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At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

H CJ 2732/05

1. **Head of Azzun City Council, Mr. _____ Hassin** (ID No. _____)
2. **Head of Nabi Elias Village, Mr. _____ Rushdi** (ID No. _____)
- 3.
4. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Advocate Michael Sfar
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The Petitioners

v.

1. **Government of Israel**
2. **Military Commander of the West Bank**

all represented by the counsel, Advocate Avi Licht
of the State Attorney's Office,
Ministry of Justice, Salah a-Din Street, Jerusalem

The Respondents

Notice on behalf of the Petitioners

According to the decision of the honorable court dated September 19, 2005, the petitioners hereby respectfully specify their position concerning the ramifications of the judgment in H CJ 7957/04 on the petition at hand.

1. This petition concerns a segment of the separation fence which was erected long ago to the east and to the south of the Zufin settlement (hereinafter: the **settlement**), a segment known as the "Zufin enclave".
2. The petition argues that surprisingly, not only the settlement is "surrounded" by the route of the fence, but also hundreds of dunams of agricultural land, which belongs to the farmers of the city of Azzun and Nabi Elias village and are cultivated by them, and that the houses located at the outskirts of the settlement are about two and a half kilometers away from the east part of the fence. The petitioners continued to argue that **the route of the fence was not set according to security needs but was rather related to the interests of the Zufin settlement, which intended and still intends to expand eastwards, and therefore the route of the fence runs along the municipal (un-built) areas of Zufin, rather than along a topographic line or the line of the settlement's houses, or any other line which may answer security needs.**
3. Hence, petitioners' main argument is that **there is no security reason behind the route according to which the fence was set.**
4. In their response to the petition which was filed on June 30, 2005, **the respondents admitted that the route of the fence, being the subject matter of the petition, was set according to a scheme which was still in its planning stages and has not yet been approved,** scheme 149/5 (see paragraph 17 of the response).
5. Respondent's counsel added and decently noted that:

Had the barrier been planned today, the south-east corner of the route would have been planned differently. Plan 149/5 would not have been taken into account ...

(Paragraph 19 of respondents' response).
6. Against this backdrop, on July 3, 2005, an *order nisi* was given as requested in the petition.
7. On September 15, 2005, judgment was given in HCJ 7957/04. In its judgment the court held as follows:

The military commander is authorized to order the construction of the separation fence in the Judea and Samaria area, if the reason behind it is a security-military one. **He is not authorized to order the construction of the fence, if the reason behind it is a political one.**

(Paragraph 98 of the judgment, my emphasis; M.S.).
8. Consequently, the court held that the fence could not protect future development plans of a settlement, due to the fact that this was a political rather than a security consideration:

There is a planning scheme, which has been filed, for the development of Alfei Menashe ... but, it is not a consideration which should be taken into account.

(Paragraph 113 of the judgment)

9. The entire route of the fence being the subject matter of this petition, was set according to development plans which, as aforesaid, "should not be taken into account" and according to the map of the municipal area of the settlement which also constitutes a political, rather than a security consideration, and is therefore inappropriate (see Exhibits B and C of the Petition).
10. In addition, in its judgment in HCJ 7957/04, the court rejected the threshold arguments concerning laches on the grounds that only after the erection and activation of the fence the petitioners could have assessed the scope of the impingement upon their rights (see paragraph 95). Said determination is also valid to the case at hand.
11. In view of all of the above, petitioners' position is that the order nisi should be made absolute, and that order should be given to dismantle the separation fence marked in Exhibit A to the petition, which was set, in its entirety, not according the security needs of the State of Israel and/or the Zufin settlement, but rather according to the development interests of the settlement.

Michael Sfar, Advocate
Counsel to the Petitioners