HCJ 1193/15

At the Supreme Court
Sitting as the High Court of Justice

In the matter of:

1. **_____ Ziyadah, ID No. _____**
2. **_____ Ziyadah, ID No. _____**
3. **_____ Ziyadah (minor), ID No. _____**
4. **_____ Ziyadah (minor), ID No. _____**
5. **_____ Ziyadah (minor), ID No. _____**
6. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA 580163517**

all represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Sigi Ben-Ari (Lic. No. 37566) 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 (Lic. No. 51583) and/or Abir Joubran-Dakwar (Lic. No. 44346) and/or Nasser Odeh (Lic. No. 68398)

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. **Minister of Interior**
2. **The Committee for Special Humanitarian Affairs**

All represented by the State Attorney's Office
29 Salah-a-Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6466713

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 should not arrange the status of petitioner 1 in Israel, and register her with the population registry as a temporary resident in Israel.

2. Why they should not act according to the procedure and law applicable to them, and particularly according to the provisions pertaining to the time frame within which they should provide response to applicants who apply to the for humanitarian reasons.

According to the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 (hereinafter: the **Temporary Order**), the Minister of Interior will make a decision in a humanitarian application: "within six months from the date on which all required documents were provided to the committee; the decision of the minister will be reasoned."

However, despite the fact that more than one year has passed since the application was submitted, and regardless of the provisions of the Temporary Order and the requirements of the law, to date no decision has yet been made in the matter of petitioner 1.

The parties to the petition

1. **Petitioner 1** (hereinafter: the **petitioner** or **petitioner 1**), originally a resident of the Occupied Palestinian Territories (OPT) is married to petitioner 2, a permanent Israeli resident, who suffers from Multiple Sclerosis (MS) and is confined to a wheel chair. Since her marriage the petitioner has been living in Jerusalem by virtue of renewable stay permits.

2. **Petitioners 3-5** are the children of petitioners 1-2.

3. **Petitioner 6** is a not-for-profit association which has taken upon itself to assist victims of abuse and deprivation by state authorities, including, *inter alia*, by protecting their rights before the courts either in its own name as a public petitioner or by representing individuals whose rights were injured.

4. **Respondent 1** (hereinafter: **respondent 1** and together with respondent 2: the **respondents**) is the Minister empowered under the Entry into Israel Law, 5712-1952, to handle all matters arising from said law, including family unification applications and applications for the arrangement of the status of children submitted by permanent residents of Israel, residents of East Jerusalem.

5. **Respondent 2** (hereinafter: **respondent 2** and together with respondent 1: the **respondents**) is the humanitarian committee, which was established pursuant to section 3A1 of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003.

The Main Facts

6. The petitioner, originally a resident of the Occupied Palestinian Territories (OPT), was born in 1975. Several months after she was born, it became evident that the petitioner was struck with polio. As a result of the disease her right leg did not develop and the petitioner had to undergo two surgeries the purpose of which was to improve the quality of her life. In the framework of these surgeries, the last of which was carried out in 1997, a platinum implant was put in petitioner's leg.

7. On February 3, 2001, the petitioner married petitioner 2. A few years before petitioners 1-2 were married, petitioner 2 was diagnosed with Multiple Sclerosis (MS). Petitioner 2 is recognized as a disabled person by the National Insurance Institute (hereinafter: **NII**), who is entitled to special services pension at the rate of 105%. It should also be emphasized that over the years petitioner 2's condition has gradually deteriorated and to date he is almost completely homebound.

   Copies of documents attesting to petitioner 2's condition are attached and marked **P/1**.

8. During their marriage petitioners 1-2 had three children. Petitioner 3, _____, was born to her parents in Jerusalem on July 17, 2003; petitioner 4, _____, was born in Jerusalem on October 6,

2005, and petitioner 5, _____, was born in Jerusalem on May 2, 2009. Petitioners 3-5 are registered, like their father, petitioner 2, as permanent residents in the population registry.

A copy of petitioner 2's identification card is attached and marked **P/2**.

9. On January 1, 2002, petitioners 1-2 submitted in the East Jerusalem office of respondent 1 a family unification application for petitioner 1.

A confirmation regarding the submission of the application is attached and marked **P/3**.

