

In the matter of:

1. _____ **Ziad, ID No.** _____
Palestinian resident of the occupied territories
2. _____ **Ziad, ID No.** _____
Palestinian resident of the occupied territories
3. **HaMoked - Center for the Defence of the Individual founded by
Dr. Lotte Salzberger, Registered Association No. 580163517**

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

Military Commander for the West Bank Area

Represented by the District Attorney's Office, Jerusalem District – Civil,
Ministry of Justice,
7 Mahal Street, Jerusalem
Tel: 02-5419555; Fax: 02-6468053

The Respondent

Administrative Petition

The Honorable Court is requested to direct the Respondent to issue to Petitioner 2 an agricultural permit to enable her to regularly and continuously access the lands of her mother, Petitioner 1, all year round.

This petition concerns Respondent's failure to approve Petitioner 2's seam zone entry application. According to Section 5A(a)(1) of the Administrative Courts Law, 5760-2000, together with item 3(e) of the Fourth Addendum, this Honorable Court is vested with the authority to adjudicate this matter.

Factual Background

The Permit Regime

1. In 2002 the Government of Israel decided to build the separation fence. A number of petitions were filed regarding both the legality of building the fence as a whole and the legality of specific parts of its route. In the judgments given in these petitions, the court ruled that the legality of the route of the fence rests on whether it strikes a proper balance between the security considerations underlying it and protection for the human rights of the protected persons (see, for instance, HCJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, IsrSC, 58(5) 807 (2004); HCJ 7957/04 **Mara'abeh v. Prime Minister of Israel**, IsrSC 60(2) 477 (2005); HCJ 5488/04 **A-Ram Local Council v. Government of Israel**, (reported in Nevo, December 13, 2006); and HCJ 8414/05 **Yasin v. Government of Israel**, IsrSC 62(2) 822 (2007)).
2. The route chosen for the separation fence resulted in significant sections of it being built inside the West Bank. Once these sections were built, the Respondent declared the areas that remained between the fence and the Green Line to be closed zones, referred to jointly as the "seam zone." Entry into this area and presence therein are prohibited without a special permit for this purpose. The access ban does not apply to residents of the State of Israel or tourists, who may enter the seam zone as they please.
3. Shortly after the first closure declaration regarding the seam zone, which was signed on October 2, 2003, petitions were filed against the permit regime. These actions challenged the legality of closing the seam zone to Palestinians and requiring them to obtain special permits in order to enter it. The ruling in these petitions was delayed for more than seven years, until judgments were delivered in the petitions against the separation fence, which were pending before the court at the time. As a result, the judgment in HCJ 9961/03 **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (reported in Nevo, April 5, 2011, hereinafter: the **permit regime judgment**) was penned while taking the separation fence as a matter of fact and looked at the harm the permit regime causes Palestinian residents as distinct from the harm caused by the fence itself.
4. The permit regime judgment examined the harm caused by the seam zone's closure to Palestinians given the arrangements the Respondents had put in place for issuance of permits to enter the seam zone to Palestinians, including the "Seam Zone Standing Orders, Misuse of Seam Zone Entry Permit – Handling Procedures" (hereinafter: the **Seam Zone Standing Orders**), and given Respondents' contention that these arrangements would be applied permissively. The Honorable Court ruled that the harm caused to Palestinian residents was proportionate, barring several specific issues that were disqualified.
5. It was further clarified in the judgment that the findings on the proportionality of the harm of the permit regime on Palestinians do not preclude the possibility that "in specific cases, severe injury is caused to the rights to property and livelihood of Palestinian residents who cannot adequately farm their lands or who encounter other access difficulties, and the Respondents, on their part do not take adequate measures to minimize said injury," and that, "these cases may be reviewed within the framework of specific petitions, in which the court will be able to examine the overall arrangements that apply to a certain area, and the specific balancing which takes place therein between the rights of the residents and other interests, as was previously done in similar petitions" (paragraph 34 of the permit regime judgment).

6. According to data recently received from the Respondent, **the percentage of denials of seam zone entry applications submitted by land owners has increased over the last five years from 24% to 72%**, such that the current implementation of the permit regime is totally different from that which was presented to the court when the legality of the permit regime was discussed. The persons harmed by Respondent's denial policy are forced to apply to the court and submit individual petitions in order to receive the permits they need, as is done in the case at hand.

A copy of Respondent's letter dated November 26, 2018 is attached and marked **P/1**.

7. In September 2019 a new and extremely offensive version of the Seam Zone Standing Orders was published, whereby entry permits into the seam zone for agricultural purposes may not be received other than for a quota of several days per annum, even when the landowners themselves are concerned. However, Petitioner's application had been submitted before said procedures were published.

