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At the Supreme Court
Sitting as the High Court of Justice

HCJ ___/20

- In the matter of:
1. _____ **Tzane, ID No., _____**
 2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA 580163517**

All represented by counsel, Adv. Aaron Miles Kurman (Lic. No. 78484) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763) and/or Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Nadia Daqqa (Lic. No. 66713) and/or Tehila Meir (Lic. No. 71836)

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. **GOC Southern Command**
2. **Coordinator of Government Activities in the Areas**
3. **Gaza District Coordination Office**

Represented by the HCJ Department
at the State Attorney's Office, Ministry of Justice
31 Salah Al-Din Street, Jerusalem
Tel: 073-3925590; Fax: 02-6467011

The Respondents

Petition for Order Nisi

According to the judgment given on June 30, 2020 in HCJ 4353/20 **Tzane v. GOC Southern Command**, a petition for order *nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause:

1. Why they should not permit petitioner 1 to travel from Israel to the Gaza Strip to visit his father for the last time according to the "divided families" procedure;
2. Why they should not reason their decision dated June 29, 2020, denying petitioner 1's permit application to travel to the Gaza Strip according to the "divided families" procedure, and should not present the evidence on which their negative decision is based;
3. Why they should not permit, according to the "divided families" procedure, an Israeli to travel to the Gaza Strip for the purpose of uniting with his Gazan parent, even when his

Israeli parent cannot accompany him to Gaza for any reason other than due to his/her death, severe illness preventing him/her from travelling or divorce from the Gazan parent.

Request for Urgent Hearing

The petitioner is the eldest son of a "divided family", living with his mother and siblings in Israel while the father of the family is a Gazan resident. This petition is filed to enable the last meeting according to the "divided families" procedure, between the petitioner and his father who lives in Gaza.

On May 18, 2020, more than a month and a half before petitioner's 18th birthday, a permit application was filed for the exit of the petitioner, his mother and siblings to the Gaza Strip for the purpose of uniting with the father of the family who lives there. Said application was filed, inter alia, with the hope that the petitioner would be able to visit his father for the last time according to the "divided families" procedure, which is respondents' procedure governing the grant of renewable entry permits into Gaza enabling Israelis who are married to Gazan residents and their **minor** children to stay therein for a period of up to six months. After coming of age, the respondents prohibit Israeli children to **even visit** their Gazan parent in Gaza other than in rare humanitarian circumstances and then only for three days at a time. In fact, due to respondents' policy, the requested visit may possibly be the last time that the petitioner and his father will have the opportunity to meet in their homeland during their lifetime.

Despite the importance of the requested visit and its special nature for the petitioner, the application of the petitioner and his family members dated May 18, 2020, remained unanswered for over five weeks. In view of the fact that petitioner's 18th birthday was approaching, the petitioner, his mother and his siblings had to file a petition with the honorable court on June 25, 2020 (HCJ 4353/20 **Tzane v. GOC Southern Command** (hereinafter: the **last petition**)). Four days later, on June 9, 2020, the application being the subject matter of the last petition was denied for "specific security reasons, which naturally may not be disclosed." Following the above and later that day, respondent 1 (who was the sole respondent in the last petition) filed a preliminary response on his behalf, in which the honorable court was requested "to direct that the petition be dismissed *in limine*... obligating the petitioners to pay expenses".

However, the honorable court did not accept respondent's said request. Given that "the decision of the Gaza District Coordination Office (DCO) [dated June 29, 2020] with respect to petitioners' application to exit Gaza" changed the "factual infrastructure on the basis of which the petition was filed" the honorable court decided on June 30, 2020, to delete it, without an order for costs "without prejudice to petitioners' right to petition against the decision" (HCJ 4353/10 **Tzane v. GOC Southern Command** (reported in Nevo, June 30, 2020)(emphasis added)).

Hence, this petition is filed according to the leave granted by the honorable court to the petitioners in the last petition, to commence new proceedings against respondent 1's negative decision in the application being the subject matter of the last petition. It should be noted that petitioner's mother and siblings decided not to join the petition at hand since according to the "divided families" procedure, they may wait for a while and then file with the respondents a

new application for permits to unite with the father of the family in the Gaza Strip. Conversely, the petitioner does not have the privilege of waiting.

Since the petitioner came of age about a week after a negative decision was given in the application being the subject matter of the last petition and after judgment therein was given, a new application which would be filed on his behalf for an entry permit into Gaza by virtue of the "divided families" procedure, shall be dismissed *in limine*, in view of the fact that said procedure does no longer apply to the children of divided families who turned 18.

It should be noted that with respect to the "divided families" procedure, respondents' practice shows that the respondents do not actually prohibit children of divided families from staying in the Gaza Strip after their 18th birthday, but only decline to approve applications filed on their behalf thereafter. To witness, when an Israeli mother files an application on her behalf and on behalf of her child shortly before his 18th birthday, in which their unification with the Gazan father of the family is requested, and their application is approved according to the "divided families" procedure, both mother and child receive permits of equal validity (which is usually six months). In these cases, the child is allowed to stay in Gaza until the expiration of his permit, even if he has previously turned of age.

Accordingly, petitioner's application being the subject matter of the last petition is the last application he could have submitted according to the "divided families" procedure, and this petition is the only way still available to him to have it approved. The only thing that the petitioner now requests is to be allowed to meet his father in Gaza one last time to part with him, since as he turned of age less than a month ago, there is no assurance that the respondents would even allow him to visit his father in Gaza in the future.

Under these circumstances, the honorable court is requested to schedule an urgent hearing in the petition, and at least, to direct the respondents to file their preliminary response to the petition as soon as possible, since the latter may render the hearing of the petition redundant.

Factual Infrastructure

A. The Parties

1. Petitioner 1 (hereinafter: the **petitioner**) is an Israeli citizen, born on July 8, 2002 in Beer Sheva. The petitioner is the eldest son of a "divided family". Currently, the petitioner lives with his mother, ____ Tzane (ID No. _____) (hereinafter: the **mother**), and his four minor siblings – who are all Israeli citizens – in Lakiya. On the other hand, the father of the petitioner and his siblings, ____ Tzane (ID No. _____) (hereinafter: the **father**) who has been married with petitioner's mother since 2000, is a Gazan resident, living in Nuseirat refugee camp for more than a decade. This year the petitioner was graduated from the Akra high school in the name of 'Amar Tzane in Lakiya, and occasionally works in the construction industry or in factories.

An application of the petitioner, his mother and siblings which had been submitted prior to petitioner's 18th birthday, for permit by virtue of the "divided families" procedure to unite with the father of the family in the Gaza Strip, was denied on June 29, 2020 in the framework of a petition which was filed in their matter (HCJ 4353/20 **Tzane v. GOC Southern Command** (hereinafter: the **last petition**)). Since "the

decision of the Gaza District Coordination Office (DCO) [dated June 29, 2020] with respect to petitioners' application to exit Gaza" changed the "factual infrastructure on the basis of which the petition was filed" the honorable court decided on June 30, 2020 to delete it, "without prejudice to petitioners' right to petition against the decision" (HCJ 4353/10 **Tzane v. GOC Southern Command** (reported in Nevo, June 30, 2020),

A copy of the last petition (including its Annexes) is attached and marked **P/1**;

A copy of the judgment given on June 30, 2020, in the framework of the last petition is attached and marked **P/2**.

2. Therefore, the petition at hand is filed according to leave granted to the petitioner by the honorable court to commence new proceedings against the negative decision in the application being the subject matter of the last petition. The only thing that the petitioner now requests is to be given the last opportunity, in the framework of the "divided families" procedure, to see his father in Gaza and part with him, since as he turned of age less than a month ago, there is no assurance that the respondents would even allow him to visit his father in Gaza in the future.
3. Petitioner 2 (hereinafter: **HaMoked Center for the Defence of the Individual or HaMoked**) is a registered not-for-profit association located in Jerusalem which acts, *inter alia*, in the matters of Israeli citizens and residents wishing to visit their family members in the Gaza Strip. It should be noted that HaMoked was petitioner 7 in the last petition.
4. Respondent 1, GOC Southern Command (hereinafter: the **respondent**), who was the sole respondent in the last petition, is vested with the authority to permit the departure of Israeli citizens and residents to the Gaza Strip from the state of Israel, which controls, for more than fifty three years the borders of the Gaza Strip and the crossings thereto.
5. As of August 15, 2005, respondent's said authority arises from sections 2(a), 22(a) and 24(a) of the Disengagement Plan Implementation Law, 5765-2005, and from the Disengagement Plan Implementation (Gaza Strip) Decree, 5765-2005. See, in that regard, paragraph 6 of the judgment of the Honorable Justice Procaccia in HCJ 10336/06 **Abu Huza v. GOC Southern Command** (reported in Nevo, December 27, 2006) ("According to section 24(a) of the Disengagement Plan Implementation Law, 5765-2005, an Israeli shall not enter Gaza Strip territory without a permit issued on behalf of the Commander. The body vested with the authority to approve the entry of Israelis into the Gaza Strip is the GOC Southern Command"). Previously, the respondent was vested with the same authority being the military commander in charge on behalf of the state of Israel of the military forces in the Gaza Strip and by virtue of the security legislation which applied to Gaza, which was declared by it on June 8, 1967 a "closed area" the entry of which required a license on its behalf (Closing Area (Gaza Strip and Northern Sinai) Order, (No. 1), 5727-1967).
6. Respondent 2, Coordinator of Government Activities in the Areas (hereinafter: **COGAT**), is responsible for implementing the civil policy of the government of Israel in the west bank areas and toward the Gaza Strip, and for the coordination and communication with the Palestinian Authority and the Palestinian population in the

west bank and in the Gaza Strip. The civil administration and the district coordination offices (DCOs) work under and are subject to COGAT.

