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At the Supreme Court
Sitting as the High Court of Justice

HCI 2129/14

In the matter of:

1. _____ **Zahdeh, ID No.** _____
2. _____ **Zahdeh, ID No.** _____
Originally resident of the Occupied Palestinian Territories
3. _____ **Abed al-Be'eri, ID No.** _____
4. _____ **Abed al-Be'eri, ID No.** _____
Originally resident of the Occupied Palestinian Territories
5. _____ **Radwan, ID No.** _____
6. _____ **Radwan, ID No.** _____
Originally resident of the Occupied Palestinian Territories
7. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Adv. Benjamin Agsteribbe (Lic. No. 58088) and/or Sigi Ben Ari (Lic. No. 37566) and/or Noa Diamond (Lic. No. 54665) and/or Abeer Joubran-Dakwar (Lic. No. 44346) and/or Anat Gonen (Lic. No. 28359) and/or Tal Steiner (Lic. No. 62448) and/or Hava Matras-Irron (Lic. No. 35174) and/or Daniel Shenhar (Lic. No. 41065) and/or Bilal Sbihat (Lic. No. 49838)

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The Petitioners

Military Commander of the West Bank Area

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Tel: 02-6466590, Fax: 02-6467011

The Respondent

Petition for Order Nisi

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

Why he should not respond to the application submitted to him by petitioner 7 and allow petitioners **1-6** and each Palestinian from the West Bank, whose family unification application (hereinafter: **family unification application**) in Israel was approved, and who resides in the neighborhoods of Jerusalem located on the east side of the separation fence, near Shu'fat Camp, to travel to the west side of the fence through the checkpoint which is located near Shu'fat Camp (hereinafter: **Shu'fat checkpoint**), without any restrictions or conditions.

Preface

1. This petition concerns the prolonged suffering of residents of the neighborhoods located near Shu'fat checkpoint: the Shu'fat Camp, Dahiyat al-Salaam, Ras a Shehada and Ras Khamis (hereinafter: the **neighborhoods**) and the severe and disproportionate injury inflicted on them by the respondent for years, and in particular, on residents who undergo family unification proceedings.
2. As is known, many of the residents of the neighborhoods, which are located in the municipal area of Jerusalem, and which are separated from the other parts of Jerusalem by the separation fence which was erected on site, are permanent residents of Israel and Israeli citizens, who reside therein with spouses and children from the West Bank, whose stay in Israel was approved according to the family unification procedure which they undergo (hereinafter respectively: **sponsoring parties** or **sponsored parties**).
3. However, notwithstanding the close proximity of the neighborhoods to Shu'fat checkpoint, the respondent does not allow sponsored parties who live therein to use said checkpoint to travel to parts of Jerusalem located on the west side of the fence. As a result of respondent's decision, the sponsored parties wishing to cross over to the west side of the fence – and naturally, in many cases, also Israeli family members who accompany the sponsored parties – are forced to travel all the way to Qalandiya crossing, a driving distance of about half an hour each way, the hard conditions of which are well known. Following the offensive and prolonged prohibition, petitioner 7 wrote to the respondent, and demanded that sponsored parties who live in the neighborhoods be allowed to use Shu'fat checkpoint, like any other person who lawfully stays in Israel. And indeed, following a lengthy correspondence, the respondent notified petitioner 7, in August 2013, that he had decided to allow the passage of sponsored parties through Shu'fat checkpoint. However, the respondent conditioned the passage of the sponsored parties through the checkpoint by a cumbersome

proceeding which was formulated by him for this purpose, under which the sponsored parties are required to provide him with documents attesting to the fact that they live in the neighborhoods, documents which the Ministry of the Interior, the security agencies and the authorities already have in their possession, by virtue of the thorough periodic examinations which the families of the sponsored parties undergo on an annual basis.

4. In view of the unreasonable demand, which does not solve the suffering of the sponsored parties, but rather entangles them in a cumbersome proceeding, which has no underlying logic or purpose, and as will be specified in detail in this petition below the respondent does not even have the professional tools to examine the matter in a reasonable and timely manner, petitioner 7 applied again to the respondent and complained of the conditions imposed on sponsored parties wishing to pass through the checkpoint. However, notwithstanding the fact that the respondent has already notified petitioner 7, a few months ago, that a decision in this matter would be made within a short period of time, no decision in this matter has been provided to the petitioners until this very day.
5. Hence, the respondent, who, by his general decision to enable sponsored parties to use the Shu'fat checkpoint, has actually confirmed that their passage through the checkpoint does not jeopardize any security purpose, continues to restrict, without any justification, the free passage of sponsored parties through the Shu'fat checkpoint.
6. The petitioners will describe herein below the factual infrastructure of the petition, including the erection of the separation fence, the harm caused by it to the residents of the neighborhoods, in general, and to the families of sponsored parties, in particular, and their correspondence with the respondent concerning the situation which they must cope with in view of the fact that their stay in Israel is governed by the provisions of the Citizenship and Entry into Israel (Temporary Order) Law, 5763-2003 (hereinafter: the **Temporary Order**). Thereafter, the petitioners will present the legal argument underlying the petition.

The Factual Infrastructure

Family Unification in Jerusalem

7. As of 1996, Israel has introduced a graduated family unification procedure for foreign spouses of Israeli residents, including East Jerusalem residents. At the end of this graduated family unification procedure, the foreign spouse should receive permanent residency status in Israel.
8. As is known, in order to have their family unification application approved and the sponsored parties enter the graduated procedure a center of life in Israel must be proved, a matter which is examined by the Ministry of the Interior. In addition to said examination, the sponsored parties and their family members undergo a thorough background check by security agencies, the purpose of which is to determine whether they pose security or criminal threat. Only the application of those who passed these checks is approved and they commence with the graduated procedure. It should also be emphasized that, for as long as the sponsored parties and their family members undergo the graduated procedure, they must meet the tests – the center of life test and the security check – every year.
9. On May 12, 2002, the Government of Israel decided to completely freeze the family unification procedures for sponsored parties who are residents of the Occupied Palestinian Territories (OPT). A year later, the Government resolution to freeze the family unification procedures for OPT residents was entrenched in the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003 (hereinafter: the **Temporary Order**).

