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At the Jerusalem District Court
Sitting as a Court for Administrative Affairs

AP 23735-12-13

In the matter of:

1. _____ **Mushasha, ID No. _____**
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Noa Diamond (Lic. No. 54665), and/or Abir Jubran-Dakawar (Lic. No. 44346) and/or Hava Matras-Irron (Lic. No. 35174) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Bilal Sbihat (Lic. No. 49838) and/or Tal Steiner (Lic. No. 62448)

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.

Appellate Committee for Foreigners

represented by the Jerusalem District Attorney's Office
7 Mahal Street, Jerusalem
Tel: 02-5419555; Fax: 02-5419581

The Respondent

Administrative Petition

The honorable court is hereby requested to order the respondent to continue to extend the validity of the tourist visa held by petitioner 1 (hereinafter: the **petitioner**) prior to the date on which the decision of the Population Authority was given in her matter, for the entire duration of the proceedings in the matter of the petitioner, who has been maintaining a center of life in Israel for over 17 years. Thus, the petitioner, who found herself exposed to health risks and devoid of any valid lawful status following the delayed decision of the Population Authority in her matter, will be able to acquire for herself private medical insurance while maintaining the continuity of her lawful residency in Israel.

At a minimum, the honorable court is hereby requested to order that the period during which the proceeding in petitioner's matter is pending before the respondent, during which she is left without any lawful status in Israel, will be detracted from the period required of her, according to the Population Authority, to reinstate her lawful status in Israel.

The Petition

1. This petition concerns the decision of the Appellate Committee for Foreigners, an arm of the Population Authority and the respondent in this petition, not to grant the petitioner the interim relief which was requested in her matter, namely, to continue to extend the validity of the tourist visa held by her prior to the date on which the decision of Population Authority was given in her matter, until such time as the proceedings pending before it are terminated.
2. The purpose of the interim relief which was requested was to enable the petitioner to acquire for herself private medical insurance and maintain the continuity of her lawful residency in Israel, which was disrupted for no fault of her own.
3. As will be specified in the petition below, after a long battle for the reinstatement of her status as a permanent resident in Israel, a status which the petitioner lost under tragic circumstances, the Inter-Ministerial Advisory Committee for the Determination and Granting Status on Humanitarian Grounds (hereinafter: the **committee**) decided to accept her request. The petitioner was referred to a humanitarian procedure in the commencement of which she was given a B/1 interim residency visa for one year. It was further determined that thereafter the petitioner would be able to submit a request for an A/5 residency visa in Israel.
4. And indeed, after the elapse of one year, the petitioner turned to the Population Authority Bureau (hereinafter: the **bureau**) and requested to upgrade her status. The petitioner advised the Population Authority's employees of the need to make a decision in her matter before her status expired.
5. However, the decision of the Population Authority was delayed and given only after petitioner's status had already expired (hereinafter: the **decision of the Population Authority**). In addition it was held in the decision of the Population Authority, that in view of changes which took place in petitioner's personal life, the humanitarian procedure undertaken by her should be severed, and that *in lieu* thereof, her husband should submit for her a family unification application, while the period during which she stayed lawfully in Israel until that time would be taken into account in the count of days she needed for the purpose of receiving a permanent status. Hence, as a result of a delay which occurred in making the decision in her matter, and despite the fact that there is no dispute regarding petitioner's right to continue to stay in Israel lawfully while maintaining the continuity of her lawful presence therein, the petitioner found herself ousted from the humanitarian procedure undertaken by her, without any lawful status in Israel.
6. It should be noted that in the hearing which was held to the petitioner in the bureau before the decision in her matter was made, the petitioners raised severe arguments before the bureau's employees, who advised them of the intention to transfer her matter to a track different than the one undertaken by her. Hence, it was, *inter alia*, emphasized before the bureau's employees that the petitioner, who had been residing in Israel for seventeen years, embarked on a humanitarian procedure for the reinstatement of her status after her request, which was submitted to the Population Authority about four years earlier, was accepted. In conclusion the petitioners emphasized the danger embedded in the severance of the procedure in petitioner's matter, a procedure in which her status was reinstated gradually independently of others, and in the transfer of the responsibility for handling the matter to her husband, who until recently was married in a bigamous marriage.

