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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCJ 1804/15**

In the matter of:

1. \_\_\_\_\_ **Abu Ghnam, ID No. \_\_\_\_\_**
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

represented by counsel, Adv. Labib Habib et. al.,  
New Beit Hanina, P.O.Box 21225, Jerusalem 97300  
Tel/Fax: 02-6263212; Cellular: 052-4404477

**The Petitioners**

v.

**GOC Hone Front Command**

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 respondent ordering him to appear and show cause, why he should not revoke an amending order issued by him against petitioner No. 1 on February 16, 2014, according to which the petitioner "will not enter, will not stay and will not be present in the municipal area of the city of Jerusalem... other than in his home, to which he will be allowed to arrive solely by driving the route marked on the map attached to this amending order."

#### **The Factual Background**

1. Petitioner No. 1, born in 1977, is a resident of Jerusalem, married and a father of three children aged five, six and seven years. The petitioner lives in Jerusalem, his family lives in Jerusalem, he works and makes a living in Jerusalem and his entire center of life as well as the center of life of his family is in Jerusalem.
2. Petitioner's five years old son, \_\_\_\_\_, suffers from autism and his complex medical condition requires treatment and medical surveillance by the petitioner and his wife.

A medical certificate is attached and marked **P-1**.

3. Petitioner No. 2 is a registered association, engaged for many years in the protection of human rights.
4. On December 4, 2014, a military force arrived at petitioner's home in East Jerusalem, and in his absence served on his family members an order signed by the respondent, together with a map which was attached thereto (hereinafter: the **first order**).

The order which was issued pursuant to regulations 6, 108 and 109 of the Defence (Emergency) Regulations, 1945, prohibited the petitioner, **forthwith**, from entering or staying in Jerusalem at large, on the grounds that it was "required for the purpose of securing state security and public safety and for the purpose of maintaining public order", for a period of six months commencing from November 30, 2014. According to the order, an objection could be submitted within seven days and an oral hearing was granted.

A copy of the order is attached and marked **P-2**.

5. On December 11, 2014, the petitioner submitted, through legal counsel, an objection in which he raised his arguments against the order. On December 22, 2014, an oral hearing was held in the military camp Ofer near Jerusalem. The petitioner and his legal counsel who attended the hearing, presented their arguments and requested to have the order revoked.

A copy of the objection is attached and marked **P-3**.

6. For proper disclosure purposes it should be noted that due to his son's illness, the petitioner arrived to his home after the order was issued to visit his infirmed son. He was consequently arrested and released on the following day. In addition, after the hearing, the petitioner was requested to arrive to the police station, apparently to "supplement" the hearing procedure. However he has not received a formal summons, and did not show up.
7. On February 16, 2015, a response was given to the objection, according to which it was decided to limit the scope of the order so that as of February 22, 2015, the petitioner would be prohibited from entering the municipal area of Jerusalem, other than through a specific route which could be used by him for the purpose of reaching his home, staying therein and leaving Jerusalem. The above is the order being the subject matter of this petition (hereinafter: the **amending order**). The response stated that the order was limited in view of the medical condition of petitioner's son.

Copies of the response and the order are attached and marked **P-4** and **P-5**, respectively.

This petition is directed against the above amending order and requests to totally revoke it.

### **The Legal Argument**

#### **The right to be heard**

8. The hearing which was conducted to the petitioner in the first order had some material flaws which undermined it and turned it patently ineffective. The conditions which the petitioner was demanded to meet for the purpose of exercising his right and defend against the order, do not comply with the rules established by law, in general, and by the judgments of the Supreme Court, in particular, as will be specified below.

#### **A hearing after the injury:**

9. The order entered into effect upon its signature. According to the judgments of the Supreme Court, as a general rule, the hearing should be conducted before the decision, rather than after its

implementation. No reason was presented which explained the need to veer from this rule, expel the petitioner from his home and remove him from his family, and sever him from his work and social environment forthwith, without giving him the right to be heard **before** the order's effective date.

### **Vague order**

10. The hearing should comply with the rules of natural justice and the obligation of the authority to act fairly, which include the right of the injured party to be informed of the reasons underlying the injury caused to him and his rights. The order did not specify any concrete facts, but mainly quoted the general causes and captions which appear in the Defence Regulations. Hence, the order does not satisfy the elementary obligation to inform the petitioner of the facts based on which the order was ostensibly issued.