The stay of sponsored parties in Israel pursuant to the Temporary Order

10. Section 2 of the Temporary Order stipulates that the Minister of the Interior shall not grant a resident of the Area a license to reside in Israel in accordance with the Entry into Israel Law, and that the Area commander shall not grant a resident of the Area a permit to stay in Israel in accordance with security legislation in the Area.

Section 3 of the Temporary Order stipulates that notwithstanding the provisions of section 2, the Minister of the Interior may, at his discretion, approve the application of a resident of the Area to receive a permit to stay in Israel, which will be issued to the resident by the Area commander.

11. In view of the fact that after the elapse of ten years, the Temporary Order is still valid, family unification applications for the sponsored parties being the subject matter of this petition, including petitioners 2, 4 and 6, are approved by the Minister of the Interior and by virtue of this approval the respondent grants them stay permits which are renewed from time to time, pursuant to section 3 of the Temporary Order. As specified above, according to section 2 of the Temporary Order, the status of sponsored parties holding stay permits would not be upgraded, and for as long as this harsh Temporary Order remains in force they would remain without status in Israel.
12. Hence, due to the Temporary Order, which prevents sponsored parties who are OPT residents from obtaining status in Israel, a situation was created in which many sponsored parties who live in East Jerusalem, maintain their center-of-life in the city and have their children there, hold a temporary stay permits only, which are renewed every year, after lengthy and comprehensive examinations. Needless to point out that this ongoing reality, in which families, one or more of whose members is originally an OPT resident, live without personal, social or family security, is the fate of many. However, although this complex reality is the fate of many, the condition of the families of sponsored spouses who live in neighborhoods near Shu'fat neighborhood, as has already been elaborated on in the preface to this petition, is much more severe, in view of the separation fence which was erected west to the neighborhoods and which separates them from the other parts of Jerusalem.

The separation fence and the prolonged harm caused by it to the families of sponsored spouses

13. In 2002, the Government of Israel decided to build a separation fence between the West Bank and Israel. Following said decision, the Government of Israel approved, in 2003, the route of the separation fence which would be built around and inside Jerusalem, including the route of the fence which was built in the area in which the neighborhoods are located. The part of the fence which was built near the neighborhoods, and which separates them from the other parts of Jerusalem located to its west, is about fourteen km long. It begins in the southern part of Anata village and continues until Qalandiya checkpoint in the north. As a result of the erection of this part of the separation fence, dozens of thousands of residents and many others who stay lawfully in Israel by virtue of family unification procedures undergone by them, are disconnected, at no fault on their part, from the other parts of the city of Jerusalem in which they maintain their center of life.
14. Although the separation fence has severely injured the residents of the neighborhoods and still impedes them from reaching their workplaces, the schools in which the children who reside in the neighborhoods study, the clinics and hospitals, the education and social centers and the different municipal and governmental offices, most of which are located west to the fence, this honorable court has approved the route of the separation fence in the area. In H CJ 6193/05 **Residents' Council of Ras Khamis v. The Competent Authority under the Arrangement of Seized Land**

Law it was held, that the harm caused by the route of the separation fence was proportionate in view of its security purpose, and in view of the commitment of the state to construct the Shu'fat checkpoint in the area, to reduce the harm caused to the residents.

15. However, although the fence and Shu'fat checkpoint were erected in the area, the harm caused to the residents has increased. In April 2007, the respondent decided to prohibit sponsored parties who were staying in Israel lawfully, from using Shu'fat checkpoint for the purpose of crossing over to the west side of the fence. Consequently, sponsored parties wishing to travel – alone or together with their Israeli family members – to the other parts of the city, are forced to travel from their home, which is located near the Shu'fat checkpoint, to the distanced and crowded Qalandiya checkpoint. Qalandiya checkpoint is at least half an hour drive from the neighborhoods, the waiting periods over there are very long and the conditions are harsh. Hence, in addition to the suffering inflicted by the respondent on so many families, he also causes the families of the sponsored parties who stay in Israel lawfully, some of them for many years, to waste invaluable time on a daily basis for years. Following the application submitted to him by petitioner 7 in 2012, in which he was requested to cancel the prohibition imposed on sponsored parties who reside in the neighborhoods preventing them from passing freely through the Shu'fat checkpoint, the respondent has decided, after over a year, to generally approve the request. However, and as specified above, despite the fact that he has no authority to examine the center of life issue, the respondent has included in his decision an unreasonable condition, according to which the passage of sponsored parties through Shu'fat checkpoint would be allowed only subject to a cumbersome procedure, under which the sponsored parties must furnish him, again, center of life documents attesting to the fact that they reside in the neighborhoods, and which the authorities already have in their possession.

