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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**H CJ 70724-08-04**

1. \_\_\_\_\_ al-'Ajur, ID ----
2. \_\_\_\_\_ al-'Ajur, ID ---- (minor)

Represented by counsel, Adv. Nadine Abu Arafah et al.  
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**The Petitioners**

v.

1. **Israel Defense Forces**
2. **Chief Military Police Officer**
3. **Commissioner of Israel Prison Service**
4. **National Security Council**
5. **Attorney General**
6. **Military Advocate General**

Represented by the State Attorney's Office  
Ministry of Justice  
Telephone: 073-3925084; Fax: 02-6467011

**The Respondents**

**Respondents' Reply to Petitioners' Notice**

1. According to the decision of the honorable Justice R. Ronen dated September 16, 2024, and the extension which was given, the Respondents hereby respectfully submit their reply to Petitioners' notice, as follows.
2. As recalled, the Petition at hand captioned as a "Petition for writ of Habeas Corpus" concerns Petitioners' request that the Honorable Court issues an *order nisi* directed at the Respondents ordering them as follows:
  - a. Inform the families of the Petitioners, a father and his **five years old** daughter, Gaza Strip residents, who were held by the military as of March 24, 2024, when the military burst into the family's home, and whose whereabouts and holding place since then are unknown; where they are held, who holds them and according to which law; to the extent they were released or transferred to another body – when, where and to

whom and what is known about their current whereabouts. Have both of them or either one of them passed away while held by the military; if this is the case when and in what circumstances; To the extent the Petitioners are no longer alive we wish to know where their bodies are held and by who. To the extent that the Petitioners are unlawfully held by an Israeli authority, **including, *inter alia*, in a detention facility which is not a declared detention facility**, the Honorable Court shall be requested to issue an order for their immediate release.

- b. Order the Respondents to check whether the Petitioners are held in an undeclared incarceration facility, since the cases in which people are arrested and held in undeclared incarceration facilities are increasing, and it seems that the answer "there is no indication of incarceration" arises from non-registration of detainees in undeclared incarceration facilities, as well as from non-registration in official facilities.
  - c. Decide once and for all which body is responsible for providing information about the holding place of the Petitioners and others in their condition; disclose the identity of the bodies holding information about the location in which the Petitioners and others in their condition are held.
3. It emerges from the Appendix which was attached to the petition that on July 23, 2024, approximately four months after the date of the alleged arrest, HaMoked sent an email message to the Incarceration Control Center's email address requesting to locate Petitioners' whereabouts and to coordinate a lawyer's visit for them as soon as possible, noting that the Petitioners were arrested in the Gaza Strip near Al-Shifa hospital in the presence of their family members who were requested to leave the place. It is alleged in the petition that said request was sent based on the family contacting HaMoked.
4. It also emerges from the petition and its appendices that one day after HaMoked had sent its above e-mail message to the Respondents, on July 24, 2024, a response was received from the military police stating that "[...] following an examination which had been conducted no indication of Petitioners' arrest or incarceration was found...".
5. On September 6, 2024 the Respondents have submitted their preliminary response stating that without derogating from any of the state's arguments concerning the matter, and without expressing any position with respect to future applications, while formulating a response to the petition an examination in Petitioners' matter was conducted, from which the following arises:

The military police officials informed that military police bodies have no indication of Petitioners' present or past arrest or incarceration by the military bodies.

The Respondents further update that Israel Prison Service officials informed that "In an examination conducted in the computerized system of Israel Prison Service in the framework of HCJ 70724-08-24

registration of the above was not found in the systems according to the details provided and therefore there is no indication of Petitioners' incarceration by the Israel Prison Service."

... It should be noted that in the response to the petition at hand which is captioned as a *Habeas Corpus* petition, the question of Petitioners' incarceration was examined by the military bodies and no indication was found of their present or past arrest or incarceration; and no indication was found of Petitioners' incarceration by the Israel Prison Service; therefore there can be no indication that the Petitioners died after they had been arrested by the military".

