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At the Supreme Court
Sitting as the High Court of Justice

H CJ 8092/20

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

Updating Notice on behalf of the Respondents

1. According to the decision of the honorable court dated August 2, 2021, an updating notice is hereby submitted on behalf of the Respondents.
2. As recalled, in the framework of the above captioned petition the Petitioners requested the honorable court to instruct the Respondents to appear and show cause:
 - a. Why they should not arrange the practice of arresting Palestinian minors in the occupied territories such that the summoning of minors through their parents or legal guardian in charge of them shall be the primary method, while night arrests shall be reserved for particularly exceptional and severe cases.

- b. Why detention practices and procedures of minors in the occupied territories should not be changed according to the principle of the child's best interest and in the spirit of the Youth Law (Trial, Punishment and Modes of Treatment)(Amendment No. 14), 5768-2008 (hereinafter: the **Youth Law**).
3. In the framework of their preliminary response, the Respondents expressed their position whereby, in a nutshell, the petition should be dismissed in the absence of legal justification for the honorable court's intervention in the practice of arresting Palestinian minors in the Judea and Samaria area (hereinafter also: the "**Area**" or "**Judea and Samaria**").

In this context, it was clarified that **there was no obligation under the local law** which applied to Judea and Samaria, under the general provisions of the law or pursuant to the rules of international customary law relevant to the case at hand, to **summon minors suspected of arrestable severe criminal offenses, in lieu of arresting them and bringing them for an interrogation while under arrest. In addition, it was argued that there was no obligation under the law as aforesaid, to refrain from arresting minors at night.**

It was further noted in the preliminary response that despite the fact that there was no obligation under the law, the Respondents have commenced in 2014 to implement a pilot whose purpose was to try summoning for interrogation minors suspected of certain offenses, in lieu of their pre-planned arrest, the above for operational reasons, for the purpose of minimizing friction with the civilian population and for reasons concerning the child's best interest; and subject to different considerations including the needs of the interrogation, operational necessity and the security of the Area.

The Respondents have further noted in their response that the relevant IDF bodies, together with Israel Police and security bodies, were working on the formulation of a procedure which shall regulate the matter.

4. On July 29, 2021, the Respondents informed that IDF Central Command and Israel Police Shai District approved a procedure on the summoning suspected minors before a pre-planned arrest in Judea and Samaria (hereinafter also: the "**Procedure**"). The Respondents attached to their notice dated July 29, 2021 an open paraphrase of said Procedure. It was subsequently noted in the hearing which was held on August 2, 2021 that the Procedure had been signed and validated on August 1, 2021.
5. After the hearing in the Petition which was held on August 2, 2021, the following decision was given by the honorable court:

"At this stage and in view of the new procedure which entered into force as of yesterday, August 1, 2021, the Petitioners request to reserve their arguments with respect to said procedure and to be allowed to raise them in the framework of an amended petition which they shall consider filing after experience is accumulated on scene regarding the manner by which the above procedure is implemented and after an

updating notice in that regard is submitted by the Respondents. Respondents' counsel does not object thereto. Therefore, we direct that the Respondents file by February 1, 2022 an updating notice concerning the implementation of the new procedure and the data concerning the numerical relation between the summoning of minors for interrogation in ways other than by night arrest and night arrests in circumstances which are permitted according to the procedure. After the updating notice is submitted the Petitioners shall be entitled, if they deem proper, to file an amended and updated petition within 30 additional days, and thereafter a decision shall be made as to the manner by which the petition shall be handled."

6. Accordingly, we wish to provide the data which were collected as of the commencement of September 2021 until the end of December 2021, regarding the implementation of the new procedure.
7. Between the months September 2021 – December 2021, 34 Palestinian minors in the area were brought to Israel Police for interrogation, of whom – six minors were summoned by phone for interrogation with Israel Police according to the provisions of the Procedure which was signed on August 1, 2021, and 28 minors were brought to Israel Police for interrogation after a pre-planned arrest, according to the provisions of section 8 of the "Unclassified Core Procedure". Namely, with respect to 28 minors a positive decision was made to use a pre-planned arrest for the purpose of bringing them to Israel Police for interrogation, in one or more of the listed circumstances:
 - (1) Where the minor's house should be search 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 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.

To complete the picture it should be noted that the above data **do not include** Palestinian minors who were arrested "red handed" in Judea and Samaria by the security forces – namely – minors who had committed arrestable offenses at the presence of the security forces or "shortly" before their arrest, since these cases deviate from the subject matter of the Procedure and from the subject matter of this Petition, dealing with **pre-planned arrests** (and see, for instance, paragraphs 120, 143, 146 and more of the Preliminary Response).

A photocopy of the "Core Procedure" was attached to the updating notice which was submitted on behalf of the State on July 29, 2021 and marked **RS/1**.

8. For the sake of good order it should be noted that the segmentation of the data relevant to this notice was made manually and required the investment of substantial resources by Israel Police. This investment was made given the initial stages of the implementation of the Procedure; to ascertain that the implementation of the Procedure proceeds as required taking into consideration the decision of the honorable court dated August 2, 2021. To err on the side of caution it should be clarified that said collection of data does not obligate the Police to act in the future in the precise same manner in which it collected factual infrastructure for the purpose of submitting this notice, considering the extent of the resources that Israel Police shall be required to invest in segmentation of this sort.
9. In view of all of the above and considering the fact that the remedies requested in the above captioned petition are general (rather than an individual remedy in the case of a concrete petitioner), the State is of the opinion that the petition has been exhausted. This position is reinforced by the data from the scene showing that the Procedure is properly implemented. It emerges from said data that in the six months which passed since the effective date of the Procedure, pre-planned arrests of minors in the appropriate cases were carried out only after an individual and positive decision had been made, taking into consideration the circumstances specified in the Procedure justifying such an action.
10. Before we conclude, it should be reminded that in view of the serious offenses committed by minors in Judea and Samaria, the investigative and operational need requires, in the vast majority of the cases, the suspect's pre-planned arrest without prior notice. In these circumstances, the relation between the number of minors who were arrested by pre-planned arrests and the number of minors who were summoned for interrogation does not lead to the conclusion that the Procedure is implemented in an ostensibly deficient manner. Anyway, if the Petitioners have concrete claims concerning the provisions of the Procedure or its actual implementation, they can contact the Respondents on this matter; and after a proper exhaustion of remedies they can apply to the competent court, if they have legal grounds to do so.
11. It should be reminded that the State holds the position that notwithstanding the new Procedure, the Petition should be dismissed, all as specified in its preliminary response to the Petition (See, *inter alia*, paragraph 82 of the response). To err on the side of caution, the State refers once again to the entire content of its above response.
12. Parenthetically and just to complete the picture, it should be noted that on November 25, 2021 a petition was filed whereby the honorable court was requested to hold that a person should not be arrested according to the Security Instructions [Consolidated Version] (Judea and Samaria) [No. 1651] Order, 5770-2009, without a judicial warrant according to Section 30 of the Security Instructions Order, other than in circumstances whereby an application for a judicial arrest warrant shall thwart the arrest. The above is brought as aforesaid just to complete the picture.
13. This response is supported by the affidavit of Mr. Yuval Zizi Investigations and Intelligence Officer, Shai District, Israel Police.

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