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At the Supreme Court
Sitting as the High Court of Justice

H CJ 2959/06

- In the matter of:
1. _____ **Ahmidat, ID** _____
 2. _____ **Al'Hamidat, Jordanian Passport** _____
 3. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Saltzberger – R.A.**

Represented by Adv. Yossi Wolfson (Lic. No. 26174) and/or Anat Kidron (Lic. No. 37665) and/or Hava Matras-Irron (Lic. No. 35174) and/or Gil Gan-Mor (Lic. No. 37962) and/or Sigi Ben Ari (Lic. No. 37566)

HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Saltzberger
4 Abu Obeidah St., Jerusalem 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

Commander of the IDF Forces in the West Bank

The Respondent

Petition for Order Nisi

A petition is hereby filed for an *Order Nisi* directed to the Respondent and ordering it to give a reason for why the visiting order held by Petitioner 2 (which was issued by the Ministry of the Interior in Israel) will not be substituted with a visiting license of the territories and why the license will not be extended from time to time until Petitioner 2's status as a permanent resident of the territories shall be put in order.

Motion for Accelerated Hearing Proceedings

The Court is moved to schedule short timeframes for the Respondent's response to this Petition and for the continuation of the proceedings thereof.

The Petition concerns the putting into order of the status of the wife of a resident of the territories and the mother of children who are residents of the territories, who has lived in the territories for over 12 years since she was 19 years old. In accordance with agreements that were reached at the High Court of Justice, she is entitled to the status of "long-term visitor", and the only obstacle in her path is the bureaucratic proceeding of substitution of the license that was issued at the time by the Ministry of the Interior with a license of the territories.

So long as her status is not put in order, she is limited in her daily life as well as in her ability to move in and outside of the territories.

The Respondent is completely ignoring the communication of HaMoked: Center for the Defence of the Individual regarding the Petitioners, the first of which is from approximately three years ago.

Experience shows, unfortunately, that in cases of this type, the Court serves more than once as a "post office box" of sorts for the Respondent and the referring of the petition to the respondent for its response often causes the ignoring to stop and the issue to be resolved.

The Parties

1. Petitioner 1 (hereinafter: the "**Petitioner**"), a resident of Bani Naim in the Hebron district, is 32 years of age. The Petitioner is an antique dealer by profession.
2. Petitioner 2 (hereinafter: "**Petitioner 2**") is a Jordanian citizen, born on 12 October 1973. Petitioner 2 is a housewife.
3. Petitioners 1 and 2 (hereinafter: the "**Petitioners**") married one another through a marriage contract on 6 March 1993.

A copy of the marriage contract is attached hereto as **Exhibit P/1**.

4. On 5 August 1993 Petitioner 2 entered the territories with a visiting license for Israel which had been issued by the office of the Ministry of the Interior in East Jerusalem. Holders of visiting licenses in Israel are entitled to also enter the territories by virtue of their visiting licenses. Petitioner 2 has since lived continuously in the territories.

A copy of the visiting license is attached hereto as **Exhibit P/2**.

5. Three children were born to the Petitioners in the territories, and they were all registered in the population registry of the territories. _____, born in 1995, is in grade 4 at the school in Bani Naim; _____, born in 1996, is in grade 2, also at the school in Bani Naim; _____, born on 15 June 2000, is in a local kindergarten.
6. Petitioner 3 (hereinafter: **‘HaMoked: Center for the Defence of the Individual’**) is a human rights organization.
7. The State of Israel holds the territories under belligerent occupation and the Respondent is the person in charge of the West Bank territories on behalf thereof and bears all of the duties and rights deriving therefrom.

The Petitioners’ Status and Entitlements

8. The Petitioners’ marriage and Petitioner 2’s entry into the territories in August 1993 categorize the Petitioners into what is customarily referred to as the “Second HCJ Population”, a term whose roots are in the undertakings which the Respondent made in the framework of a series of petitions to the HCJ which were filed in the first half of the nineties (HCJ 1979/00 *Uashra*; HCJ 4494/91 *and 63 others Abu Sarhan* and HCJ 4495/92 *and 20 others Hadra*).

The essence of the arrangement is that members of the HCJ population are able to remain in the territories according to visiting licenses that are continuously extended for an additional six months each time. In addition, they are entitled, insofar as they shall leave the territories, to reenter them without restriction. The members of the first HCJ population are also entitled to permanent status in the territories in the framework of the granting of their applications for family reunion (in the absence of a security impediment). The putting in order of the permanent status of the members of the Second HCJ Population and of anyone who does not belong to the HCJ population is supposed to also be in the framework of family reunion applications, but these are subject to annual quotas.

9. The arrangement of extending visiting licenses for members of the HCJ population (as distinguished from issuing new licenses to any one of them who shall leave the territories) also continued during the freezing policy practiced by the Respondent on any matter regarding visiting licenses since the start of the present Intifada.

10. In the framework of the HCJ arrangements it was determined, *inter alia*, that also persons who entered the territories with visiting licenses of the Ministry of the Interior were included in the HCJ population. According to the procedures determined, the licenses of these visitors would be substituted with visiting licenses of the territories and the validity thereof would be extended.

