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**HCJ 537 /15**

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

1. **Suliman**
2. **Suliman**
3. **Suliman**
4. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

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**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, Jerusalem  
29 Salah-a-din Street, Jerusalem  
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**The Respondents**

**Response on behalf of the Respondents**

1. In accordance with the decision of Honorable Justice M. Mazuz of January 22, 2015, the Respondents hereby respectfully submit their response to the petition as follows:
2. The petition concerns the request of Petitioners 1 – 3 (hereinafter: “**the Petitioners**”) to permit their entrance from the Judea and Samaria Area (hereinafter: “**the Area**”) into the territory of the State of Israel for passage to the Gaza Strip. This is requested for the purpose paying a visit to the brother of Petitioner 1 who, according to the petition, underwent coronary artery bypass surgery at the a-Shifaa hospital in the Gaza Strip on December 15, 2014.

3. The Respondents will claim that the petition must be dismissed by reason of lack of cause to intervene in the decision not to approve the passage of the Petitioners to the Gaza Strip in light of the policy of restricting the passage of Israelis [sic] between Israel and the Gaza Strip to exceptional humanitarian cases, and as **the Petitioners' request does not meet the criteria set in the policy regarding this matter** as will be specified below.

As detailed below, this policy was determined primarily in light of the activities of terrorist organizations active in the Gaza Strip and their efforts to carry out attacks and terrorist actions against the State of Israel and its citizens and to transfer the terrorist infrastructure that operates in the Gaza Strip into Israel and the Judea and Samaria Area, and due to the serious security risk that would arise as a result of allowing free movement between Israel and the Gaza Strip to both Israelis [sic] visiting the Gaza Strip and to all of the citizens of Israel.

#### **The Main Relevant Facts**

4. On December 31, 2014, the Petitioners' request for a permit to enter Israel in order to travel to the Gaza Strip for a visit to the brother of Petitioner 1 was received at the Nablus District Coordination Office (hereinafter: the "DCO").
5. As indicated in the petition, this request was submitted approximately **two weeks** after the alleged date on which the brother of Petitioner 1 underwent surgery. In addition, the Petitioners' request enclosed a **medical document dated December 15, 2014**, from the a-Shifaa hospital in the Gaza Strip, stating that the brother of Petitioner 1 suffers from high blood pressure and that he underwent coronary artery bypass surgery. The document also states that the brother of Petitioner 1 is in need of periodic monitoring.

A copy of the medical document of December 15, 2014 was attached to the petition and marked **P/1**.

6. The Petitioners' request, submitted through Petitioner 4, was received on January 5, 2015 and on January 14, 2015, (see appendices P/2 and P/3 to the petition).
7. As specified below, the examination of the request itself found that the medical condition of the brother of Petitioner 1 and the request as presented did not meet the criteria established with respect to the entry of residents of the Area into Israel for travel to the Gaza Strip to visit an ailing first-degree relative. Moreover, Petitioner 2 is not a first-degree relative of the brother of Petitioner 1 and, thus, does not meet the threshold condition for receiving the requested permit. Therefore, in accordance with the aforementioned policy, it was decided to deny the request.

On January 6, 2015, the Palestinian liaison officials were informed of the denial of the request. In addition, on January 25, 2015, a Civil Administration Public Appeals officer sent Petitioner 4 a letter regarding the decision to deny the request.

A copy of the Public Appeals officer's reply is attached hereto and marked **R/1**.