In addition, the evidence and/or information based on which the order was issued were not transferred to the petitioner. It is an additional flaw which undermines the lawfulness of the order, and deprives the petitioner of a genuine and fair opportunity to present his arguments and refute the suspicion allegedly raised against him.

11. The above material details are absent from the order, as a result of which the petitioner was deprived of a genuine opportunity to defend against the order and refute the suspicions against him. Said flaw goes to the bottom of the order and, in fact, nullifies the right to be heard!

### **Offensive Order:**

12. The petitioner will argue that neither the initial order nor the amending order comply with the limitation clause in section 8 of the Basic Law: Human Dignity and Liberty.
13. The petitioner will argue that the mere fact that the order was issued pursuant to the Defence Regulations, which are Mandatory regulations that do not pay any regard to human rights and due process, constitutes, in and of itself, a deviation from the limitation clause, and fails to comply with its conditions.
14. The petitioner will argue that the fact that the petitioner was not given any genuine opportunity to defend against the order, to review the material underlying the order, to receive information of the nature of the suspicion and its details, and to receive a genuine opportunity to challenge the privileged information and refute it - turns it into an unreasonable order which fails to comply with the conditions of the limitation clause.
15. The order in its initial format, prior to its amendment, was actually in force for **two and a half months**, during which the petitioner was expelled from his home and removed from Jerusalem, which severely injured him and his family, particularly in view of the complex medical condition of petitioner's son. In that too, the order exceeded reasonableness.
16. Nevertheless, even after the amendment of the order and the limitation of its scope, the order remained offensive and should be revoked. The order still violates petitioner's right to freedom of movement, prevents the petitioner from accompanying his son to medical treatments; the order prevents the petitioner from reaching his workplace in Jerusalem; the order, in fact, severely injures the petitioner despite its limitation, on the family, social and economical levels, all based on privileged information which the petitioner had no opportunity to review or refute.

17. The right to freedom of movement is recognized by international law and received a status of a constitutional fundamental right in Israeli law (Article 12 of the Covenant on Civil and Political Rights, 1966; Section 6 of the Basic Law: Human Dignity and Liberty; A. Barak, **Interpretation in Law** (Constitutional Interpretation), page 428; HCJ 1890/03 **Bethlehem Municipality v. State of Israel**, IsrSC 59(4) 736, 755).
18. The superior status of the right to freedom of movement dictates that it is violated only where there is a present probability that the exercise of the right may cause difficult, serious and severe injury to public security (HCJ 6893/05 MK **Levy v. Government of Israel**, IsrSC 59(2) 876, 889. The petitioner will argue that such probability does not exist and that there is no evidence of any actual risk or threat posed by the petitioner, and therefore the order should be revoked.
19. In addition, the above order also violates the right to make a living, and its derivative – the right to live in a dignified manner (HCJFH 4191/97 **Rekanat v. National Labor Court**, IsrSC 54(5) 330, 381; LCA 4905/98 **Gamzo v. Yeha'ayahu**, IsrSC 55(3) 573, 630; HCJ 366/03 **Commitment to Peace and Social Justice Association v. Minister of Finance** (not reported yet), paragraph 15. The order should be revoked due to this disproportionate violation as well.
20. The duration of the order, six months, is also disproportionate. This applies even more forcefully in view of the fact that the order entered into effect immediately, before the petitioner was granted the right to be heard, and in view of the fact that the response to the objection was given two and a half months after its submission during which the petitioner was removed from his home and family and from the city in which he lives and maintains his center of life.
21. The petitioner will argue that alternatively, and if it is necessary to restrict the petitioner in any manner, which is totally denied, the respondent should have satisfied himself by removing the petitioner from specific places, rather than removing him and prohibiting him from entering and staying in Jerusalem at large, with the exception of his home.
22. The petitioner will argue that the respondent should have exercised customary and less offensive measures and take the ordinary police procedure within the framework of which restrictions may be imposed on the petitioner.

For all of the above reasons the honorable court is requested to issue an *order nisi* as requested in the beginning of the petition, and after hearing respondent's response, make it absolute.

( signed )

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Labib Habib, Advocate