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At the Supreme Court
Sitting as the High Court of Justice

HCJ 970/14

In the matter of: _____ **Hadid, Mayor of Ramallah et al.**

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The Petitioners

v.

Military Commander of the West Bank Area et al.

Represented by the State Attorney's Office

The Respondents

Petitioners' Response to Respondents' Updating Notice

1. According to the decision of the Honorable Justice Barak-Erez dated May 7, 2015, the petitioners hereby respectfully submit their response to the updating notice which was submitted on behalf of the respondents on May 5, 2015, to this honorable court, as follows.
2. Firstly, the petitioners wish to update the honorable court that they accept respondents' proposal included in their notice "to continue to update the honorable court as to the progress made in the planning of the junction, and as to the exit options from Ramallah made available to all Palestinian vehicles, as requested, within a period of about six months".
3. As recalled, the remedy requested by the petitioners in their petition was to open the DCO checkpoint for free movement of Palestinian residents who travel in and out of Ramallah and Al-Bireh.

The numerous changes in the timetables that the respondents undertook to uphold

4. As will be specified below, **throughout the proceedings in the petition, the projected termination date for the planning of the arrangement of junction 90 has been repeatedly delayed, as well as the projected termination date for the execution of the works – and consequently, a very central and substantial part of the remedy requested in the petition was postponed.**

5. In their preliminary response to the petition dated June 11, 2014, the respondents notified that they were willing to give the petitioners the requested remedy "**subject to the execution of works in junction No. 90**" and that "**the planning is expected to take about six months**" (all emphases in this response were added – the undersigned), namely, **to be terminated on or about December 2014**. The respondents also noted that "the civil administration estimates that the **planning of the works for the arrangement of the junction and the execution thereof are expected to terminate by the end of 2015**".
6. In the parties' notice dated December 14, 2014, the respondents notified the honorable court that "the planning of the arrangement of junction 90, which should have been terminated until December 11, 2014 as stated in respondents' response, has not yet been completed, and the professional agencies estimate that **the planning will continue until the end of March 2015**."
7. In their notice dated March 15, 2015, the respondents updated that: "with respect to the progress in the planning of the junction we wish to update that progress was made mainly in changing the master plan of the junction so that it would be controlled by a traffic-light system and a roundabout will not be built therein, as originally planned... **said change is expected to shorten the planning procedure, as well as the duration of the construction and infrastructure in the junction**... with the projection being that the planning of the traffic-light controlled junction will be completed within the next few weeks following which it will be possible to evaluate the duration of the infrastructure works in the junction" (the first emphasis appears in the original, the second emphasis was added – the undersigned).
8. Although the respondents stated that the duration of the planning and construction works was expected to be shorter, having been directed by the honorable court (the decision of the Honorable Justice Barak-Erez from March 30, 2015), at petitioners' request, to submit an updating notice, *inter alia*, on the questions of whether the planning stage was completed and what was the projection for the termination of the construction works in junction 90, the respondents notified on May 5, 2015, that: "As to the evaluation of the duration of the works to be executed by Netivei Israel, including the detailed planning and actual construction works, at this stage **it is difficult to point at a precise date for the completion of the works in junction 90** (emphasis appears in the original), and that "over the course of April 2015 it became evident to the respondents that **a delay is expected to occur in the accelerated time table** established by the Transportation Coordinator, the upholding of which was agreed upon in work meeting which were held between the Transportation Coordinator and representatives of Netivei Israel." The respondents notified that "Consequently, and following clarifications given by representatives of Netivei Israel, **the Transportation Coordinator – who diligently supervises and acts, in person, in all matters pertaining to the works in junction 90 – estimates that the planning of the junction would be completed by the end of 2015, and that the construction works and their derivatives would be completed by the first half of 2016, subject to the approval of the budget for that year**" (emphasis appears in the original).
9. Hence, the termination date of the planning of the junction was postponed by the respondents from December 2014, to "the next few weeks", to March 2015 and thereafter to the end of 2015, whereas the termination date for the construction works in the junction was postponed by the respondents from the end of 2015, to a date with respect of which it was stated that "**it is difficult to point at a precise date**" and which is expected to occur during the first half of 2016 "**subject to the approval of the budget for that year**".
10. The petitioners wish to express their dismay of the continuous delays in the timetable which the respondents undertook to uphold.

