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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**H CJ 6579/08**

1. \_\_\_\_\_ Qablan
2. \_\_\_\_\_ Qablan
3. **HaMoked: Center for the Defence of the Individual**  
**founded by Dr. Lotte Salzberger**

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Tel: 02-6283555; Fax: 02-6276317

**The Petitioners**

v.

**Commander of IDF Forces in the Judea and Samaria Area**  
by the State Attorney's Office  
Ministry of Justice Jerusalem  
Tel: 02-6466157; Fax: 02-6467011

**The Respondent**

### **Notice on behalf of the Respondent**

1. In accordance with the decision of Honorable Justice Danziger dated August 24, 2008 and in accordance with the extensions granted, the respondent hereby respectfully submits a notice on his behalf.
2. The petition concerns the request of the petitioner, a resident of the Judea and Samaria Area, for permission to transit to the West Bank through the territory of Israel in order visit her ailing husband.
3. In the state's response to the petition dated August 18, 2008, it was conveyed that after the competent officials examined the petitioner's request, it has been decided, considering her husband's medical condition, to approve it. Against the background of the aforesaid, the respondent argued that as the relief sought in the petition had been granted, the need to hear it on its merits had become redundant and it must be deleted.

4. In the petitioners' response dated August 19, 2008, it was argued that the respondent's notice contained no reference to the "general" arguments raised in the petition, particularly to the issue of demanding an undertaking from residents of the Judea and Samaria Area wishing to visit Gaza not to return to the Judea and Samaria Area. The petitioners also requested the state be charged with legal expenses.
5. Against the backdrop of the aforesaid, the respondent respectfully submits his response.

### **The Respondent's Position**

6. The respondent will argue that the petition must be rejected *in limine* and on its merits.

### **The petition must be rejected in limine**

7. **First**, as aforesaid, the concrete matter of the petition has long since been resolved, as the respondents notified in their response dated August 18, 2008. As such, the petitioners' "general" arguments are theoretical arguments regarding which there is no need to rule at the present time.
8. As known, as a rule, the honorable court will not address a petition which raises theoretical questions. On this issue, we shall refer to remarks in the honorable court's judgment in HCJ 2655/06 **Att. Laor Noam v. Attorney General Takdin Elyon** 2006(1) 4211 (2006), as follows:

It is a rule that this court does not address petitions which raise theoretical questions, as "judicial experience deters the court from setting a rule which is seemingly floating in the air. The court needs an infrastructure of facts in a given case upon which to build a rule" (HCJ 6055/95, *Tsemah v. Minister of Defense, Piskey Din* 53(5), 241, 250. Compare also: HCJ 2406/05 *City of Beer Sheva v. National Labor Court*, unpublished; HCJ 1853/02 *Nawi David, Att. v. Minister of Energy and National Infrastructures*, unpublished; HCJ 10026/04, *Poalim IBI – Underwriting and Issuing LTD v. General Director of the Antitrust Authority*, unpublished; HCJ 73/85 *Kach Parliamentary Group v. Shlomo Hillel – Speaker of the Knesset, Piskey Din* 39(3), 141, 146).

This rule does not apply where the court's refusal to review questions of this sort may thwart any future review of these questions or where, practically, the court cannot rule other than when the question is presented as a general question which is not bound with the concrete facts of a specific case (the aforesaid HCJ 6055/95, p. 250; the aforesaid 2406/05). However, the petition before me is not among these exceptions and therefore does not justify our addressing it at the present time..."

(See also: HCJ 2320 **Al-Ma'amla v. IDF Commander in the Judea and Samaria Area**, *Piskey Din* 52(3) 346 (1998); HCJ 6621/99 **Magen v. Israel Police**, *Takdin Elyon* 99(3) 1181 (1999).

9. These remarks are relevant also to our case. Once the petitioners' individual case has been resolved, there is no room to review the "general" arguments raised by the petitioners. It is clear that the petitioners may hold their arguments on this issue and these may be argued in a different concrete case.
10. In light of the aforesaid, it shall be argued that the petition must be rejected *in limine*.

### **The petition must be rejected on its merits**

11. Beyond necessity, the respondent will argue that the petition must be rejected also on its merits.

### **The policy of segregating the Gaza Strip**

12. As known, since September 2000, an armed conflict has been waged against Israel by Palestinian terrorist organizations. Following the exit of IDF forces from the Gaza Strip in September 2005, these organizations have been making great efforts to transfer terrorist infrastructures to the Judea and Samaria Area and strengthen the ones already in existence therein. This security threat has intensified in light of the events leading up to the transfer of control over the Gaza Strip to the Hamas organization in June 2007.
13. The State of Israel is confronting the described threat, *inter alia*, via segregation between the Judea and Samaria Area and Gaza. The government has accordingly decided to significantly reduce the movement of residents between these two areas. Naturally, this minimalist policy directly affects applications by residents of the Judea and Samaria Area to enter the Gaza Strip.
14. On this issue, one must distinguish between applications for time-limited visits to the Gaza Strip and applications to transfer a center of life to it. Below we seek to briefly present the policy regarding processing of these two types of applications.

