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At the Supreme Court
Sitting as the High Court of Justice

H CJ 8092/20
Hearing Scheduled for August 2, 2021

In the matter of:

1. **Anonymous**
2. **Anonymous**
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA 580163517**
All represented by counsel, Adv. Nadia Daqqa
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Military Commander in the Occupied Territories**
2. **Military Advocate General**
3. **Israel Police**
Represented by the State Attorney's Office,
Ministry of Justice
29 Salah a-Din Street, Jerusalem
Tel: 073-3925590; Fax: 02-6467011

The Respondents

Notice on behalf of the Respondents

1. In view of the upcoming hearing in the above captioned petition and for the purpose of presenting an up-to-date factual and legal picture before the honorable court, the Respondents (hereinafter also: the **State**) hereby respectfully submit the following notice.
2. As recalled, the response on behalf of the Respondents dated May 2, 2021, noted as follows (paragraph 39):

"Therefore it was decided by the Central Command to terminate the Pilot and formulate an operational procedure defining the

circumstances and manner in which a minor may be summoned by phone in lieu of a pre-planned arrest. Accordingly, the relevant IDF bodies are currently working, in cooperation with the Israel Police and the security bodies, on the formulation of a procedure which shall permanently regulate the matter. It should be noted that the administrative work on the matter is expected to be concluded within the next few months [emphases appear in the original – the undersigned]"

3. Following the above, the State hereby informs that indeed, in recent days, a procedure has been approved by the Central Command and the Shai District concerning the summoning of suspected minors prior to a pre-planned arrest in the Judea and Samaria area.

A photocopy of the non-classified core procedure is attached and marked **RS/1**.

If the honorable court so directs and with Petitioners' consent, the State shall present for the review of the honorable court the classified procedure, whose unclassified core is attached hereto as aforesaid, in closed doors and *ex parte*.

4. Since the remedies requested in the above-captioned petition are general – principled remedies (and no individual remedy is requested in the matter of any one petitioner or another), the State is of the opinion that a development has currently occurred as a result of which it is doubtful whether the above-captioned petition is relevant in its current form; therefore, and for the purpose of procedural efficiency, it is proposed that in lieu of the hearing which is scheduled for August 2, 2021, the Petitioners shall be granted leave to amend their petition, the State shall respond to the amended petition, and consequently the court shall determine how to proceed with the matter.

It should be emphasized that the State holds the position that notwithstanding the new procedure, the petition should have been dismissed, all as specified in its Response, and particularly as stated in paragraph 82 of the Response ("As aforesaid, these days the relevant IDF bodies together with Israel Police and the security bodies, are working to formulate a procedure; and the administrative work on the matter is expected to be concluded within the next few months. However, it should be reminded and emphasized that it is Respondents' position that notwithstanding the above administrative work there are no legal grounds in the case at hand for judicial intervention, in the absence of a positive obligation pursuant to the law governing the area to act as requested in the petition, and the petition should be dismissed"); however, as aforesaid, for the pure purpose of procedural efficiency, the course of action specified above is proposed.

5. Since the procedure was executed in the last few days, the State saw fit to update the honorable court of same as soon as possible and before the hearing scheduled in the petition takes place. In addition, the State had contacted Petitioners' counsel on July 28, 2021 and transferred for her review the unclassified core procedure; Petitioners' counsel has cordially conveyed her consent for the mere submission of this motion. As to the procedural course of action proposed above, Petitioners' counsel stated as follows: "Petitioners' counsel strongly objects to the procedural course of action proposed above.

It is a classified procedure that only a paraphrase thereof is disclosed to the Petitioners at Respondents' choice. Hence the need for the procedure to be scrutinized by the honorable court. In addition the Petitioners wish to comment on the paraphrase presented by the Respondent, in the hearing".

Today, 20 Av 5781
July 29, 2021

(-)

Avi Milikovski, Adv.
High Court Affairs Commissioner
State Attorney's Office

Israel Defence Force
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Legal Advisor Office
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17 Av 5781
July 26 2021



**Re: Publication of the Core Procedure
Summoning Suspected Minors before a pre-planned Arrest**

The security situation which has existed in the Judea and Samaria area for many years is complex and is characterized by a wide-ranging phenomenon of life threatening terror attacks against the security of the state of Israel and the area which are committed, *inter alia*, by minors.