10. On June 5, 2002, a letter on respondent's behalf was sent to petitioners 1-2, which informed them that their family unification application was not approved.

A copy of said letter is attached and marked **P/4**.

11. On June 16, 2003, petitioner 6 wrote to respondent 1's office and requested that petitioners 1-2's family unification application be handled and on January 20, 2004, a letter from respondent 1's office was received which informed that the handling of the application would continue.

Copies of the letter which was sent to respondent 1's office and the reply thereto are attached and marked **P/5 A-B** respectively.

12. On November 30, 2004, a hearing was held for petitioner 1 in respondent 1's office. In view of the severe condition of petitioner 2, respondent 1 agreed that the hearing would be held for petitioner 1 in the absence of petitioner 2, together with an attorney on behalf of petitioner 6.

13. In a telephone conversation dated December 12, 2004, petitioners 1-2 were told that their family unification application was approved, and indeed, on December 20, 2004, petitioner 1 obtained the first referral for the issue of stay permits in Israel.

A copy of the first referral received by petitioner 1 from respondent 1 is attached and marked **P/6**.

14. Until now, ever since, petitioner 1 has been receiving renewable stay permits.

15. On February 9, 2014, an application for the upgrade of petitioner 1's status was submitted for humanitarian reasons, in view of a severe deterioration in petitioner 2's condition, whose illness became more aggressive over the years. To date, petitioner 2 is homebound and needs substantial assistance in all daily activities, including the simplest ones. Petitioner 2's body, which fails to function altogether, gradually degenerates, and currently he cannot even hold light objects in his hands. Due to his poor health, petitioner 1 needs help with eating and drinking, going to the bathroom, washing, moving from bed to his chair and *vise versa*, etc. Petition 1 is the one who assists him with the execution of said actions, she is the one who nurses him and she is the one who stays by his side almost twenty four hours a day.

16. However, petitioner 1, who treats with great devotion petitioner 2, a chronic care patient, also functions as a mother of three young children. Petitioner 1, who provides nursing care to her husband and acts as a mother of three young children, functions as the head of the family and as a single parent and in fact she holds the reins in the house. Thus, among other things, petitioner 1 is responsible for all house chores and for the family's livelihood, the children's education and health, she accompanies the family members to school, medical appointments and different institutions. In addition, petitioner 1 is the one who applies on behalf of the family members whenever required to institutions and authorities in the state of Israel. However, in the framework of her above roles petitioner 1 is often encumbered by unnecessary difficulties, and she is even denied access to certain official institutions.

In addition, petitioner 1 who holds stay permits only cannot freely and reasonably travel with her children, permanent residents, from Israel to the West Bank, where her parents live, and can pass through the checkpoints designated for residents of the Area only. As is well known the use of such checkpoints, staying and waiting therein actually constitute a nightmare. In view of the limitations imposed on petitioner 1's passage and to save her young children the distress involved in the passage through said checkpoints, petitioner 1 often refrains from visiting her family and parents with her children. Accordingly, despite the fact that the physical distance between petitioners' home in Jerusalem and her parents' home in the Hebron district is not long, the grandchildren do not get to see their grandparents of their mother's side on a regular and constant basis. In addition, and as a result of said limitation, when petitioner 1 visits her parents she is forced to leave her husband and children for a long time under the care and responsibility of others. Hence, as a result of the injury inflicted on the freedom of movement of petitioner 1, who is the central pillar of her family on whom they all depend, their rights are also being directly injured.

17. In addition, in view of the fact that petitioner 1 is a resident of the Area as this term is defined in the Temporary Order, she is also denied, as is known, of any social right. Consequently, in view of the fact that she is the only one who takes care of her husband and functions as a single parent of her children, then, in addition to her own exposure to risks and hazards should her ability to function be harmed, there is a concrete concern that the entire family will be severely injured, since should any harm be inflicted on her, not only that petitioners 2-5 would be obligated to treat her and finance such treatment, but rather, there is no one who can assume her position or who may, alternatively, finance the treatment of petitioner 2 and his children, finance the maintenance and cleaning of the house, the education and other needs of the children, matters which were attended to by petitioner 1 throughout the years.