The Parties

16. **Petitioner 1**, who was born in 1972, is a permanent resident of Israel. He lives with his wife, petitioner 2, and their five children, in Ras Khamis neighborhood, which is located east of the separation fence and near Shu'fat checkpoint. Petitioner 1 suffers from a severe mental illness and from side effects caused by the strong medications which he takes. Due to petitioner 1's medical condition, his wife, petitioner 2 in this petition, is responsible for all house chores, including the family's livelihood and the children's education and she is the one who has to accompany them for medical treatment (*Kupat Holim*) when required, etc.
17. Petitioner 2, originally a resident of Hebron, married petitioner 1 about twenty years ago and is the mother of their five children, all of whom, like their father, are permanent residents of Israel. It should be emphasized that despite petitioner 1's serious illness and despite the fact that petitioner 2 has been living in Israel for many years, she still holds stay permits only, without status and without rights. It should be noted that in the matter of petitioners 1-2 another petition is pending before this honorable court – H CJ 4093/13 – which concerns a request to upgrade the status of petitioner 2 and grant her the status of a temporary resident in Israel, in view of the petitioner 1's serious condition.
18. In view of the fact that the family of petitioners 1-2 resides in Ras Khamis, and in view of the fact that as a sponsored party who holds stay permits only, petitioner 2 is not allowed to pass through Shu'fat checkpoint, the freedom of movement of petitioner 2 as well as that of her entire family is limited. As specified above, petitioner 2 is the pillar of her family. She is the one who escorts her children and husband wherever they need to go. In view of the fact that she is precluded from using Shu'fat checkpoint on her way to the west side of the separation fence, her travel to the west side of the fence must be planned ahead of time and to the last detail. In addition, in view of the heavy traffic on the roads leading from the Ras Khamis neighborhood to Qalandiya crossing, as well as

the heavy congestion at the Qalandiya crossing itself, the family must leave its home on its way to Qalandiya crossing a long time before its scheduled appointments on the other side of the fence. Each trip of petitioner 2's family to the west side of the fence – either for the purpose of accompanying the daughter to school in Beit Hanina, or for the purpose of accompanying the children to the medical clinic (*Kupat Holim*) in the Shu'fat neighborhood, or for the purpose of accompanying her husband to medical clinics and institutions – involves the expenditure of money for taxis which the family must take to the Qalandiya crossing and the waste of invaluable time. It is therefore clear, that the limitation imposed on the passage of the sponsored party through Shu'fat checkpoint, being a holder of stay permits only, encumbers the entire family and causes harm to the family members and their quality of life.

19. Petitioner 3, a permanent resident of Israel, was born in 1979. He resides in Shu'fat Camp in Jerusalem with his wife, petitioner 4, and their two children.
20. Petitioner 4, who was born in the Gaza Strip and holds stay permits in Israel, is married to petitioner 3 and lives with him and their two children, a boy and a girl, who are twelve and ten years old, respectively, from her wedding day in 2000, in the Shu'fat Camp. The children, like petitioner 3, are permanent residents of Israel.
21. In view of the fact that petitioners 3-4 reside in the Shu'fat Camp, which is located east of the separation fence, that was erected to its west, and in view of the limitation imposed by the respondent on the passage of sponsored parties undergoing family unification procedure who lawfully stay in Israel, through the Shu'fat checkpoint, which is located near their home, the freedom of movement of the family of petitioners 3-4 is severely injured, as will be specified below.
22. Due to the limitation imposed by the respondent on the passage of sponsored parties, residents of the neighborhoods, through Shu'fat checkpoint, petitioner 4 cannot, among other things, attend parents' meetings and other school events of her children, who study in schools in the Shu'fat neighborhood which is located west of the separation fence. In addition, when the children are referred to a physician in a clinic located in the Sheikh Jarrah neighborhood, their father accompanies them to the doctor's appointment rather than their mother. Furthermore, the daughter of petitioners 3-4 currently undergoes dental treatments in Sheikh Jarrah, and due to the limitation imposed on the mother, the father must take days off work to accompany his daughter to the dentist. Hence, although petitioner 4 has a stay permit in Israel, due to the limitations imposed by the respondent on the petitioners and other families in their condition, the entire family is injured for no fault on its part.
23. **Petitioner 5**, who was born in 1971, is a permanent resident of Israel. She lives with her husband, petitioner 6, and their children, in the Ras Shehada neighborhood, which is located within the municipal area of Jerusalem, east to the separation fence. It should already be noted that two of petitioners 5-6's children, also stay in Israel as sponsored parties of petitioner 5, with whom they undergo family unification proceedings.
24. **Petitioner 6**, originally an OPT resident, was born in 1966. He is the husband of petitioner 5, and lives with her and their children in the Ras Shehada neighborhood in Jerusalem under stay permits obtained by him by virtue of the family unification proceedings undertaken by him together with his wife.
25. The family of petitioners 5-6 is a very poor family. The limitation imposed on the use of Shu'fat checkpoint which is located near their home, as a result of which the sponsored parties of the

family are forced to travel to the distanced and congested Qalandiya crossing, has directly caused the family's financial condition to deteriorate, which condition was rough to begin with. Thus, for instance, the father of the family, who earns his living doing odd jobs on the west side of the fence, is dismissed, time and time again, for being late to his workplace. These delays are not in his control, and are caused by the heavy morning traffic on the roads leading from Ras Shehada to Qalandiya crossing, and from the heavy congestion in the crossing itself. It should be noted that according to the testimonies of the petitioners and many other sponsored parties, the estimated travel time during these hours – when the roads and the Qalandiya crossing are heavily congested as many people travel to work and school on the west side of the fence – is between an hour and an hour and a half. It should be further noted that due to the limitation imposed by the respondent on the passage of sponsored parties undergoing family unification proceedings through Shu'fat checkpoint, petitioner 6 [sic] is the only one who can accompany her young children, whenever either one of them needs medical treatment etc., on the west side of the fence.

