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AL MEZAN CENTER FOR HUMAN RIGHTS



Adalah The Legal Center for Arab Minority Rights in Israel
مركز العدالة القانوني لحقوق الاقلية العربية في اسرائيل
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**Translation of selected sections of Israeli Supreme Court decision and the state's response re:
Yosef Al-Kronz and Mohammed Al-'Ajouri case**

***HCI 2777/18, Yousef Al-Kronz v. Commander of Israeli forces in Gaza
(decision delivered 16 April 2018)¹***

Excerpts from the Supreme Court decision

Synopsis: Following a petition by Adalah and Al Mezan,² the Israeli Supreme Court ruled that a Palestinian young man, Yousef Al-Kronz, shot and wounded by Israeli troops during the 30 March protests, who had already lost one leg to amputation, must be permitted to leave the Gaza Strip for urgent medical care in Ramallah to save his remaining leg. The Court found that Al-Kronz met the criteria for a permit, as set of the Ministry of Defense.³

....

8. Generally, and contrary to the petitioners' position, we contend that the Minister of Defense is authorized to exercise his discretion and to prevent the issuance of entry permits to Israel even for

¹ The Supreme Court's decision in Hebrew:

https://www.adalah.org/uploads/uploads/SCT_ruling_Yousef_Karnaz_16042018.pdf

See also, Adalah and Al Mezan, "Israeli Supreme Court rules on Adalah-Al Mezan petition: Israel must let Palestinian youth wounded by Israeli gunfire at protests leave Gaza for urgent care," 16 April 2018:

<https://www.adalah.org/en/content/view/9478>

² For information on the petition, see: Adalah and Al Mezan, "Israeli Supreme Court orders state to explain why it won't let wounded Palestinian youth out of Gaza to access urgent medical care in West Bank," 12 April 2018:

<https://www.adalah.org/en/content/view/9474>

As a result of the delays imposed by the Israeli military and the Supreme Court, and while the petition was pending, Gaza doctors amputated one of Al-'Ajouri's legs and one of Kornaz's legs. Kornaz remained in danger of losing his other leg if he did not receive urgent medical attention in the West Bank.

³ The Israeli Defense Ministry's criteria are part of the closure policy that has had a serious impact on patients in Gaza, as clarified by Al Mezan and human rights organizations in a joint statement, available at <http://mezan.org/en/post/22378> and in a video produced by Al Mezan, available at <https://www.youtube.com/watch?v=ehe8S9o3ZR0>. The current decision does not deal with the criteria given the specific nature of the case.

medical treatment, considering among other things "Israel's security interests, political interests and diplomatic interests", as stated explicitly in the "Permissions' Status" document (see above).

That said, it is a known rule that the administrative authority is required to inquire whether the particular and exceptional circumstances of the individual case do not justify deviation from the general guidelines and regulations. In addition, the [authority's] use of [his] discretion in applying administrative regulations in the case of an individual, needs to take place after the examination of the concrete circumstances relevant to the decision. Even in the case that the administrative authority put into place a general policy, [he] must examine whether or not it is appropriate to implement it considering the individual set of facts.

9. We were not convinced by the respondent's arguments that, at the time of the exercising of discretion, before making a decision regarding petitioner 1, an examination was made into the question whether the particular and exceptional circumstances of the current case do not justify a deviation from rules and regulations. [We were not convinced] that an examination was conducted of petitioner 1's particular circumstances, including his medical condition and the extreme repercussions of refusing his passage for his medical condition. It should be emphasized in this context that there is no disagreement about the fact that the medical treatment required to save petitioner 1's leg from amputation is not available in Gaza, and that without it he would suffer a "complete change to [his] quality of life". Accordingly, pursuant to the Permissions' Status document, petitioner 1 falls within the cases in which Israel would allow the entry to Israel for passage to Ramallah. Additionally, there was no disagreement that there is no indication or information that petitioner 1 would pose a security risk if he were allowed permission to pass from Gaza to Ramallah. It is further noted that the respondents were unable to show even one precedent in which the state prevented passage to Judea and Samaria [the West Bank] for medical care under similar circumstances.

In these circumstances, and seeing as we were not convinced, as previously stated, that the full concrete circumstances were considered, including the possibility of deviating from the general guidelines, it would have been desirable to order the state to reconsider the petitioner's matter. Yet, in light of the petitioner's dire condition, and the real and immediate fear that his second and only leg will be amputated, it seems that any additional delay ... could lead to the realization of the risk and amputation of petitioner 1's leg prior to the delivery of a new decision and the provision of ample opportunity to receive judicial review if necessary.

10. Therefore, in these exceptional circumstances, in which no security risk is posed by the passage of the petitioner from Gaza to receive medical treatment in Ramallah, and since it is an exceptional and unusual humanitarian case, we rule that the petition should be accepted and the order nisi become an absolute order. The respondents will allow the immediate passage of petitioner 1 from the Gaza Strip to receive medical care in the hospital in Ramallah.

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Excerpts from the State's response

Note: The state's response was given prior to the Supreme Court's decision.

4. As part of the events of "Land Day" on 30 March 2018, violent disturbances took place in a number of locations along the security barrier in the Gaza Strip, involving tens of thousands of Gaza residents. During [these events] rioters fired weapons at IDF [Israeli military] forces, burnt tires, threw Molotov cocktails, and threw stones at the security barrier and at IDF forces. Under the auspices of the riots, the terror organizations tried to turn the area of the barrier into a war zone, including throwing explosives and attempting to harm the security barrier. It should be noted that official Israeli authorities warned the residents of Gaza, through various mediums, that they should refrain from participation in the riots.

5. Petitioner 1, a Gaza resident, born in 1998, and petitioner 2, a Gaza resident, born in 2001, were participating in violent riots and were injured in their legs by IDF forces.

6. On 1 April 2018, requests were submitted to the District Coordination Offices of Gaza to permit the passage of petitioners 1 and 2 to the hospital in Ramallah, through Israel, for the administration of medical care. According to medical documents, petitioner 1 was injured in both of his legs, and petitioner 2 was injured in his left knee and surrounding blood vessels. Medical documentation does not show a risk to the life of either petitioner, but warns that lack of proper treatment may lead to the amputation of petitioner 1's leg, and likewise regarding petitioner 2.

7. After the petitioners received no response from the DCO of Gaza, they filed this petition. The petitioners matter was considered, also following the submission of the petition, and it was decided to deny the requests. This [decision] came in light of the Defense Minister's policy, according to which, entrance to Israel will not be allowed for any person injured during participation in the violent disturbances organized by Hamas, and due to the finding that the medical circumstances do not justify granting an exception to the rule, since neither petitioner's life is in immediate danger.

18. [...] Even if prima facie the petitioners' condition does allegedly fulfil the general medical requirements which appear in the Permissions' Status document, the decision of the competent authorities - with the approval of the COGAT and the Minister of Defense - is that their requests should be denied.

19. The main consideration in rejecting the petitioners' requests lies in the fact that their medical condition is a direct result of their participation in the violent disturbances organized by Hamas, as mentioned above, during which rioters fired at IDF forces, burnt tires, threw Molotov cocktails, and threw stones at the security barrier and at IDF forces. On the other hand it should be noted, that without taking lightly the petitioners' injuries, it is not a case of real risk to life.