6. In addition, with respect to the second remedy requested in the petition, the Respondents noted that the basis for Petitioners' assumption that the IDF or state authorities were holding Gazan detainees in undeclared incarceration facilities was not clear, and the petition did not even try to substantiate this assumption, while as was clarified, these detainees are held according to the Israeli law, either according to the Unlawful Combatants Law or pursuant to criminal arrest warrants; and in general, they are initially held in military incarceration facilities while the need to continue holding them in custody is examined; and if there is a need to continue holding them in custody they are intended to be transferred to the facilities of the Israel Prison Service.

In addition the Respondents argued that in any event, with respect to these allegations, they were not included in the exhaustion of remedies letter sent by the Petitioner and that it justified the dismissal of these allegations *in limine*.

7. The Respondents hereby update, without derogating from any of the state's arguments on this matter, that in the course of formulating the reply at hand to the petition captioned "Petition for Writ of *Habeas Corpus*", an additional inquiry was conducted in Petitioners' matter from which the following arose.
8. Military Police officials informed that in an additional examination which was conducted no indication was found of Petitioners' arrest or incarceration by the military bodies, either in the past or in the present.
9. In addition, it was informed by the Israel Prison Service officials that "an additional examination conducted in the computerized system of the Israel Prison Service in the framework of HCJ 70724-08-24 no registration of the above was found in the systems according to the details provided and therefore there is no indication of Petitioners' incarceration by the Israel Prison Service."

A photocopy of Israel Prison Service notice dated October 8, 2024 is attached and marked **RS/1**.

10. It emerges from all of the above, in the framework of the responses to the petition at hand, captioned "Petition for Writ of *Habeas Corpus*" that the question of Petitioners' holding was examined twice by the military bodies and Israel Prison Service, and no indication that the Petitioners were held by them was found. Therefore there can be no indication

that the Petitioners died after they had been arrested by the military; the above examination which is conducted in the framework of "*Habeas Corpus*" petition is intended to check whether a person is held by these authorities and cannot give answers to other questions raised by the Petitioners in their notice, which do not form part of the "*Habeas Corpus*" petition.

11. In these circumstances, the requested remedies in the petition are irrelevant; on the basis of the aforementioned rule, the Respondents shall argue that the petition at hand should be dismissed.
12. For this matter see the recent judgment in HCJ 201610-08-24 **Hajaj v. Israel Defence Forces** (August 25, 2024) where it was held as follows:

"After we have examined the additional issues presented by petitioner's counsel – we found no reason to issue an order. In fact, the main issues which were raised in the petition have already received a proper answer from the Respondents in the preliminary response. Contrary to the argument of petitioner's counsel, we did not get the impression that their answer was vague. It should also be added that the additional issues raised by petitioner's counsel are of a general nature and deviate in part from the boundaries of the petition which was filed, as well as from the application which was made as part of the exhaustion of remedies prior to the filing of the petition – and therefore they should not be examined in the framework of the proceeding at hand. In view of the above, the petition at hand has exhausted itself.

In conclusion: the petition is dismissed. No order as to costs."

13. See also the proceedings referred to by the Petitioners in section 5 of their notice. In all of these cases judgments were given dismissing the petitions in the absence of indication of the petitioners' arrest or incarceration: HCJ 6092/24 **Abu Ras v. Israel Defence Forces**; HCJ 5474/24 **Laban v. Israel Defence Forces** (September 2, 2024); HCJ 3549/24 **Dardsawi v. Israel Defence Forces** (May 2, 2024); HCJ 5953/24 **al-Muqayed v. Israel Defence Forces** (July 31, 2024); HCJ 2656/24 **'Awadallah v. Israel Defence Forces** (July 3, 2024).
14. In these circumstances, the Respondents shall reiterate their position that in these circumstances the remedies requested in the petition are irrelevant; and on the basis of all of the aforesaid the Respondents shall argue that the petition at hand should be dismissed.
15. The facts specified in this Reply concerning the Military Police shall be supported by the affidavit of Major Inbar Goldner, Head of Incarceration Department, who read and confirmed the above facts but for technical reasons was unable to sign an affidavit prior to the submission of the Reply.

Today, 8 Tishrei, 5785  
October 10, 2024

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**Matan Steinbuch, Adv.**  
**Deputy in the HCJ Department**  
**State Attorney's Office**