7. The petitioners submitted an objection against the delayed decision, in the framework of which the interim relief which was mentioned in the beginning of this petition was requested. However, on November 24, 2013, the respondent decided that it could not grant the petitioner the interim relief requested by her, in view of the fact that it was ostensibly a request for a mandatory injunction. Therefore, the respondent decided not to expel the petitioner from Israel for as long as the proceedings in her matter were pending before it.
8. However, let alone the fact that the interim relief which was granted to the petitioner by the respondent was not requested by her and does not provide a solution for her distress, it does not freeze the existing situation but rather worsens it. The petitioner, who was left with no lawful status in Israel as a result of the fact that the decision of the Population Authority was delayed, cannot, as a result of respondent's decision, which forms part of the same authority and its decision is therefore a decision of the same authority, acquire for herself private medical insurance and maintain the continuity of her lawful presence in Israel which was severed, as aforesaid, for no fault of her own. Hence this petition.

The Parties

9. **The petitioner** was born in Jerusalem. Her application for the reinstatement of her permanent residency status in Israel, which she lost under tragic circumstances, was accepted by the inter-ministerial committee for humanitarian matters in 2012, which held that the petitioner would embark on a graduated procedure for the reinstatement of her status. However, one year after the application was accepted, the inter-ministerial committee severed the graduated procedure undertaken by the petitioner and referred her to another procedure, thus disrupting the continuity of petitioner's lawful presence in Israel.
10. **Petitioner 2** is a registered not-for-profit association which handles, *inter alia*, the matters of residents of East Jerusalem *vis-à-vis* the Israeli authorities, including by protecting their rights before the courts, either in its own name as a public petitioner or as counsel to individuals whose rights were violated.
11. **The respondent**, which forms an integral part of the Population Authority, is the Appellate Committee for Foreigners, which handles applications for the grant of status to spouses of permanent Israeli residents and applications for the grant of status in Israel. The authority of the commissioners of the appellate committee is regulated by procedure 1.5.0002 of the Population Authority "Procedure of the Appellate Committee for Foreigners" (hereinafter: the **procedure**). During the relevant period two chair persons presided over the Jerusalemite committee: the commissioner Advocate Sara Ben Shaul and the commissioner Advocate Zvi Gal.

Petitioner's matter

12. The petitioner was born in Jerusalem in 1964 and received, after and following the annexation of East Jerusalem, a permanent residency status in Israel and was registered in the identification card of her father. Petitioner's mother is a resident of the Area, who was forced to marry, when she was a very young girl, a man dozens of years older than her. The spouses had two daughters and when they were toddlers the mother left the girls and their father and returned to live in the West Bank. Petitioner's father, who could not cope with this new situation and act as a single parent of two toddlers, put his daughters in the orphanage Dar al-Tefal, in Jerusalem.
13. When she was 15 years old she was forced to marry a Jordanian spouse with whom she lived many years. It should be noted that the decision concerning petitioner's relocation to Jordan and her transfer by her relatives to the hands of her husband was solely and exclusively made by others, and the

petitioner herself, who was a 15 years old girl, had no saying in the matter or ability to influence the decision. It should also be noted that from the moment the petitioner set her foot upon the soil of Jordan and until her return to Jerusalem in 1996, the petitioner lived as a prisoner in her home, trapped in cruel and abusive marriage.

14. In 1996, after a tragic incident in which petitioner's husband kicked her in the head and stepped on her in his home at the presence of family members, the petitioner fled to Jerusalem.
15. Upon her return to Jerusalem the petitioner started to rebuild her life. After she lived with her sister for the first few months following her return, the petitioner moved to the home of her childhood, the orphanage Dar al-Tefal, where she worked and slept. Two years after she escaped to Jerusalem, petitioner's husband agreed to divorce her in consideration for money, and she received the divorce decree on August 20, 1998. In 1999 the petitioner met her current husband, Mr. _____ Arafe, who was also married, at the same time, until 2012, to Mrs. _____ Abu Arafe. On April 12, 1999, the petitioner and her husband married and on November 5, 2003, the spouse's son _____, was born. The son, _____, who is ten years old, is a permanent Israeli resident.

