

At the Supreme Court

HCJ 6463/10

Sitting as the High Court of Justice

Scheduled for May 8, 2012

In the matter of: _____ Nasrallah et al.

Represented by counsel, Adv. Ido Blum et al.

Of HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger,

4 Abu Obeida Street, Jerusalem, 97200

Tel. 02-6283555; Fax. 02-6276317

The Petitioners

v.

Military Commander of the West Bank

Represented by counsel Adv. Hila Gorni et al.

State attorney's office, Ministry of Justice

of 29 Salah a-Din, Jerusalem

Tel.: 02-6466513; Fax: 02-6467011

The Respondent

**Notice on behalf of the Petitioners and Motion to Delete the Petition
and Award Costs**

1. As recalled, this petition concerns petitioner's request that the respondent allow him to return to his homeland, from which he was deported at gunpoint about twenty five years ago, and live with his wife, children and other family members.
2. Regretfully, the petitioners wish to give notice, that while the petitioner has been waiting endlessly for the respondent to grant him the desired permit which would allow him to return to his homeland, his family has now given notice that he had grown weak and has passed away.

3. Under these unfortunate circumstances, the honorable court is hereby requested to delete the petition, and order the reimbursement of the court fees paid by the petitioners.
4. In addition, the honorable court is hereby requested to order the respondent to pay petitioners' costs, **and this for the following reasons:**

Respondent's Conduct Prior to the Filing of the Petition: Foot Dragging and Procrastination

5. Over many years, the petitioners sent many letters to the respondent, hoping that the matter would be resolved without the courts' involvement.
6. However, it became evident that the respondent did not intend to do anything to resolve the matter. His answers (when at all given) that the matter was being "processed" or "reviewed" or even that the "examination will soon end" (as he notified in July 2006) turned out to be meaningless, empty words.
7. For four years, the petitioners contacted the respondent time and again in an attempt to receive a final and pertinent answer concerning the petitioner, yet received only laconic answers and encountered complete unwillingness to advance the matter (see paragraphs 10-31 of the petition).
8. Under these circumstances, there was no alternative but to turn to the court – even if only to receive a pertinent and clear answer from the respondent.

Respondent's Conduct Subsequent to the Filing of the Petition: More Foot Dragging, More Procrastination

9. When the petition was filed it became evident that the existence of a legal proceeding did not cause the respondent to hasten the processing of petitioner's case. The respondent has delayed filing a response to the petition for many months, while filing repeated motions for an extension.
10. In view of the extreme delay, and in view of petitioners' objection to an additional motion for an extension, in his ruling dated March 7, 2011, Honorable Justice Vogelmann indeed allowed the motion for extension, but emphasized that "the respondent is requested to complete his inquiries until the requested date".
11. However this decision too did not convince the respondent to complete the lengthy processing, and on April 26, 2011 he filed **an additional** motion for an extension. The petitioners strongly objected thereto. In his ruling dated April 28, 2011 Honorable Justice Vogelmann indeed allowed the motion, but heavily criticized respondent's conduct, writing that "Taking notice of the previous 'history' of the motions, the additional motion and the date of its filing are

regrettable... in the event that a response is not filed in a timely fashion, respondent's counsel will be summoned to a reminder hearing before me".

12. Only this decision finally caused the respondent, after many years of procrastination and foot dragging, to submit his response to the petition (and this also after an additional motion for a single day extension "due to a tour which was scheduled a few days ago").
13. Thus, after years of repeated requests and eight months after the petition was filed, on May 9, 2011, the respondent finally notified that:

After the examination of petitioner's case was concluded, and after the comments of the security agents were received, petitioner's case was brought before the Commander of IDF forces in the Judea and Samaria Area, who decided, on May 5, 2011, to allow the petitioner to return to the Judea and Samaria Area.

In view of the above, the petitioner may return to the Area subject to the submission of an application for a visitor permit to the competent officials in the Palestinian Authority. In that respect, the respondent notifies that to the extent that such an application is transferred to the respondent by Palestinian Authority officials it will be approved by the respondent [...]

Under these circumstances, the respondent will argue that the petition is no longer relevant and should be deleted.