18. Therefore, the grant of an A/5 temporary residency status to petitioner 1, who carries such a heavy burden and heads her family, is a fair a proportionate solution for the family's distress, a solution which, as will be further clarified in this petition below, does not impinge on the security purpose underlying the Temporary Order.

    A copy of the application which was submitted for petitioner 1 to respondent 2 on February 9, 2014 is attached and marked **P/7**.

19. On February 19, 2014, respondent 2's secretariat notified the petitioners that their application had been received in its office and that once the application was brought up for consideration and a decision was made therein, it would inform the petitioners of its status.

    A copy of the notice sent by respondent 2's secretariat to the petitioners is attached and marked **P/8**.

20. On March 10, 2014, May 25, 2014, June 26, 2014, September 2, 2014, October 2, 2014, November 11, 2014, December 14, 2014 and January 18, 2015, the petitioners turned to respondent 2 in an attempt to understand the status of their application. However, until the date of this petition no decision of respondent 2 in their matter has been received by the petitioners.

    Copies of petitioners' letters to respondent 2 in the above referenced matter are attached and marked **P/9 A-J**, respectively.

The legal framework

21. The Temporary Order provides in section 3A1 thereof as follows:

> Notwithstanding the provisions of section 2, the Minister of Interior may for special humanitarian reasons, upon the recommendation of a professional committee appointed for this purpose (in this section: the committee) –
>
> (1) grant **temporary stay permit** Israel to a resident of the Area or to a citizen or to a resident of a country listed in the schedule, **whose family member lawfully resides in Israel**…
>
> (D) The Minister of Interior shall make a decision, in writing, whether to grant a permit or to approve an application, as the case may be, as aforesaid in subsection (a), **within six months from the date on which all required documents were produced to the committee**; the Minister's decision shall be reasoned.

22. The fact that an explicit statutory provision exists, which guides respondents' discretion in matters of applicants with humanitarian circumstances, and which, in addition, establishes the schedule within which a decision in such applications should be made, turns the long procrastination in responding to petitioner 1's application to much more severe and scandalous.

The respondent acts contrary to applicable law and procedure

23. It should be emphasized that in addition to the provisions of the law respondent 1 published a procedure which regulates respondent 2's actions. According to the procedure, respondent 2 must convene twice a month (section 3.1 of the procedure) and put its recommendations and reasons in writing in a precise and detailed manner (section 10 of the procedure). In addition the procedure provides in section 4.3 that to the extent it is found that the application has special humanitarian grounds, respondent 2's coordinator will send the applicant a request for the submission of a *curriculum vitae*. Once the *curriculum vitae* is received a hearing will be held in respondent 1's office and at the same time a security check will be conducted.

    A copy of respondent 1's procedure 1.14.0001 is attached and marked **P/10**.

24. However, respondent 2 does not meet the rules outlined for it in the procedure and many of the applications submitted to it do not receive any response for a long time. These flaws in the committee's work have already been placed on the agenda (in an expedited discussion) of the Internal Affairs and Environment Committee on October 25, 2010. In a discussion held by the committee, in the participation of Mr. Amos Arbel, director of respondent 1's registration and status department, protracted proceedings and foot dragging by the committee were not denied:

> Chairperson David Azulay:
>
> A person applies to the humanitarian committee, a discussion is held. How long does he have to wait from the date on which he applied until he receives a positive or negative answer?
>
> Amos Arbel:

If the case is simple 3-4 months can pass and then we conclude the matter and he receives a negative answer because there are only spousal relations and there is no humanitarian aspect. **In the more complicated cases it may also take us 9 and 10 months.**

Chairperson David Azulay:

Amos, does this time frame seem reasonable to you? Such a long time to receive an answer? And right now I do not refer to the content of the answer but only to a mere answer.

Amos Arbel:

The committee works under heavy loads. The chair of the committee hardly arrives to twice a week of the committee, of work in her free time, her personal time. It should be remembered that all members of the committee hold other positions in addition to their being members of the committee. **On the same day to convene all five members of the committee, to coordinate the schedules, free themselves from their other positions and arrive…**

We know that we are heavily burdened. We are somewhat behind.

