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

H CJ 537 /15

- In the Matter of:
1. _____ **Suliman, ID** _____
Resident of the Occupied Palestinian Territories
 2. _____ **Suliman, ID** _____
Resident of the Occupied Palestinian Territories
 3. _____ **Suliman, ID** _____,
Minor, by his parents, Petitioners 1-2
 4. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA No. 580163515**

All represented by counsel, Bilal Sbihat (Lic. No. 49838) and/or Hava Matras-Irron (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 Agsteribbe (Lic. No. 58088) Abeer Jubran-Daqwar (Lic. No. 44346) and/or Nasser Odeh (Lic. No. 68398)

Of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salaberger
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Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **The Military Commander of the West Bank**
2. **The 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:

1. Why they do not reply to the Petitioners' communications promptly as appropriate in the circumstances of the matter;
2. Why they do not allow the Petitioner 1 - 3 to travel from the West Bank to the Gaza Strip in order to visit the ailing brother of Petitioner 1, and to return to the West Bank after the visit ends.

Request to Schedule an Urgent Hearing

The brother of Petitioner 1, who lives in the Gaza Strip, suffers from high blood pressure and, on December 15, 2014, underwent coronary artery bypass surgery at the a-Shifaa hospital in the Gaza Strip. The brother needs follow up treatment and monitoring and his doctors recommended that he refrain from all effort. It is understandable that under these circumstances the Petitioners are interested in visiting and attending to the ailing brother. Sadly, in light of the aforesaid, the Honorable Court is requested to schedule a date for an urgent hearing of the petition and to order the Respondent to submit his preliminary response to the petition at the earliest possible time as it may obviate the hearing of this petition.

The Factual Infrastructure

1. Petitioner 1 (hereinafter: **the Petitioner**) is a resident of the Occupied Palestinian Territories (OPT), born in 1972, and resides in Ramallah with his wife, Petitioner 2, born in 1982, and their son _____, Petitioner 3, who is 7 years old.
2. The brother of the Petitioner, Mr. _____ Suliman, ID No. _____, resides in the Gaza Strip. He suffers from high blood pressure and on December 15, 2014, underwent coronary artery bypass surgery at the El-Shifa hospital in the Gaza Strip. The brother needs follow up care and monitoring and his doctors recommended that he refrain from all effort.

A copy of the medical document regarding the brother's condition is attached hereto and marked **P/1**.

3. The Petitioner, naturally, wants to visit his ailing brother together with his wife and son, to nurse him, attend to him, and assist him.
4. Petitioner 4 (hereinafter: **HaMoked: Center for the Defence of the Individual** or **HaMoked**) is an association that works to advance human rights in the OPT.
5. Respondent 1 is the Military Commander of the West Bank on behalf of the State of Israel which has held the West Bank under military occupation for over forty seven years.

6. Respondent 2, the Coordinator of Government Activities in the Territories, is responsible for implementing Israeli policy in the West Bank and the Gaza Strip, and is in charge, *inter alia*, of the Gaza District Coordination and Liaison Administration.

Exhaustion of Remedies

7. On December 31, 2014, the Petitioners submitted, through the Palestinian Liaison Office, an application to the Respondents to allow them to visit the ailing brother in the Gaza Strip in light of his grave medical condition.
8. On January 5, 2015, HaMoked submitted a request to the Respondents asking to allow the Petitioners to travel from the West Bank to the Gaza Strip. HaMoked emphasized the brother's grave condition and the urgency of the application.

A copy of HaMoked's application of January 5, 2015 is attached hereto and marked **P/2**.

9. On January 14, 2015, HaMoked approached the Respondents once more, again requesting that they allow the Petitioners' passage from the West Bank to the Gaza Strip. Due to the circumstances of the matter, the Respondents were asked to allow the Petitioners' entry into the Gaza Strip urgently. In the application, HaMoked stated that if an answer was not received by January 18, 2015, it would consider legal action.

A copy of HaMoked's application of January 14, 2015 is attached hereto and marked **P/3**.

