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At the Supreme Court
Sitting as the High Court of Justice

HCI 6475/07

Before: **Honorable Justice A. Grunis**
 Honorable Justice E. Hayut
 Honorable Justice U. Vogelman

The Petitioners: **1. Ms. _____ Abu a-Laban**
 ID No. _____, resident of the Palestinian Authority
 2. HaMoked: Center for the Defence of the Individual,
 founded by Dr. Lotte Salzberger

v.

The Respondents: **1. OC Southern Command**
 2. Minister of Interior
 3. Minister of Defense
 4. Coordinator of Government Activities in the
 Territories
 5. Government of Israel
 6. State of Israel

For the Petitioners: **Adv. Abeer Jubran**

For the Respondents: **Adv. Danielle Marx**

Judgment

Justice Vogelman

Petitioner 1 (hereinafter: the Petitioner) is a physician by trade. She works at a hospital in the Gaza Strip and is studying for a master's degree in obstetrics and gynecology at Ain Shams University in Egypt. The

Petitioner is seeking to travel to Egypt in order to continue her master's studies and take the exam for membership in the British Royal College of Obstetrics and Gynaecologists, held in Egypt. The exam is scheduled to be held on August 3, 2007, in Egypt. On July 17, 2007, the Petitioner, through Petitioner 2 (HaMoked: Center for the Defence of the Individual) made a request to coordinate her exit from Gaza to Egypt via the Allenby Bridge border crossing and Jordan. The request remained unanswered. On July 25, 2007, the petition was filed. In the petition, the Petitioner stresses that in order to take the exam, she must leave the Gaza Strip by August 1, 2007.

The Petitioner complains that she had not received a response before the petition was filed. On the merits, the Petitioner claims that there is a practical solution that could allow her to travel to Egypt, by way of exiting the Gaza Strip to the West Bank and from there, through the Allenby Bridge border crossing to Jordan (from there, she will continue to Egypt). As argued "On the one hand, offering the solution to the Petitioner does compromise any of Israel's security interests. On the other, denial will result in a severe violation of the Petitioner's rights." The Petitioner claims that if she is unable to travel to Egypt, her freedom of movement, right to education and efforts towards personal and professional advancement would be harmed. It was argued that even after the implementation of the disengagement plan, Israel continues to control the Gaza Strip as a belligerent and occupying force, mainly due to its effective control over the Gaza Strip and that, therefore, it has an obligation to provide for the welfare and safety of protected persons in Gaza. In practical terms, the Respondents have an obligation to find a solution that would allow the Petitioner and the Palestinian population in the Gaza Strip some way of leaving the Gaza Strip. The Petitioners maintain that the Respondents bear this responsibility as Israel prevents the possibility of exiting Gaza via sea or air. It was further argued that the right of transit is recognized in international law.

The Respondents oppose the petition. As explained in the response, after the other crossings (Kerem Shalom and Rafah) have been closed for reasons over which Israel has no control, the only option available is for the Petitioner to leave the Gaza Strip via the Erez crossing. With respect to Erez, the Respondents note that since Hamas seized control of the Gaza Strip, the crossing has been the target of repeated terror attacks and dozens of mortar shells have been fired at it. At present, any opening of the crossing involves risking the lives of soldiers and civilians and the Respondents' current policy is to allow the crossing to open only in special cases, such as urgent, life-saving medical cases, staff members of international organizations, Israeli spouses from "divided families" (where the other spouse lives in the Gaza Strip) and other such cases. The Respondents further argue that the Petitioner has no right to enter Israel and that the issue of the entry of Palestinian residents of the Gaza Strip into Israel is clearly a political issue. In light of this, the Respondents claim that "[T]here is no reason or cause to put the lives and safety of the civilians and soldiers in the Erez area at risk so that the Petitioner, a foreign national regarding whose education Israel currently bears no responsibility, could travel to Egypt to take the exam." The Respondents also stress that if they allowed the Petitioner to exit, contrary to current policy, the principle of equality would compel them to do the same for many others, contrary to the security reasons that justify reducing the number of cases in which the crossing opens.

We cannot accept the petition. The Petitioner asks that the Respondents allow her to enter Israel through the Erez crossing. The Respondents do not consent to this in view of the danger that opening the crossing poses to the lives of soldiers and civilians (see on this issue, [HCI 5429/07 Physicians for Human Rights v. Minister of Defense](#) (unreported, June 28, 2007, paragraph 5(b); HCI 6339/07 **Ghazawi v. OC Southern Command** (unreported, July 29, 2007)). In accordance with Respondents' policy, the crossing opens only in special humanitarian cases and their position is that the Petitioner's matter does not fall within this category. We have reviewed the petition and the response. We have not found – at the present time and in view of the risk to life – grounds for intervention by this Court in the decision of the Respondents in the specific circumstances of the case at bar. One hopes, that as times change, the security

situation will change in a manner that allows the Petitioner to realize her desire to travel to Egypt. However, at the present time, we cannot grant the request.

Therefore, the petition is dismissed.

Rendered today, 16 Av, 5767 (July 30, 2007).

Justice

Justice

Justice