At the Appellate Court
Jerusalem District

Appeal 4682/15

In the matter of:

1. _____ Dwayat, ID No. _____
2. _____ Abu Kif, ID No. _____
3. _____ Atrash, , ID No. _____
4. _____Abu Ghanem, ID No. _____
5. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA No. 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 Abir Jubran-Dakawar (Lic. No. 44346) and/or Nasser Odeh (Lic. No. 68398) and/or Nadia Dakah (Lic. No. 66713)

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 Appellants

v.

1. **Minister of Interior**
2. **Population and Immigration Authority**

represented by counsels of the legal department
15 Kanfei Nesharim Street, Jerusalem
Tel: 02-5489888; Fax: 02-5489886

The Respondents

Urgent Appeal

The honorable court is hereby requested to order the respondents to immediately accept appellants' request **to receive full thirty days** for the purpose of filing written arguments against respondents' notice of the intention to revoke appellants' permanent residency status, all in accordance with respondents' procedures and to avoid violation of appellants' right to due process as required by law.

Preface

1. This appeal concerns respondents' inappropriate disregard of a basic request submitted by the appellants to receive the entire period of time which they are entitled to, according to respondents' procedures and notices, for the purpose of filing befitting written arguments. It should be emphasized that the appellants need this period of time in its entirety for the preparation of their written arguments against respondents' notices to them in an optimal manner, particularly in view of the fact that this case concerns written arguments against the intention to revoke respondents' permanent residency status in Israel, thus, causing some of them to become stateless in the entire world.

2. It should already be emphasized that on October 22, 2015, an official notice was given to the respondent advising him that the appellants were represented by the legal counsels of appellant 5. Nevertheless, and notwithstanding the above-said, appellants' counsels were informed that the notices were served on the appellants themselves, who do not speak Hebrew – the language in which the notices were drafted – in prison, at later dates. In addition, only on **November 17, 2015**, the respondent formally notified appellants' counsel of his intention to revoke the permanent residency status of appellants 1-4. However, notwithstanding the above, the respondents scheduled the filing date of the written arguments for December 8, 2015, thus, leaving the appellants less than thirty days for their arguments.

3. Needless to point out that the failure to give the appellants the period of time, which is anyway limited, that they need for having their written arguments prepared properly, severely violates the right of the appellants at bar for due process. Hence the appeal and the requests for interim injunction and interim order which are filed at the same time. We shall hereinafter discuss things in an orderly manner as follows.

The Factual Part

The Parties

4. **Appellant 1**, _____ Dwayat, born on July 23, 1996, is currently 19 years old and a resident of Sur Bahir located in East Jerusalem. An indictment was recently filed against appellant 1 and the criminal proceeding is still in its initial stages. Appellant 1 is currently held in Megido prison. Appellant 1 has no status in any other place in the entire world.

5. **Appellant 2**, _____ Abu Kif, born on May 17, 1997, is currently 18 years old and a resident of Sur Bahir located in East Jerusalem. An indictment was recently filed against appellant 2 and the criminal proceeding is still in its initial stages. Appellant 2 is currently held in Megido prison. Appellant 2 has no status in any other place in the entire world.

6. **Appellant 3**, _____ Atrash, born on August 26, 1997, is currently 18 years old and a resident of Sur Bahir located in East Jerusalem. An indictment was recently filed against appellant 3 and the criminal proceeding is still in its initial stages. Appellant 3 is currently held in Megido prison. Appellant 3 has Jordanian citizenship.

7. **Appellant 4**, _____ Abu Ghanem, born on January 8, 2004, is currently 22 years old and a resident of Jabal al Mukaber located in East Jerusalem. An indictment was recently filed against appellant 4 and the criminal proceeding is still in its initial stages. Appellant 4 is currently held in Eshel prison. Appellant 4 has Jordanian citizenship.

