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At the Supreme Court
Sitting as the High Court of Justice

HCI 86/11

In the matter of:

1. **Zeinab Shalaldeh, ID No. 995537958**
Resident of the Occupied Territories
2. **HaMoked: Center for the Defence of the Individual,**
founded by Dr. Lotte Salzberger

all represented by counsel, Att. Ido Blum (Lic. No. 44538) and/or Elad Cahana (Lic. No. 49009), and/or Hava Matras-Irion (Lic. No. 35174) and or Sigi Ben Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No. 41065) and/or Leora Bechor (Lic. No. 50217) and/or Noa Diamond (Lic. No. 54665) and/or Nimrod Avigal (Lic. No. 51583)

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. **Military Commander of the West Bank**
2. **Head of the Civil Administration**
3. **State of Israel**

The Respondent

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause:

1. Why they will not allow residents of the Occupied Territories to fill out application forms in Arabic and submit them to the respondents in Arabic;
2. Why they will not process the objection filed by petitioner 1, despite having been written in Arabic and allow her to leave the West Bank for Jordan.

Motion for Urgent Hearing

The court is requested to schedule an urgent hearing in the petition. The petition concerns the respondents' policy, first made known in a letter on behalf of petitioner 2, on December 2, 2010.

The policy's essence is that Palestinians submitting applications to the Israeli district coordination offices are required to fill out and submit their applications in **the Hebrew language exclusively** and that applications in Arabic will no longer be processed.

The matter is most pressing, as this policy directly affects hundreds of thousands of people who seek the services of the DCOs every day and injures them and their ability to exercise their rights.

Introduction

1. Much has been said and written about the status of the Arabic language in Israel. The courts have clarified time and again that Arabic is an official language and that the authorities must provide services and allow access to them in this language as well (see for example, H CJ 4112/99 **Adalah v. Tel Aviv Yaffo Municipality**, IsrSC 56(5) 393 (2003); Ilan Saban and Muhammad Amara, *The Status of Arabic in Israel: Law, Reality and the Limits of Using Law to Change Reality*, **MedinaVeHevra [State and Society]** 4(1), 885, (2004)).
2. Every so often, the headlines report of one case or another which exposes the fact that some Israeli authority is not equipped to provide services in Arabic. The reported authority immediately hastens to announce it will make the appropriate preparations and makes sure to clarify that it can be contacted in Arabic as well (see for example, Dana Weiler-Polak, *Report: Ministry of Justice Aid Offices Discriminate against Arabs*, **Haaretz**, August 5, 2010; Talila Neshser, *Some 20 Government Ministries are Inaccessible to Arabs*, **Galei Tzahal Online**, August 16, 2010).
3. And lo, suddenly, a single population group – and it alone – is required to file applications **only in Hebrew** and is prevented from submitting applications in Arabic. Quite absurdly, this group is none other than the Palestinian residents of the Territories.

The parties

4. Petitioner 1 is a Palestinian resident of the Occupied Territories, born in 1966, a mother of seven children who lives in Sa'ir, near Hebron.
5. Petitioner 2 (hereinafter: **HaMoked**) is an organization which promotes human rights in the Occupied Territories.
6. Respondent 1 is in charge of the West Bank area on behalf of petitioner 3, the State of Israel, which has been holding the West Bank under belligerent occupation for over forty years.

Respondent 1 holds power under international law and is obligated to act in accordance with the principles of Israeli public and administrative law. Under international law, respondent 1 is responsible for the wellbeing of the residents of the Territories, for safeguarding their public order and safety and protecting their rights (see [H CJ 10356/02 Haas v. IDF Commander in the West Bank](#), IsrSC 58(3) 443, 456 (2004)).

7. Respondent 2, the head of the civil administration is in charge of administering civilian matters in the Occupied Territories on behalf of respondent 1. The civil administration operates in the Territories via district coordination offices (hereinafter: **DCOs**) where residents of the Territories are required to file their applications using designated forms.