8. On January 22, 2015, the petition under discussion was submitted.

### **The Normative Infrastructure**

9. The Judea and Samaria Area was declared a closed military zone under the Closed Territories Order (West Bank Area) (No. 34), 5727-1967. Therefore, a resident of the Area who wishes to leave the Area is required to receive a permit from the military commander. This permit is required whether the resident seeks to travel abroad or depart the Area for Israel.
10. A permit for entry into Israel is granted by the Military Commander of the Judea and Samaria Area, in accordance with the provision of Article 3B of the Citizenship and Entry into Israel Law (Temporary Order) 5763 – 2003, for the specific purpose for which entry was requested. The military commander examines requests for entry into Israel for passage to the Gaza Strip, balancing between the resident's needs and the security needs of the State of Israel, and in compliance with the general policy of passage from Israel and the Area to the Gaza Strip.
11. As known, even after the withdrawal of IDF forces from the Gaza Strip, terrorist organizations operating in the Gaza Strip have persisted in their activities against the State of Israel and its residents, *inter alia* through artillery fire towards Israeli territory, terrorist attacks, and attempts to harm civilians and soldiers at the crossings between the Gaza Strip and Israel, along the perimeter fence, and in the territory of the State.

We recall that in June 2007, the Hamas terrorist organization took over the Gaza Strip, following which, on September 19, 2007, the area of the Gaza Strip was declared to be a "hostile entity" by decision of the Ministerial Committee on National Security.

In this regard, the Respondents wish to refer to the statement of Supreme Court President Beinisch in H CJ 9132/07 **Al Basyouni. v. The Prime Minister** (judgment of January 30, 2008) as follows:

22. In conclusion, we reiterate that the Gaza Strip is controlled by a murderous terrorist organization, that works unceasingly to harm the State of Israel and its residents, and violates every possible principle of international law in its violent activities, indiscriminately targeting civilians – men, women and children..."

12. As part of the armed conflict, terrorist organizations are making efforts to establish new extensions of the Gaza terrorist infrastructure in Israel and the Area and to carry out attacks against the State of Israel and its residents. The Israeli government seeks to combat these efforts, *inter alia*, through a policy that restricts movement between the Gaza Strip and Israel and vice versa.

In general, as part of this policy, the passage of residents of the Area to the Gaza Strip by means of entry into Israel will only be permitted **in exceptional humanitarian cases.**

13. This restrictive policy, currently specified in the Coordinator of Government Activities in the Territories' document titled "Policy on Movement of People between the State of Israel and the Gaza Strip", **was reviewed and approved on numerous occasions by the Honorable Court.** See, for example, H CJ 1583/10 **Abu Hamida v. the Military Commander of the West Bank** (published on the Judiciary website on March 25, 2010), in which the petitioner, a resident of the Judea and Samaria Area, requested permission to travel to the Gaza Strip for a set period of time in order to visit her husband. The petition was denied. The judgment determined as follows:

"During the hearing it was clarified that Petitioner 1 intends to visit the Gaza Strip. In this regard, as arises from the State's response, a limited visit of residents of the Judea and Samaria Area to the Gaza Strip is only permitted in exceptional humanitarian cases. Due to the special circumstances that prevail at this time in all that regards the Gaza Strip, the competent authority has decided that travel for family visits will not be permitted other than in exceptional cases. The said policy is based on the government's decision to impose various restrictions on the Gaza Strip and on the movement of people to and from the Gaza Strip. This decision was reviewed in the past by this Court and no cause was found to intervene therein. As such, there is no recourse but to dismiss the petition without a costs order."

See also: H CJ 495/12 **Izzat v. the Minister of Defense** (published in Pador, September 24, 2012); H CJ 5952/12 **Abu Mashayekh v. the Military Commander of the West Bank** (published in Nevo, March 21, 2013); H CJ 2748/12 **Msalam v. the Military Commander of the West Bank** (published on the Judiciary website, April 16, 2012); H CJ 1892/10 **Abu Tradaneh v. the Military Commander of the West Bank** (published on the Judiciary website, August 11, 2010); H CJ 5829/09 **Mansur v. the Military Commander** (published in Nevo, July 30, 2009); H CJ 4906/10 **Sharif v. the Minister of Defense** (published in Nevo, July 7, 2010).

