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

AP -07-20

In the matter of:

1. **_____ Alghamri, ID No. _____, Palestinian**
Passport No. N _____
Resident of the Occupied Territories
2. **HaMoked: Center for the Defence of the Individual,**
founded by Dr. Lotte Salzberger – RA 580163517

All represented by counsel, Adv. Maisa Abu Saleh-Abu Akar (Lic. No. 52763) and/or Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Nadia Daqqar (Lic. No. 66713) and/or Tehila Meir (Lic. No. 71836) and/or Aaron Miles Kurman (Lic. No. 78484)

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 the Interior**
2. **Coordinator of Government Activities in the Areas**
3. **Gaza Strip District Coordination Office**

Represented by the Jerusalem District Attorney's Office -
Civil
7 Mahal Street, Jerusalem
Tel: 073-3920000; Fax: 02-6468053

The Respondents

Administrative Petition

The honorable court is requested to direct the respondents:

1. To approve petitioner's request to return from Abu Dhabi to his home in the Gaza Strip through the Ben Gurion Airport as soon as possible;
2. To respond within reasonable time and in a clear timeline, to requests such as petitioner's request, particularly in humanitarian cases of individuals who were "stuck" in different countries around the world due to the outbreak of the corona virus;

3. To explain why they should not apply the existing procedure of the Coordinator of Government Activities in the Area (COGAT) captioned "Issue of Exits Permits to Ben Gurion Airport to Palestinian Residents", to the return of Palestinians, resident of the Gaza Strip, through the Ben Gurion Airport in view of the outbreak of the corona virus and the closure of the regular crossings through which Palestinians routinely return to their land in regular times.

An urgent hearing is requested in the petition since the petitioner, originally a Gaza Strip resident, has been "stuck" in the United Arab Emirates for more than four months, being unable to enter any country whatsoever!!! For two weeks the petitioner stayed in the United Arab Emirates' airport in inhuman conditions, and he is currently staying in a hotel room, under the authorities' supervision, and is prohibited from leaving his room!

The honorable court is requested to direct the respondents to respond to this petition as soon as possible, in view of the severe violation of petitioner's different rights, primarily, the right to dignity, reinforcing the violation of his freedom of movement. The magnitude of said violation increases for so long as the respondents do not enable petitioner's return to the Gaza Strip through the Ben Gurion Airport. The words of the Supreme Court regarding the violation of a person's right to leave his country are appropriate, mutatis mutandis, to his right to return to it:

With respect to the magnitude of the violation of the right – or the 'proportionality' of the violation – the duration of the limitation should also be considered. The longer the limitation the greater the magnitude of the violation is. Limiting the right to exit Israel for a few days is different than limiting it for a few months or even years.

(HCJ 4706/02 **Saleh v. Minister of the Interior**, IsrSC 56(5) 695, 705A (2002); and see also: HCJ 6358/05 **Vanunu v. GOC Home Front Command**, TakSC 2006(1) 320, 331; and HCJ 1890/03 **Bethlehem Municipality v. State of Israel**, 59(4) 736, 757, 759 (2005)).

Petitioner's request to return through the Ben Gurion Airport stems from "force majeure" constraints. Under routine circumstances, the main road for Gaza Strip residents who left through the Rafah border crossing and travelled through the Egyptian airport abroad, is to return to their home in the same way, through Egypt and the Rafah border crossing. However, and as known, following the outbreak of the corona virus, the Egyptian government decided to close its borders, stopped all incoming flights and closed all border crossings.

As of the date hereof, petitioner's return to the Gaza Strip through Egypt is impossible. Therefore, the only way currently available to him to return to the Gaza Strip is through the Ben Gurion Airport. As long as the respondents block petitioner's only way to return to his home, and fail to respond to his requests, **they aggravate the violation of his fundamental rights.**

The honorable court's jurisdiction to adjudicate the petition

The local and subject matter jurisdiction to adjudicate this petition is vested with this honorable court by virtue of section 5(1) of the Courts for Administrative Affairs Law, 5760-2000 (hereinafter: the **law**), together with item 12(3) of the first addendum.

