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At the Supreme Court
Sitting as the High Court of Justice

HCJ 2905/08, HCJ 660/08, HCJ
3991/08

1. _____ **Abu Shenar**
2. _____ **Ghazi**
3. _____ **Jurani**

4. **HaMoked: The Center for the
Defence of the Individual
founded by Dr. Lotte
Salzberger**

Represented by counsel, Adv. Sigi
Ben-Ari

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6276317

Petitioners in HCJ 2905/08

-versus-

1. **Commander of the Army
Forces in the West Bank**
2. **GOC Southern Command**
3. **Minister of the Interior**
4. **The State of Israel**

Represented by the State
Attorneys' Office
Ministry of Justice, Jerusalem
Tel: 02-6466289; Fax: 02-
6467011

Respondents in HCJ 2905/08

1. _____ **'Amer**
2. _____ **'Amer**
3. **HaMoked: The Center for the
Defence of the Individual
founded by Dr. Lotte
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Petitioners in 660/08

-versus-

1. **Commander of the Army Forces in the West Bank**
2. **General of the Southern Command**
3. **Minister of the Interior**
4. **Coordinator of Activities in the Territories**
5. **The State of Israel**
Represented by the State Attorneys' Office
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Respondents in HCJ 660/08

1. _____ **Bardawil**
2. _____ **Bardawil**
3. _____ **Bardawil**
4. _____ **Bardawil**
5. **HaMoked: The Center for the Defence of the Individual founded by Dr. Lotte Salzberger**
Represented by counsel, Adv. Sigi Ben-Ari
Of HaMoked: The Center for the Defence of the Individual
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Petitioners in HCJ 3991/08

-versus-

1. **Commander of the Army Forces in the West Bank**
2. **General of the Southern Command**
3. **Minister of the Interior**
4. **The State of Israel**
Represented by the State Attorneys' Office
Ministry of Justice, Jerusalem
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Respondents in HCJ 3991/08

Respondents' Updating Notice

Pursuant to the decision by the honorable court (Deputy Chief Justice A. Rivlin, Justice E. Arbel, and Justice Y. Danziger) of 8 December, 2008, the Respondents in the three title petitions respectfully file their updating notice.

1. In the honorable court's decision that was given at the end of a hearing, which took place on 8 December, 2008, the Respondents were requested to provide an update on their consolidation of a written procedure which related both to the method of filing an application for passage between the Gaza Strip and the Judea and Samaria Area and with regard to setting criteria for the actual granting of the permit.
2. The Respondents wish to inform the court that a procedure has been consolidated which regulates the Respondents' policy with regard to residents of the Gaza Strip settling in the Judea and Samaria Area. The procedure relates to the way in which applications shall be filed in Israel and the criteria in terms of which the applications which have been filed shall be examined (hereinafter: the "procedure"). In the near future the procedure shall be published on the Internet website of the Coordinator of Government Activities in the Territories.

A copy of the procedure is attached and marked appendix A

3. As has already been detailed in the Respondents' notice dated 1 December, 2008 the Respondents' policy, according to which the procedure was consolidated, is that there is no room at this time to approve the relocation of residence from Gaza to the Judea and Samaria Area, except in exceptional humanitarian cases, subject to the absence of a concrete security impediment in those cases. In paragraph 76 of the Respondents' notice it was stated:

"Pursuant to the aforesaid, in a hearing which was convened and headed by the Deputy Minister of Defence over the course of November, 2008 the Deputy Minister of Defence instructed the persons responsible for coordinating government activities in the Territories to work in coordination with the relevant General Security Services personnel in order to examine appropriate cases which are liable to be considered exceptional humanitarian cases as stated. Cases that fit into this category are confined exclusively to those of family members who are related in the first degree to residents of the Judea and Samaria area and which revolve around **objective** humanitarian circumstances, as a consequence of which **they are no longer able to live in the Gaza Strip**, and the solution to their humanitarian needs lies exclusively in the Judea and Samaria area.

Thus, for example in the case of a young child who lives with one of his parents in the Gaza Strip and who becomes orphaned of that parent and is left with no family aside from his second parent who lives in the Judea and Samaria Area."