7. Respondent 3, Gaza District Coordination Office (hereinafter: **Gaza DCO**) is responsible, on behalf of respondent 2, for the implementation of the civil policy of the state of Israel toward Gaza, and for the coordination and communication with the Palestinian Authority and the Palestinian population in the Gaza Strip. In addition, Gaza DCO is authorized on behalf of respondent 1 to issue to Israelis entry and stay permits in the Gaza Strip; such permit applications are submitted to the Israeli Desk at the Gaza DCO (hereinafter: the **Israeli desk**) and are handled by it.

B. "Divided Families" procedure – the need therefor, its history and the current mechanism for the realization of the right of members of divided families to proper family life

B(1). The need for "divided families" procedure

8. As specified below, the "divided families" procedure was established, in a version similar to the current one, in the beginning of the 21st century. Following the eruption of the second intifada and the imposition of severe limitations on the stay of Gaza Strip residents in Israel and on free movement between Gaza and Israel in general, the family life of "divided families" were violated and impinged on. The term "divided families" refers to nuclear families some members of which are Israeli residents or citizens (hereinafter: **Israelis**) and some of which are Gaza residents (hereinafter: **Gazan**).
9. According to section 2 of the Citizenship and Entry into Israel (Temporary Order) Law, 5773-2003 (hereinafter: the **Temporary Order**) "Notwithstanding the provision of any law... the Minister of Interior shall not grant a resident of the Area [including, *inter alia*, a Palestinian residing in the Gaza Strip, according to section 1 of the Temporary Order]... citizenship pursuant to the Citizenship Law, and shall not give him a license to reside in Israel pursuant to the Entry into Israel Law, and the Commander of the Area [namely, Head of Gaza DCO and several other office holders therein according to section 1 of the Temporary Order and the Authorization of Area Commanders according to the Citizenship and Entry into Israel (Temporary Order) Law, 5773-2003 (which was signed by the Ministry of Interior on February 19, 2009)] shall not grant a resident of the Area a stay permit in Israel, pursuant to security legislation in the Area.
10. Among the exceptions to the above sweeping prohibition against the entry into and stay of Gaza Strip residents in the state of Israel, it was established in in section 3(1) of the Temporary Order that "Notwithstanding the provisions of section 2, the Minister of Interior may, at his discretion, approve an application submitted by a resident of the Area for a stay permit to be issued by the commander of the Area – (1) with respect to a [male] resident of the Area over 35– to prevent his separation from his spouse staying lawfully in Israel; (2) with respect to a [female] resident of the Area over 25 – to prevent her separation from her spouse staying lawfully in Israel." However, section 3D of the Temporary Order stipulates that the authority vested in the Minister of Interior according to section 3 of the Temporary Order shall not be exercised "if_it was determined by the Ministry of Interior or the commander of the Area, as the case may be, according to opinion of authorized security bodies, that the resident of the Area...

or [his] family member may pose a security risk to the state of Israel; in this section, 'family member' – a spouse, parent, child, brother and sister and their spouses." It was further stipulated in said section that "for this purpose, the Minister of Interior may determine that the resident of the Area or the other applicant may pose a security threat to the state of Israel, based, inter alia, on opinion of authorized security bodies according to which activity which may put at risk the security of the state of Israel or its citizens takes place in the country or territory in which the resident of the Area or the other applicant resides."

11. Accordingly, "and based on opinion of authorized security bodies" that "the Gaza Strip is an area where activity which may put at risk the security of the state of Israel and its citizens takes place", the government of Israel, in its resolution No. 3598 dated June 15, 2008, directed the Minister of Interior not to exercise his authority according to section 3 of the Temporary Order with respect to "anyone registered in the population registry as a Gaza resident and anyone residing in the Gaza Strip although not registered in the population registry as a Gaza Strip resident." The government of Israel clarified that its said resolution would apply "from now on and shall in event apply to any person whose initial application has already been approved." (*Ibid*).
12. Following the Temporary Order and government resolution No. 3598, the possibility to conduct proper family life in Israel has been almost totally deprived of many of the divided families – including petitioner's family – and of the vast majority of such families which were established in the last two decades. Currently, the entry of the Gazan spouse into Israel and his stay therein, for the purpose of conducting family life under one roof together with the Israeli spouse and their children, is prohibited, other than in very exceptional circumstances and subject to the satisfaction of one of the following special conditions:
 - Provided that "special humanitarian reasons" exist beyond the fact that the Gazan is married to an Israeli and/or that they have children together (according to section 3A1 of the Temporary Order);
 - Provided that the Gazan, his spouse, child or parent "acted in a substantial manner to promote the security, the economy or another important matter" of the state of Israel, or that the state "has a special interest" in regulating the Gazan's entry into Israel and/or his status therein (according to section 3C of the Temporary Order);
 - Provided that it is an extension "of valid residency status or stay permit in Israel, which were held by" the Gazan "prior to the effective date" of the Temporary Order (according to section 4(2) thereof);
 - Provided that the Gazan's application "for citizenship according to the Citizenship Law or... for residency status in Israel according to the Entry into Israel Law" was submitted before May 12, 2002 and a decision therein has not been given prior to the effective date of the Temporary Order (according to section 4(2) thereof); or
 - Provided that the Gazan's (initial) application according to section 3 of the Temporary Order was approved prior to government resolution No. 3598.

13. Members of divided families are not only almost completely deprived of the possibility to co-habit in Israel, unless they satisfy any one of the above extraordinary conditions, but rather, the right of the Gazan father of the family to visit his spouse and children in Israel is also extremely limited. Section 3B of the Temporary Order provides that "Notwithstanding the provisions of section 2, the commander of the Area may grant a stay permit in Israel for any one of the following purposes: (1) medical care; (2) employment in Israel; (3) a temporary purpose, provided that a stay permit for such purpose is granted for a cumulative period not exceeding six months."
14. The cases in which the authorized office holders at the Gaza DCO exercise the authority vested in them (in their capacity as "commander of the Area") by virtue of section 3B of the Temporary Order , are specified in a document which is publicized by respondent 2 and which is revised from time to time according to the changing policies of the respondents and other Israeli bodies, titled "Unclassified Status of Authorizations for the Entry of Palestinians into Israel, their Passage between the Judea and Samaria Area and the Gaza Strip and their Travelling Abroad" (its updated version as of February 19, 2020)(hereinafter: **Status of Authorizations**). According to section 1(b) of the Status of Authorizations' "General" chapter, the "entry of a Gaza Strip resident into Israel requires a Gaza DCO permit pursuant to the authorization pursuant to the Entry into Israel (Exemption to Gaza Strip Residents) Decree, 5775-2005, and according to the authorities vested in the 'commander of the Area' pursuant to the Temporary Order.

A copy of the "General" chapter and chapter B of the Status of Authorizations (its updated version as of February 19, 2020) is attached and marked **P/3**.

15. The cases in which applications of Gazans to enter Israel are examined by the authorized bodies at the Gaza DCO are specified in chapter B of the Status of Authorizations. In the event of a Gazan parent whose spouse and children are all Israelis, who does not undergo a "family unification" procedure in Israel and who is not employed – in the medical area or on behalf of the Ministry of Defense, by an international organization, or by the Palestinian Authority; who did not receive an invitation to take part in a conference on behalf of the Palestinian Authority; who is not a journalist, teacher, senior athlete, senior merchant or another senior office holder or professional in one of several additional areas; and who is not a senior Palestinian official or PLO senior official – the entry into Israel of such a Gazan father of a divided family *may* possibly be permitted only in one of the following rare circumstances:
 - "For the purpose of receiving life-saving medical treatment or medical treatment in the absence of which the meaning of life changes altogether... provided that the requested treatment is not available in the Gaza Strip" (Status of Authorizations, section 2(a) chapter B);
 - "To visit an immediate family member who has been hospitalized for a long time... or who suffers from a severe illness putting the patient's life at risk (Ibid., section 2€ chapter B);

- "To visit prisoners incarcerated in prisons in Israel according to the rules and directives established by Israel Prison Service regarding visitation of prisoners" (*Ibid.*, section 5(a) chapter B);
 - "To take necessary actions to conduct legal proceedings in courts in Israel... subject to certain conditions "including the condition that preventing the resident's entry shall frustrate the legal proceeding or shall substantially affect it" (*Ibid.*, section 5(b) chapter B);
 - For an interview in a consulate/embassy provided that the requested interview is not available in the Gaza Strip (*Ibid.*, section 5(e) chapter B);
 - "For travelling abroad" for certain purposes (*Ibid.*, section 5(g) chapter B);
 - "For the purpose of participating in a wedding or funeral of an immediate family member (*Ibid.*, section 5(h) chapter B); or
 - In "other exceptional cases" that "do not meet the criteria" which are specified "subject to extraordinary circumstances" (*Ibid.*, section 5(k) chapter B).
16. Therefore, according to the Temporary Order, government resolution No. 3598 and respondents' policy as established in the Status of Authorizations, the vast majority of divided families established since the beginning of the new millennium are prohibited from exercising their right to proper family life in the territories of the state of Israel, in view of the prohibition imposed on the Gazan father of the family to reside in Israel together with his other immediate family members. Moreover, in the vast majority of the cases, the temporary stay of the Gazan father of the family in Israel, in a manner enabling him to meet at least some of his Israeli immediate family members, shall be permitted only in certain cases in which one of the family members suffers from a severe illness or is hospitalized, incarcerated in an Israeli prison, is getting married or passed away.

B(2) History of the "Divided Families" Procedure

17. Given these severe limitations, actually preventing many divided families from living together in Israel and from making short visits therein, respondents' "divided families" procedure is the only procedure enabling these family members to realize – even partially – their constitutional right to family life in their homeland.
18. Parenthetically it should be mentioned that even before the eruption of the second intifada and the enactment of the Temporary Order a "divided families' procedure" existed the purpose of which was to **enable** members of divided families to live together **in Israel**. According to this procedure renewable six month stay and sleep-over permits in Israel were issued to Gaza Strip residents (and to residents of the West Bank), who were married to Israeli residents and whose proper family unification application in Israel was pending in the Ministry of Interior for more than a year.

