

Translation Disclaimer: The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Hebrew language. In the event of any discrepancies between the English translation and the Hebrew original, the Hebrew original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Hebrew original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 10327/02
HCJ 8696/02

In the matter of:

- 1. B. Jadala**
- 2. M. J.**
- 3. HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger (Reg. Assoc.)**

all represented by attorneys Lea Tsemel
and/or Yossi Wolfson of HaMoked:
Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners in HCJ 10327/02

- 1. _____ Shahin**
- 2. HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger**

both represented by attorneys Tareq
Ibrahim and/or Yossi Wolfson and/or
Hisham Shabaita and/or Adi Landau
and/or Tamir Blank of HaMoked: Center
for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem
Tel: 02-6283555; Fax: 02-6276317

The Petitioners in HCJ 8696/02

v.

Commander of the IDF forces in the West Bank

by the State Attorney's Office
Ministry of Justice, Jerusalem

The Respondent

Response on behalf of the Respondent

The Respondent respectfully submits his response, as follows:

1. On 2 April 2003, this Honorable Court issued an order nisi directing the Respondents to show cause:

In HCJ 8696/02 –

Why he does not inform the family of Petitioner 1 as to the lot that befell him; if he is being held by him or by someone on his behalf; where he is being held and pursuant to which law; and if he was released and transferred to another official, details relating thereto.

In HCJ 10327/02 –

Why he does not inform the families of Petitioners 1 and 2 as to the lot that befell Petitioners 1 and 2: if they are being held by him or by someone on his behalf; where they are being held and pursuant to which law; and if they were released and transferred to another official, details relating thereto.

2. As regards HCJ 8696/02 –

The Petitioner was detained on 4 October 2002 for twelve days pursuant to Order Regarding Detention during Hostilities (Temporary Order) (Judea and Samaria) (No. 1500), 5762 – 2002 (hereinafter: Order No. 1500). On 15 October 2002, the Petitioner's detention was extended for an additional fifteen days. On 29 October 2002, it was extended for an additional twenty days. On 17 November, an indictment was filed against the Petitioner, and his detention was extended until the end of the judicial proceedings against him.

From 9-16 October 2002, the Petitioner was held in Facility 1391 (hereinafter also: the facility). From 16 – 27 October 2002, the Petitioner was kept in the detention facility of the Rosh Pina police. From 27 October to 12 November 2002, the Petitioner stayed in the Kishon detention facility, and from 12 November to the present, he has been held in the Hadarim detention facility.

3. As regards HCJ 10327/02 –

Petitioner 1 was detained on 22 November 2002 for twelve days pursuant to Order No. 1500. On 3 December 2002, his detention was extended for fifteen days. On 23 January 2003, an administrative detention order was issued against Petitioner 1. In the course of judicial review of the administrative detention order, the military judge reduced the period of administrative detention. ***The Petitioner was released on 20 February 2003.***

From 22-24 November 2002, the Petitioner stayed in the Petach-Tikva detention facility. From 24 November to 9 December 2002, the Petitioner stayed in Facility 1391. From 9-14 December 2002, the Petitioner stayed in the Kishon detention facility. From 14-23 December 2002, the Petitioner stayed in Megiddo. From 24 December to 6 January 2003, the Petitioner stayed in Facility 1391. From 6-8 January 2003, the Petitioner stayed in the Kishon detention facility. From 8-15 January 2003, the Petitioner stayed in Facility 1391, after which he was transferred to the Kishon detention facility, where he remained until his release.

Petitioner 2 was detained on 22 November 2002 for twelve days pursuant to Order No. 1500. On 3 December 2002, his detention was extended for twenty-two days. On 24 December 2002, his detention was again extended, for fifteen days. His detention was further extended on 7 January 2003 for twenty-two days, and on 14 January 2003, an indictment was filed against the Petitioner and an order was issued to detain him until the end of the judicial proceedings against him.

From 24 November 2002 to 27 January 2003, the Petitioner stayed in Facility 1391. On 27 January 2003, he was transferred to the Kishon detention facility. The Petitioner is currently being held in the Eshel prison.