26. The children of petitioners 5-6, _____ and _____, who has already married and is currently a mother of two, also stay in Israel, as aforesaid, as sponsored parties of their mother, petitioner 5. They also fell victims to respondent's decision to limit the passage of sponsored parties through Shu'fat checkpoint. The dubious daily experience of a long trip to school, a trip which involves heavy traffic and unbearable congestion at Qalandiya crossing itself, broke _____'s spirit, and he dropped out of school. Furthermore, like his father, _____ is having a hard time finding work in a reality in which he cannot undertake to show up to work on time, as a result of the fact that he is prohibited from crossing over to the west side of fence through the checkpoint which is located near his home, and must go all the way to Qalandiya crossing. Thus, the limitation imposed of _____'s freedom of movement contributed, and might have even caused _____, a young man, to remain without education and without livelihood.
27. Furthermore, Petitioners 5-6's daughter _____, who was about to give birth when she was nine months pregnant, and wanted to reach the hospital in Jerusalem in order to give birth, was sent to Qalandiya crossing to pass through there to the west side of the fence, whereas her husband was allowed to pass through Shu'fat checkpoint which is located near their home.
28. In conclusion, like many other families living in the neighborhoods, the family of petitioners 5-6, has never crossed over to the west side of the fence as one unit, as a family. Petitioners 5-6 cannot understand why they are forced to go all the way to Qalandiya crossing which is located near Ramallah, to cross over to the west side of the separation fence, although the Israeli authorities approved the stay of all family members in Israel.
29. Petitioner 7 is a not-for-profit association which acts to promote human rights, and, *inter alia*, the rights of OPT residents and residents of eastern Jerusalem *vis-a-vis* the Israeli authorities.
30. The respondent is the military commander, in charge of the West Bank area on behalf of the State of Israel which holds the West Bank under belligerent occupation for forty six years, and is responsible, among other things, for the grant of DCO permits and for the crossings and checkpoints through which passage is made from the east side of the separation fence which was erected in Jerusalem and in the Area, to its west side.

Exhaustion of remedies

31. Following increasing complaints of sponsored parties' families residing in the neighborhoods located near Shu'fat checkpoint concerning the prohibition imposed by the respondent on

sponsored parties precluding them from using it, petitioner 7 wrote to the respondent on August 5, 2012 and complained of the prohibition.

A copy of the letter to the respondent dated August 5, 2012 is attached hereto and marked **P/1**.

32. In its letter to the respondent, petitioner 7 described the severe harm caused to sponsored parties who live with their Israeli family members in neighborhoods located near Shu'fat checkpoint, when they are forced to go all the way to Qalandiya crossing each time they wish to cross over, alone or together with their Israeli family members, to the west side of the separation fence. Petitioner 7 pointed out in its letter that the securities authorities and the Ministry of the Interior already had in their possession all information regarding these families, and that the violation of the freedom of movement of such families was disproportionate.

33. On September 9, 2012 petitioner 7 sent a letter in an attempt to understand what happened with its previous letter.

A copy of the letter to the respondent dated September 9, 2012 is attached and marked **P/2**.

34. On October 10, 2012, the respondent replied to petitioner 7's letter dated August 5, 2012. In his response the respondent notified that the passage in Shu'fat checkpoint was not included in the security legislation concerning residents who were registered with the Palestinian population registry, and therefore, the Shu'fat checkpoint was not equipped with the technological devices required to check who actually resided in Israel. In addition the respondent explained, *inter alia*, that as an act of courtesy towards the residents of Anata located near Shu'fat checkpoint, it was decided to exclude them from the prohibition which applied to all other West Bank residents, and to allow them to pass through Shu'fat checkpoint according to the address registered in their identification cards.

35. Finally, the respondent stated that the grant of a passage permit to sponsored parties who resided in the neighborhoods had across-the-board ramifications, in view of the fact that the stay permit which was issued to them did not include any indication of their permanent place of residence in Israel and the respondent had no ability to verify this issue. Therefore, due to technical and logistic reasons, the respondent stipulated that Shu'fat checkpoint could not serve the sponsored parties population.

A copy of respondent's response dated October 10, 2012 is attached and marked **P/3**.

36. Following the above response, petitioner 7 wrote again to the respondent on December 3, 2012, and pointed out that there was a material difference between the population of permit holders, as a whole, and the population of sponsored parties that stayed in Israel lawfully, following a thorough examination by the security authorities and the Ministry of the Interior. Petitioner 7 has further clarified, that in view of the severe violation of the rights of the families of the sponsored parties, an argument concerning a technical and logistic preclusion, which prevented the respondent from identifying the sponsored parties and their place of residence, could not possibly justify the continued harm caused to them. In addition, petitioner 7 referred in its letter to the fact that there was no underlying logic in the decision to exclude the residents of Anata, in view of the fact that the distance between their place of residence and Shu'fat checkpoint was greater than the distance between Shu'fat Camp and the nearby checkpoint, and to prevent the passage of individuals who were staying in Israel lawfully and who were residing in close proximity to the checkpoint. Finally, the petitioner emphasized the great difficulty and invaluable time wasted by the sponsored parties

and their families, who are forced to travel, due to respondent's refusal to let them pass through Shu'fat checkpoint, all the way to the distanced Qalandiya crossing.

Petitioner 7's letter dated December 3, 2012 is attached and marked **P/4**.

37. On December 25, 2012 the respondent notified petitioner 7 that the application was under consideration and that upon the completion of such consideration it would be updated by him.

Respondent's letter dated December 25, 2012 is attached and marked **P/5**.

38. On January 29, 2013 petitioner 7 wrote to the respondent again, in an attempt to understand what the status of the application was, and on February 17, 2013 the respondent advised it that the application was still under consideration.

Petitioner's letter dated January 29, 2013 and the response thereto are attached and marked **P/6 A-B**.

39. On April 10, 2013 and June 9, 2013 petitioner 7 wrote again to the respondent in an attempt to understand what the status of its application was, and on July 7, 2013 it was notified by the respondent that the matter was still under consideration.

Petitioner's letters to the respondent and his response thereto are attached and marked **P/7 A-C**.

40. On August 29, 2013 and October 6, 2013 the petitioner wrote again to the respondent, in an attempt to understand whether a response has been formulated for its demand to revoke the prohibition imposed by him on residents of the neighborhoods, precluding them from using Shu'fat checkpoint located near their home.