The Parties

8. **Petitioner 1** owns land in the seam zone. **Petitioner 2** (hereinafter: the **Petitioner**) is the daughter of Petitioner 1. She submitted a permit application for the purpose of cultivating her mother's land and for maintaining the family ties to the land, but her application was denied and the requested permit was not given to her.
9. **Petitioner 3** is a non-profit association working to promote the human rights of Palestinians in the Occupied Territories.
10. **The Respondent** is the military commander in the West Bank on behalf of the state of Israel.

Main Facts and Exhaustion of Remedies

11. Petitioner 1, born in 1964, is married and has two sons and four daughters, including the Petitioner. She resides in Tura al-Gharbiya, in the Jenin District.

A copy of Petitioner 1's identification card is attached and marked **P/2**.

12. Petitioner 2, born in 1984, is married and has four children. She resides in Nazlat Zeid, in the Jenin District.

A copy of Petitioner 2's identification card is attached and marked **P/3**.

13. Petitioner 1 owns land located on 'Anin lands, in the seam zone. She inherited the land from her late father, Mr. _____ Abu Hamda, who had passed away in 1980. The plot consists of 266 dunams. Mr. Zeid was the owner of one third of the ownership rights in the plot. The plot was not actually divided.

A copy of the property tax extract is attached and marked **P/4**.

A copy of the inheritance order is attached and marked **P/5**.

14. The Petitioner received in the past permits for agricultural purposes allowing her access to the plot of land of her father in law. Her last permit was valid until approximately two years ago.

15. The Petitioner submitted a permit application for agricultural purposes in order to access her mother's land on July 24, 2019. Her application was denied on the grounds that an up-to-date property tax extract should be provided by her. Since the property tax extract was issued a few months earlier, on March 7, 2019, said demand seemed strange to the Petitioner, and she has therefore submitted another application with the same documents by the end of August 2019. The Palestinian coordination office informed that the application had been transferred by the Palestinian coordination office to the DCO on September 22, 2019 and was not answered.

16. According to Respondent's procedures, it should have answered Petitioner's application within four weeks (Section 5.a. of the chapter "Timetable for Handing Different Applications").

The chapter "Timetable for Handing Different Applications" of Respondent's procedures is attached and marked **P/6**.

17. Since four weeks have passed and Petitioner's application remained unanswered, an appeal on this matter was filed by HaMoked on October 27, 2019.

A copy of the appeal is attached and marked **P/17**.

18. More than a month has passed and the appeal remained unanswered. Therefore, HaMoked contacted the civil administration public liaison officer on December 3, 2019 and requested that the Petitioner would be summoned for a hearing before the appeal committee without delay.

A copy of the letter dated December 3, 2019 is attached and marked **P/8**.

19. However, until this day no answer has been received, neither to Petitioner's application nor to the appeal which was filed in that regard and the Petitioner was not given the permit that she needs – permit for agricultural purposes, which shall allow her access to her mother's land continuously and regularly.

Hence the petition.

The Legal Argument

20. The Petitioners shall argue that Respondent's failure to issue to the Petitioner a permit allowing her access to the land of her mother, Petitioner 1, severely and disproportionately violates Petitioner 1's fundamental right to property and Petitioner's fundamental right to freedom of movement in her country.

The Legal Background

21. The state of Israel decided to erect a large part of the separation fence within the West Bank and to close to the Palestinians the parts of the West Bank located between the separation fence and Israel's border – the seam zone. Hence, the fundamental rights of the protected inhabitants were harmed and continue to be harmed, and particularly the rights of the owners of lands which were trapped in the seam zone. Against this backdrop it was held by the courts that the Respondent must limit to the maximum extent possible the harm caused by the separation fence to the land owners:

Having completed the examination of the proportionality of each order separately, we should lift our gaze and examine the proportionality of the entire route of the separation fence being the subject matter of all orders. The length of the separation fence being the subject matter of the orders at hand is about forty kilometers. It harms the lives of 35,000 local inhabitants. Four thousand dunams of their lands are taken up by the route of the fence itself, and thousands of olive trees growing along the route itself are uprooted. The fence separates the eight villages in which the local inhabitants live from more than thirty thousand dunams of their lands. The vast majority of the lands are cultivated, and they include tens of thousands of olive trees, fruit trees and different agricultural crops. The permit regime which the military commander wishes to establish and which was applied to many plots of land cannot substantially prevent or reduce the severe harm caused to the local farmers. Access to the lands depends on the possibility to pass through gates with a great distance between them and which are not always open. Security checks shall be conducted at the gates, which may prevent the passage of vehicles and which shall naturally create long lines and many waiting hours. All of the above do not enable the farmers to cultivate their lands. **There are inevitably areas where the separation fence shall separate the local inhabitants from their lands. In these areas, passage must be secured reducing to the maximum extent possible the harm caused to the farmers (HCJ 2056/04 Beit Sourik Village Council et al. v. Government of Israel, paragraph 82 (reported in Nevo, June 30, 2004)).**

and:

The conclusion that it is impossible to establish an alternative geographic route for the fence which would be less harmful does not satisfy, in and of itself, the second proportionality test. **While examining the proportionality of the harm caused by the fence, the geographic route and the permit regime and passages to the lands located west to the fence are intertwined.** Petitioners' groves and grazing lands were disconnected by the separation fence. In this state of affairs, **the Respondents must establish reasonable crossing arrangements and an access regime to Petitioners' lands, in a manner reducing to the maximum extent possible the harm caused to them (HCJ 4825/04 Alian v. The Prime Minister, paragraph 16 (reported in Nevo, March 16, 2006)).**

and:

The arrangements which were established concerning the issuance of permits to those who have a permanent and occasional need, as such were specified, also satisfy, according to us, the second proportionality sub-test. As indicated by us above, we agree that the injury inflicted on this group is severe. Individuals who cultivated their lands in the seam zone, conducted their businesses there and established family and social relations, are forced at this present time, in order to preserve their way of life, to apply for an entry permit based on several limited causes. The residents of the zone itself are also injured from the regime which was applied thereto, since, against their will, the reality of their lives

becomes difficult and complex, as social and business isolation is imposed on them in their place of residence. **These injuries require the establishment of arrangements which preserve, to the maximum extent possible, the fabric of life which preceded the declaration, subject to security needs which require same.** It seems to us, that as a general rule, the arrangements which were established satisfy this requirement. We shall refer to the arrangements which concern the different interest groups (the permit regime judgment, paragraph 33).

22. As aforesaid, it was held in the permit regime judgment that the harm caused by the closure of the seam zone to Palestinians was proportionate, inter alia, based on Respondents' undertaking therein that they would implement the permit regime in a manner which would maintain the manner by which the lands were cultivated prior to the erection of the separation fence, including the cultivation of the lands by the family members of the land-owners:

Under the circumstances at hand, prima facie, it indeed seems that the **respondents acknowledge the residents' right to continue to farm their lands and seek to enable those who have a connection to lands in the seam zone to continue to farm them, by enabling family members and other workers to assist them with their work...** It seems to us that this arrangement gives reasonable solution which minimizes the violation of the rights of the farmers, and we assume in our said determination that respondents indeed imbue with real substance their declarations concerning the importance of continuing to provide proper solutions for the needs of the framers in the Area (paragraph 34).

Violation of the right to property

23. The right to property is a fundamental right, entrenched in section 3 of the Basic Law: Human Dignity and Liberty, protecting the rights of all human beings, as well as in the international conventions relevant to the occupied territories:

The right to property is one of the fundamental human rights. This right was recognized as a fundamental right which should be protected by the judgments of this court (see for instance: H CJ 390/79 **Dweikat v. Government of Israel**, IsrSC 34(1), 14-15; HCJFH 4466/94 **Nuseibeh v. Minister of Finance**, IsrSC 49(4) 68, 83-85) and was even expressly and constitutionally entrenched in section 3 of the Basic Law: Human Dignity and Liberty. This right is also recognized by international law and with respect to territories held under belligerent occupation it is entrenched, inter alia, in the Hague Convention and in the Fourth Geneva Convention (H CJ 1890/03 **Bethlehem Municipality v. State of Israel and Ministry of Defence**, paragraph 20 of the judgment of the Honorable Justice (as then titled) Beinisch (February 3, 2005; hereinafter: **Bethlehem Municipality Judgment**)).

24. Harming the property rights of protected inhabitants is prohibited unless it is necessary to protect human lives and is vital for this purpose:

“The obligation to protect security may, at times, result in an inevitable harm to private property... protecting human lives and bodily integrity

stands at the top of the responsibilities of the commander of the area... Along with this right [to life and bodily integrity] stands the right to property of the inhabitants of the area, which is also recognized as a protected fundamental constitutional right. It is recognized as such under constitutional law in Israel according to section 3 of the Basic Law: Human Dignity and Liberty. It is also protected under international law. The violation of property rights, including an individual's right to land, is prohibited according to the rules of war of international law, unless it is necessary for the purpose of combat...