According to section 5(1) of the law, together with item 12(3) of the first addendum, this honorable court is vested with the jurisdiction to adjudicate a petition against a "decision" (whose definition according to section 2 of the law includes "failure to decide as well as an act or omission") of an "authority" (whose definition according to section 2 of the law includes "state authorities... and other bodies and individuals holding public positions

according to any law"), pursuant to the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003 (hereinafter: the "**Temporary Order**"). Section 2 of the Temporary Order provides that "Notwithstanding any law... the Minister of the Interior shall not grant a resident of an area [including a Palestinian resident in the Gaza Strip, according to section 1 of the Temporary Order]... citizenship according to the Citizenship Law and shall not grant him residency status in Israel according to the Entry into Israel Law, and the commander of the area [namely, respondent 1] shall not grant a resident of an area a stay permit in Israel according to security legislation in the area." However, section 3B(3) of the Temporary Order provides that "Notwithstanding the provisions of section 2, the commander of the area may grant [a resident of an area] a stay permit in Israel... for a temporary purpose, provided that stay permit for such purpose shall be granted for a cumulative period not exceeding six months."

The cases in which respondent 1 exercises the authority vested in him according to section 3B(3) of the Temporary Order, to allow the entry of Gaza Strip residents to Israel for a "temporary purpose", are specified in a document published by respondent 2, and which is revised from time to time according to changes in respondents' and other Israeli bodies' policies, known as "Unclassified Status of Authorizations for the Entry of Palestinians into Israel, their Passage between Judea and Samaria and the Gaza Strip and their Travel abroad" (its updated version as of February 19, 2020)(hereinafter: "**Status of Authorizations**"). According to section 1(a) of the "General" part of the Status of Authorizations, "the entry of a Gaza Strip resident into Israel requires a permit issued by the Gaza DCO, pursuant to authorization according to the Entry into Israel Order (Exemption for Gaza Strip Residents), 5765-2005, and according to the authorities of the "Commander of the Area" pursuant to the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003.

According to section 5(7)(8) of part B of the Status of Authorizations, one of the cases in which entry of Palestinians from the Gaza Strip into Israel is permitted (for a temporary purpose) by the respondents and the bodies authorized by them for that purpose, is for "their passage... abroad through the Ben Gurion Airport". It is important to clarify that according to said section: "a resident whose exit through the Ben Gurion Airport was approved shall be entitled to return through the Ben Gurion Airport."

Factual Background

Preface: As a general rule "only in humanitarian and extraordinary events" requests of Palestinian residents to travel abroad and to return through the Ben Gurion Airport are approved

1. As aforesaid, according to respondents' policy as manifested in respondent 2's relevant procedure on the "Issue of Exit Permits through the Ben Gurion Airport to Palestinian residents" "there are very few cases in which Gaza residents request to travel abroad through the Ben Gurion Airport" where the requests are individually approved by COGAT, according to the Status of Authorizations in effect at that time. As aforesaid, the relevant section of the Status of Authorizations is section 5(7)(8) of Part B, providing that the departure of Gaza residents through the Ben Gurion Airport shall be made "in extremely extraordinary humanitarian and unique cases" in which respondents' approval was requested and granted in advance.

A copy of the "Issue of Exit Permits through the Ben Gurion Airport to Palestinian Residents (February 2015 version as it appears on COGAT's website) is attached and marked **P/1**.

2. On the other hand, Palestinians, Gaza Strip residents, travelling abroad through the Rafah border crossing do not need to receive any permit from the respondents. Conversely, while exiting through the Allenby Bridge they need the authorization of

the relevant bodies in Israel, since it involves passage through Israel to the west bank and the Allenby bridge (the passage is made solely by shuttles).

A copy of the relevant parts of the "Unclassified Status of Authorizations for the Entry of Palestinians into Israel, their Passage between Judea and Samaria and the Gaza Strip and their Travel abroad" (its updated version as of February 19, 2020, as it appears on COGAT's website) is attached and marked **P/2**.

3. As specified below, any person who exited his country has the right to return thereto. Accordingly, the return to the Gaza Strip through the point of exit is sweepingly and permanently approved and does not require permit. Similarly, a person who received permit to travel from the Gaza Strip through the Ben Gurion Airport may, by virtue of said permit, return to the Gaza Strip through the Ben Gurion Airport (the above Status of Authorizations, Part B, Section 5(7)(8)):

As a general rule, the departure of Palestinians through the Ben Gurion Airport is not authorized, with the exception of BMC permit holders and **in extremely extraordinary humanitarian and unique cases** (quota of 25 per month). **A resident whose departure through Ben Gurion Airport was approved, may return through Ben Gurion Airport** (Emphases added, M.A-S.)

