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

**H CJ 1972/15**

In the matter of:

1. \_\_\_\_\_ **Hadiga, ID No. \_\_\_\_\_**  
Resident of the Palestinian Authority
2. **HaMoked: Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger – RA 580163517**

All represented by counsel, Adv. Nasser Odeh (Lic. No. 68398) and/or 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 Benjamin Agsteribbe (Lic. No. 58088) and/or Abir Jubran-Dakawar (Lic. No. 44346)

Of HaMoked Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger  
4 Abu Obeida St., Jerusalem, 97200  
Tel: 02-6283555; Fax: 02-6276317

**The Petitioners**

v.

1. **Military Commander for the West Bank Area**
2. **Coordinator of Government Activities in the Area**

Represented by the State Attorney's Office, Ministry of Justice  
29 Salah a-Din, 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:

- a. why they should not respond to petitioners' application in view of the urgency of the matter;
- b. why they should not permit petitioner 1 to travel from the Gaza Strip to the West Bank so that she would be able to give birth to her firstborn child in her home with her family in the West Bank.

### **Request for an Urgent Hearing**

The honorable court is requested to schedule an urgent hearing in the petition. Petitioner 1 is eight months pregnant and needs the support of her family and community in the West Bank. Petition 1 is expected to give birth on May 5, 2015, and she wishes to travel to the West Bank to give birth to her firstborn child in her home and in the bosom of her family. The petitioners submitted to the respondents an urgent application in which they requested to permit petitioner 1 to enter the West Bank, but despite the urgency of the matter the respondent has not yet permitted her entry.

In view of the above, the honorable court is requested to schedule an urgent hearing in the petition and at least to direct the respondent to submit his preliminary response without delay, as it may make the hearing in the petition redundant.

### **The Factual Infrastructure**

#### **The Parties**

1. Petitioner 1 (hereinafter: the **petitioner**), born in 1989, is a Palestinian resident of Tulkarm, was born in the West Bank and moved to the Gaza Strip when she was married in 2013, following respondents' policy which forces the West Bank spouse to move to the Strip if he/she wishes to maintain family life with his/her spouse.
2. It should be noted that according to respondents' procedures Gaza Strip residents may neither relocate to the West Bank nor can they change their address from Gaza to the West Bank. Thus, a situation is created whereby a Palestinian spouse from the West Bank who is married to a Palestinian from Gaza, has no alternative but to relocate with her husband to the Gaza Strip, far from her family which continues to live in the West Bank.
3. The petitioner is eight months pregnant and needs the support of her family and community in the West Bank. The petitioner is expected to give birth on May 5, 2015. Naturally, the petitioner wishes to travel from Gaza to the West Bank and give birth to her firstborn child in her home. It should be noted that the petitioner does not get support from her husband's family due to a family dispute, and therefore she needs the support of her mother and sisters in this first childbirth.  
  
A copy of a medical report concerning petitioner's condition is attached and marked **P/1**.
4. It should be noted that petitioner's parents and her six siblings reside in the West Bank.
5. Petitioner 2 (hereinafter: **HaMoked**) is a not-for-profit association which acts for the promotion of human rights in the Occupied Palestinian Territories (OPT).
6. Respondent 1 is the military commander in charge of the West Bank area on behalf of the State of Israel, which holds the West Bank under belligerent occupation for over forty seven years. The respondent is vested with the authority to permit the travelling of Palestinians to and from the Strip.

7. Respondent 2, the coordinator of government activities in the territories, is responsible for the implementation of the policy of the state of Israel in the West Bank and the Gaza Strip, and is in charge, *inter alia*, of the Israeli desk at the Gaza Strip District Coordination Office (DCO).

### **Exhaustion of Remedies**

8. On December 30, 2014, the petitioners submitted to the respondents, through the Palestinian Civil Affairs Committee, an application to travel to the West Bank through Israel, in order to return to her home in the West Bank.
9. On February 11, 2015, HaMoked wrote to the humanitarian desk at the Gaza Strip DCO, noted that the petitioner, a West Bank resident who was staying in the Gaza Strip, wanted to return to her home, and requested the petitioner would be granted an entry permit into Israel for the purpose of travelling from the Gaza Strip to the West Bank.