The commander of the area is required to exercise his discretion carefully and meticulously before it issues an order violating the property rights of civilians in an occupied territory. This obligation is imposed on it by virtue of the rules of war in international law as well as by virtue of Israel's internal constitutional law, defining the right to property as a fundamental constitutional right (HCJ 7862/04, **Abu Daher v. The Commander of IDF Forces in Judea and Samaria**, IsrSC 59(5) 368, 376-378 (2005)).

25. Respondent's failure to handle Petitioner's seam zone entry application and approve it harms the family's connection to its land and the ability to cultivate it, and consequently Petitioner's right to property is severely harmed without any justification.

Violation of the right to freedom of movement

26. The right to freedom of movement within the state is recognized by international law as a fundamental right. This right was entrenched in the Universal Declaration on Human Rights, which was formulated following the second world war:

Everyone has the right to freedom of movement and residence within the borders of each State (Article 13(1)).

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and in the International Covenant on Civil and Political Rights from 1966:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. (Article 12(1))

<http://www.ohcr.org/en/professionalinterest/pages/ccpr.aspx/>

27. The right to freedom of movement was also recognized by Israeli case law as a fundamental right. It was so held in paragraph 15 of the judgment of the Honorable Justice Beinisch in **Bethlehem**:

Freedom of movement is one of the most fundamental human rights. We have already noted that freedom of movement was recognized by our jurisprudence as an independent fundamental right as well as a right deriving from the right to liberty, and according to some scholars this right also derives from human dignity (see paragraph 15 of the judgment and the references mentioned there). Freedom of movement is also recognized as a fundamental right in international law and this right is entrenched in a host of international treaties.

28. Israeli law recognizes the right to move within the state as more powerful than the right to move freely between states:

Freedom of movement – the violated right – is one of the most fundamental rights. This is the case in comparative law. This is the case in our jurisprudence. Referring to the "right of the resident to freely depart the country", Justice Zilberg noted that this right:

"... is a natural right, recognized as a given, in any country having a democratic regime..." (HCJ 111/53 **Kaufman v. Minister of Interior et al.** [42], page 536).

The above applies, even more forcefully, to the freedom of movement within the state. Indeed, the freedom to move within the borders of the state is mostly regarded as having a greater constitutional force compared to the freedom to depart the country (see **Daher** [23], page 708). **In most cases, freedom of movement within the state is given a constitutional status similar to that of freedom of speech.** Accordingly, for instance, in **Daher** [23] the Deputy Vice President, Justice Ben Porat, regarded freedom of movement and freedom of speech as "rights having an equal weight" (*Ibid*) (HCJ 5016/96 **Horev v. Minister of Transport**, IsrSC 51(4) 1, 49 (1997)).

29. According to scholarly literature "the more important the purpose of the movement, the greater the constitutional protection that is to be afforded to the right of freedom of movement" (Yaffa Zilbershats "On the Freedom of Movement within the State – following HCJ 5016/96 **Horev v. Minister of Transport** (not yet reported)" **Mishpat U'Mimshal** 4 793, 815 (5758)).
30. Petitioner 1 needs for her daughter, the Petitioner, to be able to move freely within the West Bank, to enable her to cultivate her seam zone land, according to the custom acceptable in Palestinian society whereby the family members of the registered owner of the plot take part in the cultivation of the land.
31. Respondent's failure to handle Petitioners' application harms Petitioner's ability to access her mother's land and cultivate it, and violates her right to freely move within the state, in a manner involving her family ties, her mother's right to property, the local deeply-rooted customs and her connection to the land which is also expected to pass to her by way of inheritance. The above without any justification and only due to neglect. Considering all of the above, the violation of Petitioner's right to freedom of movement is particularly severe.

Conclusion

32. Respondent's failure to handle Petitioners' application has been preventing the Petitioner, for a long time, and without any clear justification, from regularly accessing the land plot of her mother, Petitioner 1, and from cultivating it. Hence, Petitioners' fundamental rights to property and freedom of movement are severely violated.
33. In view of all of the above, the Honorable Court is requested to accept the petition, and direct the Respondent to issue to the Petitioner a permit for agricultural purposes allowing her to regularly and continuously access the plot of her mother, Petitioner 1, all year round.

34. In addition, the Honorable Court is requested to allocate a short period of time for Respondent's response to the petition, and obligate the Respondent to pay Petitioners' costs and attorneys' fees.
35. This petition is supported by an affidavit which was signed before an attorney in the West Bank and was forwarded to HaMoked by facsimile following telephone coordination. The Honorable Court is requested to accept this affidavit and the powers of attorney which were also provided by facsimile, considering the objective difficulties in arranging a meeting between the Petitioners and their attorneys.

January 7, 2020.

Tehila Meir, Advocate
Petitioners' counsel