14. One might have presumed that upon respondent's notice of his consent to grant the petitioner the requested remedy, the matter would come to its end. Apparently, this was also the presumption of Honorable Justice Vogelman, who, in his ruling dated May 9, 2011, ordered petitioners' counsel to notify within ten days "whether the petition could be deleted, subject to respondent's statement specified in his response".
15. However, the experienced petitioners requested to wait a while before they agreed to delete their petition, in order to ascertain that the respondent seriously complied with his undertaking and did not "go astray" again and continued with his previous conduct in an ongoing attempt to postpone the matter, to delay and to generally exhaust the petitioner in every possible way.
16. Unfortunately, petitioners' concerns proved to be justified.

Respondent's Conduct following his Notice concerning the Grant of the Requested Remedy: The "War of Attrition" Continues

17. As early as on May 22, 2012, the petitioner submitted (through his family members) an application, as specified in the State's response, to the competent

officials in the Palestinian Authority, enclosing a photocopy of his passport. About a week following the submission of the application, on May 31, 2011, petitioners' counsel communicated with respondent's counsel both verbally and in writing, with the object of checking on the status of the matter, hoping that it was about to be completed. Respondent's counsel promised to make inquiries into the matter. However, no response has been given.

18. In the following weeks thereafter too, petitioners' counsel telephoned respondent's counsel again and again in order to inquire where things stood and to check whether processing of the application had been completed. But weeks went by, the bureaucracy continued, and processing was not completed.
19. And thus, astonishingly enough, on July 27, 2011, after two months during which the matter was, allegedly, being handled by the respondent, respondent's counsel suddenly notified that the respondent had notified that "they do not have a request", meaning that the matter had not been handled at all!
20. Therefore, the family members of the petitioner were forced to go again to the offices of the Palestinian Authority, where, on August 8, 2011, they submitted an additional request concerning petitioner's matter. On the very same day, petitioners' counsel notified respondent's counsel of same and requested to expedite the matter.
21. Petitioners' counsel contacted respondent's counsel over and over again, but to no avail. On one occasion he was told that the matter was "in process", on another occasion he was told that it was "stuck with the ISA", and yet on another occasion he was told that "the representative of the relevant legal counsel was abroad" – and so on and so forth endlessly.
22. It seems that the honorable court too felt that the matter had gone on far longer than it should have, and on March 25, 2012 Honorable Justice Vogelmann ordered to schedule a preliminary hearing in the petition. The hearing was scheduled for May 8, 2012.
23. Again, only a court decision succeeded to cause the respondent to show a sign of life in the matter, and on April 3, 2012, petitioners' counsel received a letter from respondent's counsel, advising that the delay (as specified, at least eight months had elapsed from the date the second application was transferred) had been caused merely because the respondent needed the petitioner's personal details in English (!). No less.

It is needless to note that beyond the obvious callousness and pointless procrastination that characterized the respondent's conduct, these details had been, in any event, in the respondent's possession for a long time, because a photocopy of petitioner's passport was attached to the applications that were submitted in his matter in May and in August – and obviously had there been such a crucial need, these specifics could have been requested many months earlier.

24. However, meanwhile, the petitioner, who as specified in the petition was a sick man, had grown weak and passed away.
25. Thus, when he finally succeeded – after years of requests, correspondence and proceedings – to receive respondent's consent to his return, he passed away in exile, far away from his home and family, deprived of the opportunity to see his homeland once again.
26. It seems that in no case would it be more legitimate to order the respondent to pay petitioners' costs than in this case.

Petitioners' Entitlement to Costs

27. This is a clear case in which the petitioners are entitled to their costs, in accordance with the criteria established in HCJ 842/93 **al-Nasasreh v. Minister of Construction and Housing**, IsrSC 48(4) 217, 219 and in accordance with the case law in this matter.
28. This petition was filed following outrageous conduct on the part of the respondent, who, despite repeated requests submitted to him over years, did whatever he could to avoid processing petitioner's matter.

The expectation that the filing of the petition would cause the respondent to come to his senses and change his conduct proved to be false. After the petition was filed, respondent's conduct continued to be characterized by extreme procrastination and avoidance, to the maximum extent possible, from expediting the matter – when only decisive court decisions moved him to take action.

