



25 April 2010

Mr. Eli Yishai
Minister of Interior
2 Kaplan St.
Jerusalem
By fax: 02-5666376

Attorney Yehuda Weinstein
Attorney General
29 Saladin St.
Jerusalem
By fax: 02-6467001

Dear Sirs:

Re: Request to Cancel the Travel Ban Issued Against Mr. Ameer Makhoul

Reference 2010-3337

On behalf of our client, Mr. Ameer Makhoul, we are writing to you to request the cancellation of the travel ban issued against him, as follows:

1. Mr. Ameer Makhoul is a political activist and serves as the general director of Ittijah – The Union of Arab Community-Based Associations, an NGO that in addition to its activity in the local arena has won consultative status from the UN. Our client is a member of many coalitions of international organizations. In addition, our client serves as chairman of the Public Committee for the Protection of Political Freedoms in the framework of the High Follow-up Committee for the Arab Citizens of Israel. In this position, our client engages primarily in monitoring the restrictions on the political freedoms of the Arab citizens of the state, including its leaders, denouncing these restrictions and voicing sharp criticism – openly and to all, in Israel and abroad.
2. On 22 April 2010, Mr. Makhoul arrived at the Sheikh Hussein Bridge terminal at the Jordan River, intending to exit Israel. During the passport check, he was informed that he was forbidden to leave the country until 21 June 2010, and this by power of an order issued by the Interior Minister on 21 April 2010.
3. The decision to ban Mr. Makhoul from traveling abroad without conducting any prior suitable, transparent and fair proceeding is blatantly illegal. The way in which the decision was made is replete with constitutional defects. In these circumstances, there is a grave suspicion that the decision to restrict his freedom was based on purely political considerations pertaining to his struggle against the permissive use of emergency regulations against Arab citizens, as well as the criticism he levels against all of the expressions of political persecution of the Arab leadership in the state.
4. The travel ban issued against Mr. Makhoul client violates his freedom of movement and his right to freely exit Israel, a constitutional right anchored in Section 6(A) of the

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Basic Law: Human Dignity and Liberty.¹ The violation of his constitutional right takes on added severity in light of the fact that it is based on an archaic emergency regulation that would clearly be voided if enacted now, in the current constitutional era. It is an outdated piece of legislation that has enabled the sweeping denial of protected constitutional rights through administrative acts that entail harsh restrictions on the rights of the individual. On numerous occasions, the Supreme Court and learned attorneys have voiced scathing criticism of the use of emergency legislation. The main criticism centers on the fact that this legislation is characterized by overly broad and comprehensive directives and that they grant excessive prerogative to the executive branch. In one of the cases heard before the former Chief Justice Aharon Barak, he even suggested to the Knesset that it annul the defense regulations. In his words:

“Before concluding, I would like to again suggest that the Knesset consider canceling the defense regulations. The need to cancel the defense regulations has accompanied the State of Israel since its establishment.”²

5. The Supreme Court has not ignored the severity of the use of emergency regulations and the defense regulations. One method the court chose for overcoming the harshness and arbitrariness of these regulations was to define clear criteria for examining the legality of their use. Among the criteria the court defined is whether the decision meets the conditions of the limitation clause in the Basic Law: Human Dignity and Liberty. The conditions and principles of the limitation clause reflect upon the entire legal system and apply to the interpretation of orders and declarations issued by power of the emergency regulations. These principles have become an interpretive basis for defining the space of government authority and examining the essence and scope of the violation. Thus, for example, in regard to the defense regulations, it was ruled that they are “today part of the laws of a democratic state. They must be interpreted against the background of the fundamental principles of the Israeli legal system.”³
6. It is clear, therefore, that similar to most of the emergency regulations, this regulation’s deviation from the basic principles of constitutional law does not exempt the Interior Minister from his legal obligation to allow a full hearing before making the decision, to explain the reason for the decision and to reveal the evidentiary material that constituted the basis for such a decision. It is precisely due to the fact that this entails a regulation that provides an opening for the arbitrary use of authority, without any criterion to guide the exercise of this authority, makes it incumbent upon the minister to make certain that a proper proceeding be held prior to making the decision.
7. A proper and fair proceeding, the duty of every administrative authority, is to allow a fair opportunity for the person whose rights are liable to be violated to have his say and to properly confront the claims against him, and to ascertain the facts attributed to him and the veracity of these facts.⁴ Therefore, Mr. Makhoul’s right to be heard, after he learns what accusations are being directed against him and before a decision is made in his case, derives from his right to due process.

¹ See: HCJ 5211/04, **Vanunu v. GOC Homefront Command**, Piskei Din 58(6), 644, 655-656 (2004).

² HCJ 6893/05, **Yitzhak Levy et al. v. Government of Israel et al.**, Piskei Din 59(2), 876, 894; see also J. Barzilai: “Center versus Periphery: The Laws of ‘Preventing Terror’ as Politics” *Plilim* 8 (1999-2000) 229.

³ HCJ 680/88, **Schnitzer v. Chief Military Censor**, Piskei Din 42(4) 617, 628 (1989).

⁴ See: 7805/00, **Aloni v. Controller of Jerusalem Municipality**, Piskei Din 54(4) 577, 598-599 (2003). See also: HCJ 1038/08, **State of Israel v. Javitz** (decision delivered on 11 August 2009).

8. Moreover, the scope of the hearing is a function of the extent of violation of basic rights and constitutional rights. The more sweeping the authority, resulting in a real violation of basic rights, the broader and more comprehensive the hearing should be. Due process requires the possibility for Mr. Makhoul to examine the materials and evidence upon which the decision was made to prohibit his exiting from the state. The words of [former Israeli Supreme Court Justice] Haim Cohn are apt here:

“The rule is that the documents received by the authority while exercising the authority vested in it by the law, must be exposed and open to the party involved; and the authority may not contend that once the document has entered its files the involved party is no longer entitled to see it.”⁵

9. The attempt to become free of the obligation to provide an explanation by arguing that secret information is involved is unacceptable and should be summarily rejected. The Supreme Court has already recognized the obligation to reveal administrative evidence as part of the protection of human dignity, as follows:

“The protected value of human dignity in the Basic Law: Human Dignity and Liberty also mandates the conclusion that even a violation of human dignity for a worthy objective should not be done before the person whose dignity is liable to be violated has fully exercised his right of argumentation, in the sense of receiving the evidentiary material in its entirety and an opportunity to respond to it, a right that is a “security belt” against “a violation that is greater than necessary.”⁶

10. Moreover, the denial of a person’s freedom of movement is equivalent to imposing punishment upon him, something that requires that a transparent and broad proceeding be conducted, and in a way that will include the possibility of legal representation, an examination of the evidence presented against him, and the presentation of witnesses and evidence on his behalf.

In light of all of the above, I ask of you as follows:

- A. To cancel the travel ban issued against our client, Mr. Ameer Makhoul;
- B. Alternatively, to postpone the order until a proper hearing is held that would enable Mr. Makhoul to raise all of his arguments and present his evidence;
- C. To immediately deliver to us a copy of the material that served as the basis for the Interior Minister’s decision when issuing the order.

I would appreciate your prompt response.

Most respectfully,

Abeer Baker, Attorney

⁵ H CJ 142/70, **Shapira v. Regional Committee of the Bar Association**, Piskei Din 25(1) 325, 331 (1971). See also: Y. Zamir, **The Administrative Authority** (Vol. B) Nevo 1996, p. 813.

⁶ H CJ 4914/94, **Termer v. State Comptroller**, Piskei Din 49(3) 771, 790 (1995).