The Parties

4. Petitioner 1 (hereinafter: the **petitioner**), born in 1994, is a Palestinian resident of Khan Yunis, residing in the Gaza Strip.
5. Petitioner 2, **HaMoked Center for the Defence of the Individual** (hereinafter: **HaMoked Center for the Defence of the Individual** or **HaMoked**) is a not-for-profit association located in Jerusalem which acts for the promotion of human rights of Palestinians residents of the Occupied Palestinian Territories.
6. Respondent 1 is the Minister of the Interior, and is authorized according to the Entry into Israel Law, 5712-1952 and the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003, to issue visas and residency status in Israel, and to approve the issue of stay permits in Israel by Respondent 1 [*sic*]. Through the Administration of Border Crossings at the Population and Immigration Authority, the Minister of the Interior is also responsible for the control and registration of all departures from and entries into Israel through Israel's border crossings, including the Ben Gurion Airport.
7. Respondent 2, Coordinator of Government Activities in the Areas (hereinafter: **COGAT**), is responsible for implementing the civil policy of the government of Israel in the west bank areas and toward the Gaza Strip, and for the coordination and communication with the Palestinian Authority and the Palestinian population in the west bank and in the Gaza Strip. The civil administration and the district coordination offices work under and are subject to COGAT.
8. Respondent 3 (hereinafter: **Gaza DCO** or the **respondent**) is in charge of implementing the civil policy of the government of Israel in the Gaza Strip, including the issue of entry and exit permits from the Gaza Strip for its residents, and is subject to respondent 2.

Exhaustion of remedies

9. The petitioner, a resident of the Gaza Strip, had applied by the end of 2019 for a tourist visa to the United Arab Emirates, and his application was accepted. And indeed, on December 5, 2019, the petitioner went to United Arab Emirates. The petitioner

departed the Gaza Strip through Rafa border crossing, arrived to Cairo and continued from there to the United Arab Emirates.

10. Upon the outbreak of the corona pandemic, the petitioner who did not want to stay away from his family, decided to go back home. Therefore, on March 17, 2020 the petitioner bought a return flight ticket. On March 19, 2020 the petitioner went back from Dubai to Cairo, in a bid to return to the Gaza Strip in the same route through which he exited it. However, upon his arrival to the airport in Cairo, the Egyptian authorities refused to let him enter the country and sent him back to the United Arab Emirates in the same plane in which he had arrived.
11. The Egyptian authorities refused to let the petitioner enter their country due to the outbreak of the corona virus and following the decision of the state of Egypt on March 19, 2020 to close its borders and not to enable entry therein.
12. When the petitioner returned to the United Arab Emirates, his tourist visa had already expired, and the authorities at the airport refused to let him enter the country. **He therefore was forced to stay in the airport's terminal for two whole weeks.**
13. As mentioned above, after he had been "imprisoned" in the airport for two weeks, the authorities transferred him to a hotel located in the airport's complex, until the situation is resolved. In the hotel, the petitioner was not allowed to leave his room and was actually "imprisoned" therein.
14. The solution of returning home in the same way by which he arrived is not likely to occur in the near future; Egypt does not allow foreigners to cross its borders, not even for passage purposes. On May 20, 2020 the authorities of the United Arab Emirates decided to transfer the petitioner to a hotel in Abu Dhabi and until this moment he is still staying there. The petitioner is not allowed to leave his room under any circumstances.
15. To describe things accurately, it should be noted that the Kingdom of Jordan also closed its borders in mid-March 2020. Therefore, even if the petitioner succeed to coordinate with Israel his arrival to the west bank to pass through to the Gaza Strip, his entry to Jordan is prohibited.
16. It should be noted that recently the Palestinian authority acted to return its residents from different countries around the world by coordinated flights which landed in Amman. From the airport in Amman they were brought directly to the Allenby bridge from which they entered the west bank. The petitioner had contacted the Palestinian Authority in an attempt to get registered to one of these returning flights, but his request was denied by the Palestinian Authority in view of the fact that the coordination between the Authority and the state of Israel had been discontinued by it and it could not coordinate his return to the Gaza Strip.
17. Notwithstanding the measures taken by Egypt, but for the (almost) sweeping policy of the respondents prohibiting, in general, the return of a Gaza Strip resident to his home through the Ben Gurion airport, the petitioner could have returned to his home in the Gaza Strip and did not have to stay, against his will, imprisoned in a country which in fact "imprisons" him in a hotel room.
18. The petitioner has been staying in the United Arab Emirates from the end of March, and until the date hereof, there is no solution for his severe situation.
19. On June 28, 2020, about three months after Egypt had sent the petitioner back to the United Arab Emirates, HaMoked contacted, on behalf of the petitioner, the head of the civil coordination department at the Gaza DCO and to the civil administration public