A copy of HaMoked's letter to the respondents dated February 11, 2015, is attached and marked **P/2**.

10. On February 17, 2015, Senior Staff Sergeant Major Nasser a-din Amar, commander of the Israeli desk and substitute Gaza Strip DCO public liaison officer, notified that after petitioner's application was examined, the competent authorities decided to reject it in view of the fact that it did not meet the criteria, and noted that the petitioner entered Gaza through the Rafah crossing.

A copy of the letter of the substitute Gaza Strip DCO public liaison officer dated February 17, 2015, is attached and marked **P/3**.

11. On March 1, 2015, HaMoked wrote again to the humanitarian desk at the Gaza Strip DCO and requested that the application would be reconsidered. In its letter HaMoked noted that the petitioner was seven months pregnant and needed the support of her mother, family and community in the West Bank, and requested to urgently grant the petitioner an entry permit into Israel for the purpose of travelling to the West Bank, not later than March 10, 2015, otherwise an application to the court would be considered.

A copy of HaMoked's letter to the respondents dated March 1, 2015, is attached and marked **P/4**.

12. On March 9, 2015, a telephone conversation was held between HaMoked representative and Senior Staff Sergeant Major Nasser a-din Amar, commander of the Israeli desk and substitute Gaza Strip DCO public liaison officer, in which the latter notified that the matter was still under review.
13. On March 10, 2015, HaMoked representative turned to the head of civil affairs coordination at the Gaza Strip DCO, Major Tarek Shan'an for the purpose of receiving an answer to petitioner's application. In said conversation Major Tarek notified that the application would be transferred by him for an additional consideration.
14. On March 15, 2015, a telephone conversation was held between HaMoked representative and Senior Staff Sergeant Major Nasser a-din Amar, commander of the Israeli desk and substitute Gaza Strip DCO public liaison officer, in which the latter notified that the matter was still under review.

15. As of this date the new application has not yet been answered, regardless of the urgent circumstances of the matter. Hence, the petitioners had no other alternative but to turn to the court.

## **The Legal Argument**

### **A. Relocation of Palestinians from Gaza to the West Bank in Recent Years**

16. The respondents impose very severe movement restrictions on the travelling of Palestinians between the Gaza Strip and the West Bank. Said restrictions which worsened in recent years, have severe ramifications on the entire Palestinian population which was divided between the two parts of its country - and particularly on families which, for different reasons, were split up between the Gaza Strip and the West Bank, and on Palestinians from the West Bank who got "stuck", against their will, in the Strip, wishing to return to their home.
17. Those Palestinians who wanted to travel from one part of their country to the other, encountered – and encounter – many and different difficulties and obstacles. They are sent from one body to the other for the purpose of submitting their applications to the respondents, who are in charge of the handling of their affairs, which are handled with protracted delays, endless foot dragging, failure to respond, etc.
18. One of the clear consequences of said conduct is that all those Palestinians who entered the Strip and wish to return to their homes in the West Bank, like the petitioner at hand, are distanced away against their will and without any reason from their homes, with no time limit.
19. In the case at hand, the petitioner has no interest or desire to stay in Israel, but rather, only to travel between the two parts of her country, which are geographically divided, with the state of Israel in between.

### **B. Respondents' obligation to respond to applications submitted to them expeditiously**

20. The respondents, like any other administrative authority, are obligated to respond to an application expeditiously as required by law. It is a well known rule that the "obligation to act expeditiously is one of the basic principles of good governance." (I. Zamir, **The Administrative Authority** (Volume B, Nevo, 5756), 717).

And on this issue 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 **Mitrel Ltd. v. Minister of Industry and Commerce**, IsrSc 48(2) 844, 853 (1994);

HCJ 5931/04 **Mazurski v. The State of Israel – Ministry of Education**, IsrSc 59(3) 769, 782 (2004);

HCJ 4212/06 **Avocats Sans Frontiers v. GOC Southern Commend**, TakSC 2006(2) 4751 (2006).

