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At the Supreme Court
Sitting as the High Court of Justice

HCJ 8155/06

1. **The Association for Civil Rights in Israel**
2. **HaMoked: Center for the Defence of the Individual**
3. **Physicians for Human Rights**

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The Petitioners

- Versus -

1. **Commander of IDF Forces in Judea and Samaria**
2. **Head of the Civil Administration**
3. **Head of the Israel Security Agency**
4. **Legal Advisor for the Judea and Samaria Area**

by the State Attorney's Office
Ministry of Justice Jerusalem

The Respondent

Updating Notice on behalf of the Respondents

1. In accordance with the decision of the Honorable Court dated 28 October 2009, the Respondents hereby respectfully submit an updating notice on their behalf.
2. The most recent hearing before the Honorable Court took place on 28 October 2009. We shall recall that prior to that, on 1 August 2007, **the Honorable Court ordered the deletion of all requests included in the petition, which was a general petition at the outset, and left only one matter for review:** the procedure for travel abroad which was formulated at the time.

3. We shall further recall that the Petitioners' request in the context of the petition for a temporary injunction that will "freeze" the entry into force of the procedure was **rejected** by the Honorable Court in a detailed decision (see the decision of the Honorable Court dated 18 May 2008).
4. Later, on 24 September 2008, the Respondents notified of the intention to amend the procedure and publish an amended procedure.
5. In the hearing held on 28 October 2008, the Petitioners repeated their requests for an order nisi and a temporary injunction, but the Honorable Court did not accede to the requests and ruled as follows:

"The Respondents will submit an updating notice regarding the new procedure within 90 days. In their notice, they will refer to the claims raised regarding the practical inability of residents of the Judea and Samaria Area to follow the procedure and the measures that have been taken to simplify matters for the residents and reduce the times for these procedures".

6. **Noting the content of the Respondents' notice of 24 September 2008 and considering the following statements, the Respondents will argue that the petition has exhausted itself and that it must be rejected.**

The main factual developments regarding the procedure since the previous hearing

7. On 1 December 2008, a directive issued by the commander of the permit centre at the operations division branch was disseminated to the civil coordination officers at the various DCOs. According to the directive, the amended procedure must be posted at the reception windows at the DCOs.
8. An unclassified copy of the procedure was published for this purpose which includes the possibility of inquiring regarding the existence of a security preclusion for travel abroad and the manner of objecting thereto.

A copy of the published procedure is attached and marked **RN/1**.

9. We shall emphasize that the full IDF working protocol includes detailed internal instructions for processing officials intended, *inter alia*, **to prevent, or at the least**

reduce to a minimum the mishaps and difficulties which have occurred in the past (on this issue, see the decision of the Honorable Court dated 28 October 2008, cited above).

A copy of the full internal working protocol, which includes the internal instructions, is attached and marked RN/2 (it is classified as “reserved” and therefore, parts of it, mostly related to aspects of “internal” processing (method of filing, method of recording on the IDF computer screen etc.) have been “blacked out”).

10. As indicated by the aforementioned, the method of implementation of the procedure will be carried out in accordance with the Respondents’ notice to the HCJ from 24 September 2008 as follows:
- a) A resident of the Judea and Samaria Area wishing to inquire whether his travel abroad is prevented for security reasons may arrive in person at the regional DCO, fill out an application of inquiry regarding preclusion for travel abroad and submit it to the civil administration representative at the DCO.
 - b) If a security preclusion against the resident does not appear, he will receive a response **then and there**. **Since a security preclusion for travel abroad is not on record regarding more than 99% of the residents of the Area, it is clear that processing will terminate at this stage for the vast majority of applicants.**
 - c) If a security preclusion is on record regarding the resident, his case will be forwarded for renewed, extensive reevaluation by security officials. This reevaluation will take no more than six weeks and during this time, security officials may, of course, call the applicant in for questioning.
 - d) Inasmuch as the security preclusion is removed following the reevaluation, the applicant will receive a response over the telephone and in a letter forwarded to him through the Palestinian coordination. Of course, if the applicant arrives at the DCO on his own initiative, he will be able to receive the letter, but this is not at all necessary.
 - e) Inasmuch as the security preclusion remains following the reevaluation, the applicant will receive a letter of refusal through the Palestinian DCO, stating that he may file an objection to the decision.
 - f) Filing of the objection may be carried out in one of two ways: the applicant’s arriving at the DCO in person in urgent cases, or forwarding an objection through Palestinian coordination in “routine” cases.
 - g) Review of the objection will take no more than six weeks, as of the date the objection is received by the DCO. During this time, security officials may call the applicant in for questioning.
 - h) A response to the objection will be provided to the applicant in the same manner a response is provided for the original application.

i) As stated, there is a possibility that a resident of the Area will not follow the procedure, but rather arrive at the Allenby Crossing where he will be informed that his exit is prevented for security reasons. In this case also, the resident will be able to file an objection in accordance with the procedure.