The Order regarding the Establishment of a Civil Administration (Judea and Samaria) (N. 947) 5742-1981, which vests respondent 2 with his power stipulates, in view of respondent 1's duties under

international law, that the power of the civil administration is to “administer civil affairs in the Area... for the welfare and benefit of the population and in order to supply and operate public services, considering the need for good governance and public order in the Area.”

The facts and the chain of events

8. Every day, hundreds and thousands of Palestinian residents of the Occupied Territories arrive at the DCOs located throughout the Territories and file various applications.
9. Among others, DCOs receive applications to have a foreign travel ban removed as per a procedure formulated in the context of an HCJ petition (HCJ 8155/06 **The Association for Civil Rights in Israel et al. v. Commander of the IDF Forces in Judea and Samaria**) which was designed to allow residents of the Territories to inquire in advance regarding a decision to prevent their travel from the Territories and to challenge such a decision if need be.
10. The applications and the objections are submitted using a designated form. The form is written in **both Hebrew and Arabic**.

A copy of an inquiry regarding a foreign travel ban form is attached and marked **P/1**.

11. In practice, some residents of the Territories file their applications in Hebrew and some in their own language – **Arabic**.

For the purpose of illustration, copies of six applications filed in different DCOs over recent months in **Arabic** (which were processed) are attached and marked **P/2**.

12. Those who choose to file their applications in Hebrew (perhaps believing or hoping that this would have a positive effect on the processing of the application or on processing times) sometimes decide to use the services of “**typists**”. The latter lack any sort of training and earn their living by sitting at the gates of the DCOs with typewriters and “translating” forms and documents into Hebrew for a fee. More on this will follow.

13. In accordance to the aforesaid, and like many others, petitioner 1 went to the Hebron DCO on September 6, 2010, after the respondent’s officials prevented her from travelling abroad at the Allenby Bridge border crossing. The soldier who processed her application told her that there was indeed a security ban on her travel abroad. When petitioner 1 wished to file an objection, the soldier told her, much to her surprise, that she must fill out the application **in Hebrew**. However, following a telephone call from HaMoked, the DCO soldiers agreed to accept the form in **Arabic**.

Thus, eventually, like the applicants whose forms were attached to the petition (annexes P/2a-f) and like many others, petitioner 1 filled out the objection form she filed **in Arabic**. An instruction to return to the DCO on October 20, 2010 was handwritten on the form.

A copy of the form filed by petitioner 1 at the Hebron DCO is attached and marked **P/3**.

14. On October 20, 2010, petitioner 1 reported to the DCO to receive a response to the objection she had filed. Yet, to her dismay, rather than providing her with the response, the DCO soldiers told her that she had to state the purpose of the trip on the form **in Hebrew** and resubmit it. In a telephone conversation with HaMoked, a DCO soldier stated that petitioner 1’s application was actually denied on September 26, 2010 (twenty days after it was filed) because **it was submitted in Arabic**.
15. Therefore, on October 25, 2010, HaMoked contacted the head of the Hebron DCO, described the chain of events and demanded a relevant response to the objection that had been filed. HaMoked also demanded an inquiry be held into the case and the required measures be taken to prevent its

recurrence, including clarifying to all officers and soldiers that Palestinian applicants must not be required to submit translations of Arabic applications and documents. Copies of the letter were sent, *inter alia*, to respondent 2, the head of the civil administration and the office of the legal advisor to respondent 1.

A copy of HaMoked's letter to the head of the Hebron DCO dated October 25, 2010 is attached and marked **P/4**.

16. As no response was forthcoming, HaMoked sent a reminder to the head of the Hebron DCO.

A copy of the reminder dated October 31, 2010 is attached and marked **P/5**.

17. On December 2, 2010, the response to the letter arrived from the office of the head of the civil administration himself. Yet, the letter indicated that not only are the respondents unprepared to see to the conduct of the DCO, but that this is **an actual policy**.