10. To this day, no reply was received. In view of the circumstances of the matter, the Petitioners had no choice but to appeal to the Court.

The Legal Argument

11. As well known, on November 29, 2012, the UN General Assembly accorded non-member observer State status to Palestine (A/RES/67/19).

It is clear that even after the General Assembly's decision, the Military Commander continues to bear all of the obligations imposed upon him by international law as an occupying power in control of the area.

A. The Respondents' Obligation Respond to Requests Promptly

12. The Respondents, like any administrative authority, are obliged by law to respond to communications promptly. It is a known rule that "the obligation to act with due haste is one of the basic tenets of good governance" (Y. Zamir, **The Administrative Authority** (Vol. 2, Nevo, 5756 - 1996), 717).

Regarding this matter, See:

HCJ 6300/93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs**, IsrSC 48(4) 441, 451 (1994);
HCJ 7198/93 **Mitral LTD. v. Minister of Industry and Commerce**, IsrSC 48(2) 844, 853, (1994);
HCJ 5931/04 **Mazursky v. State of Israel – Ministry of Education**, IsrSC 59(3) 769, 782 (2004);
HCJ 4212/06 **Avocats sans Frontieres v. GOC Southern Command**, TakSC 2006(2) 4751(2006).

13. It has already been ruled that when it comes to human rights, the concept of a “reasonable timeframe” has special meaning (HCJ 1999/07 **Galon v. The Governmental Commission for the Inquiry of the Events of the Lebanon Campaign** 2006, TakSC 2007(2) 551, 569 (2007));

And that in matters pertaining to human rights –

There is room to expect a speedier resolution of the matter [...] A protracted infringement on human rights often exacerbates the extent of the infringement and its result could be an erosion of the right as well as severe and ongoing harm to the individual.

(HCJ 8060/03 **Q’adan v. Israel Land Administration**, TakSC 2006(2) 775, 780 (2006).

See also: HCJ 10428/05 **‘Aliwa v. Commander of IDF Forces in the West Bank**, TakSC 2006(3) 1743, 1744 (2006); HCJ 4634/04 **Physicians for Human Rights v. Minister of Public Security**, TakSC 2007(1) 1999, 2009 (2007).

14. The present case concerns a matter that demands special urgency – the Petitioners request to visit the ailing brother, who recently underwent coronary artery bypass surgery.

B. The Respondents’ Obligation to Ensure the Normal Life of the Petitioners

15. The Respondents have an active duty to defend the rights of the residents, to ensure their normal lives and to protect their rights. Article 43 of the Hague Regulations stipulates:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall **take all the measures in his power** to restore, and ensure, as far as possible, public order and safety... (Emphasis added, B.S.).

16. The duty to ensure public order and safety and to take action to serve the needs of the society applies to all aspects of civilian life:

The first clause of Regulation 43 of the Hague Regulations vests in the military government the power and imposes upon it the duty to restore and ensure public order and safety... The Regulation does not limit itself to a certain aspect of public order and safety. It spans all aspects of public order and safety. **Therefore, this**

authority – alongside security and military matters – applies also to a variety of “civilian” issues such as the economy, society, education, welfare, hygiene, health, transportation and other such matters to which human life in modern society is connected.

(HCJ 393/82 **Jam'iat Iscan v. the Commander of the IDF Forces in the Area of Judea and Samaria**, IsrSC 37(4), 785, 797, (1983); (Emphasis added, B.S.).

C. Violation of the Respondents' Rights

i. The Right to a family Life

It is a mitzvah incumbent on everyone to visit the sick. Even a person of great spiritual stature should visit one of lesser stature. One may visit many times during the day. Whoever increases the frequency of his visits is praiseworthy provided he does not become burdensome. Whoever visits a sick person removes a portion of his sickness and relieves him. Whoever does not visit the sick is consider as if he shed blood.

(Maimonides, Mishneh Torah: Hilchot Avel (Laws of Mourning) Chapter 14, Halacha 4).

