

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

At the Jerusalem Supreme Court

H CJ 9513/11 – D

Before: The Honorable Registrar Dana Cohen-Lekach

The Petitioners:

1. M Gashash
2. Y Gashash
3. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger

v.

The Respondents:

1. West Bank Military Commander
2. Head of the Civil Administration

Request to Award Costs

Decision

Pending before me is a request to award costs in favor of the petitioners after the petition was deleted at their request.

1. The above petition was filed on December 21, 2011. The respondents were requested therein to issue to petitioners 1-2 permits to enter the seam zone in order to farm their family's plots of land. On January 4, 2012 the respondents notified that on January 2, 2012 and January 3, 2012 permits to enter and work in the seam zone were issued to petitioners 1-2 (with respect to petitioner 1 the entry permit which was issued did not include an overnight permit in view of

the fact that the olive harvest season had ended). Shortly thereafter, the petition was deleted at petitioners' request due to the fact that the main remedy requested therein had been granted. The petitioners requested reimbursement of the court fee and insisted that costs would be awarded in their favor based on the argument that the criteria established in H CJ 842/93 **Al-Nasassreh v. Minister of Construction and Housing**, IsrSC 48(4) 217 (1994) were met.

2. The respondents do not object to the reimbursement of the court fee in accordance with applicable law. Furthermore, the respondents do not object that costs be awarded in favor of petitioner 2. In their response, the respondents noted, in their decency, that "indeed, the review of petitioner 2's request was delayed" and therefore they left the request to award costs in favor of petitioner 2 to the discretion of the court. Due to the fact that no real objection was raised against the award of costs in favor of respondent 2, I order that the costs associated with the filing of his petition be borne by the respondents. Regarding the amount of the costs I took into consideration the fact that the petition at hand was not particularly complex; that the remedy requested therein was obtained relatively quickly and neither a hearing in the presence of the parties nor a judicial resolution were required; and in addition no evidence regarding the amount of costs was presented (see and compare: H CJ 6857/10 **Salim v. Military Commander of the West Bank** (not reported, February 20, 2011)).
3. The dispute which still exists between the parties in the above petition and which will be herein discussed, concerns the award of costs in favor of petitioner 1. On this matter, the respondents argued that the civil administration public liaison officer pointed out in a letter dated October 5, 2011 that to the extent petitioner 1 wished to request an overnight permit, an application for an entry permit to the seam zone including overnight presence should be submitted by him to the Palestinian Coordination Office in his place of residence. Both parties provided affidavits in support of their (contradictory) claims concerning the date on which the renewed application for an entry and overnight permit to the seam zone was submitted by petitioner 1: petitioner 1 stated in his affidavit that his said application was submitted on October 20, 2011 and was transferred to the Israeli district Coordination Office (DCO) shortly thereafter. It was argued that in the absence of any reply after some two months elapsed from the date of submission of his application, petitioner 1 filed the above petition. Petitioner 1 argues that under these circumstances the petition was not premature and that it was filed after all other remedies were exhausted. On the other hand, the respondents claimed in an affidavit submitted on their behalf, that petitioner 1 had submitted his renewed application for an entry and overnight permit to the seam zone only on December 8, 2012 [*sic*]. Due to the fact that the permit was issued on January 2, 2012 the respondents argue that the processing of the application submitted by petitioner 1 was not delayed and that therefore, there is no justification to award costs in his favor.
4. In view of the contradictory claims concerning the date of submission of the renewed application to receive an entry and overnight permit to the seam zone on behalf of petitioner 1, I requested petitioner 1 to present documentation

relevant to his claim concerning the submission date of said application. The petitioner submitted a confirmation letter (original and translated) issued by the Palestinian Coordination Office, confirming that in accordance with its records, petitioner 1 had submitted an application for an agricultural permit across the separation wall on October 20, 2011 and that the application had been transferred to the Israeli DCO on October 26, 2011. I requested the respondents to submit a specific response concerning the above confirmation and its ramifications on exhaustion of remedies prior to filing a petition. In their supplementary response, supported by affidavit, the respondents stated that they had reexamined the submission date of the application submitted by petitioner 1 to enter the seam zone for agricultural purposes. It was noted that due to the fact that no indication was found in the Civil Administration system that an application on behalf of petitioner 1 had been received on October 26, 2011, as he claimed, the Palestinian Coordination Office representative was requested to transfer to the Israeli DCO a list of the applications which was transferred by them to the Israeli DCO on that day (October 26, 2011). The list was attached to respondents' response and a review thereof indicates that petitioner 1's application is not listed therein. In view of the fact that the lists of the Palestinian Coordination Office dated October 26, 2011 do not mention petitioner's application, the respondents argue that the basis of the confirmation presented by petitioner 1 regarding the transfer of his application to the Israeli DCO on October 26, 2011, was unclear.

5. After considering the matter, I have come to the conclusion that the round of supplementary responses by the parties in this case was insufficient to remove the uncertainty surrounding the date on which petitioner 1 submitted the renewed application to receive an entry permit to the seam zone for agricultural purposes (including overnight) to the Palestinian Coordination Office and, in particular, the date on which said application was transferred to the Israeli DCO. This date is important for the purpose of determining whether the petition was filed prematurely, in a manner which may have a bearing on the justification to have it filed in the first place (see and compare: H CJ 7505/10 **Head of Kharbatha Bani Harith Village Council v. West Bank Military Commander** (not reported, July 25, 2011)). In this regard, it should be noted that although petitioner 1 received the main remedy he had petitioned for, the burden to prove that remedies were exhausted before the petition was filed and that the petition was not filed prematurely, lies on the petitioner (see also: H CJ 2908/06 **Ivanov v. Minister of Interior**, paragraph 5 (not reported, April 21, 2010)). Therefore, the uncertainty which still surrounds the gap between the submission date of the application to the Palestinian Coordination Office and its transfer to the Israeli DCO, and the filing date of the petition, is to the detriment of petitioner 1. Nevertheless, I cannot ignore the fact that even if I follow respondents' arguments and assume that the application of petitioner 1 was submitted only on December 8, 2011 as they claim, petitioner 1's permit was eventually issued on January 2, 2012, i.e. – after almost a month elapsed. It cannot be ruled out that the filing of the above petition on December 21, 2011, contributed, to a certain extent, to the issuance of the permit in the manner and on the date on which it was issued. All considerations balanced, I decided to award petitioner 1 partial costs only.

6. In conclusion: under the circumstances I decide as follows:
- a. As requested and agreed, the court fee which was paid in this casefile will be reimbursed to the petitioners after deduction of the amount specified in item 33 of the Addendum to the Court Regulations (Fees), 5767-2007.
 - b. The respondents will pay petitioner 2's attorney's fees in the sum of ILS 4,000. In addition, the respondents will pay petitioner 1's attorney's fees in the sum of ILS 1,500 (a total of ILS 5,500). This amount will bear interest and linkage differentials as prescribed by law from the date of this decision until the date of payment.

Rendered today, 22 Iyar 5772 (May 14, 2012).

Dana Cohen-Lekach, Judge
Registrar