) has the authority to permit the entry of Israelis to the Gaza Strip on behalf of the State of Israel, which has controlled the borders and crossings of the Gaza Strip for more than forty years.

The respondent held this authority in the past by virtue of being the military authority commanding the military forces in the Gaza Strip on behalf of Israel and according to a military order pursuant to which the Gaza Strip was declared a closed military area. He currently exercises said authority pursuant to his interpretation of section 24 of the Disengagement Plan Implementation Law, 5765-2005.

Respondent's policy: Permission to enter the Gaza Strip to visit a first-degree relative

7. The major principles of respondent's policy concerning the entry of Israelis to the Gaza Strip were described in respondents' response dated August 27, 2004 to a petition filed by HaMoked on this issue (HCJ 10043/03 **Abajian v. Commander of IDF Forces in the Gaza Strip** (not reported)).

In said petition, the respondents were requested to allow the entry of an Israeli resident to the Gaza Strip to visit his sick mother, who was residing in Gaza. Following the petition, the respondents permitted petitioner's entry to the Strip. The respondents declared then, among other things, that even in times of armed conflict, permission to enter the Gaza Strip was generally granted to Israelis wishing to visit a first-degree relative due to a serious illness, wedding, engagement, funeral etc., in the absence of a specific security preclusion.

These arrangements continued to exist after the execution of the disengagement plan, and continue to exist today. The updated criteria, as of May 5, 2011, concerning travel between Israel and the Gaza Strip, were attached to the response of the Coordinator of Government Activities in the Territories to a petition filed under the Freedom of Information Act. The cases

in which entry of Israelis to the Gaza Strip is permitted include: "Entry of Israelis to the Gaza Strip to participate in a funeral or a wedding of a first-degree relative."

A copy of the notice of the Coordinator of Government Activities in the Territories concerning "Policy regarding transition of individuals from Israel to the Gaza Strip" of May 5, 2011, is attached and marked **P/3**.

Exhaustion of Remedies

8. On January 5, 2012, HaMoked sent an urgent letter to the Israeli desk at the Gaza District Coordination Office (DCO), requesting it to permit the petitioners to participate in the son's wedding. Due to the circumstances of the case, HaMoked advised that if no response was received by January 16, 2012, a petition to the court would be considered.

A copy of HaMoked's letter to respondent dated January 5, 2012 is attached and marked **P/4**.

9. It should be further noted that petitioner 12 wrote to the respondent as early as on October 31, 2011, about the issue of visits by family members who are residents of East Jerusalem with their loved ones who were released in the "Shalit deal" and transferred to the Gaza Strip. The letter emphasized the severe violation of the rights of such former prisoners, who were removed from their homes and families, and respondent's obligation to allow their relatives to visit them.

To this day, no reply has been received to this letter.

A copy of HaMoked's letter to respondent dated October 31, 2011 is attached and marked **P/5**.

10. Under these circumstances, the petitioners had no alternative but to petition the court.

The Legal Argument

Respondent's increased obligation to allow the petitioners to visit their son

11. Since his release from prison and deportation to the Gaza Strip, the son – an Israeli resident – has been staying, against his will, in the Gaza Strip, while his entire family is in East Jerusalem. Due to respondent's policy, which limits entry to the Gaza Strip, the family, who has not seen him since their last visit in prison, suffers from a painful separation.
12. The severe injury associated with the deportation of a person from his homeland cannot be over stated. As held in 'Ajuri:

The fundamental premise is that the displacement of a person from his place of residence and his forcible assignment to another place seriously harms his dignity, his liberty and his property. A person's home is not merely a roof

over his head, but it is also a means for the physical and social location of a person, his private life and his social relationships.

(HCJ 7015/02 **Ajuri v. IDF Commander**, IsrSC 56 (6) 353, 365 (2002)).

13. Without referring in this petition to the question of the legality of the deportation itself, it is evident that the deprivation of this right by deportation from Israel, imposes **upon the respondent an increased obligation** to allow the family members to see him in the Gaza Strip until he returns home. This is especially important now, upon the son's wedding.
14. The respondent's obligation to respect family life, which applies at all times, becomes **an increased obligation** when the respondent removes a person from his home, tears him apart from his family, deports him to a distant location and assigns his place of residence.
15. The respondent must respect the governing principle recognized both by Israeli and International law, according to which **the deprivation of a person's liberty does not constitute permission to violate his dignity and rights, including his right to family life**. In this respect, the distinction drawn between a person's confinement to a detention facility and deportation to a secluded area which severs him from his home, is not significant. In both cases, the family members who wish to visit their relative and maintain the integrity of the family unit are completely dependent on the respondent. To the same extent that a prisoner cannot be visited outside prison walls, the petitioners cannot meet their son outside the Gaza Strip.