17. The Petitioner wishes to see his ailing brother who recently underwent coronary artery bypass surgery.
18. The right to family life, that primarily includes the right of a person to maintain ties with his immediate family, particularly in times of distress and illness, is a recognized right in Israeli and international law. In view of this right, it is the duty of the Respondent to respect the Petitioner's family unit.
19. Many Supreme Court rulings have repeatedly emphasized the vast importance of the right to family life, and especially the judgment delivered in the **Adalah** case. Thus, for example, Supreme Court President Barak writes in paragraph 25 of his judgment:

It is our main and basic duty to preserve, nurture and protect the most basic and ancient family unit in the history of mankind, which was, is and will be the element that preserves and ensures the existence of the human race, namely the natural family.

[T]he family relationship ... lie[s] at the basis of Israeli law. The family has an essential and central purpose in the life of the individual and the life of society. Family relationships, which the law protects and which it seeks to develop, are some of the strongest and most significant in a person's life.

(HCJ 7052/03 **Adalah et. al v. The Minister of the Interior** TakSC, 2006(2), 1754 (2006)).

And in another context it was said that:

Israel is obligated to protect the family unit under international conventions.

(HCJ 3648/97 **Stamka v. Minister of the Interior**, IsrSC 53(2) 728, 787 (1999)).

20. Article 46 of the Hague Regulations, which constitute customary international law, stipulates:

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

21. It must be emphasized that the right to family life is a fundamental tenet of customary international humanitarian law:

Family life must be respected as far as possible.

(Henckaerts J.M. Doswald-Beck L., Customary International Humanitarian Law. Vol. I: Rules. ICRC (2005). pp. 379-383).

See also:

Article 27 of the Fourth Geneva Convention, 1949;

Article 10 of the International Covenant on Economic, Social and Cultural Rights, 1966;

Articles 17 and 23 of the International Covenant on Civil and Political Rights 1966;

Article 12 and article 16(3) of the Universal Declaration of Human Rights, 1948;

Article 12 of the European Convention on Human Rights, 1950.

22. The right to family life, which includes the right of siblings to maintain their family ties, is a recognized right in Israeli and international law. This right gives rise to a duty on the part of the Respondent to respect the family ties between the Petitioners and the brother of the Petitioner.

ii. The Right to Freedom of Movement

23. Every person is entitled to the right to move freely within his own country. The right to freedom of movement is the prime expression of a person's autonomy, his freedom of choice and the realization of his abilities and his rights. The right to freedom of movement is one of the norms of customary international law.

See:

HCJ 6358/05 **Vanunu v. GOC Home Front Command**, TakSC 2006(1) 320, paragraph 10 (2006);

HCJ 1890/03 **Bethlehem Municipality et al v. The State of Israel**, TakSC 2005(1) 1114, paragraph 15 (2005);

HCJ 3914/92 **Lev v. Regional Rabbinical Court**, TakSC 94(1) 1139, 1147 (1994).

24. The right to freedom of movement is the engine that drives the array of human rights, the engine that enables a person to realize his autonomy and choices. When freedom of movement is restricted, this "engine" is harmed and as a result thereof some of a person's possibilities and rights cease to exist. His dignity as a person is violated. Hence the great importance attributed to the right of freedom of movement.

25. When restrictions are imposed on a person's freedom of movement within the area of the state or the entity in which he resides, his social life, cultural life, human rights and freedom of choice are violated. This person is restricted in the most fundamental spheres of his life: where he will live, with whom he will share his life, where his children will study, where he will receive medical care, who his friends will be, where he will work, what his occupation will be, and where he will pray.
26. The right to freedom of movement is also entrenched in international humanitarian law. The Fourth Geneva Convention reinforces the right to freedom of movement as a basic right of protected persons, whether they are in occupied territory or in the territory of a hostile state. Article 27 of the Convention determines that protected persons shall be entitled in all circumstances to humane treatment and to respect of their dignity.
27. It is important to also note articles 41-43 (which apply to the territory of a state that is involved in conflict) and 78 (which applies to occupied territory). These articles concern restrictions on freedom through detention or assigned residence. These means are specific and their employment is likewise specific. This demonstrates that the freedom of movement of protected persons in all other circumstances was very important to the high contracting parties. It is necessary to establish explicit and specific rules for restricting freedom of movement only where there is, as a general rule, an obligation to respect this right:

[A]rt. 78 of the Fourth Geneva Convention constitutes both a source for the protection of the right of a person whose residence is being assigned and also a source for the possibility of restricting this right. This can be seen, inter alia, in the provisions of art. 78 of the Fourth Geneva Convention that determines that the measures stipulated therein are the measures that the occupying power (i.e., the military commander) may "at most" carry out.