(…)

Amos Arbel:

By the way, we presented all data before any forum which requested us to do so. We gave all data to the assistant of the Attorney General and also to the State Attorney's Office in preparation for the extension of the Temporary Order including in preparation for the current discussion in the Knesset regarding the extension of the Temporary Order, and also a year ago and so forth. We presented all data before any official in the state of Israel who requested the information.

As of last week the data are as follows and if you wish I will thereafter give you the document with the entire figures. In total 770 applications were submitted ever since the committee commenced operations. 290 applications were discussed, 157 applications were denied, 45 were approved for this status or another respectively, and an additional part – 72 applications are in process. In process it is highly likely that the application was approved but is still awaiting an Israel Security Agency (ASA) approval. Usually these ISA approvals concern security evaluation. By the way, here too it is not a simple stage which postpones the decision and the provision of a formal answer to the applicant, because the person who receives a positive answer must complete a curriculum vitae form which is a long form, which is also exhausting. It a form which holds about 30 pages in which one must specify the entire details of his family members, and of the sponsoring party and of the sponsored party. It is transferred to a serious, security ISA evaluation as required by their work and accordingly it also takes a long time until an answer is received.

(…)
Taleb A-Sanaa:

You see that out of 770 applications only 290 were discussed. It is less than 50%. Is it reasonable?

Amos Arbel:

What is "**reasonable**"? Nobody does there because it is an exceptions humanitarian committee etc. (*sic* in the original, B.A.)

(Excerpts taken from the protocol of the discussion. Emphases added, B.A.).

In view of its importance, the entire protocol is attached and marked **P/11**.

25. As the discussion in the Knesset committee continued, the representative of petitioner 6 who attended the meeting commented that the vast majority of the applications submitted to respondent 2 are not answered, as a result of which the need arises to petition the High Court of Justice. At the conclusion of the meeting, the chair of the committee emphasized the importance of the proper operation of the committee. Additionally, the chair of the committee also stated that the Internal Affairs and Environment Committee:

    a. Shall request the Head of the Population Administration to assign additional manpower to reinforce the exceptions committee until the backlog in the review of the files referred to the committee is closed.

    b. Demand that the exceptions committee act in accordance with the procedure by which it is bound.

    c. **Insist that applicants receive responses within six months, as required by the procedure**.

    A copy of the press release, summarizing the meeting dated October 25, 2010, and the resolutions adopted therein is attached and marked P/12.

26. However, even after the elapse of four years from the date on which respondent's conduct was discussed by the Knesset's committee, the conduct has not changed, and until these very days is known for its severe foot dragging. The respondent does not comply with the rules set for it in law and procedure. It does not provide response to its applicants within the timeframe by which it is bound and life goes on as usual.

27. As has been clarified in the beginning of the legal chapter, the law and procedure applicable to the matter of OPT residents having humanitarian circumstances guide in the respondents in their actions. The above matter of petitioner 1 is not an exceptional and complex case which requires documents, evidence and testimonies. **It is a family whose severe condition is well known to the respondent for many years**.

28. By respondents' severe foot dragging in petitioner 1's matter, they violate the law and even their own procedures. In addition, it is important to understand that due to their procrastination in giving a decision in the matter of petitioner 1 and in the matters of additional applicants with humanitarian circumstances in her status and condition "the respondents deny remedy from individuals who need it".

29. The failure to respond to applications such as petitioner 1's application is an unacceptable phenomenon. Beyond violating the principles of good governance, it violates material rights. It forces the applicant to take legal action as a condition for exercising his fundamental rights. The court

should exercise judicial scrutiny over the decisions of the respondent and their grounds. This is an unacceptable situation - where only petitions to the court yield responses to applications and where a person who cannot obtain legal representation and raise the required resources – his rights are crushed:

> The obligation of the court is to ensure that the principle of service is well rooted and is complied with by state authorities. This principle obligates the court to prevent unnecessary delays in proceedings at the expense of those who receive the service. This principle requires that applications made by individuals are taken seriously, abuse is prevented, values of equality are assimilated and privileges afforded to parties having governmental or other power are uprooted. The rights of 25 the individual are not exhausted by festive declarations. The rights of the individual are a daily matter. If these rights are not upheld in practice, they will soon turn into empty words that are thrown around, creating a passing illusion of honored rights which fades away due to unsurmountable bureaucratic obstacles placed every step of the way. (Remarks of Honorable Judge Okon in AP (Jerusalem) 769/04 **Amina v. Ministry of Interior**).