A copy of a letter on behalf of the State Attorney's Office dated January 4, 1999 sent to HaMoked representative in the framework of H CJ 3677/97 **Reweida v. Minister of Interior** is attached and marked **P/4**.

19. The "divided families' procedure" in its above version is a remnant from the past. Upon the eruption of the second intifada, the enactment of the Temporary Order (and thereafter, government resolution No. 3598) and the severe limitations imposed on the entry of Israelis into the Gaza Strip, the respondents had to establish a "divided families" procedure with a reverse mechanism, to prevent the complete denial of the right of members of divided families to conduct proper family life in their homeland, in the (numerous) cases in which they were deprived of the right to do so within the territories of the state of Israel.
20. Already by the end of 2004, the state authorities notified of the establishment of a "divided families" procedure in a version similar to the current one, enabling members of divided families to realize their right to family life in the Gaza Strip:
 3. IDF authorities wish to protect the family unit and the child's best interests and to uphold proper family life to the largest extent possible. The fact that one of the spouses is an Israeli resident while the other spouse is a resident of the Palestinian Authority, certainly does not make it easier to conduct proper family life, all the more so when children are involved in this reality.
 4. Being aware of the above difficulty, work procedures were established concerning divided families. According to these procedures, the Israeli spouse may submit an application, together with supporting documents, to the 'Israeli Desk' at the Erez crossing District Coordination Office (DCO), to enter Gaza for the purpose of visiting his spouse, a Gaza Strip resident.

A copy of the letter on behalf of IDF legal advisor in the Gaza Strip Area sent to HaMoked representative on November 9, 2004, is attached and marked **P/5**.

21. By the end of 2004 in the framework of H CJ 10043/03 **Abajian v. Commander of IDF Forces in the Gaza Strip**, the respondent (there) notified of his decision "not to allow... the **regular and uncontrolled** entry of thousands of Israelis into the Gaza Strip Area, even if their family members reside in Gaza." However, in the same supplementary response (No. 2) dated August 27m 2004 (paragraphs 21-22), the respondent specified several cases in which the entry of Israelis into the Gaza Strip would be allowed, including the case regulated by the "divided families" procedure (underlines were added):

However, and in view of the desire to take into consideration, to the extent possible, the needs of the residents of the Palestinian Authority, as well as the desire of Israeli citizens and residents to visit their relatives residing in the Gaza Strip Area, the respondent enables, even at the time of an armed confrontation, and in the absence of specific security preclusion, the entry into the Gaza Strip Area of immediate family members wishing to visit

the Gaza Strip Area due to a an exceptional humanitarian need (wedding, engagement, severe illness, funeral and the like).

In addition, in the absence of specific security preclusion, the entry into the Gaza Strip Area of Israelis married to a person residing in the Gaza Strip Area, is permitted.

In addition, the respondent allows, in the absence of specific security preclusion, the entry into the Gaza Strip Area of Israelis wishing to visit their immediate family members whom they have not met during the last year provided that the application is to visit during one of the holidays – Eid al-Adha, Eid al-Fitr (for Muslims) or Christmas (for Christians).

It should also be noted that Israelis granted with a permit to visit the Gaza Strip Area may join as companions immediate family members under the 18 years of age.

A copy of supplementary response (No. 2) on behalf of the respondent dated August 27, 2004 filed in the framework of H CJ 10043/03 is attached and marked **P/6**.

22. Although the list of circumstances in which the entry of Israelis into the Gaza Strip to visit Gazan family members has been limited as of 2004 – in 2008 the possibility to visit immediate family members with whom a meeting has not been held in the last year during the holidays was removed, and by 2011 the possibility to participate in an engagement party of an immediate family member was omitted - the "divided families" procedure remained and still remain in force in main part, although changes in the wording of the procedure itself were made.
23. As known, the Hamas organization assumed power over the Gaza Strip in June 2007, about two years after the implementation of the disengagement plan and the cancelation of the military regime in Gaza (which were carried out according to government resolution No. 4235 dated September 11, 2005, and the proclamation regarding the end of the military regime which was executed on the following day by the Commander of IDF Forces in the Gaza Strip Area). Thereafter, the Ministerial Committee of National Security of the Government of Israel defined, in its resolution 34/B dated September 19, 2005, the Gaza Strip as a "hostile area" being under the control of the Hamas organization (which was declared in said resolution a "terror organization") (H CJ 5268/08 **Inbar v. GOC Southern Command**, paragraph 1 of the judgment of the Honorable Justice Hayut (as then titled) (citing from the resolution of said committee dated September 19, 2007) (reported in Nevo, December 9, 2009)). "In view of the above" it was declared by the committee that "additional limitations shall be imposed on Hamas regime... and limitations shall be imposed on the movement of individuals to and from the Gaza Strip" (*Ibid.*)
24. Notwithstanding the above, in July 2008⁷ the Gaza DCO clarified that the "divided families" procedure did not change: "The entry of Israelis married to resident living in the Gaza Strip Area for spousal visitation shall be permitted... [and] the entry of a companion shall be allowed provided that they are immediate family members of the

person whose entry into the Gaza Strip was allowed – one spouse and children under the age of 18."

A copy of a letter regarding "Clarification of Criteria for the entry of Israelis into the Gaza Strip" sent to HaMoked representative on July 2008 on behalf of the Gaza DCO, is attached and marked **P/7**.

25. The "divided families" procedure was similarly drafted in a document publicized by COGAT in May 2011 with respect to the "Policy regarding the Movement of Individuals between the state of Israel and the Gaza Strip." Said document provides that the "departure [of Israelis to Gaza] in the framework of "divided families" procedure – the departure of Israelis whose spouse resides in Gaza for the purpose of uniting with their spouse" was permitted. In addition it was stated therein that the departure to Gaza of "companions" would be allowed, including "children under the age of 18" of Israelis whose entry into Gaza was allowed (*inter alia*, by virtue of the "divided families" procedure).

A copy of COGAT's document titled "Policy regarding the Movement of Individuals between the state of Israel and the Gaza Strip" (updated as of May 5, 2011), is attached and marked **P/8**.

26. It should be noted that on August 4, 2015, COGAT representative informed HaMoked representative that on July 23, 2015 "GOC Southern Command directed that departures of Israelis to the Gaza Strip shall be limited, due to the risk posed to their lives in view of the security situation in the Gaza Strip which has recently deteriorated. Said concern is coupled with the existing security concern of abuse of departures of Israelis to the Gaza Strip for the needs of terror organizations." In said letter COGAT representative clarified that "said directive does not sweepingly prohibit the departure of Israelis to the Gaza Strip, but rather limits the criteria facilitating the grant of an exit permit solely to specific cases, and in exceptional unique and urgent circumstances". It should be emphasized that even after said decision, and until this day, the respondents continued to issue entry permits into the Gaza Strip to Israelis by virtue of the "divided families" procedure.

A copy of the letter sent by COGAT representative to HaMoked representative on August 4, 2015 is attached and marked **P/9**.

27. Even recently, when following the outbreak of the Coronavirus pandemic "closure was imposed on the Gaza Strip for the purpose of protecting public health", the respondents decided to continue examining and approving "applications in the framework of the "divided families" criteria". It was so notified by respondents 2 and 3's representative to HaMoked representative in a letter dated June 10, 2020 in which it was added that "the departure of Israelis from divided families wishing to obtain exit permit to the Gaza Strip during the closure which was imposed for the purpose of protecting public health is contingent on executing, upon exit, a declaration and undertaking in the form attached as appendix" according to which "permit to return to Gaza during the closure shall not be granted" to members of divided families who have returned to Israel after having visited Gaza according to permit, the above according to the arrangements which were established in the framework of two petitions concerning divided families,

filed with the honorable court following the imposition of the above closure (see HCJ 2442/20 **al-Taiyef v. GOC Southern Command** (reported in Nevo, April 26, 2020); HCJ 2875/20 **Shweiki v. GOC Southern Command** (reported in Nevo, June 2, 2020)).

A copy of the letter on behalf of respondents 2 and 3 dated June 10, 2020 is attached and marked **P/10**.

B(3). The current mechanism for exercising the right of members of divided families to proper family life, as regulated by the "divided families" procedure

28. Currently, the updated version of the "divided families" procedure is located in section 7(c)(2) of chapter B of the Status of Authorizations according to which one of the "criteria for the departure of Israelis to the Gaza Strip" is:

'Divided families': Departure of Israelis whose spouses by marriage reside in the Gaza Strip ("divided families") for the purpose of uniting with their spouses together with their Israeli children up to 18 years of age. If the Israeli parent cannot travel to the Gaza Strip (only in cases of serious illness preventing their movement/death/divorce), his/her children (under 18) will be allowed to travel to the Gaza Strip to visit the Gazan parent.

- a) Children up to 16 may be accompanied by one member of the immediate or extended family (elder brother up to the age of 18, grandparent and in extraordinary cases an Israeli uncle or aunt).
- b) The permit will be given only to the Israeli relatives (parents/children).
- c) Departure of children (up to the age of 18) will be preceded by the Israeli guardian's signature of a declaration waiving personal and security responsibility before the departure to the Gaza Strip.
- d) Departure of children without an accompanying parent shall be allowed for a period which shall not exceed one week.