See, in this regard, Section 3(a) of the letter of the Assistant Military Advocate General for International Law dated 29 March 1994 and Section 2(a) of the letter of the head of the Civil Administration dated 17 August 1994. The letters are attached as **Exhibits P/3** and **P/4** respectively.

Exhaustion of Proceedings

11. For years the Petitioners were not aware of their entitlement to the substitution and extension of the visiting license. It should be stated, in this context, that the Respondent did nothing to publish the arrangements that it determined and the Petitioners live in a relatively remote village in southern Mount Hebron.
12. In 2000, after learning of their entitlement, the Petitioners approached the Palestinian Authority with respect to substitution and extension of the license. In accordance with procedure, the application was forwarded to the Israeli side. The application was denied. The handling on the Israeli side was documented on the visiting license (Exhibit P/2) in the form of handwritten notes:

“Who’s asking? The relationship?”

As well as:

“Substitute for V.L. [= visiting license, Y.W.] [unclear word] in the name of her husband. In addition, add comment “HCJ population, provided that she indeed entered on August 5, 1993 in checkpoint system”.

In any event, an anonymous hand erased these notes and the license was returned to the Palestinian side without substitution or extension.

13. On 6 May 2003 HaMoked: Center for the Defence of the Individual applied to the Respondent’s (former) deputy legal advisor for substitution and extension of Petitioner 2’s visiting license.

A copy of the letter dated May 6, 2003 is attached as **Exhibit P/5**.

14. A reminder was sent on January 13, 2004.

The reminder letter of 13 January 2004 is attached as **Exhibit P/6**.

15. On 22 March 2004 a meeting was held at the offices of the international law department at the Office of the Military Advocate General, in which a representative of the department, persons from HaMoked: Center for the Defence of the Individual and a representative of the Respondent's legal advisor participated. The meeting was organized at the initiative of the Office of the State Attorney (HCJ department) in order to confront the phenomenon of lack of response on the part of the Respondent's legal advisor on matters of residency in the territories, lack of response which sometimes lasts (such as in the present case) for months and years.

A letter containing a list of cases for deliberation at the meeting dated 8 February 2004 is attached as **Exhibit P/7**. The Petitioners' matter appears in Section 1(f).

16. At the start of the meeting it transpired that the army's representatives did not have answers in any one of the cases, and in fact there was no basis for discussion. However, it was agreed at the meeting that the answers in two urgent cases would be sent to HaMoked by 25 March 2004. Answers in half of the pending cases would be sent by 8 April 2004. Answers in all of the remaining cases would be sent no later than two weeks thereafter (namely 22 April 2004.)

A copy of a summary of the meeting on behalf of HaMoked: Center for the Defence of the Individual dated 22 March 2004 is attached as **Exhibit P/8**.

17. The Respondent did not fulfill this summary. Over time answers were sent to HaMoked: Center for the Defence of the Individual only in isolated cases out of the cases that were the subject matter of the meeting. On 3 June 2004 HaMoked: Center for the Defence of the Individual approached the office of the Respondent's legal advisor in a collective memo regarding 16 applications that remained unanswered, with copies to the Office of the State Attorney and to Captain Yossi Nakar from the international law department at the Office of the Military Advocate General.

A copy of the letter dated 3 June 2004 is attached as **Exhibit P/9**.

18. An additional memo with respect to the pending applications, including reference to the Petitioner's case, was sent on 5 September 2004, together with requests for the

involvement of the Office of the State Attorney and the international law department at the Office of the Military Advocate General.

Copies of the letter dated 5 September 2004 and the accompanying requests are attached as **Exhibit P/10**.

19. On 4 November 2004, the letter dated September 5, 2004 was redelivered to the Respondent's legal advisor personally.

A copy of the letter dated November 4, 2004 is attached as **Exhibit P/11**.

20. On 17 November 2004 HaMoked: Center for the Defence of the Individual attempted to seek the assistance of Lieutenant Ostnovski, the current officer at the civil-legal section of the international law department at the Office of the Military Advocate General. Lieutenant Ostnovski responded that he had requested that the relevant entities accelerate the handling of the applications and expressed hope that they would soon be answered.

Copies of the letters dated 17 November 2004 and 22 November 2004 are attached as **Exhibits P/12 – P/13**.

21. On 14 February 2005 an additional collective memo was sent to the Respondent's legal advisor, with a copy to Lieutenant Ostenovski.

A copy of the letter dated 14 February 2005 is attached as **Exhibit P/14**.

22. An additional memo was sent to the Respondent's legal advisor on 24 May 2005.

A copy of the letter dated 24 May 2005 is attached as **Exhibit P/15**.

23. A further memo was sent on 16 August 2005.

A copy of the memo dated 16 August 2005 is attached as **Exhibit P/16**.

24. But from the Respondent, not a murmur was heard.

The Legal Argumentation

25. The absence of a response on the part of the Respondent renders a challenge of its decision impossible. The Petitioners therefore move to respond in the future to any claim that the Respondent shall assert, if any.

