

Excerpts from state response in HCJ 495/12, 16.08.12

9. In the context of this policy, and having examined the individual circumstances of the petitioners' applications, it has been decided to reject their requests, given that the respondents maintain that academic studies *per se* do not constitute humanitarian grounds justifying approval.

The respondents will argue that there is no legal cause for intervening in their decisions and that the petition must be rejected. Specifics follow.

25. As aforesaid, in the context of the armed conflict, terrorist organizations are making a concerted effort to establish new branches of terrorist infrastructure from Gaza inside the Judea and Samaria Area and to transfer knowledge in order to reinforce the infrastructure that currently exists in the Judea and Samaria Area.
26. It is these efforts that the Government of Israel must confront, including, *inter alia*, **by restricting movement from the Gaza Strip to the Judea and Samaria Area and vice versa.**

Therefore, in accordance with the abovementioned resolution of the ministerial committee, the policy in effect with respect to entry of Gaza Strip residents to the Judea and Samaria Area is a policy of separation between the two areas, which limits the cases approved for entry into the Judea and Samaria Area to humanitarian and exceptional cases only.

The context and rationale for this policy have been recently addressed by Honorable President (retired) D. Beinisch in the judgment in **HaMoked: Center for the Defence of the Individual**, as follows:

The logic behind this concept is clear – in the difficult security situation in which we live, at a time when terrorist organizations in the Gaza Strip and the Judea and Samaria Area continue to make efforts to harm the State of Israel and its residents, permitting free travel between the two areas raises real concern about the potential use of this platform for maintaining contacts with terror activists in the different areas – military training, recruiting, transmitting information, orders and the like...

According to the respondents, the major change in this policy occurred after the October 2000 incidents, following which a decision was made to stop allowing travel by Palestinians from Gaza to the Judea and Samaria Area other than in exceptional humanitarian cases. During these years too, the court repeatedly upheld the role security considerations played in allowing travel between the areas and did not find cause to intervene in individual decisions made by the respondents not to allow travel based on these considerations...

15. Over the years during which Israel controlled the Gaza Strip and the Judea and Samaria Area, though the two were then considered a single territorial unit (see Ajuri), security considerations played a central role. Upon termination of the military government in the Gaza Strip in 2005 after the disengagement process, and more so since the Hamas takeover of the Gaza Strip in 2007, concern that

travel between the areas would be used for terrorism has greatly increased, particularly in the absence of effective Israeli control over the Gaza Strip....

16. Indeed, as the respondents explained in detail in their response, their current policy, which was enshrined in the procedure which is the subject of this petition, is deeply rooted in the prevailing political-security reality. As the respondents clarified, in the reality that has been in place particularly since the disengagement process was completed and Hamas took over the Gaza Strip, and in view of the fact that the Gaza Strip is a separate territory enclosed by a fence, terrorist elements have difficulty dispatching terrorists from within this area to Israel. At the same time, Gaza is home to an elaborate terror network which puts a great deal of effort into sending a human terrorist network out of the area – to Israel and the Judea and Samaria Area. Security officials estimate that the Gaza Strip has become a center for information on terrorism, for developing military capabilities and for warehousing advanced weapons. Security officials estimate that terrorist organizations strive to transfer the fight against Israel to the Judea and Samaria Area, including by means of transferring knowledge, military capabilities and explosives experts. Therefore, recruiting Gaza residents who are in the Judea and Samaria Area or wish to travel thereto has become a common practice that may advance the goals of terrorist organizations. Security officials stressed that there is a real danger that explosives experts with expertise in manufacturing deadly explosives and projectile weapons would enter the Judea and Samaria Area.

This reality, thus according to the respondents, forms the foundation of the restrictive policy they formulated, a policy which, as stated, permits travel from Gaza to the Judea and Samaria Area only in exceptional humanitarian cases.

27. As aforesaid, in view of Hamas' rise to power in the Gaza Strip, the security-political cabinet has decided, among other measures, to impose restrictions on travel to and from the Gaza Strip (Security Political Cabinet Resolution B/34 dated September 19, 2007). We note that while a change has been made with respect to movement of goods into the Gaza Strip in accordance with Security Political Cabinet Resolution B/44 of June 29, 2010, no departure from Resolution B/34 has been made with respect to movement of people, and it is still currently in effect.

This policy, which, as aforesaid, has been put in place by the political-security cabinet, forms part of Israel's battle against Hamas, a terrorist organization whose goal is to destroy the State of Israel. Thus, aside from the direct security goal which was specified above, this policy is also designed to create a distinction between the Judea and Samaria Area, where the Palestinian Authority is present and the Gaza Strip which, as aforesaid, is controlled by a terrorist organization.

61. As stated, under the policy, in the absence of exceptional humanitarian circumstances, whether or not there is a concrete security impediment for travel by a resident of the Gaza Strip to the Judea and Samaria Area for the purpose of studying is immaterial and hence no such inquiry was conducted. However, beyond requirement, solely for the purpose of order and in view of the fact that an *order nisi* was issued, the individual circumstances of petitioners 1 to 4 were examined by the respondents for the first time in the context of the petition.

This individual examination revealed that in the matter of petitioners 1 and 2, a security impediment to allowing entry into Israel for the purpose of travel to the Judea and Samaria Area does exist. With respect to petitioner 1, security officials are in possession of information indicating that she has contacts with terrorists, including first degree relatives. With respect to petitioner 2, there is security information indicating involvement in a terrorist organization and contacts with terrorists, including first degree relatives. With respect to petitioners 3 and 4, in light of some information about them, inasmuch as the respondents are required to examine their particular circumstances, these petitioners will be summoned for questioning. We note that as specified above, petitioner 3 left the Gaza Strip for medical treatment some time ago and has since returned.

As aforesaid, the respondents hold the position that there is no reason to conduct additional individual examination of any of the petitioners since there are no particular humanitarian grounds justifying excluding any of them from the general policy.

62. In addition, and beyond necessity, we note that petitioners 2 and 4 are not requesting single passage to the Judea and Samaria Area for the purpose of studying for a limited period of time, but rather to travel to the Judea and Samaria Area for a few days every week. In other words, petitioners 2 and 4 are requesting that the court instruct the Respondents to allow them to travel back and forth between the Gaza Strip and the Judea and Samaria Area every week for a long period of time stretching from a few months to a year and a half (as per the case of each individual petitioner; see on this, paragraphs 29, 42 and 49).

It is superfluous to note that **this request by the petitioners greatly amplifies all the grounds which have been listed above in detail and which form the foundation of the policy of separation between the two areas.**