Petitioner's struggle to reinstate her status in Israel

16. On March 31, 2004, the petitioner turned to the Population Authority, through Advocate Hazem, and submitted an application for an identification card.
17. On June 1, 2004, a reply was sent by the bureau, according to which the petitioner "is no longer a resident since 1993." The letter also stated that **the petitioner moved her center of life to Jordan and stayed over there for more than seven years**. It should be noted that said letter is the first notice which the bureau has ever given to the petitioner concerning the revocation of her permanent residency status in Israel.
18. On December 12, 2004, the petitioner turned again to respondent's bureau, this time through Advocate Kotini, and submitted an application for the reinstatement of her status. On February 20, 2005, a letter was sent by the bureau to Advocate Kotini, according to which "revocation was made to her [the petitioner] in 1993" in view of the fact that she stayed abroad for more than seven years and did not maintain a nexus to Jerusalem.
19. On January 22, 2006, a petition was filed with the Court for Administrative Affairs by Advocate Kotini against respondent's decision to refuse to reinstate petitioner's residency status (**AP 142/06**). The petition argued, *inter alia*, that the respondent decided to revoke petitioner's status without giving her the opportunity to present her case and be heard. On April 26, 2006, in the context of the hearing which was held in the petition, the parties agreed that a hearing would be held for the petitioner. It was agreed that after the hearing a new decision would be made in her matter. Based on said agreement the petition was deleted.
20. Following the above agreement, a hearing was held for the petitioner on June 13, 2006. However, also after the hearing the petitioner did not receive any decision regarding the reinstatement of her status.
21. In 2009, HaMoked: Center for the Defence of the Individual (HaMoked) assumed upon itself the handling of petitioner's matter. Consequently HaMoked sent five letters to the bureau, the purpose of which was to find out when was the petitioner deleted from the population registry. Said letters have never been answered.

22. Whereas according to the details which were in petitioner's possession, no decision was made in her matter after the hearing which was held for her on June 13, 2006, HaMoked turned again to the bureau on November 16, 2009, with an additional request for the reinstatement of her status.

The request for the reinstatement of petitioner's status dated November 16, 2009, is attached hereto and marked **P/1**.

23. On December 28, 2009, the petitioners were informed that following the hearing dated June 13, 2006, a decision was made on July 31, 2006, according to which petitioner's request was denied. The letter stated, *inter alia*, that the petitioner was deleted from the population registry before 1995. As a reference to the above, a **registration extract dated December 28, 2009**, was attached in which it was registered that the petitioner "ceased being a resident" on July 5, 1993.
24. On February, 11, 2010, an appeal was submitted against respondent's refusal to accept petitioner's request for the reinstatement of her status.
25. On April 26, 2010, and following the submission of the appeal, the bureau informed the petitioners that their matter was transferred to the committee, for its examination of the humanitarian aspect. On May 2, 2010, the respondent informed the petitioners again that petitioner's matter was transferred to the committee.
26. On May 4, 2010, the petitioner was informed that she was summoned for a hearing in the bureau on May 31, 2010. After the hearing and following petitioner 2's inquiries, the bureau notified on July 15, 2010 that petitioner's matter was transferred to the committee, for its decision.
27. On July 27, 2010, and September 14, 2010, petitioner 2 contacted the bureau again and requested to expedite the handling of the request.
28. On October 6, 2010, the head of the central district desk at the Population Authority notified that petitioner's matter would not be brought up before the respondent unless documents were provided which indicated that special humanitarian circumstances existed in her matter. Following said demand petitioner 2 sent again, on November 18, 2010, a letter supported by documents, affidavits and additional arguments, which justify the consideration of petitioner's special humanitarian matter by the committee.
29. On August 1, 2012, as no decision has been given by the respondent in petitioner's request, an appeal was submitted in this matter to the respondent. In the appeal it was argued that in addition to the fact that the mere revocation of petitioner's status was unlawful in view of the fact that she had never severed and had never wanted to sever her permanent connection with Israel and establish her center of life in another country, indeed, respondent's entire conduct in petitioner's matter was inappropriate and lingered over a long period of time, as a result of which the fundamental rights of the petitioner and her family members were directly violated.