This is expressed in Article 10 of the International Covenant on Civil and Political Rights 1966 ... Israel is a party to the covenant. According to the acceptable approach, the provisions of Article 10 of the covenant reflect customary international law... and this is the language of the Article:

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person..."

(HCJ 3278/02 **HaMoked: Center for the Defence of the Individual v. Commander of IDF Forces in the West Bank** IsrSC 57(1) 385, 397 (2002)).

And in connection with administrative detainees it was so stated:

The administrative detainees were lawfully deprived of their liberty. They were not deprived of their inherent human person.

(HCJ 5591/02 **Yasin v. Ben David** IsrSC 57(1) 403, 411 (2002)).

Violation of Petitioners' Rights

(i) The right to family life

16. The right to family life encompasses the safekeeping of the inherent character embedded in the unique nature of the family, which includes, among other things, encouragement, moral support and physical assistance, self realization, identity.

This is usually so, and it is even more so in important family events.

17. The petitioners wish to exercise the essence of the right to family life – to participate in their son's wedding and take part in the family celebration.
18. The Supreme Court reiterated time and again, in many judgments, the great importance of the right to family life, and in particular in the **Adalah** judgment. Thus, for instance, President Barak writes in paragraph 25 of his judgment:

It is our main and basic duty to preserve, nurture and protect the most basic and ancient family unit in the history of mankind, which was, is and will be the element that preserves and ensures the existence of the human race, namely the natural family...

Indeed, the family relationship... lie[s] at the basis of Israeli law. The family has an essential and central purpose in the life of the individual and the life of society. Family relationships, which the law protects and which it seeks to develop, are some of the strongest and most significant in a person's life.

([HJC 7052/03 **Adalah v. The Minister of Interior**](#), TakSC 2006(2) 1754 (2006)).

And in another context it was stated that:

Israel is obligated to protect the family unit by virtue of international conventions.

([HCJ 3648/97 **Stemka v. The Minister of Interior**](#) IsrSC 53(2) 728, 787).

19. Article 46 of the Hague Regulations, which constitutes customary international law, provides:

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

20. It should be emphasized that the right to family life constitutes a basic right in customary international humanitarian law:

Family life must be respected as far as possible.

(Henckaerts J.M. Doswald-Beck L. Customary International Humanitarian Law. Vol I: Rules. ICRC (2005). Pp. 379-383).

See also:

Article 27 of the Fourth Geneva Convention 1949;

Article 10 of the Covenant on Economic Social and Cultural Rights 1966;

Articles 17 and 23 of the Covenant on Civil and Political Rights 1966;

Article 12 and Article 16(3) of the Universal Declaration of Human Rights 1948;

Article 12 of the European Convention on Human Rights 1950.

21. The right to family life also includes petitioners' right to participate in significant events in the life of their relative.

The expectation of every person to take part in events that have a special significance in the lives and deaths of his family members is natural and self explanatory. Taking part in the joyous and mournful events of close family members forms part of the realization of a person's expectation to family life, be it the nuclear or more distant family. This expectation is also associated with faith and religious customs.

(LHCJA 844/07 **Ravizada v. Israel Prison Service**, TakSC 2007(1), 1161 (2007)).

(ii) The right to freedom of movement

22. The right to freedom of movement constitutes the central expression of a person's autonomy, freedom of choice and realization of his rights and abilities. The right to freedom of movement constitutes one of the norms of customary international law and is well rooted in Israeli jurisprudence.

On this matter see:

Article 12 of the 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 **Vaanunu v. GOC Home Front Command**, TakSC 2006(1) 320, paragraph 10 (2006);

HCJ 1890/03 **Bethlehem Municipality v. State of Israel**, TakSC 2005(1) 1114, paragraph 15 (2005);

HCJ 3914/92 **Lev v. The Regional Rabbinical Court**, TakSC 94(1) 1139, 1147 (1994).

23. The respondent severely violates petitioners' freedom of movement by preventing them from entering the Gaza Strip and taking part in their son's wedding. The violation of freedom of movement in our case severely harms the petitioners' family life.

Conclusion

24. The petitioners wish to enter the Gaza Strip to accompany their son to his wedding, share his joy and participate in the wedding which will take place there.
25. By refusing to permit them to travel, the respondent is severely violating petitioners' right to family life, a basic constitutional right to which they are entitled.

In view of the aforesaid, the honorable court is hereby requested to issue an *order nisi* as requested in the beginning of the petition, and after receiving respondent's reply, making the order absolute. In addition, the court is requested to order the respondent to pay petitioners' costs and legal fees.

January 17, 2012

Nimrod Avigal, Adv.
Counsel to the Petitioners

[File No. 71304]