

Translation Disclaimer: The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Hebrew language. In the event of any discrepancies between the English translation and the Hebrew original, the Hebrew original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Hebrew original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

**The Jerusalem Supreme Court**

**H CJ 6180/08-F'**

Before:

**The Honorable Registrar Yigal Marzel**

**The petitioners:**

- 1. \_\_\_\_\_ Amam**
- 2. \_\_\_\_\_ Amam**
- 3. HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger**

Versus

**The respondent:**

**Commander of the Army Forces in the Occupied Territories  
Application for a Costs Ruling**

**Decision**

1. Before me is an application for a costs ruling. The petition (dated 10 July, 2008) concerned the refusal to grant a permit of passage to the petitioner and his son from the West Bank to the Gaza Strip, unless the petitioner would commit never to return to the West Bank. As a background to this case, it should be noted that the petitioner's daughter and wife are located in Gaza and his other family members – including his ailing mother – are located in the West Bank territories. No one disputes that some time after the filing of the petition the petitioner was given the requested relief – namely a permit of passage to the Gaza Strip without the requirement of signing a commitment not to return to the West Bank. Under these circumstances it was requested that the petition be dismissed without prejudice, with a charge of costs against the respondent. In its decision dated 1 September, 2008 the petition was dismissed without prejudice. The matter of costs remains.
2. After perusing the entire material before me, I have been persuaded that indeed in this case the costs ruling should favor the petitioners. The respondent's objection to be obligated to pay the costs boils down to two primary submissions: non-clarification as to the purpose of passage to Gaza – a visit or settlement; and the non attachment of the appropriate documentation. From the series of the written pleadings in the application before me, it transpires that no one disputes that the applications for receiving a permit of passage were indeed filed in the months of January and February 2008, via the CLA, and these applications were denied. Moreover, I am also willing to assume that according to the position of the respondent which was made clear to the

petitioners, they should have clarified whether that are requesting to visit Gaza or to settle there, and also should have attached the relevant documentation in their attachments. Furthermore, I am willing to assume, without settling the matter, that the respondent's decision to condition the passage on the specific conditions of committing not to return, is reasonable, but is something that was not settled in the petition before me. Even on the basis of these assumptions, the picture still remains incomplete. In the petition, which was filed there was no further clarification as to the information the respondents had had with regard to the petitioner's situation. All the data in the petition surrounding the petitioner's family situation and his desire to return to his wife and daughter in Gaza already appeared in the application dated 21 April, 2008 which was forwarded to the respondent, long before the filing of the petition. In addition, the law is on the respondent's side since special documentation was not attached to the petition which would shed light, as claimed, on the purpose of the passage to Gaza. Under these circumstances the onus has shifted to the respondent to explain why it changed its position and only granted the relief after the petition was filed. The aforementioned onus was not discharged by the respondent since the two averred reasons – the non clarification of the purpose of the visit and the non attachment of the documentation – were not present in the actual filing of the petition. The more likely conclusion therefore is that the respondent decided, for his own reasons, to change his position in this case and to grant the permit as requested while at the same time forgoing the requirement to make a commitment not to return to the West Bank. Under these circumstances and with no other, and different reason for this change in position, I have been persuaded that the filing of the petition led to the grant of relief in addition to the rest of the required conditions, which were primarily concerned with the appropriate exhaustion of proceedings – as emerges from the applications that preceded the filing of this proceeding; and the filing of the petition is justified; indeed there is a basis for a cost ruling in favor of the petitioners.

3. As to the costs amount, while one must assign weight to the granting of relief without the necessity of holding a hearing, even so it does emerge from the application for a costs ruling that the final granting of the permit to the petitioner ran into a not insignificant number of difficulties. A general weighing up of the circumstances before me, and all the aforementioned has led to the conclusion in terms of which the respondent will bear the costs of the petitioner's fees in the amount of NIS 5, 000 and expenses amounting to an additional NIS 500. These amounts shall bear linkage differentials and interest as prescribed by law, from the date of the decision until the day of actual payment.

Given today, 5 Tevet 5769 (11 January, 2009).

Yigal Marzel, Judge  
Registrar