In the Supreme Court in Session as Appeals Court of Administrative Affairs

Admin. Appeals Court 7022/10

Before: The Honorable Presiding Justice D. Beinish
The Honorable Justice A. Gronis
The Honorable Justice N. Hendel

Appellant: Ms. Mairead Maguire

v.

Respondents: 1. The Ministry of the Interior
2. The Israel Police

Appeal against the judgment of the Court of Administrative Affairs, Central District, of 1 October 2010, File No. 039693-09-10, rendered by the Honorable Judge D. Amir

Date of Session: (4 October 2010)

For the Appellant: Adv. Orna Kohn; Adv. Fatmeh El-'Ajou

For the Respondents: Adv. Hanni Ofek

Judgment

Presiding Judge D. Beinish:

1. The Appellant, Ms. Mairead Maguire (hereinafter: "the Appellant"), is a peace activist who was awarded the Nobel Peace Prize for 1976. On 28 September 2010, the Appellant arrived in Israel, together with other women affiliated to the Nobel Women's Initiative, an organization of women Nobel Peace Prize Laureates seeking, by definition, to act for peace, justice and equality. Upon her arrival in Israel she was refused entry due to a restraining order in effect against her, issued in June 2010. The Appellant refused to board the flight that was to return her to country of departure, and sought to use the legal process in Israel before being deported. The Appellant filed an administrative petition to the Court of Administrative Affairs and, in parallel, at the intervention of this court, an injunction was issued to prevent her deportation pending a final decision on the legality of her expulsion from Israel. On 1 October 2010, the Central District Court for Administrative Affairs (Judge D. Amir) handed down its judgment to reject the Appellant's petition. The Appeal before us concerns this judgment. Taking account of the fact that the Appellant is detained in a detention facility at Ben-Gurion Airport, and considering the fact that the visit of the women's delegation was planned to last for only a few days, and is due to end in two days'

time, on 6 October 2010 we set the hearing on the Appeal at an early date, not in the regular order, so as to allow for clarification of questions arising from the Appeal in good time.

2. The following are the basic facts as they emerge from the parties' arguments. On 30 June 2009, the Appellant was arrested by the Israeli security forces while she was on board the "Arion" vessel en route to Israel in attempt to break the naval blockade imposed on the Gaza Strip. Following the Appellant's arrest, on 1 July 2009 a restraining order and a custody order were issued against her. The restraining order stated that, as provided in the Entry into Israel Law – 1952 (hereinafter: the Entry into Israel Law), a person against whom a restraining order had been issued is precluded from returning to Israel so long as the order has not been revoked. At the bottom of the order it was further stipulated that the order would remain in force for ten years from the date of issue. It appears from the State's response that the custody order and restraining order were issued and handed to the Appellant in English translation, although from the orders it can be seen that the Appellant refused to sign the declaration appearing on the restraining order, stating that the content had been explained to her. It further emerges that the orders were handed to the Appellant after a hearing had been held in English, during which the circumstances of the issuance of the order had been clarified. Although the Appellant was given the option of stating her case at the hearing she chose to exercise her right to remain silent. The Appellant continued to exercise that right at a hearing in her case held the next day (2 July 2009) before the Custody Court. The court held that there was no justification for releasing the Appellant from custody, and on 3 July 2009 she left Israel. In the copy of the standard text of the restraining order that was translated into English and attached to the court documents, there is no evidence of the period during which the ten-year restraining order would remain valid (as is the case in the Hebrew version). It is not clear if that is also the case with regard to the copy that was given to the deportees together with the restraining order in Hebrew.

3. Some months later, at the beginning of 2010, Ms. Liz Bernstein applied to the Minister of Foreign Affairs on behalf of the Organization of Nobel Peace Laureate Women, seeking to clarify whether the Appellant could enter Israel in order to participate in the said delegation's visit to Israel and the [Occupied Palestinian] Territories from 28 September 2010 to 6 October 2010. On 24 February 2010, a letter of reply was sent to Ms. Bernstein, signed by the Assistant to the Minister for Foreign Affairs. The letter stated that the Appellant had chosen to participate in an illegal flotilla that sought to encourage Hamas and to contravene the provisions of both Israeli law and international law. Therefore, it was stated on behalf of the Minister of Foreign Affairs that it was clear that the concern on which the restraining order was based was justified, and there was no reason to intervene in the Appellant's favor and to alter the prohibition on her entry into Israel.