26. In a nutshell, the Petitioners shall assert that they are entitled, pursuant to law, to substitution of Petitioner 2's visiting license with a license of the territories and to extension thereof. Their entitlement is based on the Respondent's undertakings before this Honorable Court and on its duty to treat them with equality, similarly to its treatment of the other members of the "HCJ Population" whose licenses are regularly and consistently extended.

Irrespective of this undertaking, the Petitioners' entitlement derives also from the Respondent's duty to honor the right to integrity of the family unit, and to give decisive weight in its decisions to the best interests of children, including the children of the petitioning couple. These rights are well-established in the international human rights law, in the international humanitarian law concerning the duties of an occupying power as well as in the Israeli constitutional law.

The Respondent may deny the Petitioners' application only on the basis of weighty security arguments. As a military commander in an occupied territory, any other consideration (including considerations of a racist demographic vision of the government of the occupying state) is an extraneous consideration from its point of view. Since the Respondent transferred the civil powers in the territories to the Palestinian Authority, it is also not entitled to take into account civil considerations relating to immigration policy and it is required to leave these considerations to Palestinians alone (who at the time referred the application for its handling).

Abstention from putting in order the status of Petitioner 2, who has lived in the territories all of her adult life, is an extremely unreasonable act.

Lack of Response to the Petitioners' Letters

27. The letter of the Petitioners' counsel dated May 6, 2003 (P/5) was left unanswered for two and a half years, despite repeated memos and despite the involvement of persons at the Office of the Military Advocate General and the Office of the State Attorney!
28. The Respondent is subject to the duty to handle the Petitioners' case fairly, reasonably and with appropriate speed. These duties are one of the fundamental elements of proper administration.

C.A. 4809/91 *The Local Planning and Building Committee, Jerusalem v. Kahati et al.*, Piskei Din 48(2) 190, 219;

H CJ 6300/93 *The Institute for Training Rabbinical Court Pleaders v. The Minister for Religious Affairs et al.*, Piskei Din 48(4) 441, 451.

29. The Respondent's duty to handle an application with appropriate speed is also established in Section 5 of the Order Concerning Interpretation (West Bank Region) (No. 130), 5727-1967, which determines:

An act for the performance of which no timeframe is determined or given in security legislation, must be performed with the appropriate speed and reperformed, whenever the circumstances determined for the performance thereof are present.

30. Pursuant to the Administrative Procedure Amendment (Decisions and Statement of Reasons) Law, 5719-1958, a civil servant is obligated to respond to an application to exercise authority pursuant to law within 45 days from receipt of the application.
31. The Respondent's method of not responding to applications thereto until they are brought before this Honorable Court renders the Court a "sub-branch" of sorts of the Respondent, "both a reception desk and secretary's office" in the words of the Honorable Justice Okon in AP (Jerusalem District) 769/04 *Aminah v. The Minister of the Interior*, (judgment dated 14 October 2004).
32. The Honorable Court serves for judicial review over the Respondent's decisions and reasons. It is unacceptable that only a petition to the HCJ will lead to a response to applications and that the rights of any person who is unable to obtain legal representation and to raise the necessary resources will be trampled:

It is the court's duty to ensure the establishment of the service principle, and the subjection of the State authorities thereto. This principle obligates the court to prevent an unnecessary prolongation of proceedings at the expense of the service recipients. This principle requires a serious approach to applications by individuals, prevention of maltreatment, internalization of values of equality and eradication of privileges of holders of governmental or other power. The individual's rights do not end with the making of festive declarations. The individual's rights are everyday material. If the rights do not meet the test of action, they will soon become worn-out coins that are thrown back and forth whilst creating the passing illusion of

the honoring of rights, which disintegrates due to impassable bureaucratic obstacles that are placed at every step along the path.

(The above Aminah case).

33. See also the statements made by the Honorable Justice A. Levi:

I do not accept this path which the Respondent feels free to follow. It is inconsistent with its status as a public authority and with the fact that it acts, in everything that it does, as a trustee for the public; it does not express the service principle, which obligates the Respondent to conduct itself with the necessary efficiency and speed...

The Respondent is not entitled to treat the petitioners, similarly to any other applicant, the way it does; the Respondent is not entitled to leave their case pending without a response on the merits... and if the Respondent forgets the nature of the duties that it owes, then it is the court's duty to recite the same thereto.

H CJ 10399/04 *Ben Abedkol v. The Ministry of the Interior*, decision of 3 August 2005 (not yet published).

34. A delay in the giving of the answer, particularly when it appears to be a disguise for actual denial of the application, must have repercussions. One of the possible repercussions is the issuance of an *order nisi* and the shifting to the Respondent of the burden of explaining its conduct.

See: Y. Zamir, *The Administrative Power* (Vol. B, Jerusalem, 5756-1996) p. 716 and 726-727).

This petition is supported by an affidavit signed before an attorney in the Bank [West].

In view of all of the aforesaid, the Honorable Court is moved to issue an *order nisi* as requested, and after hearing the Respondent's answer, to render it an absolute order. In addition, the Court is moved to charge the Respondent with the Petitioners' expenses and legal fees.

4 April 2006

Yossi Wolfson, Adv.

Legal Counsel for the Petitioners

[TS 14735]