30. The respondents are obligated to handle petitioners' case fairly, reasonably and expeditiously. This is so in general, this is so in humanitarian cases such as the case at hand and this is particularly so when specific provisions of law and procedure impose upon the respondents a fixed timetable.

31. Even beyond the specific provisions of the law, the obligation to act within a reasonable timeframe and not to neglect and delay the processing of applications pending before the authority, is one of the basic principles of good governance. An administration that neglects applications, ignores them and allows them to be forgotten on the shelf – is a poor administration, an administration estranged from the population which it should serve. See on this issue CA 4809/91 **Local Planning and Building Committee Jerusalem v. Kahati et al**., IsrSC 48(2) 190, 219.

Lack of reasonableness and fairness

32. In addition to the above, the conduct of the respondents who have been dragging their feet for so long in making a decision in petitioner 1's matter is also unreasonable and unfair. The court has already held long ago that in the framework of the procedure for obtaining status the respondent and his clerks must show sensitivity and abstain from creating difficulties that could turn into a "hopeless journey of attrition" (HCJ 7139/02 **Abas-Basa v. Minister of Interior**, IsrSC 57(3) 481, 489). In procedures for obtaining status in Israel the respondent should act with sensitivity and care:

> It is important to remember that each one of the applicants submitting an application for status in Israel to the respondent constitutes an entire world of his own and that any decision made in his regard – by the respondent or any other authority on its behalf – may have a devastating and dramatic effect on the life, dignity and other rights of the applicant. Consequently, it is imperative that any application for status in Israel submitted to the respondent is handled by the respondent and those acting on its behalf, with sensitivity and care… (HCJ 394/99 **Maximov v. Ministry of Interior**, IsrSC 58(1) 919, 934-935).

33. We would also like to remind that in exercising his discretion, the respondent should also take into account humanitarian considerations. In HCJ 794/98 **Sheikh Abd al-Karim Obeid v. Minister of Defense**, IsrSC 55(5), 769 pages 773-774, President Barak held as follows:

> The State of Israel is a state of law; The State of Israel is a democracy which respects human rights and seriously weighs humanitarian considerations. We

> make these considerations because compassion and humanity constitute an integral part of our nature as a Jewish and democratic state; we make these considerations because the dignity of each person is valuable to us, even if he is our enemy (compare HCJ 320/80 **Qawasmeh v. Minister of Defense**, IsrSC 35(3), page 113, 132).

Violation of the right to family life and disregard of the principle of the child's best interest

34. In addition, respondents' conduct in processing petitioner 1's matter also impinges on her young children, petitioners 3-5 in view of the fact that petitioner 1's children are totally dependent on their mother and any impingement on her freedom of movement directly affects their condition. Under these circumstances, it is impossible to lead normal family life. As described in the factual part, the children, as well as petitioner 2, are completely dependent on their mother. She is the one who takes care of them and provides for all their needs. She is the one who nurses petitioner 2, and she is the one who takes the children wherever they have to go. Therefore, any restriction imposed on petitioner 1 has direct ramifications on her children and husband, petitioners 2-5. It should be emphasized that a temporary residency status which would have enabled petitioner 1 to receive social rights and greater freedom of movement, would have solved the distress of petitioners' family in a manner which reconciles with the security purpose of the Temporary Order, in view of the fact that petitioner 1, who has been lawfully residing in Israel for over a decade, undergoes individual security examinations on an annual basis, examinations which she would continue to undergo even if her application for temporary status in Israel is approved. Relevant to the matter at hand are the words of this honorable court in AAA 6407/11

> Under these circumstances, it seems that the provision regarding the stay of status upgrade of individuals, who fall under the transitional provisions, is no longer necessary in view of the security purpose of the Temporary Order Law – a purpose which was emphasized by this court when it examined the constitutionality thereof. **Firstly, as far as the latter are concerned, not only that an individual examination may be conducted, but rather, such an examination is actually conducted once annually upon the renewal of the permit. Secondly, these individuals were subordinated, for over a decade, to the examination of the security agencies, in view of the fact that permits are renewed only in the absence of security preclusion. Thirdly, even after a person's status in Israel is upgraded – from residency under a DCO permit to residency under an A/5 temporary residency visa (and this is the category with which we are concerned) – he continues to be subordinated to security examination, in view of the provisions set forth in respondent's procedures within the framework of the graduated procedure**. (paragraph 19 of the judgment of the honorable Justice Vogelman).