The matter reached new heights when even after he recognized petitioner's right to return to his country and notified that he had decided to grant him the requested remedy, the respondent continued with his previous conduct of procrastination, foot dragging and avoiding handling the matter in every possible way.

29. There is no doubt that it was only due to the petition that the respondent agreed to render a decision in petitioner's case and grant him the requested remedy – after years of complete idleness on his part.
30. It should be noted at this early point that even if it were argued that the remedy was granted "*ex gratia*" etc. it would have no relevance whatsoever, since, in any event, the rule is that statements such as "*ex gratia*" or "*for humanitarian reasons*" do not detract from petitioners' entitlement to their costs:

Using the phrase "*ex gratia*" in the decision concerning petitioner's matter, has no bearing on the proceeding at hand. The decision in petitioner's matter was presumably made in accordance with the law... Accordingly, the ability to exercise

the power underlying said decision existed legally also before the petition was filed. However, the circumstances indicate that the willingness to find a way... to resolve petitioner's matter, came into being only after the petition was filed, and that the petition created the drive which brought about this willingness (HCJ 2193/02 **Zehavi v. Council of Real Estate Appraisers**, TakSC 2002(2) 2697, 2698 (2002)).

For this matter see also: HCJ 7072/98 **Hijazi v. Ministry of Interior**, TakSC 99(3), 1563 (1999); HCJ 5504/03 **Kahlot v. Commander of IDF forces in the West Bank**, TakSC 2004(2) 3155, 3156 (2004); HCJ 9393/03 **Watson v. Minister of Interior**, Tak SC 2004(1) 2522, 2522 (2004); HCJ 4465/05 **Jdili v. Commander of IDF forces in the West Bank**, TakSC 2005(3), 4161 (2005)).

31. In view of all of the above, it is evident that this is a clear case in which the petitioners are entitled to their costs.

As to the Amount of the Costs

32. The petitioners are of the opinion that in this case, the amount of costs ordered should be on the high side for the following reasons (for the considerations concerning the determination of the amount of the costs see the above HCJ 842/93 al-Nasasreh):

- a. The efforts invested by the petitioners vis-a-vis the respondent before they decided that there was no longer any hope and that they had no alternative but to file a petition with the court: the petition was filed after the submission of many requests to the respondent and continued efforts to find a solution without the need to turn to the court. Eventually the petition was filed after the respondent simply stopped answering the communications sent to him by the petitioners.
- b. The late stage at which the respondent agreed to grant the requested remedy and the long duration of proceedings in this case: the respondent agreed to grant the remedy only **eight months** after the petition was filed, and only after the court made it clear that it would not grant further extensions.

As held, "regarding the amount of costs, one should take into consideration the very long period of time... from the moment petitioners contacted the respondents until the moment their request was granted" (HCJ 8703/99 **Saba v. Minister of Interior**, TakSC 2000(2), 186; and see also: HCJ 4483/97 **Qawasmeh v. Minister of Interior**, TakSC 99(2) 586, 587).

- c. Respondent's outrageous conduct even after he agreed to grant the requested remedy: the petitioners were forced to continue to conduct proceedings for almost one whole year after respondent's notice concerning the grant of the requested remedy, in a mere attempt to cause

the respondent to indeed back up his statement to the court and actually put it to action.

Eventually, the petition came to its end now only due to petitioner's regretful death – when despite the (very) long time that has elapsed, the respondent has never deigned to end the bureaucracy involved in the actual issuance of the required permits.

It has been held that in determining the amount of costs one should take into consideration the fact that "the issuance of the final permit to the petitioner encountered considerable difficulties" (HCJ 6180/08 **Imam v. Commander of the Military Forces in the Occupied Territories** (not reported; decision of Honorable Registrar Marzel, dated January 11, 2009)).

33. In view of all of the above, the honorable court is hereby requested to delete the petition, order the reimbursement of the court fee and order the respondent to pay petitioners' costs.
34. Respondent's counsel, Adv. Gorni, agrees to have the petition deleted and requests to respond to the costs issue separately.

April 5, 2012

[file no. 9826]

Ido Blum
Counsel for the Petitioners