4. From the State's response it emerges that, in parallel to her application to the Minister for Foreign Affairs, another application was made in the Appellant's name to the Ministry of Justice by Physicians for Human Rights-Israel. In the application, submitted by the Appellant's representative in the proceeding before us, the organization sought to examine whether there was any impediment to the Appellant's

entry into Israel in order to participate in the organization's conference due to take place in April 2010. On 14 April 2010, the Attorney of the Ministry of Justice replied that the ministry was not the appropriate address for inquiries into entry visas into Israel for foreign citizens, and that the matter fell under the authority of the Ministry of the Interior. The letter also stated that an application had been made to the relevant entities, and as far as the examination showed, there was nothing to prevent the Appellant from entering the country. It should be noted that the State's response said that an error had occurred in this letter, and that in actual fact the restraining order had not been revoked or altered by the person in authority. In the event, the Appellant did not actually arrive in Israel and did not participate in the aforementioned conference.

5. In June 2010, the Appellant participated in another flotilla (on the ship the "Rachel Corrie") which intended to break through the blockade on the Gaza Strip. She was again arrested on 5 June 2010. Consequently, a restraining order and a custody order were again issued against her. Similar to the previous proceeding, where the Appellant was arrested due to her participation in the flotilla, a hearing was also held on her case this time, where she exercised the right to remain silent. A copy of the restraining order was handed to the Appellant together with an English translation thereof, although she refused to sign the order. This order is also to remain in force for ten years, i.e. until 5 June 2020. Soon after the Appellant learned of the order, she signed a document waiving her right to remain in Israel for 72 hours from the time the restraining order was issued for the purpose of the legal hearing, and requested to return to her home. Subsequent to her request to leave Israel she was immediately sent out of the country, on 6 June 2010.

On 21 July 2010, Ms. Bernstein, the organizer of the delegation of Nobel Prize Laureate Women, again applied to the Ministry of Foreign Affairs requesting assistance in organizing the women's delegation and in arranging visas for the participants in the delegation. On 7 September 2010, Mr. Eliaz Louf of the Israeli Embassy in Canada replied to the letter, stating that the Appellant would not be permitted to enter Israel in order to participate in the women's delegation. Mr. Louf stated in his letter that the Appellant's participation in the flotillas had led to the restriction of her entry into Israel, although her motives and humanitarian activities are not denied.

The parties' arguments show that no further application was made by the Appellant or on her behalf prior to her arrival in Israel.

6. As stated above, on 28 September 2010, the Appellant arrived in Israel on a flight from Frankfurt, and upon her arrival she was refused entry due to the existence of the restraining order. The attempt to deport the Appellant failed since she refused to board the plane. In parallel, a motion for a temporary injunction against her deportation from Israel submitted on that very day (Judge N. Ohad) was rejected. Regarding this decision a motion for permission to appeal was submitted to this court, together with a motion for interim injunction. The court (Judge A. Hayout) granted the request and issued an interim injunction ordering the expulsion of the Applicant from Israel not to take place until a further decision was rendered after a hearing in

the presence of both parties in the Court of Administrative Affairs, which was set for the next day.

7. A hearing on the injunction was held on 29 September 2010, at the end of which it was decided (Judge N. Ohad) that the Appellant would remain in the airport detention facility pending the hearing on the administrative petition she had filed. On 1 October 2010, a hearing was held on the administrative petition, following which the judgment contemplated by the Appeal before us was rendered. In the judgment (hereinafter: "the Judgment") the court (Judge Rami Amir) rejected the Appellant's argument that the restraining orders had never been handed to her and were therefore invalid. The court held that in fact it was clear that the Appellant had been aware of the existence of the restraining orders against her. This conclusion is supported by a number of facts. First, the court stated that after the issuance of the first restraining order a hearing was held in the custody court concerning the Appellant, and the court ratified the custody order. Second, the court referred to a letter on behalf of Physicians for Human Rights-Israel (signed by the Appellant's representative), which requested that the Ministry of Justice examine whether there was anything to preclude the Appellant's entry into Israel. The court held that it cannot be assumed that the Appellant and her representative would have applied to the Ministry of Justice had they not known of the restraining order; otherwise there would be no reason to assume that there was anything to preclude her entry into Israel. Third, the court based its ruling on a document prepared by the Irish Deputy Ambassador and filed in court. In the document, the Deputy Ambassador describes a meeting at the airport detention facility on 5 June 2010 with a number of persons about to be deported, among them the Appellant (after she had been detained due to her participation in the second flotilla). He further states that the, "deportees had previously, on the same evening, been handed restraining orders, while they were detained, at the immigration office in Holon" (a translation of the letter was included in the judgment). Fourth, the court held, relying on an affidavit given by the Director of the Foreign Citizens Division in the Ministry of the Interior, that the usual procedure in such cases is to hand the orders to the deportee. The court stated that the presumption of proper administration, which has not yet been refuted, is available to the Ministry of the Interior.