The letter unequivocally clarified that the request to fill out the application form in Hebrew is "**part of security agency policy**" and that "**in order to process the application it must be written in the Hebrew language.**"

If that were not enough, the respondents went on to state that "**the residents can easily fill out the application forms in the Hebrew language**", as "a Palestinian typing office which provides typing services to the residents operates in the reception area of the DCO".

A copy of respondent 2's letter dated December 2, 2010 is attached and marked **P/6**.

18. It should be noted that this "typing office" is none other than the untrained "typists" who earn their living by sitting at the gates of the DCOs with typewriters and "translating" forms **for a fee**.

To illustrate the services provided by these "typists", we present a few representative examples showcasing their handiwork, including an application by Mrs. Rizzik-Masri who does not speak Hebrew. The "typist" translated her application into Hebrew (for a fee of course) as follows:

I am married and I'm have 5 children I clean and wantde request for
have secrity precluded removed

The application of Mr. Ghaljif, who wished to make the hajj pilgrimage to Mecca and does not speak Hebrew and also hired a "typist" who wrote that the destination is:

Exti to Arabiya Saudi for Mecca Mosque

Copies of three applications typed on the typewriters of "typists" for a fee are attached and marked **P/7**.

19. Therefore, on December 12, 2010, HaMoked contacted the head of the DCO, demanding to immediately desist from this unacceptable policy and allow residents of the Territories to submit their applications in their own language – Arabic. The letter stated that:

The severity of this new policy cannot be overstated. Not only does it lack any legal basis, but it causes intolerable harm to the residents of the Occupied Territories and constitutes a complete breach of the duties of the military commander and the civil administration toward them.

We stress that even if the applications were submitted inside Israel, there would have been a duty to allow submitting them in Arabic, which is, as known, one of the official languages of the State of Israel. The Supreme Court has also recognized the status of the Arabic language (HCJ 4112/99 **Adalah v. Tel Aviv Yaffo Municipality**) and accordingly ruled, for example, that **the National Insurance Institute must accept forms filled out in the Arabic language from residents of East Jerusalem** (HCJ 2203/01 **DCI v. National Insurance Institute**).

The same holds true, all the more so, for applications submitted in the Territories by Palestinian residents of the Territories **whose mother tongue and only official language is Arabic**. It should be noted that the forms applicants are required to fill out at the DCOs are originally written in the Arabic language as well.

Clearly, inasmuch as those charged with serving the Palestinian population are not sufficiently fluent in Arabic, it is a badge of shame for the civil administration and the security agencies, which should have provided appropriate and sufficient training to the relevant officials. It is certainly inconceivable that the residents of the Territories would be made to pay the price.

The letter further stated that:

It is superfluous to note that the “solution” suggested in your letter, that the tens of thousands of residents of the Territories who turn to the DCOs would be forced to use the services of untrained Palestinian “typists” who sit at the DCO gates with typewriters and “translate” documents into Hebrew for a fee is particularly outrageous, and would have best not been put to paper.

Copies of the letter were sent to respondent 1, the legal advisor to respondent 1, the coordinator of government activities in the Territories and the state attorney’s office. HaMoked requested a response by December 12, 2010 and clarified it would be forced to turn to the courts otherwise.

A copy of HaMoked’s letter to the respondents dated December 12, 2010 is attached and marked **P/8**.

20. On December 16, 2010, Captain Matan Solomosh, from the office of the legal advisor to respondent 1, stated in a telephone conversation that they intended to hold a thorough inquiry into the matter and that this should take a few days.
21. Yet, time goes by and naught. Therefore, on December 28, 2010, HaMoked contacted Captain Solomosh and notified him that in view of his telephone message of December 16, 2010, HaMoked had not yet turned to the courts. However, considering that no progress has been made since, if no response was forthcoming by January 2, 2011, HaMoked would be forced to turn to the courts.