The Respondents also clarified (in paragraph 77 of their reply) that:

“It should be noted that the political echelon's directive was that **one may not view the mere existence of a marriage between spouses, one of which is a resident of the Judea and Samaria Area and the other a resident of the Gaza Strip as one of the aforesaid humanitarian circumstances** since the couple have the option of living together in the Gaza Strip. In this sense the realization of married and family life may equally be realized in both these areas.”

4. Pursuant to the aforesaid, the procedure establishes that initiating the proceeding for granting a permit under this application may be possible only when there is no security impediment, and in cases of a first degree family relationship (spouses, parent of minor children, minor children, elderly parents above the age of 65 {hereinafter: “family relatives”) to residents of the Judea and Samaria Area (a resident of the Judea and Samaria Area – someone who is registered in the population registry of the Judea and Samaria Area and lives there permanently) and there must be objective humanitarian circumstances, as a consequence of which they may no longer live in the Gaza Strip, and the solution to their humanitarian needs lies exclusively in the Judea and Samaria Area. If these preconditions are met, the application must be classified as one of the alternative criteria that are detailed in paragraph 10 of the procedure.
5. As emerges from the procedure, the applications for settlement that are the subject of the present petitions do not fall under the category of exceptional humanitarian circumstances, which were detailed in the procedure.

Consequently it is the Respondents’ position that the Petitioners’ cases do not qualify as exceptional humanitarian cases, in which the Respondents would allow settlement in the Judea and Samaria Area. Even more so, since, as was noted in the original replies by the Respondents to the three title petitions, in the Petitioners’ cases no application to relocate premises was transferred from the Palestinian side.

6. In light of the aforesaid and the Respondents’ reply in HCJ 2905/08 and HCJ 660/08 dated 2 December 2009 and in HCJ 3911/08 dated 12 June 2008 the petitions should rightly be dismissed.

Therefore the honorable court is requested to dismiss the petitions and to order the Petitioners to pay trial expenses and attorney fees by law.

Today,
12 Adar 5769
8 March, 2009

(signed)
Hila Gorni
Senior Deputy to State Attorney

(signed)
Tadmor Etzion
Senior Deputy to State Attorney

(Emblem of the State of Israel)

The State of Israel

Ministry of Defence

Activities Coordination in the Territories

Procedure for handling Applications by Gaza Strip Residents for settlement in the Judea and Samaria Area

General

1. Against the backdrop of the security/political situation in the Gaza Strip it has been decided on State level to limit the movement of residents between the Gaza Strip and the Judea and Samaria Area to the necessary minimum, so that for all practical purposes entry of residents of Gaza into the Judea and Samaria Area shall only be allowed in the most exceptional humanitarian cases.
2. Within the framework of a number of fundamental petitions to the HCJ the court requested that the state present its policy as to the settlement of Gaza residents in the Judea and Samaria Area.
3. The main issue was placed before the door of the Deputy Minister of Defence, who in turn established that in every case involving the settlement of Gaza residents in the Judea and Samaria Area one should adopt the most restrictive policy, which is derived from an a fortiori from the general policy of restricting movement between the two Areas. The Deputy Minister clarified that a family relationship, in and of itself, does not qualify as a humanitarian reason that would justify settlement by Gaza residents in the Judea and Samaria Area.
4. Pursuant to the guidelines of the Deputy Minister of Defence, working procedures and criteria were established for examining applications for settlement by Gaza residents in the Judea and Samaria Area. The criteria, which shall be detailed below were established after balancing the humanitarian needs of residents of Gaza against the general security needs.
5. Pursuant to a security/political survey of the situation which shall be carried out from time to time it is possible that it shall be determined that there shall be a quota on the maximum amount of applications that may be handled per year, and it is also possible that the manner of handling current applications shall be modified or shall cease altogether.

Applications by Gaza Strip Residents for settlement in the Judea and Samaria Area

A. The Administrative Track for Transferring Applications

6. The Coordinator of Government Activities in the Territories shall examine applications by residents of Gaza (that is – someone who is registered in the Palestinian population registry as a resident of Gaza) who wish to settle in the Judea and Samaria Area (hereinafter: the “**application**”) which shall be transferred by the Palestinian Authority via the director general of the Office for Civilian Affairs directly to the Coordinator for Government Activities. Applications that are not transferred through this administrative track will not be examined on their merits.
7. Only reasoned applications which relate in detail to the humanitarian justifications that underlie them, and to which all the relevant documentation supporting the application and verifying its contents has been attached, shall be examined by the Coordinator for Government Activities in the Territories. Unreasoned and unsubstantiated applications shall not be examined on their merits and shall be returned to the Palestinian authority for the purpose of supplementing the details.