A copy of appeal 33/12 and its attachments is attached hereto and marked **P/2**.

30. On January, 30, 2012, following the submission of the appeal the petitioner was notified by the committee that her matter would be brought up before the committee for consideration and decision in February.
31. On March 25, 2012, as no decision has been given by the respondent, the petitioners turned to the respondent again and complained to her of the dawdling in giving a decision in petitioner's matter.

32. On April 25, 2012, as no decision or response to petitioner's request dated March 25, 2012 has been received, the petitioners turned again to the respondent.

33. On May 28, 2012, an updating notice and a request to delete the appeal were submitted to the committee by the Population Authority's counsel. A decision dated May 24, 2012, was attached to the notice, according to which the petitioner would receive a B/1 interim stay permit for one year, upon the expiration of which she would be able to submit a request for an A/5 residency status, and a new decision in her matter would be made based on the data which would be presented at that time.

A copy of the updating notice and the request for deletion including respondents' decision to approve petitioner's undertaking of the humanitarian procedure are attached hereto and marked **P/3**.

34. On August 28, 2012, the petitioner received a B/1 interim stay permit for one year.

A copy of petitioner's passport with the stay permit received by her following the approval of the request stamped in it is attached hereto and marked **P/4**.

35. About a month later, on September 26, 2012, the other wife of petitioner's husband passed away.

Mrs. _____'s death certificate is attached hereto and marked **P/5**.

36. On June 11, 2013, about two months before the end of one year from the date of the committee's decision in petitioner's matter, the petitioners submitted to the committee a request in which the latter was requested to act according to its last year's decision and summon the petition to the bureau for the purpose of upgrading her status and granting her an A/5 interim residency visa.

A copy of the request is attached hereto and marked **P/6**.

37. On July 10, 2013, respondent's reply was received, which summoned the petitioner to the bureau for the purpose of submitting an application for the receipt of an A/5 visa and payment of application fees in the sum of ILS 175. On July 18, 2013, the petitioner personally attended the bureau, submitted a status upgrade application and paid the fees. In addition, on the date on which the petitioner attended the bureau, the petitioners specifically requested the bureau's employees, to expedite the processing of her application so that her status would be upgraded prior to the expiration of her current status, which was about to expire by the end of August, 2013.

Copies of the letter summoning the petitioner to respondent's bureau for the submission of the application and of the receipt for the payment of the application fees for the application which was submitted as aforesaid, are attached hereto and marked **P/7**.

38. Following the submission of the application and payment of the application fees a hearing was scheduled for the petitioner in the bureau for July 29, 2013.

39. In the hearing which was held to the petitioner, the bureau's employees notified her that the death of her husband's other wife and the fact that she consequently became her husband's single wife, opened the door before her husband to submit a family unification application for her. Therefore, the bureau's employees notified the petitioners that they intended to sever the humanitarian procedure undertaken by the petitioner to transfer her matter to her husband's responsibility.

40. It should be noted that on the date of the hearing serious arguments were raised against the intention to transfer the matter of the petitioner, a resident of Jerusalem who has not relinquished her status, has not severed her ties with Israel and has not relocated to another country of her own free will, to another route different from the one already undertaken by her. It was *inter alia* noted that the

petitioner, who has already embarked on the procedure, has been living in Israel for about seventeen years and that the application has already been handled by the Population Authority for about four years. In conclusion the risk embedded in the severance of the procedure in petitioner's case was emphasized before the bureau's employees, a procedure in which her status is reinstated gradually and independently, and in the transfer of the matter to her husband who until recently was engaged in bigamous marriage, hoping that he would not do it again in the future.

A copy of the abbreviated protocol prepared by respondent's employees of the above hearing is attached hereto and marked **P/8**.