35. Substantially, then, petitioner 1 satisfies all three reasons specified by the honorable court in its judgment which justify status upgrade of OPT residents who have been residing in Israel for so many years. In addition, there seems to be no reason not to accept the application and apply such fair and proportionate solution, which even reconciles with the security objective of the Temporary Order. However, the respondents are not in a hurry and they continue to delay their decision in petitioner 1's application, while causing a severe injury not only to her but also to her family unit and the principle of the child's best interest, two values which are given heightened protection in our jurisprudence.

Right to family life

36. Israeli jurisprudence regards the value of proper family life as a central and fundamental value which should be protected by society:

> […] protection for the integrity of the family constitutes part of public policy in Israel. The family unit is the 'primary unit… of human society' (Justice Cheshin in CA 238/53 **Cohen v. Attorney General**); It is 'an institution recognized by society as one of the foundations of social life' (President Olshan in CA 337/62 **Rizenfeld v. Yaakobson**). Protection for the family institution is part of public policy in Israel. Furthermore: within the framework of the family unit, protecting the institution of marriage is a central social value, which constitutes part of public policy in Israel.
>
> (Honorable Justice Barak, as then titled, HCJ 693/91 **Efrat v. Head of Population Registry at the Ministry of Interior**, IsrSC 47(1) 749, 783).

On this issue see also:

CA 238/53 **Cohen v. Attorney General**, IsrSC 8(4) 35; HCJ 488/77 **A. v. Attorney General**, ISrSC 32(3) 421, 434; CA 451/88 **A. v. State of Israel**, IsrSC 49(1) 330, 337; CFH 2401/95 **Nachmani v. Nachmani**, IsrSC 50(4) 661, 683; HCJ 979/99 **Pavaloaya Carlo v. Minister of Interior**, TakSC 99 (3) 108.

37. The right to family life is regarded as a natural constitutional right. In HCJ 3648/97 **Stamka v. Minister of Interior**, IsrSC 53(2) 728, the Honorable Justice Cheshin discussed the importance of the family unit which amounts to a basic right, as well as Israel's commitment to this right, *inter alia*, by virtue of its signature of international conventions which recognize the importance of the right to family life:

> Our case, it should be remembered, concerns a basic right of the individual – any individual – to marry and establish a family. It need not be reminded that this right was recognized by international conventions acceptable to all… (Ibid., page 782).

38. In HCJ 7052/03 **Adalah v. Minister of Interior** (hereinafter: **Adalah**)(reported in Nevo), which examined the constitutionality of the Temporary Order, the right to family life in Israel was given the status of a constitutional right enshrined in the Basic Law: Human Dignity and Liberty. President Barak summarized, with the consent of eight out the eleven justices of the panel, the rule which was established in said judgment concerning the status of the right to family life in Israel:

> From human dignity, which is based on the autonomy of the individual to shape his life, stems the derivative right to establish a family unit and continue to live together as one unit. Does this imply that the realization of the constitutional right to live together also includes the constitutional right to realize it in Israel? My answer to this question is that the constitutional right to establish a family unit also includes the right to establish the family unit in Israel. Indeed, the Israeli spouse has a constitutional right, which is derived from human dignity, to live with his foreign spouse in Israel and to raise his children in Israel. The constitutional right of a spouse to realize his family unit is, first and foremost, his right to do so in his own country. The right of an Israeli to family life means his right to realize it in Israel. (Paragraph 34 of the judgment of the Honorable President *emeritus* Barak).

39. With respect to the right of the child to family life, it was held in **Adalah** that it was based:

> ... on the independent recognition of the human rights of children. These rights are given in essence to every human being in as much as he is a human being, whether adult or minor. The child 'is a human being with rights and needs of his own' (LFA 377/05 **A & A The Designated Adopting Parents of the Minor v. The Biological Parents** (not yet reported)). The child has the right to grow up in a complete and stable family unit.
>
> (**Adalah**, paragraph 28 of the judgment of President (*emeritus*) A. Barak).