liaison officer and requested that petitioner's return from the United Arab Emirates to the Gaza Strip through the Ben Gurion airport be allowed. In his said request, HaMoked explained that the petitioner had travelled to the United Arab Emirates expecting to return to the Gaza Strip on March 19, 2020 and that he had even purchased a return ticket and flew to Egypt, but was prevented from travelling to the Rafah border crossing and was sent back to where he came from.

20. Hamoked noted in its said letter that petitioner's case was humanitarian. It was also noted that he had stayed for two weeks in the airport's terminal and was thereafter transferred to a hotel located in the airport's complex, and that currently he was locked in a hotel room, as he was not allowed to leave it. It was also noted that the petitioner could fly to Israel from Dubai, via Istanbul to the Ben Gurion airport. The details of the relevant flights and dates of departure from Dubai to Istanbul and therefrom to Tel Aviv on July 6, 2020, were attached. In addition, a photocopy of petitioner's Palestinian passport was also attached to HaMoked's said letter.

A copy of HaMoked's letter dated June 28, 2020 including its annexes is attached and marked **P/3**.

21. On the following day HaMoked was informed by respondents' representative that its letter on behalf of the petitioner was given reference No. 77341.

A copy of respondents' e-mail message dated June 29, 2020 is attached and marked **P/4**.

22. On July 2, 2020, an e-mail message was received from the public liaison office at the Gaza DCO, respondent 3, requesting to clarify petitioner's request and state whether he wanted to go back to the west bank or to the Gaza Strip.

A copy of said e-mail message dated July 2, 2020 is attached and marked **P/5**.

23. On July 6, 2020 HaMoked's representative sent an e-mail message to the respondents stating, in response to the question which had been posed, that the petitioner wanted to go back to the Gaza Strip.

A copy of said e-mail message dated July 6, 2020 is attached and marked **P/6**.

24. Thereafter, on July 7, 2020, HaMoked was requested to attach the original request to the e-mail correspondences, and so it did.

A copy of the e-mail correspondences is attached and marked **P/7**.

25. Thereafter, on July 9, 2020 a WhatsApp message was received from Yoav Bar-Ness, Lieutenant, Civil administration public liaison officer, informing that the request was under examination and that response would be probably be given in the following week. It was also stated that the response would probably be given by the public liaison officer of the Gaza DCO. Since no answer has been received within a week, HaMoked wrote again and requested to know whether a decision had been made in petitioner's request, but no response was received.

A copy of the WhatsApp messages is attached and marked **P/8**.

26. In view of respondents' refusal to approve – and apparently also to examine – petitioner's request to return to the Gaza Strip through the Ben Gurion airport; and in view of the humanitarian and extraordinary circumstances underlying his said request, and the fact that it is the only way through which the petitioner may return to his home rather than stay "imprisoned" in a hotel room; and the prolonged violation of his rights

caused as a result of respondents' procrastination and failure to give a quick and pertinent response, the petitioner has no other alternative but to apply to this honorable court.

The Legal Argument

A. International humanitarian law obligates the respondents to maintain petitioner's human rights, including his fundamental rights for freedom of movement and family life.

The Normative Framework

27. The entry of Gaza Strip residents into Israel requires permit on behalf of the respondent according to authorization pursuant to the Entry into Israel Order (Exemption to Gaza Strip Residents) 5765-2005, and the powers vested with the commander of the area by virtue of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003.
28. After the rise of Hamas to power in the Gaza Strip, in June 2007, the political-security cabinet resolved on September 19, 2007 that alongside additional limitations, a limitation shall be imposed on the movement of individuals within the state of Israel to and from the Gaza Strip.
29. In COGAT's response to a petition according to the Freedom of Information Law, updated criteria as of May 5, 2011 were attached concerning movement between Israel and the Gaza Strip.
30. The criteria are revised periodically, and the most updated version appears in the framework of the above Status of Authorizations, stipulating that a person who received permit to travel from the Gaza Strip through the Ben Gurion airport, may, by virtue of the same permit, return to the Gaza Strip through the Ben Gurion airport (The above Status of Authorizations, Chapter B, section 5(7)(8)):

As a general rule, the departure of Palestinians through the Ben Gurion Airport is not authorized, with the exception of BMC permit holders and **in extremely extraordinary humanitarian and unique cases** (quota of 25 per month). **A resident whose departure through Ben Gurion Airport was approved, may return through Ben Gurion Airport** (Emphases added, M.A-S.)

