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At the Supreme Court
Sitting as the High Court of Justice

H CJ 3544/13

In the matter of:

1. _____ Qweidar, ID No. _____
2. _____ Qweidar, ID No. _____
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – Registered Organization**

all represented by counsel, Adv. Sigi Ben Ari (Lic. No. 37566) and/or Noa Diamond (Lic. No. 54665) and/or Hava Matras-Irton (Lic. No. 35174) and/or Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Bilal Sbihat (Lic. No. 49838) and/or Tal Steiner (Lic. No. 62448) and/or Anat Gonen (Lic. No. 28359)

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. **Coordinator of Government Activities in the Territories**
2. **Military Commander in the West Bank**
3. **Minister of Transport**

All represented by the State Attorney's Office

The Respondent

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause as follows:

- a. Why they do not respond to the application submitted by petitioner 1 to receive a driver's license within the territory of Israel;

- b. Why they should not give petitioner 1 a driver's license which would enable him to drive a car within the territory of Israel;
- c. Why they should not establish a committee which would be authorized to examine applications submitted by residents of the Area to obtain driver's license in Israel, set up its working procedures and publish them to the public.

The Factual Infrastructure

Petition Summary

1. This petition concerns respondents' failure to respond to the application submitted by petitioner 1 (hereinafter: the **petitioner**) and grant him a license to drive a car within the territory of Israel. The petitioner is a resident of the Area, whose application for family unification in Israel has been approved by the Minister of Interior and who lives in Israel with his wife and children who are Israeli residents, by virtue of a stay and work permit in Israel held by him for eight years.
2. Based on the recommendation of the professional committee which was established pursuant to section 3a1 of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the **humanitarian committee**) the Minister of Interior is of the opinion that there are humanitarian grounds to grant to petitioner 1 a driver's license in Israel and has transmitted his application to the Coordinator of Government Activities in the Territories (hereinafter: the **CoGAT**) in accordance with the procedure published by the Ministry of Transport concerning the processing of an application for the grant of an Israeli driver's license to a resident of the Area.
3. Notwithstanding the above, the committee at the CoGAT, which should examine applications for the grant of a driver's license to residents of the Area living in Israel within the framework of a stay permit for family unification purposes, does not exist or does not function and petitioner 1, and others in his condition, do not receive any response to applications submitted by them to receive a driver's license for humanitarian reasons, notwithstanding the recommendation of the Minister of Interior.

Background

4. In 2002, regulations 175 and 578B to the Traffic Regulations, 5721-1961 were promulgated by the Minister of Transport which provide as follows:
 175. Notwithstanding the provisions of this Article, a resident of the Area as defined in Regulation 578, will not be issued a driver's license and his driver's license will not be renewed unless the licensing authority was convinced, for special reasons, to issue or renew same.
 - 578B. A resident of the Area will not drive a vehicle which is not registered in the Area, unless (1) if he is a resident of Judea and Samaria – he has a permit to do so issued by the Commander of IDF Forces in Judea and Samaria or anyone authorized by him for this purpose;
5. As recalled, the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the "**Temporary Order**") does not enable a resident of the Area who marries an Israeli resident to receive status in Israel by virtue of family unification. A resident of the Area, whose family unification application was approved by the Minister of Interior, will stay in Israel under

renewable stay permits issued by the military commander. His status will not be upgraded and he will not receive status in Israel for as long as the Temporary Order is not canceled.

6. Thus, petitioner 1, who has been lawfully living in Israel for eight years, who raises his seven children in Israel and who holds stay permits in Israel by virtue of family unification, is not allowed, in view of the Traffic Regulations, to drive a car within the boundaries of Israel.
7. A petition filed with this Honorable Court concerning the validity of the Traffic Regulations (HCJ 1439/07 **Shtiyeh v. The Minister of Transport at al.**, hereinafter: **HCJ Shtiyeh**) was rejected by the Supreme Court but, at the same time, the court noted in its judgment dated January 3, 2008 as follows:

We were concerned with the question whether weight should be given to the duration of the period a person holds a DCO permit. The question is even more acute due to the fact that at the present time the ability of the petitioner and others having a similar status to upgrade their status has been significantly reduced in view of the provisions of the Temporary Order. i.e., a person can hold DCO permits for a very long period of time without having his status changed. Following our comments in the hearing, respondents' counsel has agreed that in considering a request to receive a driver's license, the competent authority should give weight to the duration of the time which passed since the license applicant has received a stay permit in Israel. However, according to her, this consideration is not the dominant consideration. We made a note of the above."