A copy of HaMoked’s letter to Captain Solomosh dated December 12, 2010 is attached and marked **P/9**.

22. No response has been received since. In the circumstances, and due to the importance of the matter and its daily repercussions for thousands of Territories residents, the petitioner had no recourse but to turn to the court.

The Legal Argumentation

The duties of the military commander

23. The military commander is bound by three normative systems.

First, the military commander is bound to act in accordance with **international humanitarian law** and the laws of occupation included therein.

Second, the respondent is bound to act also in accordance with **international human rights law**.

Third, as an Israeli public authority, the military commander also carries in his backpack the norms of **Israeli public law**.

24. The respondents' duty to allow residents of the Territories to file their applications in Arabic directly follows from each of the normative systems by which they are bound.

International humanitarian law

25. As the commander of the occupied territory, the military commander's discretion is narrow and restricted by "two magnetic poles" (HCJ 393/82 **Jam'iat Iscan Al-Ma'almoun v. Commander of the IDF Forces in the Area of Judea and Samaria** IsrSC 37(4) 785, 793 (1983). He is obligated to protect the rights of the residents and ensure their normal lives and rights. Regulation 43 of the Hague Regulations stipulates:

The authority of the legitimate power having in fact passed into the hands of the occupant, **the latter shall take all the measures in his power** to restore, and ensure, as far as possible, public order and safety... (emphasis added)

The duty to ensure public order and safety and meet the needs of society applies to all areas of civilian life:

The first clause of Regulation 43 of the Hague Regulations vests in the military government the power and imposes upon it the duty to restore and ensure public order and safety... The Regulation does not limit itself to a certain aspect of public order and safety. It spans all aspects of public order and safety. **Therefore, this authority – alongside security and military matters – applies also to a variety of "civilian" issues** such as, the economy, society, education, welfare, hygiene, health, transportation and other such matters associated with human life in modern society. (HCJ 393/82 **Jam'iat Iscan Al-Ma'almoun v. Commander of the IDF Forces in the Area of Judea and Samaria** IsrSC 37(4) 785, 797 (1983); emphasis added).

In fact, the military commander has an **active duty** to protect the rights of the residents of the Territories:

Within the latter, the Area commander is responsible not only for maintaining the inhabitants' order and security but also for protecting their rights, particularly the constitutional human rights conferred to them. The concern for human rights lies at the heart of the humanitarian considerations which the commander must consider. ([HCJ 10356/02 Haas v. IDF Commander in the West Bank](#), IsrSC 58(3) 443, 456 (2004)).

26. In other words, as those who are charged with serving the protected population and as per their duty to see to its welfare and safeguard its rights, the respondents are obligated to act such as to allow residents of the Territories to exercise their rights as fully as possible.
27. As known, the only language of the residents of the Territories is Arabic. Clearly, in order for them to fully exercise their rights, they must be allowed to express themselves as comprehensively and clearly as possible when communicating with the respondents.

28. When a person who wishes to exercise one of his fundamental rights is forced to express his wishes, reasons, arguments and circumstances in a language in which he is not fluent, the clear result is a severe impediment to his ability to exercise his right.
29. It should be emphasized that providing thousands of residents of the Territories with the possibility to express themselves and present their applications to the authorities clearly and fluently is not a charitable gesture. It is an inherent part of the duties of the respondents, who are charged with seeing to the rights of this population.
30. This is the reason military legislation in the Territories is officially published in Arabic also. This is the reason the forms used by the respondents are written in Arabic also.
31. The requirement that the form (**which is originally written in Arabic as well**) be filled out in Hebrew only, is nothing short of placing an irrational obstacle in the path of residents of the Territories who seek to exercise their rights, and is in direct conflict with the military commander's duties.