Petitioner's letters to the respondent are attached and marked **P/8 A-B**.

41. On October 6, 2013 respondent's response was received.

A copy of respondent's response is attached and marked **P/9**.

42. In his response to petitioner's application, the respondent wrote that his representatives in Shu'fat Camp mapped, together with the Camp's council, all families of sponsored parties which resided in the municipal area of Jerusalem on the other side of the fence, in order to enable the orderly passage of such families through Shu'fat checkpoint.

43. On October 9, 2013 the undersigned called the civil administration public liaison officer, Second Lieutenant Bar Akuka, whose signature appeared on respondent's response dated October 6, 2013, and asked him to clarify the contents of the letter. The response was short and it was not clear whether it concerned all residents of the neighborhoods or only the families of sponsored parties who resided in the Shu'fat Camp itself. In addition, the undersigned wanted to understand, whether the families of the sponsored parties who resided in the place would receive a written permit, and what would happen with new sponsored parties who did not reside in the place on the mapping date or with families of sponsored parties whose names were accidentally omitted from the mapping which the respondent claimed to have performed. The undersigned emphasized before respondent's representative the problems involved in such mapping, in view of the fact that the life of the families of sponsored parties in the neighborhoods was dynamic rather than static, as respondent's response ostensibly indicated.

44. On the immediately following day the civil administration public liaison officer notified the undersigned, by telephone, that the permit concerned all families of sponsored parties who resided in the neighborhoods and not only families of sponsored parties who resided in the Shu'fat Camp. With respect to the involvement of a third party, namely, the Camp's council, in the proceeding for the grant of a passage permit, respondent's public liaison officer notified the undersigned that the respondent thought it would be advisable to involve the council in the proceeding for the grant of a passage permit, in view of the fact that the latter was familiar with the area and in view of the fact that the respondent wanted to put things in order.
45. On November 24, 2013 petitioner 7 wrote again to the respondent and pointed out that instead of arranging the passage of the sponsored parties, residents of the neighborhoods, through Shu'fat checkpoint as requested, he has established a cumbersome and redundant proceeding, in which he has involved a third party, namely, the Camp's council, a proceeding which continued to impose difficulties on the families of sponsored parties without any justification.

A copy of petitioner 7's letter to the respondent is attached and marked **P/10**.

46. On December 25, 2013 the civil administration public liaison officer notified petitioner 7 that its application was under consideration and that he believed that a final decision in the matter would be made shortly.

A copy of respondent's response dated December 25, 2013 is attached and marked **P/11**.

47. On January 12, 2014, in the absence of any response to its application, petitioner 7 wrote again to the civil administration public liaison officer.

A copy of petitioner's letter to the respondent dated January 12, 2014 is attached and marked **P/12**.

48. On February 19, 2014 – as no response to its application has been received – petitioner 7 notified the respondent that in a last attempt to avoid an application to the courts, it demanded to receive an answer to its application within 14 days. In conclusion, it should be noted that this letter, like its predecessors, has not been answered, and hence, *inter alia*, this petition.

A copy of petitioner 7's letter to the respondent dated February 19, 2014 is attached and marked **P/13**.

The Legal Argument

Unreasonable and disproportionate decision

49. Respondent's decision, who has no authority to examine the existence of a center of life in Israel, to demand the petitioners and other families in their condition, to furnish him documents which they furnish the authorities every year as a conclusive evidence of the existence of a center of life in Israel, as a condition for the passage of sponsored parties through Shu'fat checkpoint, is disproportionate, arbitrary and extremely unreasonable. We shall explain.
50. A stay permit given in the context of the family unification procedure is issued only following extensive and thorough security checks conducted by the security authorities, and only after it has been determined that there was no preclusion which prevented the sponsored party from entering and living

in Israel. These comprehensive checks are performed every year before the renewal of the stay permit held by the sponsored party. The same rule applies to the examination of the center of life of the families of the sponsored parties in Israel by the Ministry of the Interior. The sponsored parties and their families, who undergo a family unification procedure, are at any given moment under the constant supervision of the Ministry of the Interior and security agencies, which can revoke the stay permits held by the sponsored party and sever the family unification procedure, forthwith. At the same time it should be emphasized, that a stay permit given to sponsored parties in the context of a family unification procedure, enables them to travel freely throughout Israel.

51. It is therefore clear that there is no, nor can there be any justification for preventing or limiting a sponsored party, which received a stay permit in Israel within the context of a family unification procedure, from freely passing through Shu'fat checkpoint to the west side of the fence. Furthermore, there is no justification for the imposition on sponsored parties and their family members, a difficult and cumbersome procedure, which includes the re-submission of documents having no added value, and which does not provide any solution to any visible security need. It is important to note that like the security check which is performed to the families of the sponsored parties, the examination of the sponsored parties' center of life, is also a professional and thorough examination, which in most cases is not simple at all, and at times, is even very complex. It is doubtful whether the respondent, who has no authority to conduct a center of life examination, has the necessary tools to examine the center of life of the families in Israel. It is sufficient to note that the family unification procedure is a dynamic rather than static procedure, as one may mistakenly think. New couples marry every day, others move from one neighborhood to the other, etc., etc. In addition, it is important to note that a person's center of life in Israel may be determined by the Minister of the Interior in different and diverse ways. The thorough and comprehensive examinations performed by the Ministry of the Interior, as the authority which specializes in the examination of the center of life of the sponsored parties and their families in Israel, require, by their nature, time, expertise and various additional tools, which are not at respondent's disposal. It is therefore clear that the procedure which the respondent wishes to apply to petitioners' matter, a procedure which cannot be performed by him as he lacks the expertise, the tools and the time required therefore, will severely harm the petitioners and the other families of sponsored parties who reside in the neighborhoods.
52. In addition, respondent's decision contradicts the underlying rationale of the family unification procedure. Whereas the purpose of the procedure is to enable the families which undergo it, to maintain proper family life in Israel, with all that it entails, respondent's demand to initiate an unreasonable procedure which has no security purpose, detrimentally affects and heavily burdens the lives of the families of sponsored parties. Moreover, respondent's unreasonable decision raises the suspicion that extraneous considerations were employed. The concern regarding the purpose which the respondent wishes to achieve by his decision increases in view of the fact that the documents are already in the possession of the authorities, and in view of the fact that the respondent has already notified that he would allow the passage of sponsored parties who would comply with the conditions established by him. In any event, there is no doubt that this decision impinges on the nature of the family unification procedure in a disproportionate and unreasonable manner.
53. To conclude this part, we would like to emphasize again, that respondent's decision, as an administrative authority, to limit the passage of sponsored parties who reside on the east side of the separation fence through Shu'fat checkpoint, and to impose unreasonable conditions for having the passage approved, disproportionately and unreasonably impinges on the petitioners and many other families.