31. There is no doubt that petitioner's case clearly falls within the definition of a humanitarian case. The petitioner is far from his home, against his will, for about four months, and is "imprisoned" in a room in a foreign country.

The petitioner found himself in this situation due to the outbreak of the corona virus throughout the world. Consequently he cannot travel to any country from which he may be allowed to return to his home, other than the state of Israel.

Violation of the Freedom of Movement

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

See:

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

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

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

33. The right to freedom of movement is the engine which drives the entire body of a person's rights, the engine which enables a person to realize his autonomy, his choices. When the freedom of movement is limited, that "engine" is damaged, as a result of which certain opportunities and rights that a person has cease to exist. His human dignity is infringed. Hence, the great importance attributed to the freedom of movement.
34. The scope of Israel's control over the Gaza Strip and the West Bank obligates the petitioner to obtain respondents' permit to return to his home. Hence, the respondents bear substantial obligations towards him. These obligations were acknowledged by this court in its judgments, and it was held that Israel had special obligations applicable to the residents of the Gaza Strip. As this court ruled:

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

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

35. And note well: the petitioner does not request to stay in Israel, but to only pass through it to the Gaza Strip, due to the circumstances which were imposed on him.
36. As aforesaid, the petitioner travelled from the Gaza Strip abroad through the Rafah border crossing with the intent and expectation to return to the Gaza Strip, through Egypt, on March 19, 2020. However, as a result of the outbreak of the corona virus and the fact that the Egyptian borders were closed in mid-March 2020, the petitioner is prevented from returning to his home in this manner. Due to respondents' policy which prohibits, as a general rule, the return of Palestinian residents to the Gaza Strip through the Ben Gurion airport, the petitioner has been forced to stay abroad for the last four months, imprisoned in a hotel room. Despite the fact that the petitioners are of the opinion that petitioner's case is a clear humanitarian case in which the respondents should veer from their sweeping policy, it seems that the respondents are in no rush and no response to petitioner's requests has been given until this very day.
37. For as long as petitioner's return to the Gaza Strip through Egypt is impossible, respondents' failure to respond as aforesaid constitutes, first and foremost, a severe violation of his right to freedom of movement totally denying him the right to return to his country.

38. The residents of the occupied territories have the right to leave and return to their country and "[the] military administration in the OPT, which is subject to the rules of Israeli administrative law and to the rules of international customary law, is obligated to allow the residents of the OPT to exercise this important fundamental right" (Yaffa Zilbershats "The Right to Leave the Country" **Mishpatim** 23 69, 86 (5744)).
39. As aforesaid, the right to freedom of movement includes a person's right to leave and return to his country. This right was recognized in Article 13(2) of Universal Declaration on Human Rights (1948):
- Everyone has the right to leave any country, including his own, and to return to his country.
40. Similarly, it is explicitly stated in Article 12(4) of the International Covenant on Civil Rights, that:
- No one shall be arbitrarily deprived of the right to enter his own country.
41. A person's right to return to the country in which he resides has also been recognized by Israeli judicial precedent:
- A person's right to leave the country in which he resides and to return to it is a 'natural right'. It is one of a person's fundamental rights. The limitation of the right severely violates his rights (HCJ 4706/02 **Saleh v. Minister of the Interior**, IsrSC 56(5) 695, 702 (2002)).
42. It should be emphasized that petitioner's right to return to his country is also recognized when its realization requires passage through another country. International law recognizes a person's "Right of transfer", which imposes a certain limitation on the principle of sovereignty. A country must enable passage through its territory to foreign subjects wishing to go to a different country or to separate part of the same country. The right of transfer exists when transit is required (even if there are alternatives) and when it does not harm the country through which transit is made. The transit may be subjected to conditions aimed at protecting the legitimate interests of the country through which transit is made.
43. It should be noted that with respect to an enclave, the right of transfer has the force of a custom. It arises naturally from the mere existence of the enclave. The right of transfer also exists where there are no close relations. Classic cases against the backdrop of which the principle of the right of transfer has developed, are cases of countries which have no access to the sea (such as Switzerland or the Caucasus countries), enclaves surrounded by another country (such as west Berlin prior to the unification of Germany and the Mount Scopus enclave in the years 1948-1967) and countries which are geographically divided (such as the Palestinian territories).
44. With respect to the Right of Transfer, see:
- Kishor Uprety, *The Transit Regime for Landlocked States: International Law and Development Perspectives* (The World Bank 2006);
- E. Lauterpacht, *Freedom of Transit in International Law*, in 44 *Transactions of the Grotius Society* 313 (1958);
- C. D'Olivier Farran, *International Enclaves and the question of State Servitudes*, 4(2) *Int'l & Comp. L.Q.* 294 (1955).