21. It has already been ruled that when human rights were concerned, the concept of a "reasonable time frame" received a special meaning (HCJ 1999/07 **Galon v. The Governmental Commission for the Enquiry of the Events of the Lebanon Campaign 2006**, TaSC 2007(2) 551, 569 (2007));

And that in matters concerning human rights -

A more expeditious regularization of the matter is expected [...] a continued violation of human rights quite often broadens the scope of the injury and may result in the erosion of the right as well as in a severe and continued injury to the individual.

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

And 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).

22. Our case concerns a matter which requires, in particular, an expeditious response. The petitioner wishes to return to her home in the West Bank so that she would be able to give birth to her firstborn child in the bosom of her family, but the respondents procrastinate and fail to give their answer, despite the urgency of the matter.

**C. The violation of petitioner's rights**

(i) Petitioners' right to family life

23. The petitioner wishes to return to her home to the bosom of her family which resides in the West Bank. The petitioner who is in an advanced stage of pregnancy wishes to give birth to her firstborn child in her home near her family which can assist her, support her and take care of her before and after the birth. It is a clear manifestation of a person's close relations with his nuclear family. These special relations between the members of the same family unit are recognized and protected by the law, under the caption 'the right to family life'.

24. The right to family life is a recognized right by both Israeli and international law. Said right is juxtaposed by respondents' obligation to respect the family unit.

25. Regulation 46 of the Hague Regulations, which constitutes international customary law, provides:

Family honor and rights, a person's life, personal property as well as religious faiths and worship customs must be respected.

26. Customary international humanitarian law also emphasizes, in Rule 105 of the Red Cross (ICRC) study, as follows:

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).

And the honorable court has repeatedly held that:

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

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

And 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 Convention 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.

27. The Supreme Court has emphasized time and again the great importance of the right to family life in many judgments, and especially in **Adalah** (HCJ 7052/03 *Adalah v. Minister of Interior*, TakSC 2006(2) 1754).

Thus, for instance, writes the honorable President Barak, 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...

Family relations... underlie Israeli jurisprudence. The family has an essential and central role in the life of the individual and in the life of the society. Family relations, which are protected by the law and which the law seeks to develop, are of the strongest and most meaningful in a person's life.

(ii) Freedom of movement

28. Every person has the right to move freely in his own country. The right to free movement is the main expression of a person's autonomy, the freedom to make his own choices and the realization of his rights and capabilities. The right to free movement constitutes one of the norms of customary international law.

On this matter see:

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

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

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

29. The right to freedom of movement is the engine which drives the entire body of a person's rights, the engine which enables a person to realize his autonomy, his choices. When the freedom of movement is limited, that "engine" is damaged, as a result of which certain opportunities and rights a person has cease to exist. His human dignity is infringed. Hence, the great importance attributed to the freedom of movement.

30. When a person's right to move in the area of the state or authority in which he lives is limited, his social life is injured, his cultural life and human rights are violated, his freedom of choice is impinged. Such a person is limited in the most material aspects of his life: where he shall reside, with whom will he share his life, where will his children study, where he will receive medical treatment, who will be his friends, where will he work, what will be his profession and where will he pray.
31. The right to free movement is also entrenched in international humanitarian law. The fourth Geneva Convention establishes the freedom of movement as a fundamental right of protected persons, either in an occupied territory or in the territory of the occupying state. Article 27 of the Convention provides that protected persons are entitled, in all circumstances, to respect for their persons and their honor.
32. It is also important to take note of Articles 41-43 (which apply to the territory of the state which is involved in a conflict) and Article 78 (which applies to an occupied territory). These Articles concern limitation of freedom, by detention or assigned residence. These are strict measures and they must be used strictly. To teach you, that the right of protected persons to free movement under all other circumstances was of the utmost importance to the member states. Only where there is, in general, an obligation to respect the freedom of movement, it is necessary to establish explicit and strict rules for its restriction:

Article 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 Article 78 of the Fourth Geneva Convention itself which determines that the measures stipulated therein are the measures that the occupying power (i.e., the military commander) may take "at most".

**HCJ 7015/02 Ajuri v. Commander of IDF Forces in the West Bank**, TakSC 2002(3), 1021, page 1027).

33. International human rights law also constitutes a binding source which enshrines the freedom of movement as a basic human right. Article 12(a) of the International Covenant on Civil and Political Rights, which was signed and ratified by Israel provides as follows:

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.