Violation of rights of the petitioners and other sponsored parties

54. Petitioners' position is therefore, that in his decision to continue to limit the passage of sponsored parties who stay lawfully in Israel through Shu'fat checkpoint, by a cumbersome and redundant procedure

which serves no security purpose, the respondent continues to violate, in a disproportionate manner, the fundamental rights of the families of sponsored parties, residents of the neighborhoods, without properly balancing between the violation of their rights and security considerations, which, as aforesaid, are nonexistent.

55. Among other things, the respondent violates the right of the families of sponsored parties to freedom of movement. The right to freedom of movement is the engine which drives the entire body of a person's rights. The engine which enables a person to realize his autonomy, his choices. When freedom of movement is limited, that "engine" is damaged, as a result of which some of the choices and rights of the person cease to exist. Hence, the great importance attributed to the freedom of movement.
56. The right to freedom of movement is the main expression of a person's autonomy, his free choice and the realization of his capabilities and rights. The right to free movement constitutes one of the norms of customary international law and is well rooted in Israeli jurisprudence.

On this matter see:

Article 12 of the International Covenant on Civil and Political Rights 1966;
Article 2 of Protocol 4 of the European Convention on Human Rights 1950;
Article 13 of the Universal Declaration of Human Rights 1948;

H CJ 6358/05 **Vaanunu v. GOC Home Front Command**, TakSC 2006(1) 320, paragraph 10 (2006);

H CJ 1890/03 **Bethlehem Municipality v. State of Israel**, TakSC 2005(1) 1114, paragraph 15 (2005);

57. From the general to the particular. Israel is the country of residence of the petitioners and all other families of sponsored parties whose family unification applications were approved, and they, the sponsored parties, lawfully stay therein. Israel acknowledged the right of the families of the sponsored parties to maintain a center of life and move freely therein. However, respondent's decision, who has approved in general the passage of sponsored parties through Shu'fat checkpoint – and in so doing has reinforced the argument that the prohibition imposed on the passage of sponsored parties through Shu'fat checkpoint had no security purpose – which nevertheless wishes to impose on them a new and unreasonable demand, restricts the freedom of movement of many families. This violation of the freedom of movement of the families of sponsored parties, is made, according to the petitioners, without any justification or acceptable explanation, and is therefore inappropriate, *ab initio*.
58. In addition, there is no doubt that respondent's decision to limit the freedom of movement of the petitioners and other families of sponsored parties in their condition, whose only wish is to move in their city without fear of being unjustifiably abused, also violates their right to dignity.
59. Section 2 of the Basic Law: Human Dignity and Liberty provides that **there shall be no violation of the life, body or dignity of any person as such**. Namely, there shall be no violation of the dignity of any person, not only a citizen, **not only a resident**, but even a person who is stays in Israel unlawfully. Furthermore. In H CJ 5016/96 **Horev v. Minister of Transportation**, IsrSC 51(4) 1 (1997) it was held:

On the other hand, stands the freedom of movement, which is granted to each and every person in Israel. The freedom (right) of movement is a fundamental right of each and every person in Israel (see: Daher [23], page 708; HCJ 72/87 'Atallah et. al. v. Major General Northern Command [54]; MAppCrim 6654/93 Binkin v. State of Israel [55]). It is protected by the Basic Law: Human Dignity and Liberty. It derives from human dignity which is protected by our constitution (compare Alfasi BVerfGE 32 (1957) [90] 6). Indeed, the right of the individual to move freely within and without the borders of his country is a clear manifestation of the autonomy of the will of the individual. **Freedom of movement is embedded in the constitutional principle – which derives from human dignity - regarding the development of the personality of each individual.** Indeed, the constitutional protection afforded to the freedom of movement is an expression of the constitutional protection given in Israel to liberty. **A person's freedom of movement "... derives from the fact that all men are free and from the nature of the state as a democratic state..."** (HCJ 3914/92 Lea Lev et. al. v. The Tel-Aviv Regional Rabbinical Court et. al. [56], page 506).

(emphases added, B.A.).

60. Respondent's demand that for the purpose of crossing over to the west side of the fence, a husband separates from his wife and parents separate from their children, or alternatively, that they travel together all the way to Qalandiya crossing (in which the passage procedure is much longer and humiliating), or alternatively to the alternative, that they commence a cumbersome procedure which has no added value, is nothing but an arbitrary, outrageous and even humiliating demand which violates the right of the petitioners and others like them to dignity.
61. To conclude this part it should be emphasized, that the respondent, who continues to limit the petitioners and other sponsored parties in their condition, from using Shu'fat checkpoint freely, violates the right of the petitioners and many families in their condition, to manage their family life without interruption, routinely and on a daily basis together, **as an integrated family**, and in this sense he injures their family life. International law protects family life as well and provides, for instance, in Article 10(1) of the International Covenant on Economic, Social and Cultural Rights, which was ratified by Israel on October 3, 1991, that:

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children...

