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**HCJ 660/88**

1. “In’ash al-Usra” Association
2. Samiha Khalil

v.

**IDF Commander in the Judea and Samaria Area**

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

(11 October 1989)

Before Justices, M. Bejski, G. Bach, A. Halima

A. Feldman, L. Tsemel - on behalf of the petitioners

M. Mazuz, Senior Deputy State Attorney - on behalf of the respondents

**Judgment**

Justice G. Bach

1. This petition concerns an order issued by the commander of IDF forces in the Judea and Samaria Area (hereinafter: the respondent) on June 19, 1988, pursuant to his powers under Section 91(a)(2) of the Order regarding Security Provisions (Judea and Samaria) (No. 378) 5730-1970 (hereinafter: the Security Provisions Order) according to which the premises of the In’ash Al Usra Association (hereinafter: the association) were closed for a period of two years.

The aforementioned Section 91(a)(2) of the Security Provisions Order stipulates as follows:

91(a). The military commander may by way of issuing an order:

1. ...
2. if he believes that such is required for maintaining good governance, public order and for the security of IDF forces, demand any person who owns a site to close it, cease from operating it and keep it closed for a period specified in the order”.

The petition was directed against the closure order in its entirety and alternatively against its duration. The petition was transferred for review before a bench of three justices (a slightly different bench from the current one) and on November 21, 1988, after reviewing the petition and the material submitted by counsel for the respondent, we decided to issue an *order nisi*, but limit it to the issue of the duration of the closure order only.

In so deciding we effectively found that in view of the materials presented to us we had no doubt, not even an alleged doubt, with respect to the validity of the closure order itself, but that the question of the reasonableness of the duration of the closure should be clarified and reviewed by us.

2. The association was founded in 1965 and registered at the time under the Jordanian law for registration of charitable organizations. Petitioner 2 is the director of the association. The association's official objective is to promote the welfare of Palestinian families and women. These official objectives include, *inter alia*:
  - a. Increasing women's social and educational quality of life;
  - b. Providing assistance to persons in need who are incapable of providing for themselves or their families;
  - c. Developing and encouraging handcrafts in rural industries;
  - d. Preserving the traditions and folklores of the Area.

As part of its operations, the association, among other things, runs a professional training centre for women where occupations such as sewing, weaving, hairdressing, beauty, secretarial skills etc. are taught; a girls' boarding school; a day care center for children; a Palestinian heritage museum, a manuscript and tape archive and various workshops. According to the petitioners, the association provides employment for some 4,800 women and its products are sold in the Area and around the world.

3. According to the respondent, security forces learned as early as in the 1970s and early 1980s that the association departs from its official objectives and functions and uses cultural, social assistance and educational activities as a podium for political activity which is hostile to the State of Israel, including hostile propaganda and inciting violence against the State of Israel and the IDF. This in contravention of the Jordanian Charitable Association Law which remained in effect in Judea and Samaria and according to which a charitable association or social institution is prohibited from conducting any activity designed to "achieve political objectives" and in contravention of the association's internal regulations which stipulate that the "association shall not intervene in politics in any way...".

Petitioner 2 has been summoned on several occasions by the district commander and the welfare officer to provide clarifications as a result of the association's illegal activity in general and her own in particular. She was cautioned that the association must discontinue the aforesaid activities. In addition, restraining orders were issued against petitioner 2 between 1980 and 1983, under Section 86 of the Security Provisions Order, which prohibited her from leaving Al-Birah.

According to the respondent, when rioting broke out in the Judea and Samaria Area in December 1987, hostile activities on the part of the association and appellant 2 [*sic*] intensified. Information received in part from confidential sources revealed a reality of deep involvement by the petitioners in

the aforesaid events and the provision of assistance to terrorist organizations in furtherance of their hostile objectives.

Hostile and inciting literature as well as extremely and blatantly anti-Israeli and anti-Semitic videos were found in a search of the association's offices. These videos contained, *inter alia*, songs praising terrorist organizations and hateful incitement against Israel and IDF soldiers. Based on the materials seized in the association's buildings as aforesaid, an indictment was served against petitioner 2 in the military court in Ramallah, in which she was charged with 11 counts of incitement and possession and distribution of hostile material.

The respondent also decided, based on the overall information in his possession, to issue the closure order which is the subject matter of this petition. The closure order applies to all premises and structures in which the association operates. However, for humanitarian reasons, the association was permitted to continue running the child care center and the boarding school. The respondent also noted that he had no objection to the operation of kitchens in those structures, for purposes of the day care center and boarding school only. The respondent did caution the petitioners that this limited permit is subject to the association's refraining from using the aforesaid structures for continuing its hostile activity.

4. As stated, at this point, the question of the validity of the closure order and the justification for its issuance no longer requires a ruling and our review is limited to examining the reasonableness of the duration of the closure cited in the order.

Counsels for the petitioners argue that the closure of an educational and charitable institution for two years is not reasonable and therefore, not permissible according to the relevant order. They note, in this context, that "the respondent did not examine alternatives to closure for such a protracted period of time, did not give the petitioners warning orally or by way of closure for a short duration and there is no evidence or indications that the result the respondent wishes to reach cannot be reached by way of closure for a short duration". The petitioners' arguments also indicated that "the balance between the suffering of these individuals (those dependant on the association – G.B.) and the damage claimed by the respondent [*sic*] necessitates a significant shortening of the duration of the closure".

