[Unofficial Translation]

At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 1520/09

Before: The honourable Vice-President E. Rivlin
The honourable Judge A. Prokatchia
The honourable Judge E. Arbel

Concerning: Shawan Rateb Abdullah Jabarin

The Petitioner

– Versus –

The Commander of IDF Forces in the West Bank

The Respondent

Petition for a Conditional Order

Dates of hearings: 9 Adar 5769 (5 March 2009)
13 Adar 5769 (9 March 2009)

For the Petitioner: Adv. Michael Sfard

For the Respondent: Adv. Roee-Avihai Shweike

Decision

1. The petitioner, a resident of the West Bank, requests to be permitted to leave for abroad – according to the petition – in order to participate in the award ceremony of a prestigious award for "human rights defenders".

   The state objects to the request due to the objections of security officials. In the public response submitted by the state, it is said that the petitioner is a senior activist in a terrorist organisation, and that his leaving for abroad may serve for the advancement of the terrorist organisation's activity in the West Bank.

2. This is not the first time that the petitioner has submitted a petition regarding his desire to leave the country. In the framework of the previous petitions, the

Supreme Court has reviewed secret material, presented *ex parte*, of behalf of the security authorities, and we have done the same today. The petitions were all rejected in the past. Thus, in its verdict of 20 June 2007, the Court found that:

> "this petitioner is apparently active as a Dr. Jekyll and Mr. Hyde, in part of his hours of activity he is the director of a human rights organisation, and in another part he is an activist in a terrorist organisation which does not shy away from acts of murder and attempted murder, which have nothing to do with rights, and, on the contrary, deny the most basic right of all, the most fundamental of fundamental rights, without which there are no other rights – the right to life."

In its decision of 7 July 2008, the Court found that:

> "we are dealing with reliable information according to which the petitioner is among the senior activists of the terrorist organisation, The Popular Front for the Liberation of Palestine."

3. Today the petitioner requests again to go abroad, in order to receive a prize from an organisation located in the Netherlands. His representative requested that in our decision we consider the need to strike the proper balance between the concerns expressed by the security officials – concerning which the petitioner's representative does not have enough details due to the withholding of the evidence – and the petitioner's basic right to move freely. In the opinion of the petitioner, the security authorities' blanket ban is in contravention of international humanitarian law and international human rights law. According to the petitioner, the enhanced right to freedom of movement which human rights defenders should enjoy must also be taken into account.

4. Due to the special factual circumstances of the case, we are not required to address the important issues of principle that the petitioner has raised. Indeed, the weight of the right to freedom of movement should be brought into account when examining the appropriate proportionality of the respondent's position. And yet, the fact should not be ignored that the entire West Bank is a closed military zone, entry and exit from which require a permit; plainly the right to freedom of movement is examined in view of the special legislation for the area which, in turn, is examined in view of international law.

   With all these before us, we attempted to do two things: first, to carefully examine the factual material used by the respondent in his decisions. And second, to examine the possibility of settling this matter with a limited travel permit or a 'creative' solution that partially realises the petitioner's ability to enjoy his right to freedom of movement. To do this we held two hearings, in each of which there was also held a thorough and broad assessment, *ex parte*, and the possibilities for meeting the security requirements in a proportional manner were examined. We found that the material pointing to the petitioner's involvement in the activity of terrorist entities is concrete and reliable material. We also found that additional negative material concerning the petitioner has been added even after his previous petition was rejected. This negative basis strengthens the security authorities' position, according to which the prohibition placed on the petitioner leaving the country is not intended for "punishment" for his forbidden activity, but due to relevant

security considerations. Therefore, we did not find a way to interfere with the respondent's decision not to allow the petitioner to leave for abroad.

5. In his arguments before us, the petitioner's representative addressed the irregularity of the procedure whereby the petitioner is giving his consent for the court to review secret security material. Such a hearing, *ex parte*, doubtlessly makes it more difficult for the petitioner's representative to confront the claims raised on behalf of the respondent. Doubtlessly this deviation from the rules of adversarial debate makes things difficult for the petitioner's representative; it also makes things difficult for the court which seeks to undertake an open and effective dialogue with the representatives of both sides and, in the course of things, turns the Court into the petitioner's "representative" during the one-sided hearing. This form of debate makes things difficult for everyone; yet, as the petitioner's representative also agreed, this is not the forum or the manner in which to address questions that fall outside the framework of the present debate.

The result is that the petition is rejected. No order for expenses.

Given today, 14 Adar 5769 (10 March 2009)

Signed:

Vice-President	Judge	Judge