41. However, on September 10, 2013, it became evident that petitioners' arguments fell on deaf ears and they received a decision which stated as follows:

I hereby respectfully notify you that the matter of your client was examined by the headquarters of the Population Authority, **according to our following recommendation**: "Now after the death of her husband's first wife, **the door has now been opened before him** to submit a family unification application for him. It was decided that your client would be referred to said procedure, by the conclusion of which she would be entitled, **should she satisfy the conditions, to receive permanent residency status**. We find this procedure to be more appropriate based on our policies concerning the handling of matters of this kind, over the procedure of an inter-ministerial committee which has commenced. Therefore we recommend commencing a family unification procedure, and the period during which she stayed lawfully would be taken into consideration for the purpose of the procedure". **The inter-ministerial decided to accept our recommendation and approve a family unification procedure**. Therefore **your client's husband should submit a family unification application for his wife**.

(the mistakes appear in the original, the emphases were added, B.A.)

The decision is attached hereto and marked **P/9**.

42. On October 9, 2013, the petitioners submitted to the respondent appeal No. 654/13. Along the main remedy requested by the petitioners, namely, the revocation of the decision which severed the humanitarian procedure undertaken by the petitioner, the petitioner requested a interim relief, namely, the extension of the stay permit which was held by the petitioner and expired due to the delay which occurred in making the decision in her matter. As specified above, the delay was not caused by the petitioner, who drew the attention of the different arms of the Population Authority to the matter, but was rather caused by the bureau and the committee.

A copy of appeal 654/13 is attached hereto and marked **P/10**.

43. On that very same day the respondent gave a decision in which the petitioners were requested to clarify whether upon the submission date of the appeal the petitioner was holding any permit or whether a mandatory injunction was requested?

A copy of respondent's decision is attached hereto and marked **P/11**.

44. In view of the repeated requests which were submitted to the bureau and the committee for the renewal of the permit prior to its expiration and the procrastination of the bureau and the committee in making a decision in petitioner's matter, the petitioners clarified to the respondent on October 10, 2013 that prior to the decision in her matter, the petitioner held a stay permit which had been given

to her on August 28, 2012. The petitioners further clarified to the respondent that the decision against which the appeal was submitted indicated that there was no dispute concerning petitioner's right to continue to lawfully stay in Israel, and that it was important to maintain the continuity of her lawful residency in Israel.

Petitioners' clarification dated October 10, 2013 is attached hereto and marked **P/12**.

45. On October 16, 2013, the respondent gave the following decision:

For the response of respondent's counsel - also regarding the question which permit was held by the appellant prior to the submission of the appeal and also on the extension of the permit (not as a interim relief by the chair of the committee) to the extent an extension is concerned – within 14 days.

A copy of the decision dated October 16, 2013 is attached hereto and marked **P/13**.

46. On October 24, 2013, the petitioners turned again to the respondent and complained before it that contrary to its decisions in the appeal, neither the request for the main remedy nor the request for the interim relief have been responded to until that date.

A copy of petitioners' request to the respondent dated October 24, 2013 is attached hereto and marked **P/14**.

47. On that very same the respondent gave an interim decision against which this petition is made. In paragraph 2 of its decision the respondent holds as follows:

Upon the submission of the appeal an interim relief was requested, for the renewal of appellant's stay permit; On October 16, 2013, I ordered respondent's counsel to provide a response on the issue of the renewal of appellants' stay permit – not as a interim relief (in view of the fact that it is a mandatory injunction which the committee is not authorized to issue). No response has been provided by respondent's counsel and now I have before me a request for a interim relief which would prevent the expulsion of the appellant from Israel, until the committee resolves otherwise.

A copy of respondent's decision is attached hereto and marked **P/15**.

48. On that day, and following respondent's decision, the Population Authority's counsel requested from the respondent an extension to respond to petitioners' appeal. In response to said request, and without requesting petitioner's response as is customary, the respondent automatically approved the request for extension on the following day.

A copy of the request for extension, on which respondent's decision is scrawled by hand, is attached hereto and marked **P/16**.