The Parties

8. Petitioner 1 (hereinafter: **petitioner 1**), borne in 1967, lives in the village of Akeb and is married to an Israeli resident.
9. Petitioner 2 (hereinafter: **petitioner 2**), is the wife of petitioner 1, borne in 1976, an Israeli resident.
10. Petitioner 3, HaMoked: Center for the Defence of the Individual (hereinafter: **HaMoked**) is a human rights organization located in Jerusalem.
11. Respondent 1, the military commander in the West Bank, holds the West Bank Area under belligerent occupation. He is in charge of the realization of the human rights of the residents of the occupied Area under his responsibility, all in accordance with international humanitarian law, international human rights law and the Israeli constitutional and administrative law.
12. Respondent 2, the CoGAT, is in charge, on behalf of the Ministry of Defence, of government policy and coordination of civil matters in the Area. The CoGAT is the agency to which a resident of the Area, who requests a driver's license in Israel, is referred to by the Minister of Interior through the humanitarian committee, in accordance with the procedure established by the Ministry of Transport in this matter.
13. Respondent 3, the Minister of Transport, is the minister in charge of the issuance of driving licenses in Israel.

Factual Background

14. Petitioner 1, a resident of the Area, and petitioner 2, a resident of Jerusalem, were married in 1993. The couple has seven minor children, the youngest of whom is a few months old.
15. Petitioners' application for family unification was approved in 2005. Since then petitioner 1 receives stay permits which are renewed on an annual basis.
16. Petitioner 2 is a sick woman. She was born with a congenital heart defect in which the heart is situated on the right side of the body. Due to this defect she should avoid strenuous activity and should not subject herself to any mental stress.
17. Petitioner 2 also suffers from back problems, which cause her severe back pains and limit her movement and functioning faculties. She can stand only for a few minutes, she can walk only short distances and she can not climb stairs. Most of the household chores are done by her 16 year old daughter _____.

Copies of medical records concerning petitioner 2 are attached and marked **P/1 A-G**.

18. Petitioner 1 is the family's provider. He teaches mathematics in the school of the Wakf located in the Old City and earns about 3,000 NIS per month. Petitioner 1 has a driver's license in the Area since 1987.
19. The family lives in a rented apartment in the village of Akeb. The apartment is located on the sixth floor and there is no elevator in the building. Due to her condition, petitioner 2 hardly leaves her home. She goes out only for urgent needs or medical treatments and does it with the assistance of petitioner 1.
20. Petitioner 1 needs a driver's license in Israel to drive his wife to medical treatments and to assist his children to be mobile. Presently, without a driver's license in Israel, it is very difficult for petitioner 2 to arrive to her medical treatments and it is difficult for the petitioners to move their seven children around in accordance with their different needs.
21. In view of the above, petitioners 1-2 applied on July 5, 2011 to the humanitarian committee and requested to upgrade the status of petitioner 1 and grant him a permit for a temporary stay in Israel.
22. On October 9, 2012, the committee's decision was delivered to the petitioners. The humanitarian committee has rejected their application to receive a stay permit in Israel for humanitarian reasons. The grounds given by the committee to the rejection were that the need to receive a driver's license in Israel did not constitute a special humanitarian reason for the purpose of granting a temporary stay permit, due to the fact that presently a driver's license may be received in Israel for special humanitarian reasons in accordance with a procedure published by the Minister of Transport. Notwithstanding the above said, the procedure has not been attached to the response letter.
23. The humanitarian committee has also noted that "the Minister of Interior, with the recommendation of the committee, is of the opinion that your application to receive a driver's license has special humanitarian grounds and it will transfer the application to the CoGAT to be processed by them."

A copy of the response of the humanitarian committee dated October 9, 2012 is attached and marked **P/2**.

24. The procedure of the Ministry of Transport referred to by the humanitarian committee is procedure No. 3/2011 of July 12, 2011: procedure for the processing of an application to issue/renew an Israeli driver's license to residents of the Area (hereinafter: the **Ministry of Transport procedure**).