See further: The Universal Declaration of Human Rights, adopted by the United Nations' Assembly on December 10, 1948, Article 8(1); Article 17(1) and Article 16(3) of the International Covenant on Civil and Political Rights, which entered into effect in Israel on January 3, 1992.

62. The respondent, who restricts the freedom of movement of families of sponsored parties, does not enable their free passage through Shu'fat checkpoint which is located near their home, and forces them to take bypass roads which unreasonably elongate the travel time, and alternatively conditions the passage of sponsored parties through Shu'fat checkpoint on a restrictive and cumbersome procedure established by him in this regard, arbitrarily and unjustifiably injures the family life of

the petitioners and others like them, and does not enable them to live their life properly, as would have been expected of him. It is inconceivable, that the respondent determines, without any justification, that sponsored parties who stay in Israel lawfully, and are entitled to freely travel therein without any interruption, provide him, within the framework of an unreasonable procedure, documents which the authorities already have in their possession, or alternatively, be separated from their family members on a daily basis as a matter of routine, or be sent to the distanced Qalandiya crossing, which encumbers and burdens their life.

Tests of proportionality

63. There is no doubt that the measure taken by the respondent against sponsored parties who reside in Israel lawfully for years – the decision to prevent them from freely passing through Shu'fat checkpoint located near their home in the context of their stay permit in Israel, the imposition of unreasonable conditions and the application of a cumbersome procedure – is, as aforesaid, a measure which violates their right and the right of their family members to freedom of movement, dignity and family life.
64. The lawfulness of the administrative measure is determined according to the principle of proportionality. According to this principle, any governmental act designed to fulfill an appropriate purpose, must be applied to an appropriate degree and not beyond necessity.

As the “fundamental underlying the fundamentals of administrative law”, as Prof. Dafna Barak-Erez calls it (**Administrative Law** 103 (2010)), the principle of lawful administration is currently enshrined in the constitutional limitations clause, in light of which any governmental act must be examined, especially those compromising protected constitutional values - primarily human rights (H CJ 2651/09 **The Association for Civil Rights v. Minister of Interior**, published in Nevo, para. 6 of the judgment of Hon. Jus. Levy).

Indeed, the test of proportionality was designed to protect human rights... the governmental act is proportionate only if it fulfills a proper purpose using suitable means which are least injurious to human rights and the injury inflicted by them on human rights is proportionate to the benefit they offer in achieving the purpose. This derives from the constitutional status of human rights, which no governmental act may violate, unless for “a proper purpose and to an extent no greater than is required” (the limitations clause in the Basic Laws concerning human rights). This is also required by our interpretive approach, according to which upholding human rights is the (general) purpose of any governmental act (see H CJ 953/87, 1/88 **Poraz v. Mayor of Tel Aviv Yaffo et al; Labor Party in the City of Tel Aviv Yaffo et al. v. Tel Aviv Yaffo City Council et al.** [11], at p. 329; H CJ 693/91 **Efrat v. Director of the Population Registry at the Ministry of Interior et al.** [12]). Only when the governmental act violates human rights to the least (most moderate) possible extent, and there is a proper (not inflated) proportion between the injury inflicted by it on human rights and the proper purpose, is it possible to say that the purpose of the governmental act - the

general purpose of which is to uphold human rights and the specific purpose of which is to achieve the special purposes underlying it – is properly fulfilled. (HCJ 4330/93 **Ghanem v. Bar Association Tel Aviv District Committee**, IsrSC 50(4), 221, para. 12 of the judgment of the Honorable President (as then titled) Barak).

65. The first question in the context of the proportionality test is, whether the measure selected by the authority was designed for a proper purpose. A purpose is considered proper if, *inter alia*, it is designed to achieve a social purpose or safeguard a public interest (see for example, HCJ 5016/96 **Lior Horev v. Minister of Transport**, IsrSC 51(4), para. 64 of the judgment of the Honorable President (emeritus) Barak).
66. On this issue it should already be stated, that the fact that the respondent has not deigned to respond, until this day, to the letters sent to him regarding his decision and the unreasonable conditions included therein, makes it difficult to determine and to even truly examine whether there is, in this case, a real proper purpose, and what that purpose is. As aforesaid, in view of the fact that we are concerned with sponsored parties whose family applications were approved and who are thoroughly and meticulously checked on a periodic basis, and in view of the fact that all documents and information in their matter, including documents attesting to the fact that they maintain a center of life in a place known to the authorities, it is unclear what is the purpose that the respondent wishes to achieve by imposing on them an additional and redundant procedure, with no added value.
67. Case law has developed three subtests, designed to assist in the examination of the proportionality of the selected measure (see for example, HCJ 3477/95 **Ben 'Attiya v. Minister of Education, Culture and Sports**, IsrSC 49(5) 1; HCJ 4644/00 **Yafura Tavori LTD. v. The Second Television and Radio Broadcasting Authority**, IsrSC 54(4) 178; HCJ 3648/97 **Stemka v. Minister of Interior**, IsrSC 53(2) 728).
68. The first subtest is the test of rational means. A correlation must exist between the purpose and the measure taken by the authorities to achieve the purpose, and the measure must rationally lead to the realization of the purpose.
69. As detailed in the part in which the proportionality of the decision was discussed, it seems that the measure selected by the respondent – the imposition of a redundant and cumbersome procedure on individuals who lawfully reside in Israel – does not achieve any purpose, be it a security purpose or any other purpose. As aforesaid, these individuals are sponsored parties who anyway reside in Israel with their families, and whose family unification applications were approved following rigorous security checks which are repeatedly conducted whenever their stay permits are renewed. In addition, as aforesaid, these individuals are under constant supervision of the security authority and the Ministry of the Interior, which can sever the family unification procedure at any given moment. Hence, the security purpose has already been achieved by the exercise of different means. In addition, and as aforesaid, the thorough and comprehensive examinations conducted by the Ministry of the Interior, as the authority which specializes in the examination of the center of life of sponsored parties and their families in Israel, require, by their nature, time, expertise and other additional tools. It is not clear then, how the demand to furnish documents which are already found in the possession of the authorities and their delivery to the respondent, serves any security justifiable purpose and/or how does the "bullying" of the petitioners and others in their condition, add to the security purpose or other purposes, which have already been achieved during the family unification procedure. Thus, the selected measure does not meet the first subtest of proportionality– the test of the rational measure.