The Normative Framework

49. The Entry into Israel Law provides that a person who is not an Israeli national or an Israeli resident including minors, and does not hold a stay permit by virtue of the law, stays in Israel unlawfully, breaches the provisions of the law and may therefore be deported from Israel.

50. Section 1(b) of the Entry into Israel Law, 5712-1952 (hereinafter: the **Entry into Israel Law**), provides as follows:

The residence in Israel of a person, other than an Israeli national or the holder of an oleh's visa or oleh's certificate, shall be by a stay permit under this Law.

51. Section 12(1) of the Entry into Israel Law, in which offences under the Law are specified, provides that a person who commits an offence under the Law is:

Anyone who either: enters Israel or resides therein contrary to the Law.

Section 13(a) of the Entry into Israel Law provides that:

A person who is not an Israeli national or oleh according to the Law of Return, 5710-1950, and resides in Israel without a stay permit (in this Law – an **illegal alien**), will be deported from Israel as soon as possible unless he has left the country by his own volition beforehand.

Section 13A(b) of the Entry into Israel Law provides that:

An illegal alien will be held in custody until he leaves Israel or until his deportation there-from, unless he was released by bond, bank guarantee or another suitable security (in this chapter: **security**), according to the provisions of this chapter; A person is held to be an illegal alien in Israel if he is unable to present a stay permit without a reasonable explanation.

Section 4(g) of the procedure referred to in section 11 above provides that:

The commissioner may give an interim decision prior to deciding in the appeal on its merits, including an interim decision prohibiting the deportation of an appellant from Israel, for the purpose of maintaining the *status quo*.

The procedure is attached hereto as exhibit **P/17**.

The Legal Argument

52. Petitioners' position is that the respondent, being in fact an arm of the same administrative authority which is responsible for petitioner's condition, should have accepted petitioner's request for a interim relief and extend the stay permit she had in her possession until recently; notwithstanding the fact that the procedure according to which an appeal is submitted and conducted before the respondent is similar to the legal procedure according to which an administrative petition is submitted and conducted; notwithstanding the fact that the response submitted thereto is similar to the response submitted to the court; and notwithstanding the fact that a reasoned decision is given upon the termination of the procedure, similar to a judgment. The respondent constitutes an integral part of the administrative authority being the bureau, the committee or the respondent and therefore, it is incumbent upon it to rectify the situation. Moreover. As will be specified in this petition below, respondent's decision in petitioner's matter leads to a serious deterioration in petitioner's condition.
53. Alternatively the petitioners will argue that even if the respondent was correct in arguing that it was not authorized to issue the order in view of the fact that it was a mandatory injunction, indeed, the honorable court is authorized to do so, in view of the fact that there is no fault on petitioner's behalf, who is not responsible for the delayed decision of the Population Authority in her matter, and whose condition is aggravated as a result of the failure to give her the interim relief, in view of the fact that the continuity of her lawful presence in Israel is severed and she is exposed to different risks without any justification.

The status of the appellate committee

54. Some authorities of the Minister of Interior, including those which concern the handling of appeals against decisions to deny applications for the registration of children according to regulation 12 of the Entry into Israel Regulations, were delegated to the respondent by notice in the Official Announcements and Advertisements Gazette 5870 page 439.
55. Consequently, procedure 1.5.0001 (as updated on October 6, 20011) was established for the appellate committee for foreigners at the Ministry of Interior – Jerusalem and Tel Aviv Districts, which regulates respondent's work. The procedure provides that the respondent will discuss, *inter alia*, cases concerning registration of children only one of whose parents is a permanent resident and cases in which no response is provided by the Population Authority. In addition the procedure explicitly provides that:

Filing an appeal with the appellate committee for foreigners against a decision of an office holder of the Population and Immigration Authority is a necessary step in the exhaustion of administrative remedies prior to the filing of a petition with the competent court.