8. **Appellant 5** (hereinafter: **HaMoked**), is a registered not-for-profit association which has taken upon itself, *inter alia*, to assist East Jerusalem residents and their family members in various matters *vis-à-vis* state authorities and to protect their rights before legal instances, either in its own name as a public petitioner or as counsel to those whose rights were violated.

9. **Respondent 1** (hereinafter: **respondent 1** and together with respondent 2, the **respondents**), is the Minister who notified the appellants of his intention to act according to section 11(a) of the Entry into Israel Law and revoke their permanent residency status in Israel.

10. **Respondent 2** (hereinafter: **respondent 2** and together with respondent 1, the **respondents**), is the Population and Immigration Authority.

Factual Background and Exhaustion of Remedies

11. The following is the factual background of the appeal.

12. On October 14, 2015, respondent 2's Ministerial committee on national security affairs convened to discuss the security situation and approved a series of measures. Among other things the committee decided to "**revoke the permanent residency of perpetrators**". In the government meeting dated October 18, 2015, the prime minister specified the measures taken recently according to the decision of the Ministerial committee on national security affairs, including "revocation of perpetrators' residency".

    A copy of the decisions of the Ministerial committee on national security affairs made on October 14, 2015, taken from the website of the prime minister's office, is attached and marked **A/1**.

    A copy of the announcement of the government secretary given following the government meeting which was held on October 18, 2015, taken from the website of the prime minister's office, is attached and marked **A/2**.

13. On October 22, 2015, appellant 5 wrote to respondent 1 and informed him that it was representing appellants 1-4 in the status revocation proceedings in Israel, as it was reported on the media a day earlier that respondent 1 had signed letters which summoned appellants 1-4 for a hearing. Appellant 5 requested to be advised of any action taken in connection with said proceedings. Receipt of the letter at the Minister's office was confirmed by telephone on that day by Advocate Michal Pomeranz who represents appellants 1-4 in the status revocation proceedings in Israel on behalf of appellant 5 (hereinafter: **appellants' counsel**)

    A copy of appellant's 5 letter to respondent 1 dated October 22, 2015, is attached and marked **A/3**.

14. On November 9, 2015, appellant 1 informed his counsel in the criminal proceeding, Adv. Akram Khalili, when he met with him in extension of detention proceedings that he had received in prison a letter dated October 21, 2015, from respondent 1, which notified of the latter's intention to revoke his permanent status in Israel and of the opportunity to file arguments within 30 days. Following said information, appellants' counsel wrote on November 10, 2015, to respondent 1 and protested against the failure to transfer the above notice to her despite the representation notice which was given to him. She also noted that November 9, 2015, should be regarded as the date on which the letter was

served for the purpose of computing the days for the filing of the arguments against the intention to revoke appellant 1's status.

A copy of respondent 1's notice to appellant 1 of the intention to revoke appellant 1's permanent status is attached and marked **A/4**.

A copy of the letter of appellants' counsel to respondent 1 regarding appellant 1 dated November 10, 2015, is attached and marked **A/5**.

15. On November 12, 2015, appellants' counsel visited appellants 1-3 in Megido prison, when she was informed that appellants 2 and 3 have also received notices from respondent 1 of his intention to revoke their permanent status, while giving the opportunity to file arguments within 30 days. The notices were dated October 21, 2015.

A copy of respondent 1's notice to appellant 2 of the intention to revoke appellant 2's permanent status is attached and marked **A/6**.

A copy of respondent 1's notice to appellants 3 of the intention to revoke appellants 3's permanent status is attached and marked **A/7**.

16. On November 16, 2015, appellants' counsel wrote to responded 1 and **demanded that the proceedings for the revocation of appellants' status be stayed**. In her letter appellants' counsel noted that she became aware for the first time of the intention to revoke the permanent residency status of appellants 2-3 on November 12, 2015, when she visited them in prison, despite appellant 5's representation notice dated October 22, 2015. Therefore November 12, 2015, should be regarded as the effective date for the purpose of computing the days for the filing of the arguments against the decision to revoke their status.

