

At the Jerusalem District Court
sitting as the Court for Administrative Affairs

AP 54868-09-19
Scheduled for a hearing
on November 19, 2019

Before Honorable Justice Moshe Sobel

Petitioners:

1. P [REDACTED] S [REDACTED] I.D. [REDACTED]
2. [REDACTED] I.D. [REDACTED], born in 2014
3. [REDACTED] I.D. [REDACTED], born in 2016
4. [REDACTED] I.D. [REDACTED], born in 2018
5. Gisha - Legal Center for the Right to Freedom of Movement (Registered Association)
Represented by counsel, Adv. Sigi Ben Ari et al. from Gisha - Legal Center for the Right to Freedom of Movement
of 42 Harakevet St., Tel Aviv, 67770
Tel: 03-6244120, Fax: 03-6244130

V.

Respondents:

1. Coordinator of Government Activities in the Territories
2. Gaza Coordination and Liaison Administration
3. Military Commander of the West Bank
Represented by Jerusalem District Attorney's Office - Civilian
7 Mahal St., Jerusalem, 9149301,
POB 49333
Tel: 073-3920000, Fax 02-6468053

Preliminary Response on behalf of the Respondents

[...]

The legal framework [sections 18-31 of the preliminary response]

18. Entry into Israel by a resident of the Gaza Strip, including for the purpose of transit abroad or to the Judea and Samaria Area, requires receipt of a permit from the Military Commander according to Section 3b of the Citizenship and Entry into Israel Law (Temporary Order) 2003 (see also Entry into Israel Order (Exemption for Gaza Strip residents) 2005). The section stipulates that the Commander of the Area, and, in the matter at hand, the competent officials at the Gaza CLA, may grant residents of the Gaza Strip a permit to remain in Israel for the purpose of medical treatment; work in Israel or for a temporary purpose not exceeding six months cumulatively.
19. In 1967, upon the entry of the IDF into the Judea and Samaria Area and the application of military rule therein, the area was declared a "closed zone" according to the Order regarding Closed Zones (West

Bank Area) (No. 34) 1967. In 2009, an order consolidating the powers of the Military Commander in the Judea and Samaria Area was issued, and this particular power is now enshrined in Section 318 of the **Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) 2009**.

20. Note that in the past, residents of the Gaza Strip were granted a general permit to enter the Judea and Samaria Area pursuant to General Entry Permit (Residents of Held Areas) (No. 5) (Judea and Samaria) 1972, with a parallel general permit to exit the Gaza Strip given to Gaza Strip residents. As part of the Order regarding Suspension of General Entry Permit (Residents of Held Areas) (No. 5) (Temporary Order) 1988, the general entry permit allowing entry and remainder in the Judea and Samaria Area was suspended, and so, any Gaza resident seeking to enter and remain in the Judea and Samaria Area is required to obtain a personal permit from the Military Commander.
21. Another aspect relating to entry by Gaza residents into Israel and the Area is the Hamas takeover of the Gaza Strip after the IDF exited the Gaza Strip in 2005. On this, we refer to the remarks made by Honorable President Beinisch in HCJ 9132/07 **Al-Bassiouni v. Prime Minister** (reported on the Judicial Authority website, October 31, 2008) (hereinafter: **Al-Bassiouni**). President Beinisch determined, inter alia, “that the Gaza Strip is controlled by a murderous terrorist organization, which acts relentlessly to inflict harm on the State of Israel and its inhabitants, violating every possible rule of international law in its violent acts, which are directed indiscriminately at civilians - men, women and children [...]”
22. Given the violent Hamastakeover of the Gaza Strip, on September 19, 2007, the Ministerial Committee on National Security Affairs (CNSA) passed a resolution whereby the Gaza Strip was “**hostile territory**” (CNSA Resolution B/34). In the wake of this resolution, a decision was made to limit entry into Israel from the Gaza Strip, including for purposes of transit to the Area, in general, to humanitarian and exceptional cases, with an emphasis on urgent medical cases (hereinafter: the movement policy).
23. The premise, which the Honorable Court has repeated numerous times over the years, is that the State of Israel has broad powers and discretion to decide who may enter its territory and a foreign national has no legal right to enter the State’s sovereign territory, including for the purpose of transit to the Area or abroad. This principle derives from both the rules of international law and the laws governing entry into Israel, which give the state extremely broad discretion with respect to entry into its territory by foreign nationals, all the more so when the matter concerns residents of a hostile territory that has been engaged in ongoing warfare with the State of Israel, such as the Gaza Strip and the terrorist organizations operating therein.
24. The policy on travel between Israel, the Area and the Gaza Strip has been devised based on various security and military considerations, including: Hamas’ rise to power in the Gaza Strip; the relentless acts of terrorist organizations operating in the Gaza Strip against the State of Israel, including firing rockets at Israel, carrying out terrorist attacks and other attempts to harm civilians and soldiers; **the efforts made by terrorist organizations in Gaza to use Gaza residents whose entry into Israel and the Area has been approved for hostile purposes by recruiting them, whether overtly, by subterfuge or through blackmail, for the commission of terrorist attacks and the transfer of operatives, knowledge, intelligence, funds or equipment for terrorist activities**; as well as the constant efforts made by terrorist organizations to install new extensions of Gaza’s terrorism infrastructure inside the Judea and Samaria Area, and to strengthen infrastructure already active in the Area.
25. One of the significant rationales for the movement policy is **the security need to “differentiate” between the Gaza Strip and the Area**. This rationale is rooted in concerns regarding the possible exploitation of ties between Gaza residents and the Area to advance terrorist activities, whether knowingly or by deception. Thus, terrorist organizations work relentlessly to transfer terrorism