29. As established in section 1(c) of the Status of Authorizations "The departure of an Israeli, including an Israeli resident and a foreign national who was given residency status in Israel, to the Gaza Strip, requires a permit issued by the GOC Southern Command and the Gaza DCO on his behalf, according to the authorization by virtue of section 24 of the Disengagement Plan Implementation Law, 5765-2005". Accordingly, permit applications by virtue of the "divided families" procedure are submitted to the Israeli desk (Gaza DCO) and are handled by it. According to section 3(g) of the Israeli desk procedure dated February 11, 2019, concerning "handling permit applications of Israelis to travel from Israel to the Gaza Strip" permits issued according to the "divided families" procedure are valid "up to six months" while permits issued in humanitarian and/or other "exceptional cases are valid "up to three days".

A copy of the "procedure for handling permit applications of Israelis to travel from Israel to the Gaza Strip – Israeli desk", dated February 11, 2019, is attached and marked **P/11**.

30. As aforesaid, the purpose of the "divided families" procedure was and still is to enable spouses one of whom is Israeli and the other is Gazan to conduct family life in their homeland together with their **minor** children. According to the procedure's current version, and subject to the changing policies of the state of Israel and security checks that each Israeli under the age of 16 undergoes (including minor children), permits are issued enabling the Israeli spouse to travel to the Gaza Strip and stay there with his/her Gazan spouse, together with their minor children, for up to six months.
31. It should be noted that in the framework of the "divided families" procedure, minor Israeli children over the age of 16 are issued separate personal permits, while minor Israeli children under the age of 16 are regarded as being accompanied by their Israeli parent and are included in his/her permit.
32. According to the law, Israelis who entered the Gaza Strip by virtue of permit issued according to the "divided families" procedure (and in general) may travel therefrom and return to Israel through the Erez crossing at any given moment. The permit expires immediately upon the Israelis' departure of the Gaza Strip even if they did not stay therein throughout the entire six month period. Therefore, whenever Israeli members of divided families wish to re-enter the Gaza Strip, they are required to apply for and obtain a new permit from the respondents. On the other hand, Israeli members of divided families wishing to stay in the Gaza Strip continuously beyond the six month period, are required to submit permit renewal application shortly before its expiration (while formally, permit renewal is considered by the respondents as a new permit).
33. In general, no limitation is imposed on the number of permits which may be obtained by virtue of the "divided families" procedure or on the frequency with which permit applications may be submitted. Therefore, in fact the procedure regulates two possible ways to conduct family life for divided families. Israeli members of divided families can choose to establish the center of their life in Gaza and live there with the Gazan parent/spouse under one roof. In this case they will be required to renew their permits once every six months, and whenever they travel to Israel to visit their Israeli relatives (or for any other reason) they shall have to obtain new permits in order to return to their home in Gaza. Alternatively, Israeli members of divided families can decide to live in Israel distanced from the Gazan parent/spouse, and occasionally visit him/her in Gaza subject to obtaining the required permit(s) for each visit.
34. It should be emphasized that the "divided families" procedure does not fully shield and protect the right of members of divided families to proper family life. As aforesaid, whenever Israeli members of a divided family wish to return to their home in Gaza to unite over there with the Gazan father of the family, they must submit a new permit application. Quite often they are required to wait weeks and even months before their application is approved, and obviously, there is always a chance that the application would be denied (even if the past their applications have always been approved).

35. Moreover, in two specific cases the "divided families" procedure deprives Israeli children of divided families of the possibility to realize in their homeland their right to proper family life with their Gazan parent.
36. It should be emphasized that according to the procedure in its current version, the rule is that the inability of the Israeli parent to accompany minor children, members of divided families, prevents the children from visiting their Gazan parent. Only if the inability of the Israeli parent to accompany his/her children to Gaza arises from "a serious illness preventing his/her movement", his/her divorce from the Gazan parent or his/her death, the children will be allowed to travel to Gaza to visit the Gazan parent, "for a period of time not exceeding one week" instead of six months, and with respect to children under 16, subject to being "accompanied by one member of the immediate or extended family".
37. At the same time, it should be noted that attached to the procedure of the Israeli desk titled "Handling permit applications of Israelis to travel from Israel to the Gaza Strip" (see Annex **P/11**) is a "Consent form of a parent/guardian for the exit of an Israeli minor to Gaza according to the Unclassified Status of Authorizations for the entry of Palestinians into Israel, their passage between the Judea and Samaria Area and Gaza Strip and their travelling abroad[']". According to the form "if the parent/guardian is abroad – photographs of the passports of both parents/all guardians should be attached or, the form having been certified by the Israeli consul or by a notary should be presented". The form includes "consulate/notarial certification" wording. Hence, the question arises whether, according to respondents' practice, the fact that the Israeli parent is abroad constitutes, in and of itself, additional grounds for permitting his/her children to travel to Gaza without being accompanied by him/her to unite with their Gazan parent.
38. Either way, it is important to emphasize in the case at hand that the "divided families" procedure ceases to apply to Israeli children after they turn 18, Namely, a permit application to travel to the Gaza Strip in the framework of "divided families" procedure shall be denied with respect to an Israeli child if submitted after he came of age.
39. It should be noted that with respect to the "divided families" procedure, respondents' practice shows that the respondents do not actually prohibit children of divided families from staying in (or even from entering) the Gaza Strip after their 18th birthday, but only decline to approve applications filed on their behalf thereafter. To witness, when an Israeli mother files an application on her behalf and on behalf of her child shortly before his 18th birthday, in which their unification with the Gazan father of the family is requested, and their application is approved according to the "divided families" procedure, both mother and child receive permits of equal validity (which is usually six months). In these cases, the child is allowed to stay in Gaza until the expiration of his permit, even if he has previously come of age. However, according to the procedure he shall not be issued with an additional permit.
40. Hence, an Israeli child is deprived of his right to apply for permit by virtue of the "divided families" procedure as soon as he comes of age, and at the same time he is deprived of the right to conduct proper family life with his Gazan parent (and with his Gazan siblings, if any) in their homeland. In fact, according to respondents' procedure

the only lawful possibility – and as such, absurd - available to an Israeli child who came of age and wishes to continue conducting proper family life with his Gazan parent in their homeland, is to marry a Gazan resident and establish with her an immediate divided family of his own, thus acquiring (once again) the right to obtain permits by virtue of the "divided families" procedure.

41. According to respondents' criteria, as established in section 7(b) and 7(c), chapter B of the Status of Authorizations, the applications of Israeli children over the age of 18 of divided families to travel to Gaza (not in the framework of their employment) are considered only "in humanitarian cases... and in exceptional, unique and urgent circumstances only" and in general only "to visit an immediate family member" (including grandparents) staying (lawfully) in Gaza "[and] suffering a serious illness, putting the patient's life at risk or requiring long hospitalization" or "to participate in a funeral or wedding of an immediate family member (including grandparents) taking place in Gaza. Subject to specific security checks and the changing policies of the state of Israel, these applications are approved, in general, for a period which does not exceed three days.
42. Therefore, after turning 18, an Israeli child (who does not have immediate family members (including grandparents) in the Gaza Strip other than his Gazan parent), may solely visit his Gazan parent, only if the parent re-marries or suffers a serious illness, and then only for three days at a time. Under these circumstances, if the Gazan parent does not re-marry or becomes seriously ill, his Israeli child who came of age shall not be entitled to travel to the Gaza Strip to visit him, but only to bury him.

C. The history of petitioner's divided family

43. Petitioner's father, a Palestinian resident of the Gaza Strip, was born in Libya on February 26, 1980, and thereafter moved with his family to the Gaza Strip. In 1996 the father started working as a construction worker in Israel, where he met petitioner's mother. Aforesaid, the mother is an Israeli citizen, born in October 13, 1981, in Beer Sheva, Petitioner's parents (hereinafter: the **spouses**) got married on March 6, 2000.

A copy of the mother's identification card is attached and marked **P/12**;

A copy of the father's identification card is attached and marked **P/13**;

Copies of the marriage contract of petitioner's parents and its translation into Hebrew are attached and marked **P/14**.

44. After their marriage the spouses submitted a family unification application and lived together in Lakiya. The father's stay in Israel was regulated by renewable permits issued to him on behalf of the respondents in the framework of the family unification procedure. At a certain point the father received an ID number, but (according to the Temporary Order) did not receive citizenship.
45. Accordingly, in Israel, the spouses have established their family. As aforesaid, on July 8, 2002 their eldest son, _____, the petitioner in the proceeding at hand, was born. About two years later, on April 28, 2004, petitioner's brother, _____, was born, and on

November 18, 2005 and January 27, 2009 his two sisters, ____ and ____ were born, respectively.

A copy of petitioner's identification card is attached and marked **P/15**;

A copy of petitioner's birth certificate is attached and marked **P/16**;

A copy of the identification card of petitioner's brother, ____, is attached and marked **P/17**;

46. It should be noted that the father's parents (petitioner's Gazan grandparents) currently reside in the Gaza Strip together with the father's three sisters; while the father's three brothers all currently reside abroad. In 2009 the father's father started suffering from a heart disease. Therefore, a few months after the birth of his daughter ____, petitioner's father had to go back to the Gaza Strip to nurse his father and take care of him and to support his elderly mother.
47. It should be emphasized that the father's decision to go back to the Gaza Strip to support his elderly parents had far reaching consequences for him, his wife and children affecting their life style to this day. The need to file the petition at hand arises directly from the father's desire to honor his parents, stand by them and support them in their difficult times in the beginning of 2009, the above, following the policy which was applied by the respondents at that time – and which continues to be applied by them to this date – prohibiting free movement between Israel and the Gaza Strip and enabling movement between them only in rare humanitarian cases (and also in some additional exceptional cases which are not relevant to the matter of the petitioner and his family) as specified above.
48. According to respondents' policy, the father could not (and cannot, to this date) continue living with his family in Israel while frequently visiting Gaza, let alone making prolonged and/or spontaneous visits according to his elderly parents' dynamic needs. Respondents' policy forced the father, son of Gaza Strip residents who did not receive Israeli citizenship, to relocate from Israel to Gaza to be accessible and at the disposal of his parents to help them at any given moment.
49. It should be noted that before the father returned to the Gaza Strip he did not plan to stay there forever. Indeed, he had requested and received from the respondents permit to travel to Gaza for a limited period of time to take care of his parents. However, due to the poor health of his elderly parents, the father had to stay in Gaza beyond the permitted period.
50. Consequently, the father has lost his status in Israel and his right to stay and live therein. Forthwith, he has been almost totally deprived of the ability to enter Israel, the center of his life as of 2000 and the domicile of his wife and their children, other than in exceptional humanitarian circumstances in which he shall be entitled to receive special permit on behalf of the respondents, as specified above. And indeed, since then all applications to allow the father's return to Israel were denied. Hence, petitioner's family ability to conduct proper family life in Israel and live therein together has evaporated.

