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At the Supreme Court Sitting as the High Court of Justice

HCJ 8027/21

Before:

**Honorable Justice D. Barak-Erez
Honorable Justice O. Grosskopf
Honorable Justice Y. Kasher**

The Petitioners:

1. ___ Abu Altayef
2. ___ Abu Altayef
3. ___ Abu Jazar
4. ___ Alrim Karim
5. **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger**
6. **Gisha – Legal Center for the Freedom of Movement**

v.

The Respondents:

1. **GOC Southern Command**
2. **Coordinator of Government Activities in the Territories**
3. **Gaza District Coordination Office**

Petition for *Order Nisi*

Session Date:

Tevet 10, 5783 (January 3, 2023)

Representing the Petitioners:

Adv. Aharon Miles Kurman; Adv. Daniel Shenhar

Representing the Respondents :

Adv. Omri Epstein

Judgment

1. The petition before us is directed against the policy which applies to the issuance of permits to Israeli citizens or residents wishing to visit the Gaza Strip Area. More concretely, this petition concerns the criterion referred to as "divided families", setting out the conditions pursuant to which visitor permits as aforesaid are issued to Israeli citizens or residents who are married to Gaza Strip residents.

2. Typically, we are concerned with a family consisting of an Israeli citizen or resident who is married as aforesaid to a Gaza Strip resident, having children together. According to the applicable policy, the Israeli spouse can apply for a permit to visit Gaza for a period which does not exceed six months at a time, and the above application can also apply to the minor children of the spouses, namely, until they turn 18. On the other hand, according to the "divided families" criterion, visitor permits cannot be granted to children above the age of 18 who have a parent permanently residing in Gaza.
3. Briefly stated, the petition focused on the violation of the right to family life and freedom of movement of persons having parents residing in Gaza, who are unable to meet them, on a regular basis, after they reach maturity. In other words, the petition aimed at expanding the scope of persons having the right to receive visitor permits in the Gaza Strip by virtue of the policy applicable to "divided families".
4. On the other hand, respondents' position was that the complex security circumstances relating to the relationships between Israel and the Gaza Strip do not enable establishment of a more lenient policy with respect to the movement of Israeli citizens or residents to Gaza. Among other things it was stated in the preliminary response that the policy was established –

"Considering the position of the security bodies whereby the entry of Israelis into the Gaza Strip, and their movement between the Gaza Strip and Israel pose substantial security risks, *inter alia*, due to the fact that terror bodies in Gaza exploit it to promote terror objectives, including by recruiting family members of Gaza residents to promote their activities, either consciously, or deceitfully or under threats" (paragraph 4 of the preliminary response)."

The respondents have also emphasized that only recently the security bodies have re-stated their position concerning the security threat posed by the movement of Israelis to the Gaza Strip, particularly in connection with "divided families".

5. The hearing in the petition was held before us on January 3, 2023. Petitioners' counsel has re-emphasized the need to consider the harm caused to the family members who cannot meet and see each other. Petitioners' counsel has also argued that other easings which were decided upon with respect to the movement to and from the Gaza Strip, regarding the possibility of working inside Israel, ostensibly show that there is also room for further easing in the context at hand. On the other hand, respondents' counsel reiterated their principled position which was presented above. Concretely, it was emphasized that the number of Israeli citizens and residents having first degree relatives in Gaza is estimated at about 50,000 people. Therefore, expanding the scope of the visits to include additional populations of adults is expected to create an actual security difficulty. It was further argued that the issuance of work permits in Israel and their ancillary arrangements cannot be compared to the issuance of visitor permits to persons holding Israeli identification cards. Finally, it was re-stated that the policy is the outcome of the security circumstances on the ground and that the respondents re-evaluate it from time to time, according to the changes in the circumstances. Accordingly, for instance, it was pointed

out that recently concrete decisions were made with respect to the issuance of visitor permits to Gaza residents having relatives in Israel for Christian or Muslim holidays.

6. After we have heard the arguments of the parties, and with petitioners' consent, an *ex-parte* hearing was also held in which we were presented with the full security opinion on the matter and have also heard the security bodies. In said hearing we have also presented questions and received explanations.
7. By the end of the hearing and in view of the answers we have received, we are of the opinion that in the case at hand legal grounds justifying our interference according to the rules of administrative law were not established. Indeed, it is an inevitable conclusion that the lives of "divided families" between Israel and Gaza are difficult and filled with obstacles. However, in view of the difficult security circumstances, given the fact that the decision on protecting state security and its foreign relations is at the core of the discretion, and in view of the explanations given to us by the representatives of the state – there is no room for the interference of this court (see also: HCJ 7235/09 **HaMoked Center for the Defence of the Individual v. GOC Southern Command** (September 16, 2009); HCJ 5649/12 **Hamdan v. GOC Southern Command** (August 16, 2012)). The respondents are held to continue weighing the possibility of granting visitor permits, according to the changing circumstances.
8. In conclusion: the petition is denied without an order for costs.

Given today, Tevet 12, 5783 (January 5, 2023).

Justice

Justice

Justice