A copy of the Ministry of Transport procedure is attached and marked **P/3**.

25. The preamble to the procedure provides as follows:

Under the Traffic Regulations, the licensing authority may not issue or renew an Israeli driver's license to a resident of the Area, other than for special reasons. Residents of the Area who request a driver's license in Israel, are mostly individuals having a stay permit in Israel, whose status has been obtained under a family unification proceeding. This procedure is intended to regulate the processing of an application for the issuance or renewal of a driver's license to a resident of the Area.

26. According to the procedure, Petitioner 1's case should be processed under track A, which is designated for "a resident of the Area who holds a valid driver's license for the requested category which was issued by the Palestinian Authority." According to this track, if the applicant is "a resident of Judea and Samaria – he will be referred to the Head of the Economics Branch in the Civil Administration of Judea and Samaria" (page 4 of the procedure).

27. Finally, both the procedure of the licensing department at the Ministry of Transport and the humanitarian committee of the Ministry of Interior refer a resident of the Area, who holds a driver's license which was issued by the Palestinian Authority and who wishes to receive a driver's license in Israel for humanitarian reasons, to the Coordinator of Government Activities in the Territories and to the Head of the Economics Branch in the Civil Administration.

Exhaustion of Remedies

28. On November 1, 2012, HaMoked wrote to the public liaison officer at the CoGAT, and requested to receive clear instructions concerning the submission of a humanitarian application for the issuance of a driver's license in Israel to a resident of the Area. HaMoked wanted to know to whom the application should be submitted, which documents should be attached thereto and whether any procedure existed which outlined the processing of the application.

A copy of HaMoked's letter to the Coordinator of Government Activities in the Territories dated November 1, 2012, is attached and marked **P/4**.

29. On November 22, 2012, HaMoked received a response from the Civil Administration public liaison officer which stated that **the matter was being handled precisely at that time and that they were working on the preparation of the procedure and that upon its completion it would be published in the customary manner.**

30. The response letter stated further that residents of the Area holding family unification permits would be issued driving licenses only in cases in which the following conditions were met:

The applicant is entitled to a family unification permit for more than three consecutive years;

The humanitarian committee has given its recommendation;

There are special circumstances which require driving in Israel (such as: disability);

The applicant holds a valid driver's license of the Palestinian Authority;

The authority to make a decision in the matter is vested with a committee headed by the Head of the Operations Division at the CoGAT;

Subject to security, criminal and traffic check.

A copy of the response letter of the CoGAT dated November 22, 2012 is attached and marked **P/5**.

31. Following this response, HaMoked wrote again to the public liaison officer at the CoGAT, and requested to receive the details of the committee mentioned in his letter, which had the authority to examine applications for driving licenses submitted by residents of the Area, so that HaMoked would be able to refer to it applications such as this one.

A copy of HaMoked's letter dated November 25, 2012 is attached and marked **P/6**.

32. On that same day first lieutenant Tom Dror, the public liaison officer at the CoGAT, called the undersigned and gave her the telephone number of the humanitarian committee. The undersigned explained that she wanted the details of the committee at the CoGAT, which was handling applications for a driver's license rather than the details of the humanitarian committee. First lieutenant Tom said **that the committee at the CoGAT has not yet been established**. The undersigned requested to receive said information in writing.

33. On December 20, 2012 a letter of the public liaison officer at the CoGAT was received which stated what has already been known rather than what has been requested: the telephone number of the humanitarian committee.

The letter of the public liaison officer at the CoGAT dated December 20, 2012 is attached and marked **P/7**.

34. On December 31, 2012, the undersigned wrote again to the public liaison officer at the CoGAT concerning petitioner 1's matter. She indicated that petitioner 1 has received the recommendation of the humanitarian committee for the issuance of a driver's license long ago and that the committee has transferred its recommendation to the CoGAT about three months earlier and that no response has been received. She also indicated that petitioner 1 met all of the conditions which were specified in the CoGAT letter dated November 22, 2012.

A copy of HaMoked's letter dated December 31, 2012 is attached and marked **P/8**.

35. On January 31, 2013, the response of the public liaison officer was given according to which the final procedure concerning this matter has not yet been approved. Once it is approved, petitioner 1's application shall be examined in accordance with the criteria set forth therein.