For that reason, the court held that Section 13(c) of the Entry into Israel Law applies to the Appellant, whereby "a person against whom a restraining order had been issued is precluded from returning to Israel so long as the order has not been revoked". The court based its decision on the second restraining order (of 5 June 2010), stating that in view of the letter sent to the Appellant's representative in April 2010 concerning the convention by Physicians for Human Rights-Israel, saying that there is no impediment to the Appellant's entry into Israel, the first restraining order should be considered to have been revoked.

In view of the rulings of the court that the second restraining order was still in effect, and that the Appellant knew of the existence of the order, the court rejected the petition. The court stated that the petition did not specifically address the order and the grounds therefore, and that even if the Appellant had done so, this was not the appropriate procedure. The court held that if the Appellant had sought to challenge the restraining order, she should have done so through customary methods, including first

applying to the executive authority, and not by presenting the court with the "fait accompli" of a prohibited arrival in Israel. The court held that to the extent the Appellant claims that she was ostensibly promised, when she was deported from Israel in June 2010, that she would be able to return to Israel, she may present these arguments to the competent authority, if she should elect to challenge the restraining order specifically. The court further related to the letter sent to the women Nobel Prize Laureates by the Israeli Embassy in Canada, dated 7 September 2010, which stated expressly that the Appellant would not be allowed to enter Israel. The court further held that subsequent to this explicit letter, the Appellant had sufficient time to file a petition and application for temporary relief prior to her arrival in Israel. However, she preferred to place a "fait accompli" before the state. For these reasons the court denied the petition without relating specifically to the restraining order.

8. The Appeal before us was filed with respect to the judgment. The Appellant's representatives argue that the previous court had erred in refusing to discuss some of her arguments, and held that she must first exhaust her arguments in another procedure. According to the Appellant, an administrative petition is the only procedure by which it is possible to challenge the decision to refuse entry of a person into Israel, and the relief requested in the petition – to direct the Respondents to give the reasons why they would not permit her entry into Israel – is the appropriate and relevant relief in this petition. Such a challenge, according to the Appellant, is a direct challenge that seeks to examine the legal validity of the restraining order. Accordingly, the Appellant believes that the previous court should have considered simultaneously both the validity of the restraining order and the refusal to permit the Appellant to enter Israel. The Appellant further argued that the court did not give sufficient weight to the fundamental values and human rights emerging from the Appeal, and instead chose to base its decision only on procedural grounds. In the arguments contained in the Appeal the Appellant's representatives reiterated the arguments presented to the previous court, but they did not specifically repeat the argument before us that the Appellant had not been aware of the existence of the prohibition against her entering Israel.

On the other hand, the Respondents' representatives argued that the Appeal should be denied. According to the Respondents, the Appellant chose to ignore the restraining order and prohibition against her entering the country, and further chose to ignore the two letters sent to the organizer of the delegation that explicitly clarified that her entry into Israel would be refused. The Respondents' representative further emphasized that the Appellant had not applied to the Minister of the Interior to request the revocation of the prohibition against her entering Israel, nor to the Administrative Affairs Court to challenge the decision. Instead, the Appellant chose to take the law into her own hands and to arrive in Israel in contravention of the law. It was argued that the failure to exhaust the available procedures and the act of taking the law into the Appellant's own hands were sufficient to create grounds for denying the petition. According to the Respondents, it is well-established that the court will not grant relief to a petitioner who contravenes the law under which he requests relief. Taking the law into one's own hands implies a lack of good faith, and the timing of the filing of the petition (i.e. only after the Appellant had arrived in Israel) also appears to constitute bad faith. The Respondents' representative also saw as a demonstration of bad faith the denial of

receipt of the restraining order and the fact that the Appellant refrained from referring the court to the letter sent from the Israeli Embassy in Canada, which expressly stated that the Appellant's entry into Israel would be refused. The Respondents' representative also noted that its arguments were ostensibly procedural, but from the contents of the letter from the Israeli Embassy in Canada, the grounds for the restraining order clearly emerge as being due to the Appellant's participation in the flotilla, which was intended to damage and delegitimize the State of Israel and to encourage Hamas and other terrorist organizations.

