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At the Supreme Court
Sitting as the High Court of Justice

H CJ 8706 /14

In the matter of:

**HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger – RA**

represented by counsel, Adv. Andre Rosenthal
License No. 11864
of 15 Salah a-Din Street, P.O.Box 19405,
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Tel: 6280458; Fax: 6221148; Cellular: 0505-910847

The Petitioner

v.

GOC Home Front Command
Represented by the State Attorney's Office
Ministry of Justice

The Respondent

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering him to appear and show cause, why he should not provide interpretation services during the hearings in the appeals of three Israeli residents, Arabic speakers, who were distanced from Jerusalem by the respondent.

The orders were signed on November 30, 2014 and entered into effect on the date of their signature. The appeals will be heard by respondent's representative on December 22, 2014 in the Ofer Camp, from 10:00. The respondent refuses to provide interpretation services into Arabic.

In view of the fact that the orders entered into effect even before appellants' arguments were heard, the honorable court is hereby requested to schedule an urgent hearing in the petition, and if possible, before the date scheduled for the hearings in the appeals.

The grounds for the petition are as follows:

1. The petitioner is a human rights association which has taken upon itself to assist, among other things, Palestinians, victims of cruelty or deprivation by state authorities, including by protecting their rights before the authorities, either in its own name as a public petitioner or as counsel for persons whose rights have been violated. The affidavit of the Executive Director of HaMoked for the Defence of the Individual (**HaMoked**) is attached and marked **P/1**.

2. As aforesaid, on November 30, 2014 the respondent signed restraining orders against three Israeli residents of an Arabic origin. A copy of the orders is attached and marked **P/2** through **P/4**.
3. Appeals were filed, and on December 15, 2014, petitioner's counsel wrote to Captain Shindell of respondent's legal department and requested to schedule a date for the hearing of the appeals. A copy of said letter is attached and marked **P/5**.
4. On December 15, 2014, a letter was received from the office of respondent's legal advisor according to which a representative on his behalf was appointed to hear the appeals.
5. On December 16, 2014, petitioner's counsel was advised, by a telephone message which was left in his office, that the hearing was scheduled for December 22, 2014 around 10:00 and would be held at the offices of the Home Front Command in Ramla.
6. On the same day, December 16, 2014, following a discussion with the appellants, petitioner's counsel wrote to Captain Shindell and requested to arrange the presence of the three appellants in their hearings on December 22, 2014. A copy of said request is attached and marked **P/6**.
7. On December 17, 2014, as no response has been received to the letter concerning appellants' presence in their hearings, and following a failed telephone attempt, petitioner's counsel wrote again to Captain Shindell and clarified that "their presence in the hearing, when their movement within state territory is restricted, is a fundamental right."

A copy of said letter is attached and marked **P/7**.

8. A. On December 17, 2014, in the afternoon, petitioner's counsel was advised by telephone, that the hearings in the appeals were transferred to the "Ofar Camp". In said conversation petitioner's counsel requested that interpretation services would be provided. We were advised that there was no intention to provide interpretation; We were further advised that I would be able to act as an interpreter.

B. Following said conversation, petitioner's counsel wrote once again to Captain Shindell and, *inter alia*, noted: "... An authority which wishes to restrict the fundamental rights of a resident must make sure that said resident understands the proceeding. It is not our responsibility to provide an interpreter."

A copy of said letter is attached and marked **P/8**.

9. Today, December 18, 2014, we were informed by respondent's legal department of the hearing dates and, in section 3 of the letter, reference was made to our request to provide interpretation services. And it was so stated:

"3. Furthermore, and as I informed you in our telephone conversation, **no interpretation services will be rendered during the hearing.**" (emphasis appears in the original, A.R.)

A copy of said response is attached and marked **P/9**.

Hence this petition.

10. In AAA 8675/11 **Maspan Mizmor Tadesa v. State of Israel** it was unequivocally clarified by the honorable court that in an interview of a refugee the services of a trained interpreter should be used, if necessary. In said judgment, in section 13 thereof, the words of this honorable court in CrimApp 8974/07 **Lin v. State of Israel**, were cited, where it was held that:

"The interpretation of the legal proceedings constitutes an important layer in the requirement to maintain due process" and that "the failure to provide interpretation, including the failure to provide effective interpretation, violates the fundamental rights of the litigant..."

In addition, it was also held that –

"Ostensibly, it is difficult to equate the procedural rights of an interrogee or a person against whom criminal charges were brought, with those afforded to an individual whose application is heard within the framework of an administrative proceeding. Since the first one is fighting for his innocence and liberty, and should his procedural rights be violated, he may find himself behind bars at no fault on his part. However, in view of the severe consequences which may derive from the an erroneous decision in a request for asylum – sending a person back to a place in which he is being persecuted – it seems that the above words are relevant to our case, *mutatis mutandis*, and the obligation to provide appropriate interpretation cannot be in dispute."

The case at hand does not concern a transfer of the appellants to "a place in which they are persecuted" but there is no doubt that a fundamental right of each one of them is violated and as far as the petitioner is concerned, the respondent must not only make sure that a hearing is held in their matter but that they also understand what is said in that hearing.

11. Therefore, the honorable court is requested to issue an order as requested, to schedule a hearing in the petition as soon as possible so that the hearings would not have to be postponed – in view of the fact that the orders have already been signed in the end of November – and after hearing the parties' arguments make it absolute.

Jerusalem, today December 18, 2014.

(signed)

Andre Rosenthal, Adv.
Counsel to the petitioner