Procedure No. 1.5.0001 is published in the link: <http://www.piba.gov.il/Regulations/1.5.0001.pdf>

56. The competent courts do not accept petitions unless all remedies before the respondent were exhausted, and to the extent a petition is filed in any of the above matters, which was not firstly brought before the committee, it is dismissed *in limine*. See on this issue for instance, AP (Jerusalem) 8986/08 **Taha v. Minister of Interior** (February 16, 2009).
57. Hence, the administrative authority established a body, which constitutes an additional necessary step for exhaustion of remedies, beyond the already laborious procedure before it, including the appeal procedures. In view of the protracted proceedings which the applicants must take even before they reach the stage in which an appeal is submitted to the respondent, and in view of the fact that the possibility to turn to court, to the extent necessary, was pushed forward, a short 90 day period was established for respondent's decision.
58. However, regretfully, the administrative authority is far from meeting the schedules established by it in the appellate committee procedure. Consequently, the decision in the dispute and the applicants' ability to have their day in court is delayed, in many cases by a year and even more. See for instance AP (Jerusalem) 54853-01-13 _____ **Sirhan v. Minister of Interior** (May 21, 2013) and AP (Jerusalem) 294-10 **Salem v. Minister of Interior** (reported in Nevo).
59. Hence, applicants' right to receive a response to their applications from the respondent within reasonable time, and to the extent such a response is not given, to have their day in court, is considerably delayed as a matter of routine.
60. Needless to say that under these circumstances, respondent's exercise of the authority conferred on it in section 4(g) of the procedure attached above as exhibit **P/15**, to give at least an interim remedy, which will secure the lawful presence of the applicants in Israel and will maintain the *status quo* while awaiting respondent's decision, is even more so important.
61. However, notwithstanding the long delay which occurred in applicant's matter as described above – as a result of which she was, *inter alia*, left with no lawful status in Israel – and despite the fact that the respondent was aware of the fact that it would not discuss petitioner's matter within the time frame prescribed in the procedure, the respondent refuses to enforce on the Population Authority bureau, the other arm of the same authority of which it constitutes a part of as well, the exercise of the law

concerning the grant of temporary residency status, in view of respondent's position that despite the fact that the situation is in the entire responsibility of the authority of which it constitutes a part of, the application concerns a mandatory injunction which is not under its authority.

62. This means that the respondent, which does not fulfill its duty and fails to meet the time frame prescribed for making decisions in the substantial issues submitted to it, now refuses to fulfill its duty even with respect to the remedies which require immediate attention, which it regards as mandatory injunctions without the realm of its authority. As a result of respondent's decision, the petitioners, who wish to maintain a continuous lawful presence of the petitioner in Israel, are left with no alternative but to turn to the court.

Erroneous denial of petitioners' request for an interim order

63. As stated above, petitioners' position concerning the decision in the interim order is clear. The respondent was both authorized and obligated to give the petitioner at hand an interim order, directing the Population Authority to extend the stay permit held by her prior to the delayed decision of the Population Authority in her matter for the following reasons:

- a. As aforesaid, the petitioners turned several times – orally and in writing – ahead of time, both to the Population Authority bureau and to the committee, and requested to expedite the handling of petitioner's matter concerning the regulation of her status in Israel, before the status held by her expired.
- b. For reasons entirely derived from the Population Authority, its decision in the matter of the petitioner, who acted properly, was delayed until after the status which was held by her expired on August 28, 2013.
- c. Immediately after the decision was made, the petitioners quickly submitted to the respondent an appeal, in the framework of which they requested the interim relief due to the denial of which this petition was filed.

It is therefore inconceivable that the same administrative authority which in its capacities as the Population Authority and as the committee is responsible for the severance of the humanitarian procedure undertaken by the petitioner and the continuity of her lawful presence in Israel, would argue, in retrospect, in its other capacity as the respondent, that the application which was submitted to it was an application for a mandatory injunction.

64. Particularly when the same Population Authority admits, between the lines of the decision against which the appeal was submitted, that it acknowledges the importance of maintaining the continuity of petitioner's lawful presence in Israel.