A copy of the letter of the public liaison officer at the CoGAT dated January 31, 2013 is attached and marked **P/9**.

36. More than six months have elapsed since the humanitarian committee has transferred its recommendation to the CoGAT, to give petitioner 1 a driver's license in Israel. About three months have elapsed since the CoGAT has notified that the procedure for an examination of an application had not yet been approved and that upon its approval petitioner 1's application would be examined and a response would be given.

37. No response has been received. Therefore, the petitioners have no alternative but to turn to this Honorable Court.

The Legal Argument

The obligation to exercise authority and establish procedures

38. More than five years have elapsed since this Honorable Court has rendered its judgment in HCJ Shtiyeh, concerning the sweeping prohibition to give driving licenses in Israel to residents of the Area, in which the Justices have expressed their opinion that in certain cases this sweeping policy should be deviated from.
39. Following this judgment, although with a considerable delay, the Ministry of Transport issued the procedure for the processing of an application to issue/renew an Israeli driver's license to residents of the Area.
40. As aforesaid, according to the procedure of the Ministry of Transport and according to the humanitarian committee the application of a resident of the Area to receive a driver's license in Israel is transferred to respondent 1, the Coordinator of Government Activities in the Territories or to his subordinate: the Head of the Economics Branch in the Civil Administration.
41. However, respondent 1 does not exercise his authority and does not respond. For many months now he claims to have been working on the preparation of the procedure or, that the examining committee has not yet been established, and contrary to the rules of good governance, he bluntly fails to exercise the authority vested in him. Thus, he prevents whoever needs a driver's license in Israel, for exceptional humanitarian reasons, from receiving a response to his request.
42. A person who applies to the authority is entitled to have the authority exercise its power. The authority is obliged to exercise its discretion and can not refrain from taking an action without a prior deliberation. (HCJ 297/82 **Berger v. Minister of Interior**, IsrSC 37(3), 29, the Honorable Justice Barak).
43. Appropriate to the case at hand are the remarks of the Honorable Justice Shamgar which were also made in the above HCJ Berger:

The establishment of primary arrangements in the law, which vest in a certain office holder the power to exercise a given authority under given circumstances, does not only constitute the grant of power and authority, but rather gives rise to major meanings in the form of the imposition of an obligation. Thus, in the grant of power is embedded, *inter alia*, the obligation to consider the need to have it exercised and the proper ways that should be taken in this regard. Secondly, it is very well known and clear that from the grant of power to a certain office holder stems the obligation to examine requests and applications, which impose on the person in whom the authority is vested the obligation to exercise his powers this way or the other.

....

A person in whom authority is vested may be regarded as abusing his duty, if he fails to exercise the authority vested in him in the sense that he completely ignores it, for good or for worse, and entirely fails to consider whether and when such authority should be exercised by him (compare: **HCJ 295/65**). Assuming authority for the purpose of never exercising it is

inappropriate *ab initio* (compare: HCJ 292/65 **Roshgold v. Minister of Finance**, IsrSC 20(1) 639, page 644) and the same rule applies to the neglect of any area in favor of which the authority was granted.

44. Usually, for the purpose of exercising its powers, the administrative authority needs procedures. Procedures (which are also referred to as administrative rules) set standards for the exercise of the administrative powers which the authority is required to implement in certain specific cases. Procedures are required when the authority is obligated to exercise its discretion in particular cases, repeatedly, where no clear criteria were established for the manner by which such authority should be exercised. (see: Raanan Har Zahav, **The Israeli Administrative Law**, Shenhav publishers, 5757-1996). Procedures are required to prevent a situation of vagueness or uncertainty as to whether and how the authority should be exercised.
45. While exercising its discretionary powers in specific cases brought before it, the administrative authority is not entitled to establish procedures for itself but is rather obligated in certain cases to do so. The purpose of the above is to enable the administrative power to be exercised in an orderly, predetermined and rational manner and to enable the administrative authority to exercise its authority fairly, consistently and equally (Yoav Dotan, **Administrative Rules**, Nevo Publishers, 5756-1996, pages 120-122).
46. And as stated by the Honorable Justice (*emeritus*) Itzhak Zamir:

Not only that an administrative authority is entitled to establish rules for the exercise of its powers, but it is possible that in a certain case it will be obligated to establish rules, as a condition for the exercise of its power. How come? It is possible that a certain power may not be exercised in an equal, fair and reasonable manner unless the power is exercised in accordance with clear and pertinent criteria known to all... (I. Zamir, **The Administrative Authority** (volume B), Nevo Publishers, 1996 780-781).