5. The respondent's argument on the other hand, is that there is no flaw in the duration of the closure and that it does not exceed the bounds of reasonableness considering the circumstances.

The respondent specifically asks that the following factors be considered with respect to this issue:

- a. The essence and severity of the hostile activity attributed to the petitioners, whereas the respondent has been convinced that the association used the elaborate organizational apparatus it established in the Area for the needs and for the furtherance of terrorist organizations during the intifada.
- b. This is not a single, spontaneous incident, but systematic activity spanning over a protracted period of time.
- c. The fact that the main actor and driving force behind the association is petitioner 2 who particularly stands out in her hostile and inciting activities.

- d. According to the respondent, there are indications that subversive activity continues even in the association's institutions which were permitted to operate for humane reasons, i.e., the day care center and the boarding school.
  - e. It is fitting to consider the security circumstances currently prevailing in the Area, which necessitate an appropriate response to the petitioners' actions.
  - f. Among other things, the respondent also points to the fact that a number of other organizations, such as the Shabiba organization and sports and labor organizations have also been shut down for periods of two years.
6. I do not dispute the legitimacy and relevance of the respondent's aforesaid considerations. However, I have reached the conclusion that a closure order for a period of two years with respect to an institution such as the association in this case does exceed the bounds of reasonableness and permissibility. I shall provide grounds for my position.
- a. One must not forget that a closure order under Section 91(a)(2) of the Order regarding Security Provisions is not intended to penalize the relevant institution or organization or its members, but to serve as a warning and as a preemptive act, all in the furtherance of good governance and public order and for the safety of IDF forces.

It is difficult not to feel that the decision to close the association for a long period of two years exceeds the aforesaid purposes.

- b. Indeed, I do not find cause for our intervention in the respondent's conclusion which is based, *inter alia*, on confidential intelligence material which was not brought for review by us and according to which the association's institutions were widely used for spreading subversive and inflammatory opinions among the public in need of the associations' services. However, one cannot ignore the fact that this is an association which also carries out extensive social and educational activities and documentary materials presented to us by counsel for the petitioners will prove as such.

One of the basic tenets which must guide sovereign policy in a held territory is the desire to allow, as much as possible, normal life to continue as per usual. The operation of educational and charitable institutions such as those the association was established to promote can naturally contribute to the achievement of this goal. And, *vice versa*, the closure of such institutions which have operated and existed for a protracted period of time may cause shocks and increase tensions which in no way assist in engendering normal life.

One should note in this context, Article 43 in the Annex to the Hague Convention respecting the Laws and Customs of War on Land, 1907, which, as known, reflects customary international law which applies in Israel even without an Israeli legislative act. This Article sets forth as follows:

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, while respecting, unless absolutely prevented, the laws in force in the country.

The phrase "public order and safety" as it appears in this Article has been interpreted in case law. The following was stated in HCJ 202/81[1], p. 629, by Justice Shilo:

What is ensuring public order and safety? The obvious answer is: implementing good governance, encompassing all its agencies practiced in a civilized country in our day and age, including security, health, education, welfare, but also including quality of life and transportation

In HCJ 393/82[2], Justice Barak said of the same Article, in page 798:

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 to which human life in modern society is connected.

- c. One must distinguish on this issue between organizations and institutions regarding which one can conclude that organizing riots and other hostile activities has become, over time, their dominant goal, such as the “Shabiba” and other youth organizations and educational institutions such as schools, professional training workshops and boarding schools which are used also for purposes which may compromise security and public safety in the Area. While there may be a need to close institutions of the first category for long periods of time and perhaps prohibit their activities indefinitely, every effort should be made to periodically review the situation with respect to institutions of the second category.

It is of course possible to distinguish each and every institution, but generally and theoretically, the institutions of the petitioning association can be said to belong to the second category.

- d. It should be recalled that this is the first time a closure order was issued against the association. On this aspect too, the closure for two years seems unreasonably long and it should have been clarified whether an order for a more limited time could achieve the deterrent objective sought.

7. To summarize my position on this issue:

Every case must of course be viewed according to the special information proven in relation thereto. I took pains to demonstrate in the previous paragraph why a closure order for two years seems to me to be excessively “punitive” and therefore unreasonable.

However, I cannot ignore the respondent’s weighty reasons and the severity of the activities carried out in the association under the direction of petitioner 2 and the systematic and protracted operation of these activities.

When all the relevant considerations are taken into account, it appears to me, that the closure order with respect to the association’s institutions should not have exceeded one year.

8. I would therefore make the *order nisi* absolute in the sense that we declare that the closure order directed against the association should have been limited to a period of one year. At the end of said year, the situation should have been reviewed, relevant to all aspects thereof, and a decision on the need to extend the order further should have been made.

However, in light of the fact that the closure order was issued on June 19, 1988 and its one year validity ended on June 19, 1989, and considering the security situation currently in effect in Judea and Samaria, I would instruct that the aforesaid order remain valid until the end of 1989, *i.e.*, until

December 31, 1989. The respondent will then be able to reexamine all the issues and questions related to the petitioning association and reach a decision while considering all the relevant facts.

Considering the circumstances, I would not issue a writ for costs.

Justice M. Bejski: I concur

Justice A. Halima: I concur

Ordered as stated in the judgment of Justice Bach

Given today, 22 Cheshvan, 5750 (11 October 1989).