A copy of the document detailing the policy for approving the movement of people between the State of Israel and the Gaza Strip (hereinafter: "**the policy document**") is attached hereto and marked **R/2.**

14. In regard to our matter, the policy document determines that the passage of residents of the Area to the Gaza Strip through Israeli territory will only be permitted for the purpose of visiting **a first degree relative who has a serious disease which is life-threatening or which requires prolonged hospitalization**. The age of the ailing individual is also considered in the framework of the examination of the request.
15. This clear policy was approved by the Honorable Court. In regard to the circumstances of the case before us, we wish to refer to the judgment in HCJ 1912/12 **Aqra' v. the Military Commander of the West Bank** (published in Nevo on June 6, 2012), concerning the request of the petitioner, a resident of the Area, to travel to the Gaza Strip in order to visit his brother who, he claimed, had had a heart attack and underwent cardiac surgery. The petition was rejected. The following was determined in the judgment:

“We did not find cause to intervene in the decision of the military commander. The Respondents' response indicates that the prevailing policy, which stems from the current security-political situation, is to separate between the areas. According to this policy, passage from the Area to the Gaza Strip will be allowed only in exceptional cases involving a humanitarian need. It should be noted that this court has examined this policy in the past and found no justification to intervene therein. In the case at hand, no such need arose at the present time. **This is neither a life threatening illness nor an illness which requires lengthy hospitalization, as required under the above mentioned policy. Therefore, there are no grounds for our intervention in said decision.** (Emphasis added).

### **The Respondents' Position**

16. As aforesaid, in the present case, the Petitioners' request was examined by the competent officials who found that the information submitted regarding the current medical situation of the brother of Petitioner 1 does not indicate that he is in a life threatening situation as a result of the surgery he underwent. In fact, the brother was released from the hospital to his home following his surgery, is not hospitalized at this time, and only needs periodic monitoring. Furthermore, the documents attached to the request do not specify the existence of complications or other factors which indicate a risk that the brother's condition will be aggravated. It must also be noted that the request to visit the brother of Petitioner 1 was submitted approximately two weeks following the surgery or his release from the hospital.

Therefore, despite the understanding of the Petitioners' wish to visit the brother of Petitioner 1, **given the situation at the time the request was filed**, it does not meet the relevant criteria set in Section B of the policy document.

17. It must be noted that **should there be a change in the medical condition of the brother of Petitioner 1**, the Petitioners will be able to submit an appropriate request in the future, **supported by proper medical information**, that will be examined in accordance with the conditions of the prevailing policy, including the relevant criteria, and subject to security screening.
18. It must be reiterated that at the present time, in light of the security situation, passage between Israel and the Gaza Strip is only possible in exceptional humanitarian cases, with an emphasis on urgent medical cases. As afore stated, this restrictive policy was examined by this Honorable Court, which, in a series of cases, did not find cause to intervene in it.
19. In keeping with this policy, the competent officials believe that the medical situation of the brother of Petitioner 1, as presented in the request and the attached medical document, does not presently constitute a “serious illness which is life-threatening or which requires prolonged hospitalization” and, consequently, does not fall within the classification of exceptional cases in which passage will be permitted.
20. Incidentally, it should be noted that an examination of the Respondents’ computer system found that Petitioner 1 [sic] has a wife, six children and three brothers who, according to the data available in the Respondents’ computer system, are all residents of the Gaza Strip. Accordingly, and without belittling the wish of the Petitioners to visit the brother of Petitioner 1, he does not lack other relatives who can support him.
21. **In conclusion**, given all that was specified above, the Respondents will claim that the petition must be dismissed in the absence of cause to intervene in the decision not to approve the entry of the Petitioners’ into the Gaza Strip, and as there is no flaw that may justify intervention in the decision in accordance with existing policy regarding this matter.
22. The facts set forth in this response are supported by the affidavit of Meir Holtz, Assistant Health Coordinator in the Judea and Samaria Civil Administration.

Today, 15 Shvat 5775  
February 4, 2015

[Signed]  
Noam Mola, Adv.  
Assistant to the State Attorney