A copy of the letter sent by appellants' counsel to respondent 1 dated November 10, 2015, is attached and marked **A/8**.

17. On November 17, 2015, a response was given through the legal advisor for the population and immigration authority to the letters of appellants' counsel dated November 10, 2015, and November 16, 2015. The reply letter noted that on October 21, 2015, respondent 1 signed a notice of intention to act according to section 11(a) of the Entry into Israel Law against appellants 1- 4 and that his notices were transferred to the four appellants through the Israel Prison Service. It was also noted that he was not aware of appellant 5's notice dated October 22, 2015, that it was representing the appellants. At the same time, respondent 2's counsel noted that <u>any response to the notices given by the Minister of Interior regarding the appellants would be accepted until December 8, 2015</u>.

A copy of respondents' letter dated November 17, 2015, is attached and marked **A/9**.

18. On November 17, 2015, appellants' counsel answered the letter of the legal advisor of respondent 2 and noted that she, personally, verified receipt of the notice concerning appellants' representation dated October 22, 2015, by respondent 2's bureau. She also added that there was no basis for the date stipulated by respondent 2's legal advisor, December 8, 2015, as the date for the filing of the written arguments, and reiterated that the dates mentioned in her former letters should be regarded as the effective dates for this matter.

19. Due to their importance we shall cite from paragraph 4 of the letter of appellants' counsel the dates from which one should start counting the thirty day period for the purpose of filing the written arguments.

Hence, as specified in my above referenced letters, one should regard the dates on which the notices were served as November 9, 2015 with respect to Mr. Dwayat, as November 12, 2015, with respect to Mr. Abu Kif and Mr. Atrash and as November 17, 2015, with respect to Mr. Abu Ghanem. **Accordingly, the filing date of our written arguments is until December 9, 2015, with respect to Mr. Dwayat, December 12, 2015, with respect to Mr. Abu Kif and Mr. Atrash and December 17, 2015, with respect to Mr. Abu Ghanem**.

(Emphases added, A.J.)

A copy of the letter of appellants' counsel dated November 17, 2015, is attached and marked **A/10**.

20. However, despite repeated requests sent by appellants' counsel to respondent 2 for the approval of her request that the number of days for the purpose of filing written arguments be counted from the dates on which the notices were served on the appellants as specified in paragraph 16 above, respondent 2 keeps disregarding the request in an inappropriate and brazen manner until this very date. Hence the appeal and the requests for interim injunction and interim order which are filed at the same time.

A copy of the additional letters of appellants' counsel to respondent 2 regarding the computation of the days for the purpose of filing written arguments is attached and marked **A/11**.

The Legal Framework

21. The appellants will argue that respondents' inappropriate conduct, who, on the one hand, are aware of the limited time frame which the appellants have available to them to fight the intention to revoke their permanent status, but at the same time unfairly ignore the request to give the appellants the entire period of time which they are entitled to receive according to the procedures, a period of time which they need to properly prepare their written arguments in a matter which is so crucial for their future, means that the respondents knowingly violate appellants' right to due process and that they act contrary to their duty as an administrative authority to handle promptly and efficiently requests submitted to them. It is clear that respondents' inappropriate conduct directly affects appellants' case and rights which are violated as a result of said conduct.

The importance of the right to be heard

22. The importance of the right to be heard cannot be overstated. The Supreme Court regards the preliminary hearing in the realm of administrative law as one of the rules of natural justice (HCJ 3/58 **Berman v. Minister of Interior**, IsrSC 12 1493, page 1503; HCJ 290/65 **Eltagar v. The Mayor of Ramat Gan**, IsrSC 20(1) 29, page 33; CrimApp 768/80 **Shapira v. State of Israel**, IsrSC 36(3) 337, 363 and many others).