11. Over the course of the week following 1 December 2008, the procedure was posted in the DCO windows. A copy of the procedure was simultaneously forwarded to the Palestinian Ministry for Civil Affairs, which notified that it would publish the procedure in Arabic.

Data regarding implementation of the procedure (as at 10 February 2009):

12. Until the abovementioned date, 10 February 2009, 69 applications were submitted in accordance with the procedure.

13. Of the applicants, two residents had not been precluded from travel abroad at all.

14. In 15 cases, **the preclusion was removed** as a result of the reevaluation of the security preclusion **carried out in accordance with the procedure**.

15. In 30 cases, security officials held their position, according to which the preclusion from travel abroad was justified.

16. In 14 of the cases a single exit for abroad was made possible, despite the preclusion being found to be justified, and this for special reasons. Regarding four of these individuals, the preclusion was removed only for the purpose of the one-time exit.

17. 9 of the applications were rejected as the applicants did not meet the procedure's criteria: these were requests to travel abroad for the Hajj; despite the fact that these were "routine" requests to exit, i.e., requests for non-urgent travel, they were submitted a short time before the planned date of travel and for this reason rejected out of hand.

18. 9 applications were still being processed on 10 February 2009.

19. The aforesaid indicates that despite the Petitioners' position, dozens of residents of the Judea and Samaria Area have already used the procedure.

It is further indicated that in 19 of the 69 applications filed up to 10 February 2009, travel abroad was made possible (whether by removing the security preclusion or despite leaving the security preclusion for travel intact and providing an exceptional one-time permit for humanitarian reasons). The predicament of these 19 individuals has improved as a result of the procedure's existence, despite the Petitioners' position, which was rejected by the Honorable Court, that the entry into force of the procedure must be frozen.

20. The data presented above also provides a clear response to the Petitioners' claim, according to which there is, allegedly, "a practical inability on the part of Judea and Samaria Area residents to follow the procedure" (see the decision of the Honorable Court dated 28 October 2008). The data shows that there is indeed a practical ability to follow the procedure and that dozens of residents of the Judea and Samaria Area have availed themselves of the procedure in the past two months.

The Petitioners' claims disregard the relevant figures

21. In the Respondents' notice of 24 September 2008, they noted the lack of proportion in the Petitioners' claims regarding the scope of the phenomenon, **as the percentage of Judea and Samaria Area residents whose travel abroad is prevented for security reasons is minute and stands at less than one percent of the residents of the Judea and Samaria Area.**

22. So, amongst other things, is written in the Respondents' notice:

A person reading the Petitioners' claims may erroneously conclude that security preclusion for travel abroad applies to a large percentage of the Area's residents. We therefore wish to clarify, again, the relevant scope:

Less than one percent of the Area's residents are currently defined as precluded from travel abroad.

Hence, **the vast majority** of the Judea and Samaria Area residents who arrive at the Allenby Crossing – do travel abroad.

This is relevant also regarding residents of the Area who decide to follow the new procedure: When a Judea and Samaria Area resident decides to follow the procedure and inquire whether there is a security

preclusion for travel in his case in advance, there is more than a 99% chance that at the very first time he arrives at the DCO, he will be told, **then and there**, that he is not precluded from traveling abroad, such that there will be no need for him to arrive at the DCO again (this, in accordance with the amendments that will soon be made to the procedure on the basis of a recently conducted evaluation. We shall elaborate on this below).

The figures relating to Area residents' travel abroad in the time that has passed since the procedure entered into force best demonstrate the issue:

The Petitioners present ten cases in which, they claim, the procedure did not function well in recent months.

For comparison only, we shall note that the civil administration has notified that in February, 23,448 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in March, 20,681 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in April, 33,632 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in May, 30,303 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in June, 62,766 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in July, 99,117 people left the Judea and Samaria Area for abroad through the Allenby Crossing; in August, 81,186 people left the Judea and Samaria Area for abroad through the Allenby Crossing.

Thus, since the new procedure has taken effect, more than 350,000 individuals have left the Judea and Samaria Area for abroad through the Allenby Crossing (the vast majority of them used the "old" method rather than the new procedure). In the same period, the Petitioners found 10 cases in which, they claim, the procedure did not function properly and even if there are presumably other cases, **it is clear that this is a very small population within the general population of residents of the Area wishing to travel abroad...**

23. To these figures we shall add that in 2008, 722,393 exits of Palestinian residents for abroad were recorded. In addition, 1,334 permits to travel abroad via Ben Gurion Airport were issued for residents of the Judea and Samaria Area.