4. It should be noted that the Respondent provided the above information to the Petitioners some time ago.
5. **The above indicates that *the orders to show cause issued by this Honorable Court are moot: the Petitioners were given a complete breakdown on the detention of the Petitioners, on where they were held and are currently being held, and pursuant to which law. Therefore, the petition should be denied.***
6. The Petitioners contended that, after receiving the Respondent's responses, the petition was not moot because, they argue, it is necessary to hear, in the context of this petition, in a general manner and as to the principles involved, matters regarding Facility 1391.

In response, it should first be mentioned that the said matters are inconsistent with the relief sought in the petition and with the text of the order nisi that was subsequently issued. For this reason alone, the request should be denied.

Second, as stated above, the Petitioners were held in Facility 1391 for no more than a number of days, and some time has passed since they were transferred to other detention facilities and prisons. In these circumstances, by making its request, the Petitioners seek to have the court conduct a general hearing, without any concrete reasons to justify it.

It is common knowledge that, “**the main function placed on the court is to decide disputes, and there is usually no dispute unless there is a concrete factual foundation**” (see HCJ 2581/91, *Muraz-Adnan Salhat v. Government of Israel*, *Piskei Din* 47 (4) 837, 841).

There is, of course, no absolute rule that prevents the court from handling a legal issue where a factual foundation does not exist; however, when a subject can arise incidental to the handling of a particular dispute, the court is inclined not to hear the petition (*Ibid.*)

The state’s position is that it would be improper for the court to hear our matter on a general question, in the absence of concrete factual circumstances that require hearing by the court. Whereas the present question can arise incidental to an actual detention, it is proper to hear it when all the relevant factual circumstances are before the court.

In light of the above, for this reason too, the Honorable Court is requested to deny the Petitioners’ application.

7. For the sake of caution, we shall also respond to the general question. We shall first provide the relevant factual background and then relate to the legal arguments raised by the Petitioners in this context.

Factual background

8. Facility 1391 is located within a secret army base that defence officials use for various classified needs. This is the reason that the location of the base is a secret. For reasons of state security, it is not possible to expose details in this public response, but there is nothing, of course, that prevents us from providing the details to the court *ex parte*, if the Petitioners consent.

9. In addition to its said primary purpose, the army base also serves as a detention facility.

The detention facility does not serve as a detention facility in the conventional sense, but is intended, as a rule, for special cases, and for detainees who are not residents of the territories.

10. It should be emphasized that, over the past five years (except for the period of time mentioned in Section 11 below), only a few detainees stayed in the facility.

11. As a result of the shortage of detention sites following Operation Defensive Shield, this facility was used, *temporarily*, by the General Security Service, and detainees who resided in the territories were held there. The General Security Service interrogated these individuals for short periods of time.

However, as this Honorable Court was informed in the response submitted prior to the hearing on the application for an order nisi, the factual situation has changed recently, and it was decided that the General Security Service no longer needs to use this facility. Thus, **as far back as a number of months ago, the GSS ceased to use the facility as a detention facility, and the detainees who were held there were removed, at which time *the facility reverted to its original purpose.***

12. For many weeks, detainees were not held in Facility 1391. Now, a few detainees are held in the facility.

13. The Minister of Defence declared the detention facility a military prison pursuant to his authority under Section 505 of the Military Justice Law, 5715 – 1955.

The declaration is attached hereto and marked R/1.

14. We also wish to mention that the facility meets all the standards of a military prison.

The detention cells are ventilated, and, as a rule, there is one detainee to a cell (each cell is 4.5 sq. m in size).

15. Whenever detainees are held in the facility, the condition of the facility and the conditions in which detainees are held there are checked, in accordance with the practice in other military prisons.

It should be mentioned that, in addition to the regular checks conducted by IDF officials, the facility is also checked by other government authorities. For example, recently, in early March 2003, the head of the special tasks division of the State Attorney's Office, Ms. Talia Sasson, visited the facility.

16. At times in which detainees are kept in the facility, the detainees are provided the same conditions provided in other military prisons.

17. The detainees receive three meals a day.

The detainees receive food that comes from the facility's kitchen, which serves the soldiers situated in the facility.

The food is varied and of good quality, and is given in quantities suitable for maintaining the health of the detainees.

At least one hot meal is served daily.

At breakfast and dinner, the detainees receive hot drinks.

18. Every detainee in the facility receives personal items that include clean clothes, bedding, a towel, socks, slippers, mattress, blankets, bath soap, and toilet paper.