23. The more severe and irreversible the consequences of the governmental decision are, the more essential it is to enable the involved individual to present his arguments and respond to arguments raised against him in an attempt to refute them (HCJ 5973/92 **The Association for Civil Rights in Israel v. Minister of Defense,** IsrSC 47(1) 267, pages 285-286).

24. The right to be heard and its importance was discussed by the Honorable Justice (as then titled) Barak in the **Gingold** case as follows:

A fundamental right of an individual in Israel is that the public authority which takes action against his status would not do so before it grants said individual the

> right to present his arguments. As far as this fundamental right is concerned, it makes no difference whether the public authority acts by virtue of a statute or by virtue of an internal directive or agreement. It also makes no difference whether the power which is exercised is judicial, quasi-judicial or administrative and whether the discretion vested in said authority is broad or narrow. In any event in which a public authority wishes to change a person's status it must act towards him fairly, and said duty imposes on the authority the obligation to give said person the opportunity to present his arguments. (HCJ 654/38 **Riva Gingold v. the National Labor Court**, IsrSC 35(2) 649, pages 654-655).

25. Moreover. The right to be heard is not only a formal procedure which consists of invitation and hearing. **The right to be heard is the right to a fair hearing** (HCJ 598/77 **Eliyahu Deri v. The Parole Board**). **It is the right to be given proper opportunity to respond to information which was obtained** and which may affect the decision in petitioner's matter (see: HCJ 361/76 **Hamegader v. Slomo Refaeli**).

26. Therefore, the allocation of an insufficient period of time for the purpose of raising arguments against such a crucial decision in appellants' matter is not fair and undermines the great importance of the right to be heard and the right to due process. It should be reminded that the appellants are held in prison and not accessible to their counsel and that the investigation material which was submitted in the framework of the criminal proceeding and which is relevant for the hearing is very broad in scope.

The authority's failure to respond runs contrary to its duty to act promptly

27. One of the basic principles of administrative law is the duty of the administrative authority to respond to applications submitted to it within reasonable time. Efficient and prompt handling of applications is one of the fundamental principles of good governance. Respondent 1 must handle applications submitted to him fairly, reasonably and promptly.

> The sole purpose for which the authority was established […] was to serve the public. […] It may be said that the primary obligation of the authority is to exercise the power in a manner in which the service […] would be rendered to the entire public promptly, without unnecessary trouble, at high quality and low costs, to the maximum extent possible. This is the obligation to act efficiently. The obligation to act efficiently, like the obligation to act fairly, also derives from the status of the administrative authority as a trustee of the public. (I. Zamir, **the Administrative Authority** (4756)(B), page 675).

28. **The Competent Authority must act reasonably. Reasonableness also includes meeting a reasonable schedule** (HCJ 6300/93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs**, IsrSC 48(4) 441, 451; and see also 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); CA 4809/91 **Local Planning and Building Committee, Jerusalem v. Kahati**, IsrSC 48(2) 190, 219.

29. In the case at bar, in view of the fact that the decision is crucial and difficult and in view of the fact that the timeframe in which the respondents conduct the procedure for the revocation of appellants' permanent residency is short and limited, they should have responded forthwith and accept appellants' requests regarding the last day on which arguments may be filed.

Conclusion

30. In the short period of thirty days which the appellants are entitled to receive to fight the intention to revoke their status in Israel – by virtue of the procedures as well as according to respondents' notices given them – and instead of focusing on the proper preparation of their counter arguments, they find themselves forced to fight respondent 2 to make it do what it is obligated to do, namely, give them thirty full days for the preparation of their written arguments. Respondent 2 of its part knowingly breaches its obligations as an administrative authority to act expeditiously and violates appellants' right to due process.

31. Therefore, the honorable court is hereby requested to order respondent 2 to immediately approve appellants' request. In addition, the honorable court is requested to obligate respondent 2 to pay attorneys' fees and costs of trial.

Jerusalem, November 29, 2015.

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Abir Jubran-Dakawar, Advocate
Counsel to appellants

(File No. 89542)