The decision in the application for an interim order aggravated petitioner's condition

65. Moreover. Other than the lack of fundamental fairness which arises from the above referenced decisions, one of which is directly responsible for the severance of the continuity of petitioner's lawful presence in Israel and for her removal from the humanitarian procedure undertaken by her, and the other denied her request for interim relief, arguing that the request concerned an interim injunction, we are concerned with a decision which harms the petitioner and considerably aggravates her condition in two ways.
66. Respondent's decision aggravates petitioner's condition firstly in that the period during which the proceedings are pending before it – a period which, as aforesaid, lingers over many months – and during which the petitioner has no lawful status as a result of the authority's decisions, will be

detracted from the number of days that the petitioner is required to lawfully stay in Israel as a condition for the reinstatement of her status. Accordingly, *albeit* the fact that the petitioner has been maintaining a center of life in Israel for more than 17 years, her matter may be postponed for an additional identical period – for no reason and unjustifiably.

67. In addition, respondent's decision harms the petitioner in that contrary to the situation which existed prior to the expiration of her status in which the petitioner could acquire for herself private medical insurance, currently, as a result of the fact that she became, against her will and due to the authority's conduct, an illegal alien in Israel for no fault of her own, she is precluded from doing so.

Petitioner's exceptional matter justifies an interim relief and even a mandatory injunction

68. Moreover. Even if the respondent is correct in arguing that it is not authorized to issue the requested interim relief since it is ostensibly a mandatory injunction – an argument which is totally rejected by the petitioners – indeed, the honorable court is authorized to give the petitioner the interim relief. In the judgment given in LAA 10948/08 ____ **Croant v. Ministry of Interior** (reported in Nevo) the Supreme Court held as follows:

The rule is that a mandatory injunction is not given as a matter of routine, but where it is justified the rule may be deviated from [...] and indeed there were cases to which the exception applied and in which an interim order which constituted a mandatory injunction was given... the case at hand is one of these exceptional cases.

69. In another earlier judgment given in LAA 4026/08 **Ministry of Interior v. Kanchi Jagadesh** (reported in Nevo), the court denied an Application for Leave to Appeal submitted by the Ministry of Interior against the decision of the court of first instance to give the respondent an interim order which constituted a mandatory injunction due to an ostensible lack of fault on his behalf.
70. From the general to the particular. As aforesaid, the petitioner at hand did nothing wrong. She applied to the Population Authority bureau and to the committee ahead of time, time and time again, and requested them to give a decision in her matter expeditiously before the expiration of the status held by her, on August 28, 2013. However, following the procrastination of the authority in making the decision, for reasons which have nothing to do with the petitioner, an unbearable injury was inflicted on the petitioner, who found herself, again, for no fault of her own, with no lawful status in Israel.
71. It should be further noted that the damage is not theoretical but is rather substantial. From the moment the decision was given the petitioner was instantaneously deprived of lawful status in Israel, against her will. Consequently, the continuity of her lawful presence in Israel was severed with all ensuing ramifications, as described above, and in addition, she is unable to acquire for herself medical insurance, not even privately.
72. Hence, the damage caused to the petitioner by the delayed decision and by the failure to give her the interim relief is not a theoretical damage but rather a substantial and material one. In view of the lack of fault on petitioner's behalf, the entire responsibility for whose condition lies on the different arms of the Population Authority, and in view of the humanitarian backdrop and the impossible situation in which the petitioner found herself, there is no doubt that her matter is indeed one of the exceptional cases in which the issue of an interim order is justified even if it is ostensibly a mandatory injunction.

Conclusion

73. The above indicates that the petitioner, who did nothing wrong and who was seriously and severely harmed, is entitled in either case to be granted by the honorable court the interim relief sought by her.

The respondent has regretfully disregarded in its decision the fact that the authority to which it belongs is the one which is responsible for the severance of the continuity of petitioner's lawful residency in Israel, and therefore, also for turning the application into an application for an ostensible mandatory injunction. In so doing the respondent abandoned the petitioner to her fate and deprived her of the defense entrenched for her benefit in the law – as well as in the decision of Population Authority which as aforesaid, implicitly recognized the importance of maintaining the continuity of petitioner's lawful residence in Israel.

74. **In view of the above, the honorable court is hereby requested to order as requested in the beginning of this petition. In addition the honorable court is requested to order the respondent to pay petitioners' costs and legal fees.**

Jerusalem, December 11, 2013

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[File No. 61517]