In view of the security situation, it is incumbent on the military commander to take different enforcement actions, including arrests of individuals suspected of offenses against the law which governs the area. These actions must be taken, as the case may be, against adults as well as against minors.

Despite the fact that there is no legal obligation to do so, the IDF acts for operational reasons as well for reasons arising from the desire to minimize the harm inflicted on the civilian population, and for reasons pertaining to the child's best interests, to establish operational procedures enabling summons of suspected minors when the interrogation needs, the operational circumstances and the risk to the security of the area allow it.

Concurrently with the Petition which had been filed with the High Court (HCJ 8092/20 Ahmed Bajawi et al., v. Commander of IDF Forces in the Judea and Samaria Area), the administrative work of the relevant security bodies formulating an internal classified operational procedure defining the circumstances and manner in which suspected minors may be summoned *in lieu* of their pre-planned arrest, was concluded. Since the procedure is classified, the following are the core provisions concerning the "summoning of suspected minors before a pre-planned arrest" the publication of which was authorized by the operating bodies and information security bodies.

The Core Procedure on the "Summoning of Suspected Minors before a Pre-Planned Arrest"

Background

1. In view of the numerous criminal and terror attacks committed by Palestinian minors in the Judea and Samaria area, the security forces are required to arrest minors in order to conduct interrogations and legal proceedings in their matter for the purpose of bringing them to justice and thwarting criminal and terror actions in general.

2. Simultaneously, in recent years substantial changes have occurred with respect to the rights of minors in the framework of the criminal proceeding in the area. Accordingly, minors should be treated with great sensitivity and their rights should be meticulously protected.
3. Against this backdrop, in appropriate cases the possibility shall be examined to deliver summons to minors suspected of having committed criminal offenses requiring them to appear for an interrogation, when the investigation is conducted by Israel Police.
4. Over the last few years a pilot was conducted by the Judea and Samaria Division summoning suspected minors against whom there were grounds for detention, prior to their pre-planned arrest. This procedure is the product of the pilot which was conducted and of the lessons learnt therefrom.
5. The following is the procedure for summoning minors who are suspected of having committed offenses and against whom there are grounds for detention, as a preliminary act for their pre-planned arrest by the security forces.

The Purpose of the Procedure

6. To define the manner by which suspected minors are arrested in the Judea and Samaria Area, balancing between the needs of the interrogation and the security needs on the one hand, and the sensitivity which exists in pre-planned arrests of minors, on the other.

The Method

7. In any case involving a minor who is wanted for interrogation by Israel Police, the officer handling the case should ask themselves whether the pre-planned arrest of the minor is required or whether they can be summoned for an interrogation.
8. Generally, in the following events a pre-planned arrest may be carried out without prior telephone summons:
 - (1) Where the minor's house should be searched for the purpose of locating physical evidence;
 - (2) Where there is an actual concern that the suspected minor may escape;
 - (3) Where there is a concern that the prior summons may lead to obstruction of the investigation;
 - (4) Where several suspects are involved and it can be estimated that summoning one of the involved suspects shall jeopardize the possibility to arrest the others;
 - (5) Where the minor poses an immediate threat.
9. If the officer found that the minor can be summoned by telephone, they shall be summoned as specified in the procedure.
10. The summons shall be made by Israel Police, by a person speaking the Arabic language. In the beginning of the conversation it should be ascertained that the conversation is made with the minor's parents, the above without derogating from the provisions of the law allowing refraining from giving notice in the events set forth in the law. If contact may not be established with the minor's parents, the conversation should be made with a member of the minor's nuclear family (brother or sister) who is an adult (above 18 years

of age). If a family member as aforesaid cannot be reached and in the absence of any other alternative, the conversation shall be made with the suspected minor himself. If the conversation was made with the suspect minor himself, their parents should be contacted to inform them of the summons.

11. If the minor failed to appear to the interrogation on the required date and time and grounds for detention still exist in their matter, they can be arrested by a pre-planned arrest.

Non-Applicability

12. The procedure shall not apply in the following events:
 - (1) Minors who are wanted for interrogation by bodies other than Israel Police;
 - (2) Serious offenses;
 - (3) Suspected minors with criminal record in serious offenses.