

At the Supreme Court
Sitting as the High Court of Justice

HCJ 495/12

Ms. Aza Izzat Qasem Kafarneh et al.
by counsel, Adv. Nomi Heger et al.
42 HaRakevet St. Tel Aviv, 67770
Tel: 03-6244120; Fax: 03-6244130

The Petitioners

v.

Minister of Defense et al.
by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-6466305; Fax: 02-6467011

The Respondents

Notice on behalf of the Respondents

1. In accordance with the decision of the Honorable Court dated May 23, 2012, and in accordance with the motion for extension, the Respondents hereby respectfully submit a notice on their behalf.
2. As recalled, the petition herein concerns the request made by Petitioners 1-5 (hereinafter – **the Petitioners**), residents of the Gaza Strip, for permission to travel from the Gaza Strip to the Judea and Samaria Area, through Israeli territory, for the purpose of academic studies at Birzeit University. The Petitioners' request was denied by the Respondents, in keeping with their general policy with respect to travel by Gaza Strip residents to the Judea and Samaria Area.
3. In its decision of May 23, 2012, the Honorable Court instructed the Respondents to reconsider their position "particularly with respect to Petitioners 1 to 4 (in view of their age)".
4. The Respondents wish to notify that in view of the decision of the Honorable Court, the matter of the Petitioners was presented to the Coordinator of Government Activities in the Territories once again.

Having considered all the circumstances relevant to the matter, including the possibility of making a distinction between Petitioners 1 to 4 and Petitioner 5, the Coordinator of Government Activities in the Territories has decided not to alter his previous decision in the matter of the Petitioners.

5. On this issue, we wish to note that the Respondents' general policy not to allow students from the Gaza Strip to travel to the Judea and Samaria Area predates the rise of Hamas to power in the Gaza Strip. It also predates the implementation of the "disengagement" plan.

On this issue, we wish to refer to the judgment of this Honorable Court in HCJ 7960/04 **Muhammad Musa Al-Ghrazi v. IDF Commander in Gaza**, rendered September 29, 2004. We also wish to refer

to a judgment issued by this Honorable Court in a petition filed following the implementation of the disengagement plan and the ruling therein which revoked the order nisi issued in the petition, HCJ 11120/05 **Hamdan v. GOC Southern Command** (judgment rendered August 7, 2007).

See on this issue also, the judgment in HCJ 8731/09 **Berlanty v. IDF Commander in the Judea and Samaria Area**, rendered December 9, 2009, which addressed the Respondents' aforesaid policy.

According to the policy applied by the respondents for some time and prior to August 2005, entry of Gaza residents to the West Bank for the purpose of academic studies is not approved. This policy has been reviewed by this court in the past and no cause for intervention was found (HCJ 7960/04 **Al-Ghazi v. IDF Commander in the Gaza Strip** (unreported, September 9, 2004) (hereinafter: **Al-Ghazi**); HCJ 11120/05 **Hamdan v. GOC Southern Command** (unreported, August 7, 2007 (hereinafter: **Hamdan**)).

6. We also wish to refer to the judgment of Honorable Justice M. Naor of July 7, 2010 in HCJ 4806/10 **Sharif v. Ministry of Defense**, in which she held:

3. We have examined the matter of the Petitioner and we have not been persuaded that the current political and security situation and the Petitioner's personal circumstances necessitate intervention in the Respondent's decision. In a number of recent decisions, the Court has not intervened in the Respondent's policy and there is no justification to do otherwise in the Petitioner's case (see and compare: HCJ 1583/10 **Abu Hamida v. Military Commander of the West Bank** (not yet reported, March 25, 2010); HCJ 9657/07 **Jarbu v. Military Commander of the West Bank** (not yet reported, July 24, 2008); HCJ 5829/09 **Mansour v. Military Commander of the West Bank** (not yet reported, July 30, 2009)).

4. The petition is denied.
(emphases added, R.S.)

7. We emphasize – the aforesaid policy is largely based on security considerations. However, in addition to the security consideration proper, the Respondents' policy is also based on political considerations. This policy, as recalled, is rooted in government policy according to which entry into Israel by residents of the Gaza Strip, which has been defined by the Ministerial Committee for Security Affairs (the Cabinet) as "hostile territory", even if solely for the purpose of transit to the Judea and Samaria Area, is restricted to exceptional humanitarian cases with an emphasis on urgent medical cases. This policy, which has been approved by the Honorable Court time and again, is based on substantial political and security considerations.
8. In view of the aforesaid, the Respondents will again argue that the petition must be dismissed.

This petition is supported by the affidavit of General Eitan Dangot, Coordinator of Government Activities in the Territories.

July 25, 2012

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Roi Shweka

Deputy in the State Attorney's Office

Affidavit

I the undersigned, General Eitan Dangot, declare as follows:

1. I serve as the Coordinator of Government Activities in the Territories.
2. I make this affidavit in support of the Notice on behalf of the Respondents in HCJ 495/12 (hereinafter: **Respondents' notice**).
3. The facts outlined in the Respondents' notice are true to the best of my knowledge and belief.
4. This is my name, this is my signature and the content of my affidavit is true.

Confirmation

I the undersigned, Nir Keidar an advocate, confirm that General Dangot, whom I know personally, appeared before me on July 23, 2012, and after I warned him that he must make a true statement and that if he fails to do so he will be subject to the penalties prescribed by law, signed his affidavit in my presence.