47. **The obligation to respond promptly**

One of the basic premises underlying administrative law is the obligation of the administrative authority to respond to applications submitted to it within reasonable time. The processing of applications in an efficient and prompt manner is one of the corner stones of good governance. The respondent must handle the applications submitted to it fairly, reasonably and promptly.

The authority has not been established [...] but for the purpose of rendering service to the public. [...] It may be said that the primary obligation of the authority is to exercise its powers in a manner that the service [...] to the public at large will be rendered promptly, without an excessive burden, at a high quality and low costs, to the extent possible. This is the obligation to act efficiently. The obligation to act efficiently, like the obligation to act fairly, also stems from the position of the administrative authority as the trustee of the public." (I. Zamir, **The Administrative Authority** (5756) (B), page 675).

A competent authority must act reasonably. Reasonableness also means complying with reasonable schedule (HCJ 6300/93 93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs**, IsrSC 48(4) 441, 451).

And see also:

HCJ 7198/93 **Mitrel Ltd. v. Minister of Industry and Commerce**, IsrSc 48(2) 844, 853 (1994);

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

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

48. This duty is also entrenched in section 11 of the Interpretation Law, 5741-1981, and in section 5 of the Order concerning Interpretation (West Bank Area)(No. 130), 5727-1967, which provides:

An action, for the execution of which no time frame was set or established by security legislation, must be carried out expeditiously and must be re-executed whenever the circumstances promulgated for its execution occur.

49. According to section 2(a) of the Administrative Procedure Amendment (Statement of Reasons) Law, 5719-1958, a public servant must respond to a request to exercise a power granted by law within 45 days from the date of receipt of the request.

50. In our case the respondent has breached all possible norms concerning reasonable response time - both under general administrative law and under military legislation. **More than six months have elapsed from the date the humanitarian committee has transferred to the respondent the recommendation of the Minister of Interior to issue a driver's license to petitioner!**

51. Appropriate to our case are the mindful remarks of Judge Okon:

The obligation of the court is to ensure that the principle of service is well rooted and is complied with by state authorities... This principle requires that applications made by individuals are taken seriously, abuse is prevented, values of equality are assimilated and privileges afforded to parties having governmental or other power are uprooted. The rights of the individual are not exhausted by festive declarations. The rights of the individual are a daily matter. If these rights are not upheld in practice, they will soon turn into empty words that are thrown around, creating a passing illusion of honored rights which fades away due to un-surmountable bureaucratic obstacles placed every step of the way. (AP (Jerusalem) 769/04 **Abu Mialeh v. Ministry of Interior**, not reported, October 14, 2004).

52. Our case concerns a response to a humanitarian need, and the lengthy abstention from giving a response causes petitioner 1 and his family great difficulty and even suffering. In this context, a strict meaning is attributed to the term reasonable time.

Summary

53. The petitioners request that a driver's license in Israel be issued to petitioner 1 for humanitarian reasons. Such reasons were acknowledged by the Minister of Interior who has recommended to give him a driver's license.
54. Many months pass and petitioners' request remains unanswered. Respondents' omission and failure to exercise their power and grant petitioner 1 a driver's license in Israel is scandalous.
55. Respondents' breach of the duty to exercise power and give response affects additional families in petitioners' condition which request that their applications to receive a driver's license in Israel be examined based on humanitarian grounds.
56. The petitioners and their minor children experience great suffering as a result of the lengthy delay in the examination of their application and the issuance of a driver's license in Israel to petitioner 1. The failure to respond infringes upon their rights to health, education and freedom of movement. The passage of time intensifies respondents' omission and the injury inflicted upon the petitioners.
57. In view of the above, the Honorable Court is hereby requested to grant an *Order Nisi* as requested, and after hearing the respondents' response, make it absolute. The court is further requested to order the respondents to pay petitioners' trial costs and attorneys' fees.

May 19, 2013

Sigi Ben Ari, Advocate

Counsel to the petitioners

[file No. 75547]