9. As stated above, in the hearing before us the parties reiterated their principal arguments before the previous court, and their written arguments in the Appeal before us. In the course of the hearing, we also enabled the Appellant to make a statement, from which it emerged that she was aware that she was forbidden to enter Israel, although she was not at all aware that the restraining order was valid for ten years. According to the Appellant, she relied on the fact that the first restraining order had apparently been revoked, in view of the letter sent to her by the Ministry of Justice stating that there was no impediment to her entering Israel. In the rest of her statement the Appellant attempted to explain her ideological position, which we do not have to address here.

10. As for the Appeal itself, and having heard the parties' arguments in detail, we have reached the conclusion that there is no shortcoming in the judgment of the lower court and no grounds for interference. The judgment is based on the determination that the restraining order and the prohibition of entry were known to the Appellant. Due to the delivery of the order (which the Appellant refused to sign at the time) and the notice of prohibition of entry, the Appellant should have taken the legal avenues available to her in order to argue against the order in an application to the Minister of the Interior. Thereafter she could have challenged the Minister's decision in court. Since the Appellant decided to take the law into her own hands and to arrive in Israel despite the prohibition on her entry, she is not entitled to the relief she requested, in accordance with the basic rules according to which we exercise our judicial review. So long as the restraining order is in effect, the rule specified in Section 13(c) of the Entry into Israel Law applies, whereby: "A person against whom a restraining order had been issued is precluded from returning to Israel so long as the order has not been revoked."

It is important to stress that the Minister of the Interior has broad discretion in decisions regarding entry into Israel. In view of the political aspects and implications of allowing entry into Israel in the circumstances of the case before us, weight is given to the position of the Ministry of Foreign Affairs on behalf of whom letters were sent to the Appellant explaining the refusal to permit her entry into Israel in accordance with the restraining order. At the same time, in view of the extraordinary circumstances of the case, and taking account of the time spent by the Appellant in the detention facilities, and that the visit is intended to end within 48 hours, we suggested in the course of the hearing that the State's representative should allow the Appellant to complete her planned visit in Israel, by releasing her on bail provided she guarantees and undertakes to leave Israel on the planned date in 48 hours' time, on 6 October 2010. In parallel, we suggested that the restraining order should remain in

effect and the Appellant could challenge it, should she be interested in doing so, in the aforesaid legal manner. Accordingly, we enabled the state's representative to consult with her principals. After about one hour, the State's representative announced that both the Minister of the Interior and the Minister of Foreign Affairs could see no reason to alter their original position, even under the restricted conditions we suggested.

11. As we have stated many times before, in matters concerning policy, we have the jurisdiction to examine the legality of orders, directives and activities performed by the executive authority in accordance with its policy, but it is not our duty to examine the wisdom of its decisions (see, e.g. HCJ 963/04, *Leufer v. The State of Israel*, ILR 58(3) 326, 336 (2004)). We believe that, although the Appellant entered Israel while aware of the prohibition and took the law into her own hands – for which the court cannot grant the seal of legality – it would have been preferable had the state accepted our suggestion and enabled the Appellant to join the women's delegation for the remaining 48 hours, taking account of the fact that she had already been kept in the detention facility, and on the terms we suggested. However, after receiving the state's response to our proposal, we could see no legal grounds to interfere in the lower court's decision. As stated in the foregoing, the court's decision was based on its determination, as a factual finding, that the Appellant had been aware of the restraining order, both because it had been handed to her and because letters had been sent to her representatives stating explicitly that her entry into Israel would not be permitted. Since the court rejected the Appellant's principal arguments concerning the fact that she had no knowledge of the restraining orders, it saw no reason to discuss the arguments with respect to the validity of the restraining order itself. It should be noted that arguments regarding the validity of the restraining order were also not presented to us, although the Appellant's representative said in her statement that due to the violation of the Appellant's basic rights, the previous court should also have discussed the matter of the validity of the restraining order. We shall also remark that we found no substance in the argument that the Appellant's basic rights had been violated, although she was prevented from expressing her positions during her stay in Israel. The arguments of her representative that the rights of peace activists in Israel had been violated are also unfounded, especially as they were not parties to the petition and the Appeal. In these circumstances, the Appeal is denied.

12. Nothing in our judgment prevents the Appellant from applying in the future to revoke the restraining order, and certainly to shorten its lengthy term of ten years, in the appropriate manner according to the procedures provided by law.

Accordingly, the Appeal is denied. In the circumstances, there is no order for costs.

Rendered this day, (4 October 2010).

Chief Justice Justice Justice