40. Justice Cheshin held that:

> The law of nature is that the biological mother and father keep their son, raise him, love him and nurture him until he grows up and becomes a man… this bond is stronger than all strengths and is beyond society, religion and state… state law did not create the rights of the parents towards their children and the entire world. State law came to what had already existed, and should protect an innate instinct inside us. It makes a parental "interest" into a "right" recognized by law, the right of the parents to keep their children.
>
> (CFH 7015/94 **Attorney General v. A.**, IsrSC 50(1) 48, 102).

41. International law too attributes great importance to the family and imposes on the states the obligation to protect it. Thus, for instance, Article 10(1) of the International Covenant on Economic, Social and Cultural Rights, *Book of Treaties* 1037, which was ratified by Israel on October 3, 1991, stipulates that:

> The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment **and while it is responsible for the care and education of dependent children**…
>
> (Emphasis added, B.A.)
>
> See also: The Universal Declaration on Human Rights, which was adopted by the UN Assembly on December 10, 1948, Article 8(1); Article 17(1) and Article 16(3) of the International Covenant on Civil and Political Rights, *Book of Treaties* 1040, entered into effect with respect of Israel on January 3, 1992.

<u>The principle of the child's best interest</u>

42. The determination that children should be afforded the opportunity to grow up in a stable and loving family unit, serves a larger principle recognized in Israeli and international jurisprudence – the

principle of the child's best interest. According to this principle, in all actions concerning children, whether by courts of law, administrative authorities or legislative authorities, the best interests of the child should be taken into account as a primary consideration. For as long as the child is a minor and for as long as his parent functions properly, it is in his best interest to let him grow up in a family unit which supports him.

43. In Israeli jurisprudence, the principle of the child's best interest is a basic and well-rooted principle. Accordingly, for instance, in CA 2266/93 **A. v. A.,** IsrSC 49(1) 221, Justice Shamgar held that the state should intervene to protect the child from having his rights violated.

44. Furthermore, the principle of the child's best interest was recognized in many judgments as a guiding principle whenever rights should be balanced. As stated in CA 549/75 **A. v. Attorney General** IsrSC 30(1), 459, pages 465-466, "There is no juridical matter concerning minors in which the best interest of the minors is not the first and main consideration."

45. In international law too, the principle of the child's best interest is afforded the status of a superior principle. Among other things, this is reflected in the Convention on the Rights of the Child. The Convention, which was ratified by the State of Israel on August 4, 1991, sets a number of provisions imposing an obligation to protect the child's family unit (see: Preamble of the Convention and Articles 3(1) and 9(1) of the Convention). In particular, Article 3 of the Convention provides that the best interests of the child should be taken into account as a primary consideration in any governmental act. Accordingly, any piece of legislation or policy should be interpreted in a manner allowing for the protection of the rights of the minor.

46. Hence, beyond the unreasonableness and unfairness of respondents' conduct in the matter of petitioner 1, the respondents, who act contrary to the Temporary Order and the procedure, also violate the right of petitioners' family to family life and the principle of the child's best interest.

Conclusion

47. Petitioner 1's application is pending before the respondents for over a year. Regretfully, petitioner 1's case is not the only one that is not being processed within the reasonable time frame set forth by law and procedure. This conduct is particularly outrageous given the fact that the fate of people with humanitarian circumstances including infants is at stake. **The respondents must act in accordance with the procedures and the law governing their operations**.

48. Leaving the petitioners with no response is even more outrageous in view of the fact that the respondent has known the family at hand for years and its case is neither complicated nor complex, but may rather be simply and proportionately solved in view of the Temporary Order, current case law and the procedures of the respondent himself.

49. In view of the aforesaid, the honorable court is hereby requested to grant an Order Nisi as requested in the beginning of this petition, and after hearing respondents' response, make it absolute. The court is further requested to order the respondents to pay attorneys' fees and costs of trial.

Jerusalem, February 17, 2015.

_____

Benjamin Agsteribbe, Advocate
Counsel to the petitioners

(file No. 26666)