51. From this turning point onwards, the petitioner, his mother and his siblings were deprived of the right to conduct proper family life in their home land together with the father of the family, which right could have only be realized by them in the Gaza Strip, subject to receiving renewable permits issued by the respondents according to the "divided families" procedure. Hence, the petitioner became, when he was six years old, into a member of a "divided family".
52. Several months after the father of the family had returned to the Gaza Strip, the mother decided to relocate together with the petitioner and his siblings from Israel to Gaza, in order to live there together with the father of the family. Accordingly, the mother submitted, for the first time, a permit application to travel to Gaza by virtue of the "divided families" procedure by the end of 2009. Said application had been approved and an exit permit to Gaza was issued to her and her children. However, it should be emphasized that due to a security concern which exists in her matter (as alleged by the respondents), the respondents required the mother to sign, as a condition for issuing the requested permit, an undertaking whereby she would not be allowed to return to Gaza for a period of one year from her entry thereof, should she return to Israel during said year.
53. Since then and until 2016 the spouses continued to raise the petitioner and his siblings together under the same roof in Nuseirat refugee camp in the Gaza Strip. During said period, in which the center of life of the mother and her children was in Gaza, the mother used to occasionally exit Gaza together with her children to visit her family members in Israel, usually during school breaks in Gaza. Accordingly, the mother has submitted a considerable number of permit applications by virtue of the "divided families" procedure, to return to Gaza with her children after their periodic visits in Israel, and to renew their stay permits in Gaza when they did not exit it within six months from their last entry thereto.
54. It should be noted that all applications submitted by the petitioner in the framework of the "divided families" procedure aimed at regulating the residency of the petitioner and her children in the Gaza Strip between the years 2010-2016, were approved by the respondents, although, at times, only after petitions had been filed with this honorable court.

Copies of two permits (for example) issued to the petitioner, his mother and siblings by virtue of the "divided families" procedure are attached and marked **P/18**.

55. In the beginning of June 2011, the petitioner, his mother and siblings exited Gaza for the first time since they have relocated thereto. Their application to return to the father of the family in Gaza, which had been submitted by the end of said month, has remained unanswered for more than a month, and hence the petition which was filed in their matter on July 25, 2011 (HCJ 5536/11 **Tzane v. GOC Southern Command**). In the framework of said petition the petitioners were informed on August 21, 2011, that the respondent "will not object to the passage of the petitioner and her children to the Gaza Strip". However, in view of current security material (as alleged by the respondent) in their matter, it was stated by respondent's representative in said letter that "should the petitioner exit Gaza, any additional application submitted by her during the next year to enter Gaza would not be approved, other than in special or exceptional

circumstances which may justify it." Following a certain exchange, the respondent agreed on September 8, 2011 to shorten the above period to the "next six months". Consequently, the petition was deleted on September 11, 2011 at petitioners' request.

A copy of respondent's letter dated August 21, 2011 in the framework of HCJ 5536/11 is attached and marked **P/19**.

A copy of respondent's letter dated September 8, 2011 in the framework of HCJ 5536/11 is attached and marked **P/20**.

A copy of the judgment dated September 11, 2011 in the framework of HCJ 5536/11 is attached and marked **P/21**.

56. In July 2012, the petitioner, his mother and siblings had to file another petition to receive an answer to their application which had been submitted a month earlier, to enable them to return to the father of the family and to their home in Gaza after having visited family members in Israel (HCJ 5441/12 **Tzane v. GOC Southern Command**). On July 16, 2012, five days after the petition had been filed the petitioners were informed that their departure to Gaza would be allowed for six months, without additional limitations. Consequently, the petitioners had filed an application to delete the petition, which was accepted by the honorable court in a judgment given by it on July 29, 2012.

A copy of a letter on behalf of the state dated July 16, 2012 in petitioners' matter in HCJ 5441/12 is attached and marked **P/22**.

57. During the next three consecutive years, the petitioner, his mother and his siblings received several permits by virtue of the "divided families" procedure without filing a petition. However, following respondent's decision dated July 23, 2015, to limit the departure of Israelis to the Gaza Strip (See Annex **P/9**), the mother and her children had to file another petition on August 13, 2015 with the honorable court (HCJ 5555/15 **Tzane v. GOC Southern Command**), to renew the permit granted to them on July 22, 2015 to return to Gaza, which they were unable to realize prior to respondent's said decision from July 23, 2015. Several days after the petition had been filed the petitioners were advised that they would be allowed to travel to Gaza without any additional restrictions. Hence, the petition was deleted on September 6, 2015 at petitioners' request.

A copy of respondent's letter dated August 17, 2015 in the framework of HCJ 5555/15 is attached and marked **P/23**.

58. In the beginning of July 2016, the petitioner together with his mother and siblings exited Gaza to visit their family in Israel. The respondents approved two permit applications submitted by the mother, one in mid-July and the other about a month later, allowing them to return to their home in Gaza. However, since her son ____ (petitioner's brother) broke his leg and had to undergo rehabilitation, petitioner's family could not use the permits and had to stay in Israel.

59. Consequently and due to additional circumstances, including their severe economic situation in Gaza and the beginning of the new school year, petitioner's parents had to

make a difficult decision which divided the family between Gaza and Israel. Namely, petitioner's parents decided that the mother and their children would relocate to Israel and move the center of their life thereto, and that according to respondents' policy, the mother and the children would thereafter exercise their right to family life by periodic visits of the father in Gaza, using the permits which by that time were used to regulate their life together in Gaza.

60. In 2017 the petitioner, his mother and siblings received three permits by virtue of the "divided families" procedure, which were used by them to unite with the father of the family who, as aforesaid, had to stay in Gaza, disconnected most of the year from his wife and their children. It should be noted that their last permit application from 2017 to travel to Gaza was approved on December 19, 2017, on the same day on which an additional no-response petition was filed on behalf of the petitioner's family (HCJ 9887/17 **A v. GOC Southern Command**).
61. In 2018 the petitioner, his mother and siblings continued receiving permits to visit the father of the family in Gaza. Their first application in the framework of "divided families" procedure was approved on March 7, 2018, and their second application was approved on July 10, 2018, two days after petitioner's 16th birthday. Based on said last permit, the petitioner, his mother and siblings departed to Gaza on July 29, 2018. They stayed in Gaza, together with the father of the family, for about a month before returning to their home in Israel, expecting to visit him again toward the end of the year.

A copy of Gaza DCO's approval letter date July 10, 2018, is attached and marked **P/24**.

D. Petitioner's unification with the father of the family in Gaza has not been permitted for two years

62. However it should be noted that since the petitioner, his mother and siblings exited Gaza in August 2018 to date, their return to Gaza has not yet been approved, although the spouses had a baby on December 13, 2018 (____, ID No. _____, petitioner's younger brother), who has never met his father.

A copy of ____ Tzane's birth certificate is attached and marked **P/25**.

63. Following ____'s birth, the mother submitted a permit application on her behalf and on behalf of all of her children, to travel to Gaza to unite with the father of the family. However, on January 28, 2019, the representative of the Israeli desk informed that the applications of the mother and the petitioner (who has already, as aforesaid, turned 16, and whose application required specific security check) had been denied "due to specific security reasons, which naturally may not be disclosed".

A copy of the denial notice dated January 28, 2019, is attached and marked **P/26**.

64. On February 7, 2019, a petition was filed on behalf of the mother and her five children (including the petitioner) against the denial of their application (HCJ 975/19 **A v. GOC Southern Command**). In the framework of the state's preliminary response to the petition, filed on March 5, 2019, the respondent explained the above decision as follows (paragraphs 36-38):

36. The current position of the security bodies – against the backdrop of the general security reality in the Gaza Strip, in view of updated intelligence information concerning the petitioner [the mother] and her family substantiating a specific threat as a result of petitioners' entry into the Gaza Strip, and in view of the efforts of terror organizations to obtain the collaboration of Israeli citizens – is that the petitioners should not be allowed to enter the Gaza Strip at this time. As aforesaid, relevant to this matter are also general current circumstances relating to the entry of Israelis into the Gaza Strip, in which terror bodies in Gaza, headed by the Hamas organization, exploit the humanitarian policy applied by the state of Israel toward the Gaza Strip, to promote terror objectives, including by the exploitation of family visits.

37. In the case at hand, security bodies object, at this time, to petitioners' departure to Gaza, **in view of the fact that in petitioner's previous departure to Gaza, she tried to transfer dual-use equipment requiring license to the Gaza Strip at the request of the inviting party, the father of the family, without license as aforesaid; in view of the fact that information in the possession of security bodies indicates that the inviting party and his family members are connected to and identified with terror activists at the Hamas organization, and substantial suspicion exists that at least one of the family members has been recently involved in terror activity as a result of which an IDF soldier was severely injured; and in view of the fact that security bodies have information whereby the Hamas organization attempts to recruit Israeli citizens entering the Gaza Strip as collaborators to promote its activities – petitioners' departure to the Gaza Strip raises a security risk.**

38. It should be noted that the application was denied for security reasons with respect to the petitioner [the mother] and petitioner 2 [____, the petitioner in the proceeding at hand], and therefore the entry of petitioners 3-6 [all other children who were under the age of 16] is prohibited in view of the fact that as aforesaid, Status of Authorizations provides that children under 18 may travel to Gaza to visit the Gazan parent if the Israeli parent cannot travel to Gaza '**only** in the event of a serious illness preventing his movement/death/divorce'.