B. The criteria for examining applications

8. The preconditions for initiating a proceeding for granting a permit under this application is the absence of a security impediment, pursuant to a security check (by the Israel Police and the GSS) both of the Gaza resident and of the resident of the Judea and Samaria Area.
9. Initiating a proceeding for granting a permit under this application will only be facilitated when it involves cases of family members of the first degree (spouses, parents to minor children, minor children, elderly parents above the age of 65 (hereinafter: “**family relatives**”) of residents of the Judea and Samaria Area (resident of the Judea and Samaria Area – someone who has been registered in the Palestinian population registry as a resident of the Judea and Samaria Area and who lives there permanently) whose cases are concerned with objective humanitarian circumstances, as a consequence of which they are unable to continue living in Gaza, and the solution to their humanitarian needs lies exclusively in the Judea and Samaria Area.
10. After these preconditions have been met, the application must fall within the following alternative criteria:
 - A. A resident of Gaza who suffers from an ongoing (chronic) medical condition which requires assistance by a family member who is a resident of the Judea and Samaria Area, and who has no other family member (not necessarily of the first degree) who is a resident of Gaza who is able to assist the patient.

- B. A minor resident of Gaza who is under 16 years old, where one of his parents, who was a resident of Gaza, passed away and the other parent is a resident of the Judea and Samaria Area and there is no other family relative who is a resident of Gaza who is able to take the minor under his wings. In the event that it is necessary, the nature and scope of the existing relationship with the parent who is a resident of the Judea and Samaria Area shall be examined in relation to the degree, nature and scope of the relationship with other family relatives in Gaza.
 - C. An elderly person (above the age of 65) who is a resident of Gaza and who is in a needy situation, which requires the handling and supervision of family relative who is a resident of the Judea and Samaria Area, who can assist him. In the event that it is necessary, the nature and scope of the existing relationship with the family relative who is a resident of the Judea and Samaria Area shall be examined in relation to the nature and scope of the relationship with other family relatives in Gaza.
- 11. The coordinator of Government activities in the territories is vested with the discretion to examine every application for settlement on its merits and according to the concrete circumstances of the application, even if it does not fit within one of the three alternatives listed in paragraph 10, provided that falls in line with paragraph 9 above.
 - 12. In the event that it is necessary the applicants shall be invited for an interview with the coordinator of Government activities in the territories for the purpose of further examining the humanitarian need that underlay the application.

C. Multi phased proceeding

- 13. Granting status in the Judea and Samaria Area shall not be done automatically.

Gaza residents, whose passage to the Judea and Samaria Area shall be approved, pursuant to the aforesaid, shall, at the first stage, be given a six-month permit of stay and thereafter, subject to the compliance with the conditions established in Chapter 2 above, shall have their permit extended in accordance with an application, for six more months.

At the second stage, after a year has passed from granting the first permit, subject to the compliance with the conditions established in Chapter 2 above, their permit shall be renewed in accordance with an application, once a year.
- 14. The revoking of permits of stay shall be done under the following circumstances:
 - A. Should there be a security based objection to the continued stay of the applicant in the Judea and Samaria Area the permit shall be revoked and a notice to that effect shall be delivered to the permit holder.

- B. Should the humanitarian need which justified the granting of the permit expire, the permit shall be revoked as of the date that has been determined by the coordinator of Government activities in the territories, which shall not exceed 30 days from the date a decision has been made to revoke the permit, and a notice to that effect shall be delivered to the permit holder.
- C. Should the permit holder return to the Gaza Strip or alternately should he leave the Judea and Samaria Area for an extended period, the permit shall be revoked and a notice to that effect shall be delivered to the permit holder.

For our purposes a short term visit to the Gaza Strip, for exceptional humanitarian reasons, shall not be considered a return to the Gaza Strip.

- 15. After 7 years have passed from the day the first temporary permit of stay was granted, there shall be an examination pursuant to an appropriate application and subject to the conditions established in Chapter 2 above, as to whether to grant a permit of settlement in the Judea and Samaria Area and a change of the registered address in the copy of the file of the Palestinian population registry , which is in the possession of the Israeli side.

12 Adar, 5769

8 March, 2009.