(HCJ 7015/02 'Ajuri v. IDF Commander in West Bank, TakSC 2002(3), 1021, 1027).

28. International human rights law is also a binding source which anchors freedom of movement as a basic human right. Thus, article 12(A) of the International Covenant on Civil and Political Rights, which Israel signed and ratified establishes:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

29. The aforementioned Article 12 is a mandatory source. For additional sources of interpretation see: Article 13 of the Universal Declaration of Human Rights and Article 2 of the Fourth Protocol (1963) to the European Convention on Human Rights.

D. Passage from the West Bank to the Gaza Strip

30. The Gaza Strip and the West Bank constitute one legal unit. This is entrenched in military legislation: The Military Proclamation regarding the Application of the Interim Agreement (Judea and Samaria), (no. 7) 5756-1995 anchored the interim agreement between Israel and the PLO ("the Oslo Accord"),

which determined – as a fundamental principle – that the West Bank and the Gaza Strip constitute two parts of one territorial unit. This was also recognized by this Honorable Court (HCJ 7015/02 '**Ajuri v. IDF Commander in the West Bank**'; IsrSC 56 (6) 352.

31. It must be noted that changes in the scope of Israeli control of the Gaza Strip did not affect the fact that these two areas constitute one territorial unit. History recognizes many examples of states that were partially occupied, and regardless of the scope of the occupation, they undoubtedly remained one state.
32. It is because of the scope of Israeli control over the Gaza Strip and the West Bank that the Petitioner must receive the Respondents' approval. Therefore, the Respondents have real obligations towards him. These were recognized in the rulings of this Court, which determined that Israel has special obligations towards residents of the Gaza Strip. This Court ruled as follows:

In the prevailing circumstances, the main obligations of the State of Israel relating to the residents of the Gaza Strip derive from the state of armed conflict that exists between it and the Hamas organization that controls the Gaza Strip; **these obligations also derive from the degree of control exercised by the State of Israel over the border crossings between it and the Gaza Strip**, as well as from the relationship that was created between Israel and the territory of the Gaza Strip after the years of Israeli military rule in the territory due to which the Gaza Strip is currently almost completely dependent upon the supply of electricity from Israel.

HCJ 9132/07 **al Basyouni et al. v. The Prime Minister et al.**, January 30, 2008, paragraph 12 of the judgment. (Emphasis added, B.S.).

33. It must be noted that the Petitioners do not seek to remain in Israel, only to pass through it and to visit the ailing brother due to the circumstances that were imposed upon them.

Conclusion

34. The Petitioner requests to pass through Israel to the Gaza Strip with his wife and son in order to see his ailing brother, attend to him and nurse him.
35. By delaying their response to the Petitioners' communications, the Respondents are not only derelict in their duty to provide a response within a reasonable period of time, but are also violating the right of the Petitioners to freedom of movement within their own country and the rights that rely on it, primarily the right to family life.

This petition is supported by an affidavit signed before an attorney in the West Bank and sent by fax to the undersigned as agreed by telephone. The Honorable Court is requested to accept this affidavit and the powers of attorney which were also sent by fax in consideration of the objective difficulties involved in holding a meeting between the Petitioners and their counsel.

In light of the aforesaid, the Court is requested to issue an *order nisi* as sought and after hearing the Respondent, render it absolute. The Court is also requested to rule that the Respondents bear the Petitioners' expenses and legal fees.

January 20, 2015

Bilal Sbihat, Adv.
Counsel for the Petitioners