The above figures should duly serve as a relevant factual framework for the petition at hand, as it seems that the Petitioners' claims do not consider the fact that the number of individuals precluded from travel abroad for security reasons is extremely low.

24. **The Respondents will argue that the petition has exhausted itself and must be rejected. With the exception of the matter of the procedure for travel abroad, all the other requests included in this petition have long since been deleted. As for the procedure, indeed, in the course of the hearings before the Honorable Court, the procedure has been amended and improved.**
25. **Noting the aforesaid and particularly noting that dozens of residents of the Judea and Samaria Area have used the amended procedure since December 2008, and usage thereof has allowed for the exit of some 28% (19 of 69) of the applicants under the procedure, it appears that there is no longer cause to leave petition pending.**

The Petitioners' claims regarding the involvement of the Legal Advisor for the Judea and Samaria Area in individual applications

26. The Petitioners take issue with the fact that occasionally, in this petition and in individual petitions of its sort, applications regarding travel abroad which are forwarded to the Legal Advisor for the Judea and Samaria Area are not answered to their satisfaction.
27. To this issue we shall respond – and this has been stated in the response to the Petitioners' request for a temporary injunction, **which was rejected** – that the practice that has developed over the years to contact the Legal Advisor's office for the purpose of reevaluating preclusions for travel abroad of residents of the Judea and Samaria Area is a practice that evolved out of necessity, **in the absence of a proper administrative objection procedure.**
28. The decision whether to prevent a resident from traveling abroad for reasons of security is a decision which is – and should be – made by authorized professional agencies whose role it is to do so and not by the legal agency which counsels them. **There is no room to oblige the consulting legal agency to serve as a “permanent substitute” for the authorized professional agency.**

Needless to say, the office of the Legal Advisor for the Judea and Samaria Area will make its services available to the authorized professional official and counsel him on the legal aspect throughout the decision making process.

29. **As the Respondents have notified the Court in their previous notices, the new procedure was designed to rectify the situation that existed in the past and allow the authorized official to arrive at an informed decision in advance, based on all relevant considerations, before a decision which may impede the desire of an Area resident to travel abroad is reached.**
30. Moreover, the Respondents, through the office of the Legal Advisor for the Judea and Samaria Area , have made it clear to the Petitioners, and wish to re-clarify also in the context of this response, that inasmuch as an application raises, *prima facie*, claims that justify special intervention by the legal official, whether due to their urgency or for any other appropriate reason, they will be addressed by the staff of the Legal Advisor for the Judea and Samaria Area, as is the case in similar situations.

However, it must be understood that not every application is an “urgent application” or a “clear humanitarian case”, which may justify deviation from the relevant procedure and forwarding of the special individual processing in a clearly professional case from the authorized professional official to the Legal Advisor for the Judea and Samaria Area; it also cannot be said that even when there are urgent applications they do not receive a proper response from the authorized professional official.

This is particularly relevant when the procedure at hand is a relatively new one and an examination of it and of the way in which the administrative authority handles it over time must be allowed before general claims are raised against the manner in which it is implemented.

Conclusion

31. In the framework of this petition, the Petitioners challenged, *inter alia*, the existing situation regarding travel abroad by Judea and Samaria Area residents. The Petitioners took issue with the situation where a resident arrived at the Allenby Bridge and was told only there that his travel abroad is prevented for security reasons.

The Respondents, who, even prior to the submission of the petition had begun staff work designed to rectify this situation, prepared a procedure allowing a resident of the Judea and Samaria Area to know, in advance, if he is precluded from travel or not. While processing the petition and following comments made by the Court and the State Attorney's Office, the procedure was amended and improved.

The procedure did not alter the previous state of affairs. That is, toady, as before the procedure came into force, a Palestinian resident may not contact the Respondents in advance requesting to know whether his travel abroad is prevented, but rather arrive at the Allenby Bridge directly.

As such, the situation created with the entry into force of the procedure has not made matters worse for Palestinian residents wishing to travel abroad, as compared to the situation in effect prior to the entry into force of the procedure, but rather significantly improved their situation and the factual data presented above attests to the same.

The petition addresses the matter of less than one percent of the population of the Judea and Samaria Area and must be reviewed with this in mind.

According to the data presented above, it is clear that the amended procedure has come into effect and dozens of residents of the Judea and Samaria Area have already acted in accordance thereto. For over a quarter of them, the application to the Respondents under the new procedure has made their travel abroad possible. In these circumstances, as stated, the petition has exhausted itself and must be rejected.

32. The facts presented in this notice are supported by an affidavit given by Lieutenant Colonel Sharon Biton, Operations Division Branch Head in the Civil Administration.

Today 14 Adar 5769
10 March 2009

[signed]
Gilad Shirman
Deputy State Attorney