International human rights law

32. The respondents are obligated to act in accordance with international human rights law, primarily the UN conventions on civil and political rights and social economic rights. This honorable court has also examined the actions of the military commander vis-à-vis these norms ([H CJ 9132/07 Al-Basyuni v. The Prime Minister](#), TakSC 2008(1) 1213; H CJ 2150/07 [Abu Safiya v. Minister of Defense](#) (not yet published, December 29, 2009); [H CJ 7957 Mara'abe v. The Prime Minister of Israel](#) TakSC 2005(3) 3333 §24; [H CJ 3239/02 Marab v. IDF Commander in the West Bank](#) TakSC 2003(1) 937; [H CJ 3278/02 HaMoked: Center for the Defence of the Individual v. Military Commander in the West Bank](#), IsrSC 57(1) 385)).
33. According to international human rights law, the respondents are obligated to allow residents of the Territories to exercise their rights without distinction or discrimination, including on the basis of **language**.

Article 2 of the International Convention on Civil and Political Rights stipulates:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, **language**, religion, political or other opinion, national or social origin, property, birth or other status.

34. According to the same article, the respondents must also take every measure, including legislating, to promote and allow the complete fulfillment of the rights awarded under human rights covenants.
35. Clearly, a person who is unable to properly express himself when communicating with the authorities cannot fully enjoy his rights.

Israeli public law and the status of Arabic in Israel

36. As known, the respondent "carries in his backpack" the rules of Israeli public law and is obligated by the principles which apply to every Israeli authority (H CJ 393/82 [Jam'iat Iscan Al-Ma'almoun Al-Tha'auniya Al-Mahduda Al-Mauliya v. Commander of the IDF Forces in the Area of Judea and Samaria](#) IsrSC 37(4) 785; [H CJ 10356/02 Haas v. IDF Commander in the West Bank](#), IsrSC 58(3) 443; H CJ 2056/04 [Beit Sourik Village Council et al. v. Government of Israel](#) IsrSC 58(5) 807).

37. Article 82 of the 1922 King's Order in Council, which is a piece of legislation still valid in the State of Israel stipulates:

All Ordinances, official notices and official forms of the Government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew...

(The provision has been changed with respect to English, see Section 15(b) of the Law and Administration Ordinance, 5708-1948).

It should be noted that this provision was naturally enacted with respect to the entire area of Mandatory Palestine, including the West Bank.

38. It has already been ruled, with respect to the aforesaid Article 82, in the **Adalah case** (HCJ 4112/99 **Adalah v. Tel Aviv Yaffo Municipality**, IsrSC 56(5) 393) that:

This Article stipulates a very important provision, pursuant to which it has been determined that Arabic is an official language. As such, it was granted a "supreme, special status" (Justice M. Cheshin in CivA 12/99 **Mer'I v. Sabek**, IsrSC 53(2) 128, 142). It is unlike other languages spoken by citizens or residents of the country. This special status directly results in rights and duties vis-à-vis the central government. However, this special status is not limited to the rights and duties which are a direct result thereof. The official status of a language radiates unto the corpus of Israeli law and affects its operation. This effect is expressed, among other things, in the weight that must be given to the official status of the language in the overall considerations that must be taken into account by a competent official when exercising state authority.

(The Adalah case, §13 of President Barak's opinion)

President Barak goes on to state:

The uniqueness of the Arabic language is twofold: first, Arabic is the language of the largest minority in Israel, which has been living in Israel from days bygone. It is a language which is tied to the cultural, historical and religious characteristics of the Arab minority in Israel...

Second, Arabic is an official language in Israel (see §12 above). Israelis speak many languages, but only Arabic, along with Hebrew, is an official language in Israel. Arabic, therefore, has been granted special status in Israel...

The official status of Arabic "has a unique and added value" (A. Saban, *The Legal Status of Minorities in Democratic Deeply-Divided Countries: the Arab Minority in Israel and the Francophone Minority in Canada*, **LL.D. Thesis**, Hebrew University (2000)).