infrastructure, as well as knowledge, from Gaza to the Area in a bid to strengthen existing terrorism infrastructure and install new terrorism infrastructure, in part by using Gaza residents who enter the Area thanks to humanitarian applications for hostile purposes. Respondents seek to meet this significant security challenge by way of reducing travel between the Gaza Strip and the Judea and Samaria Area.

See, in this context: HCJ 2088/10 HaMoked: **Center for the Defence of the Individual v. Commander of the Judea and Samaria Area** (reported in Nevo, May 24, 2012), paragraph 14 of the opinion of President (retired) Beinisch.

26. **The policy on movement to and from the Gaza Strip, including its feature of “differentiating” between the Gaza Strip and the Area, has been reviewed and upheld by the Supreme Court on many occasions**, both generally and specifically, by way of examining the various humanitarian criteria put in place in Israeli policies on travel between Gaza and Israel, and on transit to the Judea and Samaria Area or abroad. (see, Unclassified Status of Authorizations for the Entry of Palestinians into Israel, their Passage between Judea and Samaria and Gaza and their Travel Abroad (hereinafter: the permission status document)).

See, e.g., among many: HCJ 4906/10 **Sharif v. Minister of Defense** (delivered July 7, 2010); HCJ 9657/07 **Jarbu’ v. Military Commander of the West Bank** (delivered July 24, 2008); HCJ 5829/09 **Mansour v. Military Commander of the West Bank** (delivered July 30, 2009); HCJ 1583/10 **Abu Hmedah et al. v. Military Commander of the West Bank** (delivered March 25, 2010).

27. With respect to the aforementioned separation policy, exit by Palestinians from the Judea and Samaria Area to the Gaza Strip is expressly regulated in protocols and in the permission status document.
28. With respect to Judea and Samaria Area residents, the power is vested in the CLAs in the Judea and Samaria Area and COGAT under defined criteria. The latter include a criterion dedicated to settlement in the Gaza Strip, which is regulated under a designated procedure entitled, *Procedure for settlement in the Gaza Strip by Judea and Samaria Area residents* and posted on the COGAT website (a copy of the procedure was attached as Exhibit P/4 to the petition).
29. As stated in the procedure, “As settlement of Gaza residents in the Judea and Samaria Area is possible only in the rarest cases (under the Procedure for Settlement in the Gaza Strip by Residents of Judea and Samaria Area), the need to allow the family unit to be maintained in the Gaza Strip arises.” Therefore, “The premise is that a resident of the Judea and Samaria Area may file an application for permanent settlement in the Gaza Strip for any purpose that is considered humanitarian (usually family unification). Generally, **one-time** travel may not be denied in the absence of concrete security reasons” (emphasis added).
30. Additionally, as stated in the procedure posted on the COGAT website in Hebrew and Arabic, “At the time the application is filed, the CLA representative will make sure that the resident has signed the declaration which details the possible implications of the approval of his application to settle in Gaza. The declaration clarifies, inter alia, that the applicant will not be able to return from Gaza to the Judea and Samaria Area, other than in exceptionally rare cases.” The procedure also states that “Once the application is approved, travel by the resident from the Gaza Strip to Israel, including for the purpose of travel abroad, as well as returning to the Judea and Samaria Area will be considered according to the policy in effect at the time with respect to Gaza residents. **Note that currently, a resident who has chosen to settle in the Gaza Strip is not able to permanently relocate to the Judea and Samaria Area**” (emphasis added).
31. Finally, the procedure states, “inasmuch as the policy on transit between the two areas remains with respect to separation, the declaration remains in force.”