A copy of respondent's response (without its annexes) dated March 5, 2019, in HCJ 975/19 is attached and marked **P/27**.

65. During the hearing in the petition which was held on March 28, 2019, the petitioners argued that reference was made to several small tires to be used by the father of the family in his business, and that the mere fact that the respondents allowed the mother and her children to enter the Gaza Strip, after having confiscated the tires, shows that the above cause did not justify respondent's refusal to permit the return of the mother

and her children to Gaza. Respondent's representative noted that "we have therefore said that additional information existed justifying the refusal, separate and apart from the tires incident". After the honorable court has reviewed the privileged material ex parte, the Honorable Justice Vogelman noted that "we have seen the material, asked questions. At this point she will not be able to enter we cannot interfere." **She will be able, within five months from this date, to submit an application, it's not an undertaking that the answer will be positive, a *de-novo* examination shall be conducted, we have requested said period in view of the humanitarian circumstances". (emphasis added). In view of the honorable court's comments the petitioners withdrew their petition which was deleted on that day by judgment which stated that "the respondent agreed to re-examine petitioners 1-6's new application to travel to Gaza after the elapse of five months from this day."**

A copy of the minutes of the hearing dated March 28, 2019 in HCJ 975/19 is attached and marked **P/28**.

A copy of the judgment dated March 28, 2019 in HCJ 975/19 is attached and marked **P/29**.

66. According to respondent's proposal in the hearing dated March 28, 2019, the mother and her children submitted about five month later, a new permit application to visit the father of the family in Gaza. However, said application was also denied with respect to the petitioner and his mother again "due to specific security reasons, which naturally may not be disclosed." The petitioner, his mother and siblings petitioned again to the honorable court on October 7, 2019 against the new refusal (HCJ 6625/19 **Tzane v. GOC Southern Command**). In its preliminary response dated November 4, 2019, the respondent deleted its previous argument concerning the dual-use equipment, but has more or less reiterated his previous explanations, as follows (paragraphs 35-36):

35. In the case at hand, security bodies object, at this time, to petitioners' departure to Gaza, in view of the fact that **according to updated information in their possession the inviting party and his family members are connected to and identified with terror activists at the Hamas organization. In addition, substantial suspicion exists that at least one of family member has been involved in the last year in terror activity as a result of which an IDF soldier was killed. In addition they have information whereby Hamas organization attempts to recruit Israeli citizens entering the Gaza Strip as collaborators to promote its activities.**

36. It should be noted that the application was denied for security reasons with respect to the petitioner [the mother] and petitioner 2 _____, the petitioner in the proceeding at hand], and therefore the entry of petitioners 3-6 [all other children who were under the age of 16] is prohibited in view of the fact that as aforesaid, Status of Authorizations provides that children under 18 may travel to Gaza to visit the Gazan parent if the Israeli parent cannot travel to Gaza '**only** in the event of a serious illness preventing his movement/death/divorce'.

A copy of the denial notice dated September 18, 2019, is attached and marked **P/30**.

A copy of respondent's preliminary response dated November 4, 2019 in HCJ 6625/19 is attached and marked **P/31**.

67. In a hearing held on December 26, 2019, respondent's representative argued that the denial arose from "additional updated information which has accumulated as of the previous hearing" in petitioners' matter. On the other hand, petitioners' representative emphasized the severe violation of petitioners' right to family life, stressing the fact that within about six months ____ would come of age and therefore would not be able to visit his father in Gaza in the framework of the "divided families" procedure. After it has reviewed the privileged material *ex parte*, the honorable court denied the petition without an order for costs. In the judgment which was given on that day it was held that after "we have reviewed the privileged information *ex parte*, [] we were convinced that that there is a basis for respondent's arguments in paragraph 4 of its response (reiterating the provisions of paragraph 35 thereof), whereby the inviting party and his family members are connected to and identified with terror activists in the Hamas organization, and that substantial exists that at least one family member has been involved in the last year in terror activity as a result of which an IDF soldier was killed".

A copy of the minutes of the hearing dated December 26, 2019 in HCJ 6625/19 is attached and marked **P/32**;

A copy of the judgment December 26, 2019 in HCJ 6625/19 is attached and marked **P/33**.

E. **Petitioner's application being the subject matter of the petition at hand was denied in the framework of the last petition filed on his behalf and on behalf of his mother and siblings**

68. Notwithstanding the decision of the honorable court to deny their previous petition, the mother and her children decided to file on May 18, 2020, a new permit application to visit the father of the family in Gaza. Said application was filed about a month and a half before petitioner's 18th birthday, *inter alia*, to enable him to enter Gaza one last time in the framework of the "divided families" procedure to part with his father, since after he turns 18 and is deprived of the right to submit permit applications by virtue of the "divided families" procedure, it is possible that the next time in which the petitioner would be permitted to enter Gaza, according to respondents' policy, will not be to visit his father but rather to bury him. Due to its importance, petitioner's 18th birthday was noted in the reminders which were sent by HaMoked representative to respondents' representatives on May 18, 2020, June 2, 2020, June 15, 2020 and June 17, 2020.

A copy of the application submitted by the petitioner, his mother and siblings dated May 18, 2020 is attached and marked **P/34**.

Copies of the reminders dated May 18, 2020, June 2, 2020, June 15, 2020 and June 17, 2020 are attached and marked **P/35**.

69. In the absence of pertinent response to their application dated May 18, 2020 after more than five weeks from its submission date, and considering the fact that petitioner's 18th birthday was approaching, the mother and her children had to file their last petition (HCJ 4353/20 **Tzane v. GOC Southern Command**)(which is attached to the petition at hand as Annex **P/1**) ON June 29, 2020. In said petition the honorable court was requested to direct the respondent "to appear and show cause why it should not immediately permit the departure of" the mother and her five children "from Israel to the Gaza Strip, to enable them... []to unite with the father of the family who lives there according to the "divided families" procedure. In addition, it was emphasized in the detailed description of the requested remedies, in the request for urgent hearing, in the body of the petition and in the conclusion thereof that ____ (petitioner 2 therein) requested a permit enabling him to meet his father in Gaza one last time before the "divided families" procedure no longer applies to him.
70. On June 29, 2020 the respondent decided not to approve the applications of the mother, ____ and his brother ____ (who was above the age of 16), each one "due to specific security reasons which naturally may not be disclosed". Said decision was attached to respondent's preliminary response, which was filed on that day. According to the response, "the application of the mother of the family (petitioner 1) and two of her children who are over 16 years of age, was denied due to specific security reasons." The respondent added that "the decision did not refer to petitioner 1's children, petitioners 4-6, minors under the age of 16. According to IDF bodies, since minors under the age of 16 should be generally accompanied by an adult family member, it means that, in fact, the application of the petitioners under the age of 16 has also been denied (petitioners 4-6), the above according to the accepted procedure at the time on which permit application acceptance notice was given". It should be noted that contrary to the above, the Status of Authorizations provides that children under the age of 16 can be accompanied by an older brother between 16-18 years of age.
71. It should be emphasized that in said preliminary response, the respondent did not explain the security reasons which according to it substantiated its negative decisions in the applications of the mother, ____ and _____. In addition, the respondent did not indicate the same specific security reasons applied to each one of the three family members whose applications were denied and/or whether these were the same reasons which had been specified in the preliminary response to their previous petition. Moreover, the respondent has altogether neglected to refer to ____ specific matter or to the fact that his 18th birthday was approaching. Instead, the respondent argued that "today's decision constitutes a substantial change in the relevant factual infrastructure, and the petition which *ab initio* was premature when filed... does not pertain to the most current decision in petitioners' matter... Therefore, under these circumstances the respondent requested the honorable court "to direct that the petition be dismissed in *limine*, or at least deleted, while imposing on the petitioners the obligation to pay costs".

A copy of respondent's preliminary response (including its annexes) dated June 29, 2020 in HCJ 4353/20 is attached and marked **P/36**.

72. On the next day, June 30, 2020, the honorable deleted the petition without an order for costs. In its judgment (attached to the petition at hand as Annex), the honorable court

held that "Since the decision of the Gaza DCO was given with respect to petitioners' application to travel to the Gaza Strip, the factual infrastructure on the basis of which the petition was filed has changed, and exhausted itself. Therefore, the petition should be deleted, without prejudice to petitioners' right to petition against the decision which was made, should they wish to do so, after they review the reasons thereof and the recent decisions of the court in their matter".

73. Hence, the petition at hand is filed according to the leave granted to the petitioners in the last petition by the honorable court in its judgment dated June 30, 2020, to initiate a new proceeding against the negative decision in the application being the subject matter of the last petition. It should be noted that in view of the decisions given by the honorable court in the two petitions which had been filed by them in 2019, and in view of the fact that they may submit to the respondents in the future a new application according to the "divided families" procedure, the petitioner ____ mother and siblings decided not to join the petition at hand.
74. On the other hand, the petition does not have said privilege of waiting. As he turned 18 about a week after his application being the subject matter of the last petition was denied, the petitioner lost his right to submit new applications by virtue of the "divided families" procedure. Therefore, the application dated May 18, 2020, is the last application that the petitioner could have submitted in the framework of the "divided families" procedure, and the petition at hand is the only way still available to him to have it approved. And it should be reminded that if the application is not approved, it is possible that the next time in which the petitioner shall be allowed to enter the Gaza Strip according to respondents' policy, shall not be to visit him but rather to bury him.
75. In view of all of the above and in view of the fact that no reasons were given to support the negative decision in the application being the subject matter of the last petition, and to enable him to meet his father who lives in the Gaza Strip one last time in the framework of the "divided families" procedure, the petitioner has no alternative but to petition again to this honorable court in connection with the application being the subject matter of the last petition.

