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At the Supreme Court
Sitting as the High Court of Justice

HCI 8588/14

In the matter of:

1. **Hafi, ID No. _____**
Resident of the Palestinian Authority
2. **HaMoked: Center for the Defence of the Individual,**
founded by Dr. Lotte Salzberger - RA

all represented by counsel, Adv. Nasser Odeh (Lic. No. 68398) and/or Bilal Sbihat (Lic. No. 49838) and/or Hava Matras-Irton (Lic. No. 35174) and/or Sigi Ben Ari (Lic. No. 37566) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Noa Diamond (Lic. No. 54665) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Abir Jubran-Dakawar (Lic. No. 44346)

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. **Military Commander of the West Bank Area**
2. **Coordinator of Government Activities in the Territories**

represented by the State Attorney's Office, Ministry of Justice
29 Salah a-Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondents

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 why:

- a. They should not respond immediately to petitioners' request, in view of the urgency of the matter.
- b. They should not urgently allow petitioner 1 to travel from the Gaza Strip to the West Bank, to attend the funeral of his one and-a-half year old son, who passed away today, December 15, 2014, in the "Dr. Thabet Thabet" hospital in the West Bank, after a severe chronic lung disease.

Request for Urgent Hearing

The honorable court is requested to schedule an urgent hearing in the petition and order the respondent to give a pertinent response to petitioner's request to travel to the West Bank as soon as possible.

Petitioner's son, one and-a-half year old ____, passed away this morning, December 15, 2014, in the "Dr. Thabet Thabet" hospital in Tulkarm, after a severe genetic and chronic lung disease from which he suffered for many months.

The family members are holding the funeral ceremony and are waiting for petitioner's arrival so as to enable him **to meet his deceased son for the first and last time, to bid him farewell and participate in his funeral.**

The petitioner never met his son. His applications for travel permits through Israel for the purpose of visiting his sick son were denied for security reasons.

Each passing hour in which petitioner 1 is separated from his wife and from the mourning and funeral ceremonies, only intensifies the injury inflicted on the petitioner and his family, who are, naturally, devastated and heart-broken. The honorable court is requested to schedule an urgent hearing in the petition so as to enable the petitioner to participate in the funeral of his son, to mourn him and stand by his wife in her most difficult moments.

The Factual Infrastructure

The Parties

1. Petitioner 1 (hereinafter: the **petitioner**), who was born in 1973, is a Palestinian who lives in the Gaza Strip.

A copy of the father's identification card is attached and marked **P/1**.

2. Petitioner's one and-a-half year old son, ____ Hafi, ID No. ____, who lived in the West Bank with his mother (hereinafter: the **son**), suffered from a severe chronic lung disease which put his life at risk. In the past, he had been hospitalized many times in the hospitals. On October 19, 2014 the deceased son was hospitalized in the "Dr. Thabet Thabet" hospital, suffering from shortness of breath, cyanosis and acute respiratory distress. **This morning, December 15, 2014 the one and-a-half year old son, passed away in the hospital.**

A copy of the death certificate of the son ____ is attached and marked **P/2**.

3. The petitioner never met his deceased son.
4. In 2007 the petitioner married his fiancée, Mrs. ____ Hafi, ID No. ____, and the spouses had two daughters, ____ and ____.

5. In 2009 the petitioner was distanced from his home in the West Bank only because of his registered address in the copy of the Palestinian Register held by the respondent, and was expelled to the Gaza Strip. He has been living there since then, instead of with his wife and children in the West Bank.
6. Due to respondent's policy, which disconnects the different parts of the Occupied Palestinian Territories (OPT) from one another, the family was sentenced to a protracted separation. When Mrs. Hafi could no longer bear the long separation from her husband, she travelled in June 2012 to Jordan, crossed over to Egypt and entered the Gaza Strip through Rafah Crossing. Mrs. Hafi stayed with her husband in the Gaza Strip for about ten months, and returned to the West Bank in April 2013 to give birth to her son ____.
7. Petitioner 2 (hereinafter: **HaMoked**) is a registered not-for-profit association which promotes human rights in the OPT.
8. Respondent 1 is the military commander, in charge of the West Bank area on behalf of the State of Israel which has held the West Bank under military occupation for over forty seven years. The respondent has the authority to allow the passage of Palestinians to and from the West Bank.
9. Respondent 2, the coordinator of the government activities in the territories, is responsible for the implementation of the policy of the state of Israel in the West Bank and the Gaza Strip, and is in charge, *inter alia*, of the Gaza Strip district coordination and liaison office.