### ***Tim- limited visits to the Gaza Strip***

15. The respondent informs that, as a derivative of the aforementioned minimalist policy, time-limited visits to the Gaza Strip are made possible only in exceptional humanitarian cases, while family ties, do not constitute in and of themselves humanitarian grounds justifying approval of the application.

On this issue, see the remarks of Justice Grunis in HCJ 9657/07 **Jarbu'a v. IDF Commander in the Judea and Samaria Area** *Takdin Elyon* 2008(3) 2362.

### ***Settlement of residents of the West Bank in the Gaza Strip***

16. First, the respondent notifies that processing an application for permanent settlement by Judea and Samaria Area residents in the Gaza Strip will be examined and processed by the officials authorized to do so, **only in cases where a Judea and Samaria Area resident asks, of his free will, to transfer his center of life to the Gaza Strip**. It shall also be emphasized that inasmuch as a resident's application does not imply that he wishes to **transfer** his center of life to the Gaza Strip, indeed his application is processed as an application for a time-limited visit in accordance with the aforementioned.
17. To the point, despite the minimalist policy and in the appropriate cases, applications by residents of the Judea and Samaria Area to travel through the State of Israel to Gaza in order to settle there are approved.
18. Once a resident of the Judea and Samaria Area has expressed his wish to transfer his center of life to Gaza, he is given a document entitled: "declaration", on behalf of the military commander, the purpose of which is to clarify the policy currently in practice to the applicant. The document reads as follows:

"I hereby inform you that your application for a transit permit from the Judea and Samaria Area to the Gaza Strip has been approved in light of your declaration that it is your intention to transfer your center of life to the Gaza Strip permanently.

We wish to inform you, that according to the policy currently in practice, the entry of residents whose center of life is in Gaza to the Judea and Samaria Area is permitted only in exceptional humanitarian cases.

We shall emphasize that inasmuch as you wish to return to the Judea and Samaria Area you will be required to submit a detailed application to the Palestinian Civilian Committee. Inasmuch as the application is transferred to the Israeli side, it will be examined in accordance to the policy in practice at the time.

A copy of the original document and its Arabic translation is attached and marked **R/1**.

19. We shall again clarify that a resident of the Judea and Samaria Area who has received such a document has already noted in his application that he intends to transfer his center of life to the Gaza Strip. Therefore, **it is not a case of a request for an undertaking by the resident to transfer his center of life to the Gaza Strip, as an express declaration of his wish to that effect has already been given in the framework of the application the resident had submitted to the competent official. The purpose of the document is to clarify to the applicant current policy regarding residents whose center of life is in the Gaza Strip to return to the Judea and Samaria Area.** [sic] The respondents will argue that there is no flaw in so doing and therefore, the petitioners' general arguments must be rejected, on their merits as well.

#### **Processing of the petitioner's case**

20. The petitioner's application, as submitted to the DCO, was for a time-limited visit to the Gaza Strip. As such, her application should have been examined in view of her husband's illness and with due consideration to the medical documents attached to the application.
21. However, as the respondent has notified, due to an error, the petitioner's application was not examined in accordance with existing procedures relating to visits for humanitarian reasons. Instead, the petitioner's application was examined as if it were an application to transfer her center of life to Gaza. In light of the above, the respondent requests to leave the decision regarding expenses to the discretion of the honorable court.

It shall be noted, on this issue, that the respondent is of the opinion that on the matter of a ruling on expenses, the petitioner's insistence on the petition, despite it having become theoretical, also has to be taken into consideration.

22. As noted, following submission of the petition, the competent officials examined the petitioner's application once again, this time in accordance with the relevant procedures and it was decided to approve the application.

#### **Conclusion**

23. In light of the aforesaid, the respondent is of the opinion that the petition must be rejected *in limine* – due to its being theoretical; and on its merits – once it has been found that there is no room for the honorable court's intervention in the petition also in relation to the general arguments raised by the petitioners.
24. Therefore, the respondent requests the petition be rejected *in limine* and on its merits.

Today 4 Kislev 5769  
01 December 2008

[signed]  
Gilad Shirman, Att.  
Deputy State Attorney