45. For as long as the Egyptian borders are closed, Palestinians living in the Gaza Strip travelling from and returning back to Gaza, are necessarily **required** to pass through Israel. Petitioner's case is the exception to the rule set forth in the relevant procedure. As aforesaid, it was established by the respondents that Palestinians **may** travel through the Ben Gurion airport "in humanitarian and extraordinary cases" (the above procedure, section 1(a)). As a result of the circumstances which were created following the outbreak of a severe pandemic, the worst to have occurred in the last 100 years, namely, the total ban imposed by Egypt on international traffic, the petitioner is unable to return through it to the Gaza Strip. Consequently, the petitioner has been forced to stay, for about four months, imprisoned in a hotel room, after he had stayed in the airport's terminal for two weeks, all of the above, stranded from his family, prevented from assisting them to cope with the difficulties, challenges and unprecedented pressures encountered by them in this period as a result of the epidemic.
46. If petitioner's case is not a "humanitarian and extraordinary" case, then the exception seems meaningless and the ban imposed on the of movement of Palestinians such as the petitioner (not holding a BMC, VIP1 or VIP2 permit or an A/5 visa) through the Ben Gurion airport seems all-embracing (see the above procedure, section 1(b)).

The extraordinary nature of petitioner's request is self-evident. The petitioner requests a one-way permit, namely, a permit to return to the Gaza Strip through the Ben Gurion airport, under the present circumstances in which he has no other possible way to return to his home and family. As aforesaid, the only relevant and valid procedure applicable to a case such as this, to petitioners' best knowledge, is the procedure regulating the issuance of **Exit permits** to Palestinians through the Ben Gurion airport, which includes, according to the Status of Authorizations, a sub-permit to return through the same route. Hence, the mere fact that the petitioner does not request a round-trip permit, but rather only a return permit – which apparently is not regulated by any specific procedure – attests to the extremely extraordinary nature of his case.

The respondents violate petitioner's right to family life, thus reinforcing even further the violation of his right to freedom of movement

47. By preventing the petitioner from returning to his home in the Gaza Strip through the Ben Gurion airport, the respondents prevent him from unifying with his parents and his other family members living in the Gaza Strip and from assisting them to deal with the state of emergency following the outbreak of the corona virus. In their above actions the respondents severely violate petitioner's right to family life. This right is derived, inter alia, from the right to human dignity, and is one of the natural, fundamental and most important rights. As was held by Justice Procaccia in **Dobrin**:

The Basic Law: Human Dignity and Liberty entrenches the human rights to dignity and liberty... Within the scope of the right to human dignity lies the right of a person to have a family... The right to family is one of the most basic elements of human existence. It is derived from the protection of human dignity, from the right to privacy and from the realization of the principle of the autonomy of the will of the individual, which lies at the very essence of the concept of human dignity.

(HCJ 2245/06 **Dobrin v. Israel Prison Service**, para. 12 of the judgment of Justice Procaccia (reported in Nevo, June 13, 2006)(references were omitted)

48. These special relations between the members of the same family circle are recognized and protected by the law. As stated by the then President of the Supreme Court in **Adalah**:

It is our initial and basic duty to preserve, nurture and protect the most basic and ancient family unit in the history of mankind, which was, is and will be the element that preserves and ensures the existence of the human race, namely the natural family'... the family relationship, and the protection of the family and its basic elements... lie at the basis of Israeli law. The family has an essential and central purpose in the life of the individual and the life of society. Family relationships, which the law protects and which it seeks to develop, are some of the strongest and most significant in a person's life.

(HCJ 7052/03 **Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of the Interior**, IsrSC 61(2) 202, para. 25 of the opinion of Justice Barak (2006)(Emphasis added)(References were omitted)).