The Legal Argument

A. The respondents violate petitioner's right to family life

76. By preventing the petitioner from traveling to the Gaza Strip, the respondents prevent him from visiting, one last time in the framework of the "divided families" procedure, his father who lives in the Gaza Strip. In doing so, the respondents critically violate petitioner's right to family life. This right derives, inter alia, from the right to human dignity and is one of the most important natural and fundamental rights, as was held by the Honorable Justice Procaccia in **Dobrin**:

The Basic Law: Human Dignity and Liberty entrenches the human rights to dignity and liberty... Within the scope of the right to human dignity lies the right of a person to have a family... The right to family is one of the most basic elements of human existence. It is derived from the protection of human dignity, from the right to privacy and from the realization of the principle of the autonomy of

the will of the individual, which lies at the very essence of the concept of human dignity.

(HCJ 2245/06 **Dobrin v. Israel Prison Service**, para. 12 of the judgment of Justice Procaccia (reported in Nevo, June 13, 2006)(references were omitted)

77. These special relations between the members of the same family circle are recognized and protected by the law. As stated by the then President of the Supreme Court in **Adalah**:

It is our initial and basic duty to preserve, nurture and protect the most basic and ancient family unit in the history of mankind, which was, is and will be the element that preserves and ensures the existence of the human race, namely the natural family'... the family relationship, and the protection of the family and its basic elements... lie at the basis of Israeli law. The family has an essential and central purpose in the life of the individual and the life of society. Family relationships, which the law protects and which it seeks to develop, are some of the strongest and most significant in a person's life.

(HCJ 7052/03 **Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of the Interior**, IsrSC 61(2) 202, para. 25 of the opinion of Justice Barak (2006)(Emphasis added)(References were omitted) (hereinafter: **Adalah**)).

78. The right to family life also includes the right of children to be raised by their parents and the right of parents to raise their children. As was held in LCA 669/00 **A v. Attorney General**, IsrSC 54(3) 196, 209 (2000) "Parents have a natural and fundamental right to raise their child".
79. In addition, the right to family life includes the right and obligation of any person to take care of their parents and honor them. Relevant to this matter are the words of the then deputy president Menachem Elon concerning person's obligation to honor their parents:

The connection between a child and his parents and the commandment to honor one's parents is a basic and sacred principle of Israel heritage from ancient times and any human society of culture; it is the fifth of the Ten Commandments: 'Thou shall honor your father and your mother' (Exodus 20:1–21; Deuteronomy 5:1–23). The reason for that being that 'a person is created by three: God, his father and his father' (Kiddushin 30, 2[13]). Go and learn the importance attributed to the commandment to honor one's parents by our scholars as reflected in the story about Rabbi Tarfon (one of the most well-known scholars of the first century): 'Rabbi Tarfon had an old mother. Whenever she went to bed he kneeled before her and she climbed, and whenever she woke up he bent over and she stepped down on him. One day he spoke highly of himself in the synagogue. They told him: you have not even fulfilled half of the commandment. Did she throw your wallet to the ocean and you did not scold her?' (Kiddushin, 31, 2 [13] translated into Hebrew...).

(CA 1482/92 **Hagar v. Hagar**, IsrSC 47(2) 793, 805 (1993)).

80. Accordingly and in view of the supreme importance of the "family relations... in the life of the individual and in the life of the society" any person, according to both Israeli law and international law, has the right to family life (the above **Adalah**, paragraph 25 of the opinion of president Barak). Against this fundamental and substantial right, it is incumbent upon the respondents to respect petitioners' family, as held by this honorable court: "Israel is obligated to protect the family unit by virtue of international conventions" (HCJ 3648/97 **Stemka v. Minister of Interior**, IsrSC 53(2) 728, 787 (1999)).

81. Among other things, Article 46 the Hague Convention (1907), constituting international customary law, stipulates, inter alia, as follows:

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

82. The comprehensive study of the International Committee of the Red Cross which was published in 2005, in a bid to identify the rules of international humanitarian customary law, recognizes the obligation of the state to protect family life as one of these rules:

Family life must be respected as far as possible.

(Jean-Marie Henckaerts & Louise Doswald-Beck, [1 Rules] Customary International Humanitarian Law 379-83, Rule 105 (Int'l Comm. Red Cross ed., 2005, Cambridge University Press 2009)).

83. The obligation of the state to protect the family unit and the right to family life are also recognized by other international sources, including: Article 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) (hereinafter: the Fourth Geneva Convention); Article 10 of the International Covenant on Economic, Social and Cultural Rights (1966), Treaties Series 1037; Articles 17 and 23 of the International Covenant on Civil and Political Rights (1966) Treaties Series 1040; Article 12 and Article 16(3) of the Universal Declaration on Human Rights (1948); and Articles 8 and 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

84. It should be noted that in general the right to family life includes a citizen's right to live with the members of his immediate family in his country. As was held in **Stemka** (*Ibid.*, page 787):

The state of Israel recognizes the citizen's right to freely choose their spouse and establish with them a family in Israel. Israel is obligated to protect the family unit by virtue of international conventions... and although said conventions do not require [the adoption] of this policy or another with respect to family unification, Israel has recognized – and does recognize – its obligation to protect the family unit also by way of granting family unification permits. Accordingly, Israel joined the most advanced states, states recognizing – subject to state security,

public safety and public welfare reservations – the right of family members to live together in the territory chosen by them.

85. However, upon the enactment of the Temporary Order (and government resolution No. 3598) many divided families – including petitioner's family – were deprived of the right to live together in Israel. Underlining the honorable court's decision which recognized the validity of the Temporary Order in the above **Adalah**, was the possibility to conduct proper family life in the territories (the Gaza Strip in the case at hand), the above according to the state's argument in said case that the order was proportionate and constitutional because it did not completely deny the right to family life, but rather restricted it, as it could be exercised in the territories. As stated by the then president Barak:

In so far as the right to family life is concerned, the respondents claim that the Temporary Order 'does not prevent family life, nor does it limit the autonomy to choose a spouse, nor does it nullify the right to family life; rather, it does not allow the realization of the right specifically in the State of Israel'

...

Certainly the Citizenship and Entry into Israel Law does not prevent the Israeli spouse from marrying their spouse from the territories. The freedom to marry is maintained. Moreover, usually the Israeli spouse is not prevented from moving to the territories ('Every person is free to leave Israel.' Section 6(a) of the Basic Law: Human Dignity and Liberty). Thus he is entitled, of course, to realize his right to establish the family unit outside Israel. I assume — without having had all the details submitted to us in this regard — that in most cases the Israeli spouse will receive a permit from the military commander to enter the territories.

(**Adalah**, *Ibid.*, paragraph 14 and 42 of the opinion of President Barak).

86. However, as the petitioner came of age about a month ago, he was deprived of the right to conduct proper family life with his father in Gaza. As aforesaid, if his application being the subject matter of the last petition to visit his father one last time in Gaza according to the "divided families" procedure is not approved, the next time in which the petitioner shall be permitted to travel to Gaza shall not be to visit his father but rather to bury him.

B. By denying the application being the subject matter of the last petition, the respondents violate the principle of the child's best interest

87. As has already been held in CA 209/54 **Steiner v. Attorney General to the Government of Israel**, IsrSC 9 241, 250 (1955) "The child's best interest is a paramount principle". The Covenant on the Rights of the Child (1989), Treaties Series 1038, which was ratified by the state of Israel in 1991 and the enactment of the Basic

Law: Human Liberty and Dignity, have reinforced the status of the child as an independent rights holder and as a separate and independent legal entity under the law.

88. Judicial precedent has often emphasized that when the child's best interest is discussed considerable weight should be given to this consideration. ""Since the legislator ascended to the level of the modern approach – a modern approach that the scholars of Israel have been taking for ages – that the child is not an 'object'... but is rather a 'subject', he himself is a 'litigant'... and his interests may not be disregarded under any circumstances whatsoever (*Ibid*).
89. However, it seems that the respondent "[disregarded the interests" of petitioner who was a minor when the application being the subject matter of the last petition had been submitted as well as when it was denied (*Ibid*.) The respondent did not give proper weight to petitioner's supreme interest to visit his father who lives in Gaza one last time before the petitioner is deprived of the right to receive permits by virtue of the "divided families" procedure.
90. It should be noted that depriving an Israeli child of his right to visit his Gazan parent, in circumstances in which the Israeli parent's inability to accompany him to Gaza does **not** stem from a serious illness preventing his movement or from his death or divorce from the Gazan parent, constitutes a severe violation of the principle of the child's best interest and of the child's right to family life with his Gazan parent.
91. In this context it should be emphasized that in HCJ 10336/06 **Abu Huza v. GOC Sothern Command** (reported in Nevo, December 27, 2006), the respondents approved the entry of minors to Gaza, unaccompanied by their Israeli mother, to visit their Gazan uncles during the holidays while the mother's inability to accompany her children arose from security preclusion. The Honorable Justice Procaccia stated in that matter as follows:

It arises from the petition that petitioners' family received the status of permanent residents and citizens of the state of Israel. The ages of the children span from three to seventeen. According to the petition, until recently, the petitioner and her minor children used to visit petitioner's brothers and sisters in the Gaza Strip, mostly during the holidays. Recently respondent 1 (hereinafter: the respondent) has refused to grant the petitioners permits to visit their relatives, due to security preclusion, and hence the petition.