No progress was made in obtaining the remedy requested in the petition

11. As recalled, already in their preliminary response to the petition dated June 11, 2014, the respondents have notified that they were willing to give the petitioners the requested remedy "subject to execution of works in junction No. 90". The respondents also notified that "at night time – **commencing from 22:00 until 06:00**, when no material concern exists of traffic congestions along road 466, the **IDF enables free passage of vehicles through the checkpoint**" (the first emphasis was added, the second emphasis appears in the original – the undersigned).
12. In the parties' notice dated December 14, 2014, the respondents informed the honorable court that "a decision was made to enable entry to Ramallah through the DCO checkpoint to **all Palestinian private vehicles**, even before the execution of the works in junction No. 90. (emphasis appears in the original). At the same time the respondents also undertook to examine the possibility to enable the opening of the checkpoint for the exit of all Palestinian private vehicles, **prior to the execution of the works**, and to update the honorable court regarding "the examination of the possibility... to enable the opening of the checkpoint for the exit of all Palestinian private vehicles, **prior to the execution of the works**".
13. After the opening of the checkpoint for the entry of all Palestinian private vehicles, **the main remedy which remained in dispute between the parties was the opening of the checkpoint for the exit of all Palestinian private vehicles at all times, day and night**. In view of the fact that the respondents keep postponing the timetables which they undertook to uphold, **in fact, no progress was made in connection with this remedy**, despite respondents' undertaking to examine the possibility to open the checkpoint for the exit of Palestinian vehicles prior to the execution of the works, as will be specified below. Therefore, the petitioners are of the opinion that the petition has not been exhausted and that at this stage it should not be deleted.
14. It should be noted that on May 5, 2015, the respondents notified the honorable court that "the possibility to enable the exit of private vehicles through the DCO checkpoint has been **recently** tested during night time, given the fact that at this time traffic volume is lower. **Following this test and in the framework thereof, in fact, the exit of private vehicles through the DCO checkpoint is being currently facilitated during night time, beginning from 22:00 until 06:00**" (the first emphasis was added, the second emphasis appears in the original – the undersigned). It is unclear which test is referred to by the respondents, in view of the fact that as specified in paragraph 12 above, **the opening of the checkpoint for the exit of vehicles during night time has already been included in their preliminary response to the petition dated June 11, 2014, almost a year earlier**. It should be pointed out that in their preliminary response to the petition the respondents notified that free passage of vehicles was facilitated, contrary to that of private vehicles, as stated in their last update, so that in fact, the updating notice limits the statement which was made the preliminary response.
15. The petitioners wishes to reiterate their request that the respondents continue to examine the possibility **to open the checkpoint for the exit of all Palestinian private vehicles from Ramallah prior to the execution of the works**.

In conclusion

16. Hence, **in each one of the three responses or statements which were submitted on behalf of the respondents since their preliminary response to the petition dated June 11, 2014, the respondents notified that the date on which the planning was expected to be completed was postponed, and in their statement dated May 5, 2015, the respondents notified that the date on**

which the construction works were expected to be completed was also postponed. All together, the date on which the planning of the junction was expected to be completed was postponed by one year, from December 11, 2014 to the end of 2015, and the date on which the construction works were expected to be completed was postponed by six months, from the end of 2015 to mid 2016. **Consequently, a very central and significant part of the requested remedy was postponed – the opening of the checkpoint for the exit of all Palestinian vehicles.**

17. As recalled, and as has been broadly described in the petition, the blocking of the checkpoint for the exit of vehicles from Ramallah and Al-Bireh harms hundreds of thousands of Palestinian residents, including over 100 thousand residents residing in the settlements headed by petitioners 1-10, who must take a significantly longer route, and who are burdened with high and unnecessary costs both in time and money, and whose fundamental rights are directly violated, including their freedom of movement, freedom of occupation, the right to own property, the right to education and dignity.
18. If this is the situation when the court oversees the petition and the realization of respondents' undertakings, it may be easily imagined how things could have been had the petition been deleted.
19. In HCJ 5587/07 **Uziel v. Property Tax and Compensation Fund** (not reported, March 2, 2008), the court heard a petition which was filed after the state failed to appoint statutory appellate committees regarding compensation for war damages following the Second Lebanon War, and the honorable court was requested to oversee the petition until the matter was arranged. In this context the Honorable Justice Rubinstein (as then titled) noted in paragraph 6 of his judgment that:

The obligation of the court in this case, like in many other similar cases in the framework of administrative law, was not to write a learned legal judgment, but rather to oversee the authorities while encouraging and expediting their actions, like a nanny or a babysitter - for the purpose of promoting the realization of their duty under the law in the labyrinth, or rather bureaucracy of public administration. This obligation means that the case is not closed and archived but rather stays alive until the problem which was raised in the petition is reasonably solved. In the case at hand the court was also unwilling to close the file **until the issue is substantially solved.** The exceptionality of this case was manifested, on the one hand, in the specific circumstances associated with post war rights, and in its excessive duration, on the other. It should be remembered that we are concerned with pure and simple civil rights, namely, the right of a person under the law to appeal in his matter.

And in HCJ 8673/10 **Braun v. Israel Electric Company Ltd.** (not reported, December 19, 2011), the Honorable Justice Rubinstein (as then titled) noted in paragraph 11 of his decision dated February 18, 2013 as follows:

This court must regard itself, in the absence of any other option, as a "babysitter", to ascertain that the authorities fulfill their duties in a reasonable pace.

20. It seems that like in the above mentioned decisions, in the case at hand the court must also oversee respondents' actions and, in fact, act as a "babysitter", to ascertain that the respondents uphold their undertakings and carry them out at a reasonable pace, until the remedy requested in the petition is obtained.
21. In view of the above, and in the hope that the respondents will keep the updated timetable undertaken by them and will no longer postpone it, the petitioners request the honorable court to accept

respondents' request in their statement dated May 5, 2015, "to continue to update the honorable court as to the progress made in the planning of the junction, and as to the exit options from Ramallah made available to all Palestinian vehicles, as requested, within a period of about six months", particularly in view of the fact that all of a sudden the respondents condition their undertaking to grant the remedy which was requested in the petition upon "**the approval of the budget for that year**", a budget which is expected to be approved by the submission date of respondents' updating notice.

Sivan 3, 5775
May 21, 2015

(signed)

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Counsel to the petitioners