34. The above Article 12 is a binding source. For interpretation purposes see also Article 13 of the Universal Declaration of Human Rights and Article 2 of the fourth Protocol from 1963 of the European Convention on Human Rights.

**(iii) The passage from the West Bank to the Gaza Strip**

35. The Gaza Strip and the West Bank constitute a single legal unit. This is established in military legislation: the Proclamation on the Implementation of the Interim Agreement (Judea and Samaria), (No. 7), 5756-1995, entrenched the Interim Agreement between Israel and the PLO (the "**Oslo Accords**"), which provides – as a basic principle – that the West Bank and the Gaza Strip

constitute two parts of a single territorial unit. This was also established in the judgment rendered by this honorable court (HCJ 7015/02 **Ajuri v. Commander of IDF Forces**, IsrSC 56(6) 352).

Even the changes which took place in the scope of Israel's control over the Gaza Strip following the implementation of the "disengagement plan", did not prejudice said recognition. Indeed, this case concerns two different issues – the issue which pertains to the scope of respondents' obligations towards the civilian population, and the issue which pertains to the fact that said geographical units constitute a single political entity (and indeed, there are cases, throughout history, in which a state the territory of which was divided between different occupying forces, still remained one single state).

36. The scope of Israel's control over the Gaza Strip and the West Bank obligates the petitioner to obtain respondents' permit. Hence, the respondents bear substantial obligations towards her. These obligations were acknowledged by this court in its judgments, and it was stipulated that Israel had special obligations applicable to the residents of the Gaza Strip. As this court ruled:

In the prevailing circumstances, the main obligations imposed on the State of Israel towards the residents of the Gaza Strip derive from the state of belligerency that exists between Israel and the Hamas organization which controls the Gaza Strip; these obligations also derive from the scope of control exercised by the State of Israel over the border crossings between Israel and the Gaza Strip, as well as from the situation which was created between Israel and the territory of the Gaza Strip after the years of Israeli military rule in the territory, as a result of which the Gaza Strip is currently almost completely dependent upon the supply of electricity from Israel.

(HCJ 9132/07 **Al-Bassiouni v. The Prime Minister**, January 30, 2008, paragraph 12 of the judgment).

37. As specified above, respondents' control over the ability to travel between the Gaza Strip and the West Bank imposes obligations towards the petitioner, as was recognized by the judgments of this court. Travelling through Israel from the Gaza Strip to the West Bank is the only way available to the petitioner for the realization of her right to family life and freedom of movement.
38. And note: the petitioner does not wish to stay in Israel, but only to pass through it , due to the circumstances imposed on her by the respondents.
39. The scope of the right of transit is broader than the scope of the right of entry for staying purposes, and therefore, weightier reasons are required to impinge on it.

### **Conclusion**

40. The petitioner has been trying, for several months, to return to her home in the West Bank, with no success. The petitioner wishes to travel from the Gaza Strip to the West Bank to give birth to her firstborn child in her home and in the bosom of her family.
41. The case at hand concerns an urgent matter which requires an immediate response, following petitioner's advanced pregnancy and her desire to give birth to her firstborn child near her mother and sisters. The petitioner wishes to realize her basic right to family life, but the respondents procrastinate and fail to give their answer, despite the urgency of the matter.



42. By delaying their response to petitioners' requests, the respondents breach their obligation to respond within reasonable time and violate petitioner's right to freedom of movement in her own country and the rights the exercise of which is dependent thereon, and first and foremost the right to family life.

This petition is supported by an affidavit which was signed before an attorney in the West Bank and was sent to the undersigned by fax, subject to coordination by phone. The honorable court is requested to accept this affidavit and the power of attorney which was also sent by fax, taking into consideration the objective difficulties involved in a meeting between the petitioner and her legal counsels.

In view of the above, the honorable court is hereby requested to issue an *order nisi* as requested and after hearing respondents' response, make the order absolute. In addition the court is requested to order the respondents to pay petitioners' costs and legal fees.

March 19, 2015

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Nasser Odeh, Advocate  
Counsel to the petitioners