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At the Supreme Court
Sitting as the High Court of Justice

HCJ 6156/10
Scheduled for: September 6, 2010

_____ **Kabha et al.,**

all represented by counsel, Advocate Yadin Eilam
45 Yehuda Halevi Street, Tel Aviv Jaffa, 65157
Tel: 03-5606080; Fax: 03-5606083,

The Petitioners

v.

Military Commander of IDF Forces in Judea and Samaria

The Respondent

Respondent's Response

1. According to the decision of the honorable Justice A. Procaccia, and in preparation for the hearing of the petition, which is scheduled for September 6, 2010, the respondent hereby respectfully submits his response to the petition.
2. The petition concerns the request of petitioner 1 (hereinafter: the **petitioner**), a permanent resident of the seam zone, to order the respondent to show cause "why he should not direct to stop the detention and humiliation of the petitioner... at the Reihan crossing."
3. The respondent is of the opinion that this petition should be denied. According to security agencies, information concerning the petitioner indicates that there is a concern that the petitioner may use his passages through the Reihan crossing, for the purpose of transferring weapons. Therefore, it is required to check him whenever he passes through the Reihan crossing. To the extent necessary, the respondent will present the privileged information in petitioner's matter, *ex parte*.

It should be noted that the data concerning petitioner's passages, as those were recorded by the computerized system of the Reihan crossing, do not comply, in general, with petitioner's allegations regarding this issue as described in the petition.

General background – the seam zone and the permits granted therein

4. As a result of the terror activities and attacks which were carried out by Palestinians within the boundaries of the state of Israel following the eruption of the violent incidents in September 2000, the government of Israel decided, in the beginning of 2002, of the erection of a security fence along the seam line between Israel and the Judea and Samaria Area, and of the prevention of the free passage of residents of the Judea and Samaria Area into the territory of Israel located west of the fence.
5. The route of the security fence was determined based on a host of considerations, primarily the security consideration, and additional considerations, such as topographic considerations. In view of these considerations, the route of the security fence does not exactly coincide with limit line of the Judea and Samaria Area, and in certain areas, the security fence passes within the Judea and Samaria Area in a manner which leaves a certain zone of the Judea and Samaria Area, between the security fence and the limit line of the Judea and Samaria Area. These areas are referred to as the "seam zone".
6. In view of the fact that there is no physical barrier which prevents the entry into Israel through the "seam zone" area, and in view of the security threat embedded in the passage of terrorists from the seam zone into the territory of the state of Israel, the military commander exercised his authority under the Order regarding Closed Territories (West Bank Area)(No. 34) 5727-1967, and declared the seam zone areas as a closed military territory which may neither be entered into nor exited without a permit.
7. The declaration of the seam zone as a closed military territory is premised on the assumption that free passage in and out of the Judea and Samaria Area into the seam zone, and there-from into Israel without additional security check, poses a security threat. Passage without a permit may be exploited for activity against the security of the state of Israel and its citizens.
8. The declaration of certain areas which constitute part of the Judea and Samaria Area, but which are located on the "Israeli" side of the fence as a "seam zone", was made gradually. The declaration of stages A and B regarding the Samaria area was signed on October 2, 2003, whereas the declaration of stages C and D and the 'surrounding Jerusalem' area was signed on January 5, 2009.
9. According to security legislation, the declarations concerning a closed territory do not apply to permanent residents in the area, such as the petitioner. Section 318 of the Order regarding Security Provisions [Consolidated Version](Judea and Samaria)(No. 1651) 5770-2009, provides that the presence of a permanent resident in a closed territory does not constitute a violation of the order.
10. The lawfulness and reasonableness of the seam zone declaration and the provisions which were established in that regard are currently pending before this honorable court within the framework of the general petitions – H CJ 9961/03 **HaMoked: Center for the Defence of the Individual v. Commander of IDF Forces in Judea and Samaria**, and H CJ 639/04 **The Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria**. As indicated by the petition, the petition before us does not concern general seam zone principles, but is rather engaged in the specific case of the petitioner.

Respondent's response

11. As indicated by the petition, the petitioner, a resident of Barta'a which is located in Samaria, was born in 1987, and is a permanent resident of the seam zone, which means that he lives, on a permanent basis, on the "Israeli" side of the security fence. In view of the fact that he is a resident

of the Judea and Samaria Area, it is clear that the respondent allows the passage of the petitioner to the "Palestinian" side of the security fence, and back, to his place of residence in the seam zone.

As indicated by the certificate in petitioner's possession, which was attached to the petition as Exhibit P/1, the petitioner is entitled to pass through the Reihan crossing. As indicated by the certificate, it does not constitute a entry permit into Israel. **It is clear that the petitioner, being a resident of the Judea and Samaria Area, does not have a permit to enter into and stay in Israel.**

12. However, in fact, after the passage of the Reihan crossing to the "Israeli" side of the fence, there is no physical barrier which may prevent the petitioner from having, in fact, free access to the territories of the state of Israel.
13. In view of the above, the respondent is authorized to check the individuals who pass through the Reihan crossing, including the petitioner, before they cross over to the "Israeli" side of the security fence. All passengers who pass through the Reihan crossing go through a routine security check, which includes an inspection of the identification documents in their possession, an inspection of their permits, a biometric authentication, body scanning system, meganometer and a baggage screening machine. According to information provided by the Crossings Administration, the security check usually takes between five to seven minutes.
14. As aforesaid, as far as the petitioner is concerned, **there is a concern that the petitioner exploits his passages through the crossings for the purpose of transferring weapons**, and the respondent is prepared to present before the honorable court, *ex parte*, the privileged information in that regard. In view of the above, in addition to the security check described above, the petitioner undergoes a specific search while passing through the Reihan crossing.
15. According to information provided by the Crossings Authority at the Ministry of Defence, an examination of the computerized system indicated that during a period of about three months, from June 1, 2010, and until the date the information was provided (August 30, 2010), the petitioner reached the Reihan crossing seven times. Each time, the petitioner underwent a security check, on his way to the "Palestinian" side of the security fence, as well as on his way back to the "Israeli" side of the security fence.

According to the records of the Crossings Administration, the petitioner reached the Reihan crossing on June 1, 2010, June 9, 2010, June 20, 2010, June 30, 2010, July 22, 2010, August 4, 2010, August 10, 2010. The Crossing Administration also informed that according to computerized system, the petitioner underwent an individual search only on June 1, 2010, and that on all other times in which he came to the Reihan crossing, the petitioner underwent a routine security check. Hence, the Crossing Administration was not aware of the alleged incidents on June 4, 2010, and July 25, 2010.

However, and in view of the recorded security preclusion in petitioner's matter, whenever the petitioner arrives to the crossing, the crossing representative turns to the security agencies, and inquires, by phone, whether there is need to conduct an individual search. As a general rule, the duration of the detention of a person who passes through the crossing and against whom security preclusion exists, is constantly monitored.

16. Parenthetically, and in response to the allegations made in paragraph 12 of the petition, it should be noted that according to information received from the Crossing Administration, the petitioner contacted one of the female employees of the crossing on the social network "facebook". Said

employee updated the security officer of the Reihan crossing of the above, and the latter transferred the information to the security agencies.

17. In view of all of the above said in this response, the respondent will argue that the petition should be denied, and that the petitioners should be obligated to pay respondent's costs.

Today,
26 Elul 5770
September 5, 2010

(signed)
Roi Shweiq
Deputy State Attorney