70. The second proportionality subtest – the test of the least injurious measure - requires that the governmental measure used injures the individual to the least extent possible, taking into consideration the rights at stake, which are, in this case, fundamental rights of the first degree. The status of these rights, as detailed above, and the extent of the injury inflicted on them require that an alternative, less injurious measure be employed. In the case at hand, the measure that should have been applied to the sponsored parties, whose matter is being carefully and thoroughly examined by the security authorities and the Ministry of the Interior and whose stay in Israel has been approved, is **the presentation of the valid stay permit in their possession at Shu'fat checkpoint, as a condition for their passage, and nothing more**. In view of the fact that the measure employed by the respondent in petitioners' matter is not the presentation of a stay permit, which should have been used, but rather, the implementation of a cumbersome and redundant procedure which has no justification and which does not serve any security purpose, it is clear that the respondent did not use the less injurious means, which injures the individual to the less extent possible.
71. In conclusion, the third subtest of proportionality, which is also known as the 'test of proportionality in the narrow sense' requires that the injury caused by the selected measure be of proper proportion to the gain brought about by that measure. This test, which requires a proper correlation between the means and the goal is not satisfied in our case. As specified above, the current situation in which the fundamental rights of so many families are being violated for a prolonged period of time, without yielding any real benefit to the respondent, leads to the inevitable conclusion that the severe measure taken by the respondent does not satisfy the third proportionality test either.
72. Hence, the measure taken by the respondent in the limitation of the passage of sponsored parties to the west side of the fence in Shu'fat checkpoint which is located near their home, fails to satisfy the three proportionality tests, and therefore it should be revoked.

The obligation to respond expeditiously

73. To conclude this petition, the petitioners also wish to refer to respondent's lengthy disregard of petitioner 7's applications concerning the unreasonableness of his decision. It should be emphasized that the respondent, like any other administrative authority, is obligated to respond to an application expeditiously, as required by law. The obligation to act within reasonable time and not to neglect and procrastinate applications which are pending before the authority, is one of the basic principles of good governance."

See on this issue (I. Zamir, **The Administrative Authority** (Volume B, Nevo, 5756), 717):

The obligation of the administrative authority to act **with due** promptness is one of the fundamental principles of good governance. It stems from the obligation of the administrative authority to act in a fair, reasonable, and trustworthy manner. The breach of the obligation to act with due promptness is a cause for judicial review.

(HCJ 5931/04 **Mazurski v. The State of Israel – Ministry of Education**, IsrSc 59(3) 769, 782 (2004)).

And on this issue see also:

CA 4809/91 **Local Planning and Building Committee, Jerusalem v. Kahati**, IsrSC 48(2) 190, 219;

HCJ 7198/93 **Mitrel Ltd. v. Minister of Industry and Commerce**, IsrSc 48(2) 844, 853 (1994);

HCJ 4212/06 **Avocats Sans Frontiers v. GOC Southern Commend**, TakSC 2006(2) 4751 (2006);

HCJ 6300/93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs**, IsrSC 48(4) 441, 451;

74. It has already been ruled that when human rights were concerned, the concept of a "reasonable time frame" obtained a special meaning (HCJ 1999/07 **Galon v. The Governmental Commission for the Enquiry of the Events of the Lebanon Campaign 2006**, TakSC 2007(2) 551, 569 (2007)); And that in matters concerning human rights -

A more expeditious regularization of the matter is expected [...] a continued violation of human rights quite often broadens the scope of the injury and may result in the erosion of the right as well as in a severe and continued injury to the individual.

(HCJ 8060/03 **Q'adan v. Israel Land Administration**, TakSC 2006(2) 775, 780 (2006)).

And see also:

HCJ 10428/05 **'Aliwa v. Commander of IDF Forces in the West Bank**, TakSC 2006(3) 1743, 1744 (2006); HCJ 4634/04 **Physicians for Human Rights v. Minister of Public Security**, TakSC 2007(1) 1999, 2009 (2007).

75. In petitioners' case at bar, the respondent has failed to respond to petitioners' applications concerning the decision made by him, which is intrinsically connected to the human rights of many families, for a long period of time, despite the fact that he has notified the petitioners quite a while ago, that his decision in the matter would be given shortly, as he had put it in his own words. Hence, this is a brazen violation of the authority's obligation to respond to applications submitted to it in a pertinent and prompt manner.

Conclusion

76. The procedure imposed by the respondent on sponsored parties who wish to move freely in their city, from the east side of the separation fence where they live to its west side, is arbitrary, unreasonable and disproportionate. The imposition of respondent's demands on the families of sponsored parties violates many fundamental rights of the family members and sponsored parties. The imposition of the procedure on the families of the petitioners and other families in their condition and the violation of their rights does not serve any legitimate purpose and does not satisfy the proportionality tests.
77. In view of all of the above, the honorable court is requested to issue an *order nisi* as requested, and after receiving respondent's reply, make the order absolute. In addition, the court is requested to order the respondent to pay petitioners' costs and legal fees.
78. This petition is supported by affidavits on behalf of petitioners 1-7.

March 20, 2014

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[File No. 74161]