49. As aforesaid, and in view of the supreme importance of the "family relationships... in the life of the individual and in the life of society", every person is vested with the right to family life, both according to Israel and international law (*Ibid*). In view of this basic and essential right, the respondents have the obligation to respect petitioner's family circle. Since, as was held by the Supreme Court "Israel is obligated to protect the family unit by virtue of international covenants (HCJ 3648/97 **Stemka v. Minister of the Interior**, IsrSC 53(2) 728, 787 (1999)).

50. Article 46 of the Hague Convention (1907), constituting international customary law, stipulates, inter alia, as follows:

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.
Private property cannot be confiscated.

51. The comprehensive study of the International Committee of the Red Cross which was published in 2005, in a bid to identify the rules of international humanitarian customary law, recognizes the obligation of the state to protect family life as one of these rules:

Family life must be respected as far as possible.

(Jean-Marie Henckaerts & Louise Doswald-Beck, [1 Rules] Customary International Humanitarian Law 379-83, Rule 105 (Int'l Comm. Red Cross ed., 2005, Cambridge University Press 2009)).

52. The obligation of the state to protect the family unit and the right to family life are also recognized by other international sources, including:

Article 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) (hereinafter: the Fourth Geneva Convention);

Article 10 of the above Covenant on Social and Economic Rights;

Articles 17 and 23 of the above Covenant on Civil Rights;

Article 12 and Article 16(3) of the Universal Declaration on Human Rights (1948); and

Articles 8 and 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Conclusion

53. The petitioner, a Gaza Strip resident, travelled through Egypt to the United Arab Emirates expecting to return to his home in March. On his way back, upon landing in Egypt, he was informed by the Egyptian authorities that Egypt had closed its borders and therefore he would not be allowed to enter Egypt in order to travel therefrom back to the Gaza Strip. The Egyptian authorities have not allowed him to stay in their airport and have therefore sent him back to the United Arab Emirates on the same plane which had brought him there. The petitioner was forced to stay in the airport for two weeks, under patently unreasonable conditions, in the absence of permit to enter the United Arab Emirates. Thereafter, the authorities decided to transfer him to a hotel located in the airport's complex where he was not allowed to leave his room. In mid-May the petitioner was transferred to another hotel under the same "imprisonment" conditions in his room. The petitioner suffers immensely due to the fact that he cannot return to his home and more so due to the fact that he has been "imprisoned" in a room for four months.
54. However, even in the framework of respondents' sweeping policy, prohibiting the return of Palestinian residents through the Ben Gurion airport other than in "humanitarian and extraordinary" cases (and in several additional isolated cases mentioned above), the petitioner could have returned to the Gaza Strip and unite with his family. However, as a result of the manner by which respondents' policy is implemented and due to respondents' refusal to approve petitioner's urgent request for a permit to return through the Ben Gurion airport despite the extremely extraordinary and humanitarian circumstances of his case, the petitioner has been forced to stay abroad for about four months.
55. Hence, petitioner's rights are violated, primarily his right to freedom of movement – and mainly the fundamental right to return to his country – as well as his right to family life. Respondents' refusal to approve petitioner's request, completely ignoring the extraordinary and humanitarian circumstances of his case, aggravate the violation of his rights which is patently disproportionate and unreasonable.

In view of all of the above, the honorable court is requested to direct the respondent to act as requested in the beginning of the petition and to obligate it to pay costs of trial and attorneys' fees.

It should be noted that this petition is supported by a **declaration** which was signed by the petitioner electronically via a video conference call with the undersigned, conducted between the petitioner from his hotel room in the United Arab Emirates and the undersigned in Jerusalem. A copy of the signed declaration was sent to the undersigned by e-mail as specified in the "Notice to the Honorable Court in the matter of the above Declaration". Given these circumstances and in view of the urgency of petitioner's matter and his extremely extraordinary and humanitarian circumstances, the honorable court is requested to accept, for the time being, the signed declaration, particularly in view of the fact that the petitioner, against his will, is unable to leave his room and sign the declaration before a notary.

In addition, the honorable court is requested to accept the power of attorney, which was also signed by the petitioner electronically via a video conference call with the undersigned, conducted between the petitioner from his hotel room in the United Arab Emirates and the undersigned in Jerusalem, and which was sent to the undersigned by e-mail.

July 23, 2020

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