Previous Legal Proceedings

10. The medical condition of ____, the son who was born, was difficult. He suffered from a genetic disease and from a chronic lung disease. According to medical opinions, the life expectancy of the son was not short.
11. On February 11, 2014, a petition was filed on behalf of the petitioner, **who has never met his son**, to allow him to travel from the Gaza Strip to the West Bank to visit his sick son and meet his wife and two daughters who reside in the West Bank (HCJ 1104/14 ____ **Hafi et al. v. Military Commander of the West Bank Area**).
12. In the hearing of the petition, the court encouraged the parties to find a way which would enable the father to make a one day visit subject to conditions, despite the security and criminal material which was pending against him. However, due to the hospitalization of the son and the claim made by respondent's representative that apparently, the son's condition improved, contrary to petitioners' position, the court decided not to resolve the issue of petitioner's passage and not to interfere with respondent's decision:

We do not find room to make a decision in a hypothetical question concerning the visit if, god forbid, it turns out that the condition is indeed critical, however, under the current circumstances, and in the absence of any real indication that it is indeed the case, we do not think that this petition should be continued and we deleted it.
13. The court added that "We wish the baby full recovery, and obviously, petitioners' rights are reserved according to need, without us having expressed any opinion."

A copy of the judgment dated February 16, 2014 is attached and marked **P/3**.

Exhaustion of Remedies

14. On October 21, 2014, the petitioner submitted, through the Palestinian Civil Affairs Committee, an application to the respondents to travel to the West Bank to visit his son and return to the Strip thereafter.
15. On October 29, 2014, HaMoked turned to the humanitarian desk at the Gaza DCO, and requested to allow the entry of the petitioner into the West Bank in view of the difficult condition of the son. HaMoked requested that the travel permit would be granted to the petitioner urgently!

A copy of HaMoked's letter dated October 29, 2014 is attached and marked **P/4**.

16. Ten days passed but no response has been received. Therefore, on November 9, 2014 HaMoked sent another letter to the humanitarian desk at the Gaza DCO, along with updated medical records concerning the critical condition of the son, and requested that the travel permit would be granted to the petitioner urgently.

A copy of HaMoked's letter dated November 9, 2014 is attached and marked **P/5**.

17. On November 13, 2014, a telephone conversation was held between HaMoked's representative and a soldier at the office of the Gaza DCO public liaison officer, in which the latter said that the request was under review.
18. On November 24, 2014, HaMoked's representative called the office of the Gaza DCO public liaison officer and was advised in said telephone conversation that a written response would be sent to her within a few minutes.
19. Days passed but no response has been received. Therefore, between November 24, 2014 and December 8, 2014 many telephone conversations were held between HaMoked's representative and the soldiers at the office of the Gaza DCO public liaison officer, in which HaMoked's representative requested to allow the petitioner to exit the Gaza Strip. However, in all these conversations the soldiers repeated again and again the same answer, that "the matter was still under review".
20. As aforesaid, this morning, December 15, 2014, the son passed away in the "Dr. Thabet Thabet" hospital in Tulkarm. In the morning the petitioner submitted to the respondents, through the Palestinian Civil Affairs Committee, an application to travel through Israel to the funeral, to escort his son to his final resting place.
21. This morning, HaMoked sent an urgent letter to the humanitarian desk at the Gaza DCO, and requested that the travel permit would be granted urgently.

A copy of HaMoked's letter to the respondents dated December 15, 2014 is attached and marked **P/6**.

22. Hours passed and no response has been received. Therefore, at 13:15 HaMoked's representative called the Gaza DCO head of civil coordination department, Major Tarek Shan'an, and requested to receive an immediate response to petitioner's application. The DCO representative informed that there was a security preclusion against the petitioner and that the application was transferred to the Gaza DCO legal advisor, for his review.
23. Currently, no response has yet been received to the application on its merits, notwithstanding the urgent circumstances of the matter and petitioners' applications, which were submitted both in writing and by phone. Each passing hour increases the distress of the petitioner and his wife. Hence, the petitioners had no alternative but to turn to the court.

The Legal Argument

24. In view of the circumstance of the matter there is no need to discuss at length of the severe violation of the rights of the petitioner and his family members, including the right to dignity, the right to freedom of movement and the right to burial. Petitioner's family members are anxiously waiting for him, so that they would be able to run the funeral ceremony and commence the mourning period.
25. The father was deprived of the right to parenthood, he was deprived of the right to take care of and support his wife and family during the son's severe illness. **Now the father requests not to deprive him of the right to see his son for the first and last time, and to be with his wife who suffered alone for many months and struggled with her son's severe illness with all her might.**

This petition is supported by an affidavit which was signed before an attorney in the Gaza Strip and sent to the undersigned by fax after arrangements were made over the telephone. The honorable court is requested to accept this affidavit and the power of attorney which was also sent by fax, taking into consideration the objective difficulties of a meeting between the petitioner and his legal counsels.

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

Nasser Odeh, Adv.
Counsel to the Petitioners

December 15, 2014

[File No. 81189]