In the state's response prior to the hearing in the petition, notice was given that after having reconsidered the matter, the respondent accepted petitioners' application in as much as it concerned the minors, and that their departure for a visit in Gaza would be allowed. It was also explained in the response that the state did not insist on the satisfaction of the accepted condition whereby the departure of minors to the area would be allowed only if they are accompanied by a responsible adult, since in this case the family informed that there was no suitable person who could assist in the matter. In view of the above, the petition became redundant with respect to petitioners 2-8.

With respect to the petitioner – the mother of petitioners 2-8 – the respondent insists on his refusal to permit her departure to visit the area, due to security preclusion.

With the consent of petitioner's counsel we have reviewed privileged material, *ex parte*. We were convinced that said material substantiated respondents' position concerning the existence of security preclusion preventing petitioner's departure to Gaza. We are aware of the fact that until the beginning of 2006 her departure for family visits in Gaza was allowed, but the current and updated material which we have reviewed explains the change in respondent's position, and we have seen no reason to interfere with his discretion in that regard.

According to section 24(a) of the Disengagement Plan Implementation Law, 5765-2005, Israelis may not enter the Gaza Strip area without a permit issued on behalf of the commander. The body authorized to approve the entry of Israelis into the Gaza Strip is the GOC Southern Command who is vested with the discretion to allow the entry of Israelis into said area. Among his considerations, on the one hand, is the concern that the entry of Israelis into the Gaza Strip would create substantial security risks due to anticipated attempts of terror organizations to integrate them in their activities for the purpose of promoting their objectives; on the other hand, humanitarian considerations are taken into account in this context relating to the natural needs of Israeli citizens to visit their family members in Gaza, particularly during the holidays.

Under the circumstances of the case at hand, balancing between the different considerations the GOC Southern Command decided to allow the entry of the six minors into Gaza and to prevent the entry of their mother into the area due to security preclusion as aforesaid. We see no reason to interfere with this decision, and with the balancing which led thereto. In view of the above, we have no alternative but to deny the petition in as much as it relates to the petitioner.

92. If the departure to the Gaza Strip of the minor petitioners in **Abu Huza** was allowed for the purpose of visiting their uncles, notwithstanding the security preclusion which was imposed on their mother, all the more so in the case at hand, petitioner's visit of his father in Gaza for the last time (in the framework of the "divided families" procedure) should be permitted. It should be noted that currently the petitioner may not visit his father one annually during the holidays – members of divided families were denied of said option more than a decade ago.

C. The respondents violated the obligation to conduct a hearing and provide reasoning and deprived the petitioner of the right to be heard

93. As aforesaid, the applications (being the subject matter of the last petition) of the petitioner, his mother and brother ____ were denied by the respondent "due to specific security reasons which naturally may not be disclosed". In its preliminary response to

the last petition the respondent did not explain said "security reasons" (see annex **P/36**). Hence, the respondent has violated the obligation imposed on it as a public authority to provide sufficient reasoning, and has deprived the petitioner of his right to be heard.

94. The purpose of the obligation to provide sufficient reasoning is "to prevent arbitrary and obscure decisions and lay the foundation for both administrative and judicial criticism of decisions of public servants (Raanan Har Zahav, **Israeli Administrative Law** 239 (1996)). The purpose of the obligation to provide sufficient reasoning is also to realize one of the rules of natural justice – petitioners' right to heard – and to lay the foundations for the right to be heard since in the absence of reasoning the petitioners cannot defend themselves against the decision and affect it before it was given or thereafter either by submitting an application to re-consider to the administrative authority or by filing a petition to this honorable court.
95. Relevant to this matter are the comments of the honorable Justice (as then titled) Barak in Abu Romi:

The case before us demonstrates the great importance that should be attributed to a strict adherence to the rules concerning the right to a fair hearing. Since the petitioner has not been given the opportunity to hear the complaints against him and to present his own position, he became convinced that the considerations of the authorities were inappropriate and discriminatory and his trust as a citizen in the government was undermined. The rules concerning the right to a fair hearing are aimed at preventing this state of affairs, since the purpose thereof is not only to ensure that in practice justice is made with the injured individual, but also to ensure that the trust of the public in good governance is maintained... This right is not only a formal procedure of summons and hearing. The right to be heard means the right to a fair hearing (HCJ 598/77, page 168). The meaning of this right is to give a proper opportunity to respond to information which was obtained and which may affect a decision which concerns petitioner's matter. **Therefore, the right to be heard is not properly exercised, if the applicant is not advised of the information which was obtained in his matter and is not given the opportunity to properly respond thereto.**

(HCJ 656/80 **Abu Romi v. Minister of Health**, IsrSC 35(3) 185, 18-189 (1981) (Emphasis added)(References omitted)).

96. Even when the scope of the reasoning is limited due to security considerations "it does not necessarily result in a complete nondisclosure of the reasons":

An exemption from disclosure of reasons, facts or documents when the disclosure may infringe on state security or its foreign relations is acceptable to the legislator and the court in various contexts. And if a question arises, it does not relate to the exemption itself, but rather to the scope of the exemption. On the one hand, it is reasonable that a public servant will not have to disclose the grounds for his decision if

it may infringe on state security or its foreign relations. However, on the other hand, **it does not necessarily result in a complete nondisclosure of the reasons.**

(I. Zamir, **The Administrative Authority** (volume B, 5756), page 917; emphasis added).

And also:

Even when a standard decision is concerned, the authority does not fulfill its obligation by giving the reasons underlying its decision in a general and laconic manner, providing only the "caption" of its reasons with no specific and pertinent reference to the circumstances of the case at hand. **Namely, notice stating "your application is denied for security reasons" – is insufficient.**

(Yoav Dotan, "The Duty to give Reasons in Administrative Law" 19 **Mechkarey Mishpat** 5, 37 (2002)(Emphasis added).

97. However, in petitioner's matter the respondents explained their negative decision "in a general and laconic manner, providing only the "caption" of [their] reasons with no specific and pertinent reference to the circumstances of the case at hand." [*Ibid.*] As aforesaid, petitioner's application being the subject matter of the last petition was denied "*due to specific security reasons*". However, contrary to respondents' frivolous argument that said reasons "naturally may not be disclosed", the fact that these are security reasons "*does not necessarily result in a complete nondisclosure of the reasons*" (Zamir, *Ibid.*)
98. The petitioner, his mother and brother have indeed received relatively extensive paraphrases in the framework of their two 2019 petitions. However, in the preliminary response to the last petition the respondent did not state whether these were the same reasons that had been specified in the past. In addition, the respondent did not specify whether said reasons were equally attributed to the petitioner, his mother and brother _____, or whether different considerations applied to each one of them. Either way, it should be emphasized that according to the Status of Authorizations, petitioner's entry into Gaza without his mother shall be allowed for one week instead of six months – which may probably reduce the weight of the security considerations and affect the balancing between them and the severe violation of petitioner's right to part with his father.
99. In the legal arena, the petitioner confronts the respondents, his much stronger opponents, like a boxer blindfolded by said opponents. Therefore, the petitioner requests that the veil of secrecy in his matter be lifted and that the detailed and substantial reasons underlying respondents' decision denying his personal and separate application to visit his father in Gaza one last time in the framework of the "divided families" procedure be disclosed to him. Only then the petitioner shall be able to exercise his right to be heard, "to respond... properly" to respondents' arguments, allegedly substantiating their decision prohibiting his departure to Gaza, and to protect his fundamental right to family life and freedom of movement (**Abu Romi**, *Ibid.*, page 189).

D. The respondents violate petitioner's right to freedom of movement

100. By preventing the petitioner from exiting Gaza, the respondents also violate his right to freedom of movement. The right to freedom of movement is the main expression of a person's autonomy, the freedom to make his own choices and to realize his abilities. The great importance of the right to freedom of movement arises from the fact that freedom of movement is the engine which drives the entire body of a person's rights, the limitation of which necessarily results in the violation of other human rights relating to all aspects of life. Hence, the severe violation of petitioner's right to family life is a direct and inevitable result of the limitation of his freedom of movement.
101. In Israeli administrative-constitutional law, the right to freedom of movement is entrenched in the Basic Law: Human Dignity and Liberty. It is recognized as a basic fundamental right "which is in the first rank of human rights" and is "on the very highest level of the scale of rights in Israel" (HCJ 1890/03 **Bethlehem Municipality v. State of Israel**, IsrSC 59(4) 736, 754 (2005) (citing the words of president Barak in HCJ 5016/96 **Horev v. Minister of Transport**, IsrSC 51(4) 1, 51, 53 (1997)). And the right to freedom of movement includes the right to leave the country in which a person resides and to return thereto.
102. In international human rights law the right to freedom of movement is entrenched, *inter alia*, in Article 12 of the International Covenant on Civil and Political Rights (1966), Treaties Series 1040, which was signed by Israel in 1966 and ratified by it in 1991; in Article 13 of the Universal Declaration on Human Rights (1948); and in Article 2 of the Fourth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms (1963).

Conclusion

103. The petitioner wishes to visit his father who lives in Gaza one last time in the framework of the "divided families" procedure. If his application being the subject matter of his last petition is denied, the next time in which he shall be allowed to leave Gaza may not be to visit him but rather to bury him.
104. By preventing the petitioner from exiting Gaza, the respondents crucially violate his right to family life and his right to freedom of movement. Almost two years have passed since the respondents have allowed the petitioner to meet his father, and if they do not retract their negative decision in petitioner's application being the subject matter of the last petition, said last meeting may literally be their last meeting.

In view of all of the above, the honorable court is requested to issue an order nisi as requested in the beginning of the petition, and after receiving respondents' response to make it absolute. In addition the honorable court is requested to direct the respondents to pay petitioners' expenses and attorneys' fees.

This petition is supported by an affidavit signed before an Israeli lawyer and forwarded to HaMoked by facsimile, following coordination by phone. The honorable court is requested to accept this affidavit and the power of attorney which was also sent by facsimile, considering the objective difficulties concerning meetings between the petitioners and their legal counsels.

August 6, 2020

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