

**At the Supreme Court Sitting as the High Court of Justice**

**HCI 2486/14**

Before: **Honorable Justice E. Hayut**  
**Honorable Justice N. Hendel**  
**Honorable Justice D. Barak-Erez**

The Petitioners: Nader Abdallah Abd al-Razeq Masri

v.

The Respondents: 1. **Minister of Defense**  
2. **GOC Southern Command**  
3. **Coordinator of Government Activities in the Territories**

Petition for *Order Nisi*

Session date: 7 Nissan 5774 (7 April 2014)

Representing the Petitioners: Adv. Ido Katri; Adv. Nomi Heger

Representing the Respondent: Adv. Arin Safdi-Atilla

**Judgment**

Justice D. Barak-Erez

1. The petitioner is a resident of the Gaza Strip and a marathon runner. He seeks to participate in the marathon race due to take place on April 11, 2014 in the Bethlehem area. His request to enter Israel in order to travel to the area where the race is due to take place has been denied in accordance with the restrictive policy regarding the entry of Gaza residents into Israel. The petition challenges this decision.
2. The petition relies on arguments regarding the injury caused to the petitioner, as a top athlete in his field, participating in the race [sic], while pointing to the fact that there is no security preclusion specific to the petitioner himself with respect to travel from Gaza via Israel. On the other hand, the respondents argue that since the Gaza Strip is considered a hostile entity, the policy in effect on this issue (known as “the separation policy”) is highly restrictive and the decision in the petitioner’s matter – which is not a humanitarian case – was made by high-ranking officials inside the security establishment. It was also argued that the document entitled Policy on Movement of People between the State of Israel and the Gaza Strip (hereinafter: **the policy document**), lists cases in which travel from Gaza to the Judea and Samaria Area may be permitted, including cases involving urgent medical treatment, visiting a relative who is suffering from a serious illness and family occasions marked by a first-degree relative. The petitioner’s case, as stated, does not fall within these terms. The respondents confirm that Section 16(a) of the policy document stipulates that Gaza residents would be permitted to enter from time to time to participate in events held with

Palestinian Authority sponsorship, subject to the defense minister's approval. However, the respondents argue that this clause concerns state level political and foreign policy considerations – areas where the respondents have broad discretion with little room for intervention.

3. During the hearing held before us, we sought to verify that the decision in the petitioner's matter had in fact been approved by the defense minister himself. Subsequently, after a recess, counsel for the respondents notified us that the matter had been brought to the attention of the defense minister and that he approved the decision not to allow the petitioner to enter the area in order to participate in the race.
4. Due to the circumstances described above, we cannot accept the petition. The minister of defense allegedly acted according to the discretion vested in him by the policy document, and as is known, room for intervention in this discretion is very limited (see: HCJ 495/12 **Izzat v. Minister of Defense** (September 24, 2012) (hereinafter: **Izzat**)). As Justice E. Rubinstein stated in **Izzat**, the complexity of the situation with respect to civilians' exit from the Gaza Strip is "almost despairing" (ibid., §13). One hopes, of course, for an improvement in the security situation in the future, one that will bring with it relief in this area as well. It is not superfluous to note that the policy document includes reference to a criterion of "soccer players", in relation to the Palestinian national soccer team and the Palestinian Olympic team, and so, it stands to reason that, even according to security officials, passage for the purpose of athletic activities is worthy of consideration. It would be good if the respondents weighed the possibility of expanding this exception to other athletic fields, in the same spirit, and considering appropriate cases that might arise in the future. In any event, inasmuch as the review of the decision is limited to the legal aspect – under the current circumstances, we are unable to provide the petitioner with a remedy.
5. In conclusion: the petition is dismissed. No costs order is issued.

Issued today, 7 Nissan 5774 (7 April 2014)

Justice

Justice

Justice