(The Adalah case, §25 of President Barak's opinion)

39. Over the years, the court has reiterated the fact that Arabic is an official language which the authorities must allow those seeking their services to use.

40. Thus for example, it has been ruled that Arabic can be used in the courts:

It has already been ruled, based on the status of Arabic as an official language (Article 82 of the 1922 King's Order in Council), that a litigant may file documents with the court in

Arabic, without translation. (CC (District - Nazareth) 5685/95 Salim v. Al-Jani Estate (unpublished, September 29, 2004)).

CivA 8837/05 **Marshud v. Al-Shurti** (unpublished, January 11, 2009)).

41. In 2001, a petition was filed against the National Insurance Institute [NII] regarding use of Arabic by the institution (HCJ 2203/01 **DCI v. National Insurance Institute** (unpublished, January 7, 2009) hereinafter; the **DCI case**). The petitioners demanded, *inter alia*, that the NII translate the forms it uses to Arabic and **allow residents of East Jerusalem to fill out the forms in Arabic**.

42. **Even the state did not dispute this demand** in the petition, as described in the court's decision:

In their response, the respondents agree that as a result of the official status of Arabic and the duty to provide forms in Hebrew and Arabic, there is room to allow for the forms to be filled out in Arabic and to allow correspondence in Arabic.

(The aforesaid DCI case, opinion of Honorable Justice Joubran dated December 15, 2005).

43. The court severely criticized the NII for delaying and postponing finalization of the required preparations for years and clarified that this amounted to disregard of the duties incumbent upon it vis-à-vis East Jerusalem residents. As stated in the ruling dated January 7, 2009, when the court issued a decree absolute:

The history of processing the petition was detailed in our decision dated July 23, 2008. In that decision we severely criticized the conduct of the NII in this case and opined that this expresses "disregard of the duties incumbent upon the NII vis-à-vis the residents of East Jerusalem, disrespect for our decisions and for declarations made to the court by the institute itself. In that decision, the NII was granted 90 additional days to present a concrete action plan and schedule backed by affidavit.

Indeed, on December 1, 2008, we were presented with a supplementary affidavit, signed by the E.D. of the NII, which contained a report regarding issuance of instructions to translate the forms designed for use by the public and which appear on the NII's website in Hebrew (some 120 forms). It was relayed that all forms would be bi-lingual. A report was provided regarding the number of forms already translated and uploaded to the website and a detailed schedule for completing the translation and publication of forms, due to be available on the NII's website in Arabic by the end of June 2009. We were also told that all communications submitted to the NII in Arabic are admitted. We therefore issue a decree absolute in the petition at bar that the NII must uphold its undertaking with respect to admitting forms in Arabic. It must also complete the translation and uploading of forms to the website, all as detailed in the E.D.'s affidavit and the detailed annex thereto, which is to be considered as part of this decree.

44. If this was ordered with respect to Israel – where the main language is Hebrew and Arabic is the minority's language, then it is all the more so with respect to the Occupied Territories and the Palestinian population where Arabic **is the only language of the majority**.

Conclusion

45. It is difficult to describe the enormity of the absurd created by the respondents' new policy: a Palestinian who contacts the Israeli interior ministry may submit his application in **Arabic**, whereas, when contacting the civil administration, entrusted with providing services to the Palestinian

population in the Territories, he is required to submit the application **in Hebrew only**. Clearly, directing all residents of the Territories to those paid “typists” is inconceivable and would have been best not put to paper.

46. Hence, the refusal to process Arabic language applications and documents submitted by residents of the Occupied Territories lacks any legal basis and is in direct conflict with the duties of the military commander and the civil administration in the Occupied Territories under international and Israeli law.

In light of all the aforesaid, the honorable court is requested to issue an order nisi as sought, and render it absolute upon hearing respondents’ response. The court is also requested to impose payment of petitioners’ expenses and legal fees on the respondent.

Ido Blum, Att.
Council for the petitioners

4 January 2011
[T.S. 66990]