



The High Court of Justice confirms the sweeping prohibition on Gaza residents studying in the West Bank

In the High Court of Justice 11120/05 *Hamdan v Major General, GOC Southern Command* and 9 other related petitions (not published, August 7, 2007)

Paragraph 8 of the verdict:

[...] and it was claimed that since the Gaza disengagement, terrorism has increased. Travel from Gaza to the Judea and Samaria area is allowed for senior Palestinian Authority officials who are not identified with Hamas, leading business people and senior employees of international organizations, Judea and Samaria area residents wishing to return to their place of residence and extraordinary humanitarian and medical cases – not including people aged between 16 and 35, including students, who are a special “risk group.” Regarding the “risk profile,” which is based on intelligence information, it was claimed that the 16-35 age group is responsible for the lion’s share of terrorist activity, and that students in particular play a role in this; it was claimed that the universities of Judea and Samaria serve as “hothouses” for breeding terrorists, and even a person who only comes to study, and does not arrive with terrorist intentions, is likely to be influenced by this environment. On the legal plane, it was claimed that the Gaza Strip is not held militarily and is not under Israeli army control, but the Judea and Samaria area is held militarily and the obligation to ensure its general security, its borders and crossings, including for the Israelis within it and its impact on Israel’s security, is borne by Israel. Regarding individualized investigations, in HCJ 7052/03 *Adalah v. The Minister of the Interior* (unpublished), Vice President Cheshin noted the difficulties involved in this unfeasible and perhaps impossible task. Regarding the judgment in HCJ 7015/02 *Ajuri v. The IDF Commander in the West Bank*, PD 66(6) at p. 352, which the petitioners mentioned when arguing that Gaza and the Judea and Samaria area should be viewed as one unit, it was argued that indeed according to Article 75 of the Fourth Geneva Convention, the Judea and Samaria area and Gaza are not “two areas unrelated to one-another, but rather they should be view as one area,” (President Barak at p. 370) – but it cannot be said that travel between them is unencumbered.

Paragraph 16 of the verdict:

[...] As noted, according to the respondents' claims, an analysis of the current information indicates that the 16-35 age group is central to terrorist activities, with students playing a prominent role among this group. As such it seems that there is no serious dispute, except on the question of whether innocent people can be distinguished from terrorists via individualized investigations. There is no denying that in an ideal world, individualized investigations would be the best way to achieve a just outcome, since the innocent are not punished along with the guilty; this is true even if we don't enter into the finer points of the said general legal obligation. However, such investigations arouse many difficulties in practice. As noted by Vice President Cheshin in the *Adalah* case (albeit in regard to status in Israel), in terms of an individualized investigation system, "it is not unreasonable to assume that it will likely lead to an increase in terrorist activity in Israel...". "we therefore did not find, with all our goodwill, that the considerations of the respondents who oppose it suffer from extreme unreasonableness."

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