Once a week, the detainee receives a new set of clothes; bedding and towels are changed according to need.

Blankets are changed once a month or according to need.

Once a day, the detainees are allowed to shower. Shaving and haircuts are provided according to need.

The detainees are given cleaning materials to keep the detention cells and bathrooms clean, as is customary in all prisons.

19. A medic is present in the facility twenty-four hours a day. The medic checks each detainee daily (the examination includes a check of blood pressure, temperature, and weight).

A physician examines every detainee once a week.

Every detainee who complains about a medical problem is examined by a physician as soon as possible, and, where necessary, the detainee is provided medical treatment, either inside or outside the facility.

It should be mentioned that the facility has an infirmary equipped with medications and medical equipment, and it has procedures for the orderly transfer of emergency cases to hospital.

Checks on the medical and sanitary conditions are conducted weekly.

20. Subject to interrogation needs, detainees are allowed to send and receive letters.

21. It should be mentioned that notification of the detention of detainees held in the facility is delivered to the relevant authorities in accordance with law. In addition, a control center of IDF prison facilities (hereinafter: the Control Center) was established for the specific purpose of providing everyone who requests information regarding a detainee in the facility of the fact that the person is a detainee in Facility 1391 (the Control Center was established following malfunctions that had occurred in the past). Also, the Control Center provides a clear address for requests and correspondence regarding the detainee's case.

22. We wish to emphasize that, although the location of the facility is classified, the detainees' rights are safeguarded, both as regards the conditions of the detention and as regards his meeting with counsel and visits by outsiders, whether by relatives or the Red Cross (in cases in which there are no grounds to prevent such visit), for which the detainees are transferred outside the facility for the purpose of meeting with counsel or with visitors.

23. Thus, ***detainees in Facility 1391 are provided conditions of detention like in all other military prisons, including the possibility of meeting with counsel (where reason does not exist to prevent such meeting) and including the sending and***

receiving of letters and of receiving visits from their relatives and from the Red Cross (where there is no security reasons or interrogation need to prevent it). *Relatives of the detainees are given a clear address for the purpose of obtaining information, and to submit requests and file applications, including an application to allow them to receive visitors.*

The fact is that the facility whose location is classified does not derogate from the rights of detainees held there.

Response to the Petitioners' contentions

24. The Petitioners argue that the failure to provide information on the physical location of the house of detention violates the hearing rights of the detainee and the psychological needs of their families, and is inconsistent with the provisions of Section 78A(b) of the Security Regulations (Amendment No. 53) (Judea and Samaria) (No. 1220), 5748 – 1988 (hereinafter: the Order).

25. Section 78A(b) of the Order states:

Where a person is detained, information on his detention and the place where he is located will be provided without delay to his relative, unless the detainee requests that the said notification not be given.

26. The purpose of the duty to provide the notification set forth in Section 78A(b) of the Order is to inform the detainee's relatives as to the lot that befell their relative, so that detainees do not disappear, and also to supply them with information that will enable them to assist him in protecting his rights.

In H CJ 670/89, *Musa Yunis Muhammad Odeh v. Commander of IDF Forces, Piskei Din* 43 (4) 515, the court stated:

The duty of giving this notification results from the fundamental right given to a person lawfully detained by the competent authorities that they inform his relatives of the fact of his detention and the place where he is being held, so that they will know the lot that befell their detained relative and how it is possible to provide him with the necessary assistance to safeguard his liberty. This right is a natural right, and derives from human dignity and general principles of justice, and is given to both the detainee himself and to his relatives.” (emphasis added) (see Paragraph

3)

27. From the moment that the notification of the detention of a person is given to his relative, and he is informed *of the particular detention facility in which he is held*, and is given a *clear address* to receive letters and request, including requests for visits, and in the matter of meeting with counsel, *the purpose of the duty of giving notification on the detention is met and the duty set forth in Section 78A(b) of the Order is fulfilled.*

Contrary to the argument raised by the Petitioners, the detainee and his relatives have not been harmed in any way in the present cases, for **they are not denied any right, to which they would have been entitled, had the detainee been held in another military prison.**

28. As long as the relatives of the detainee are informed of his detention, and they are informed where he is being held, and are given a clear address for making requests in diverse matters, including visits and meeting with counsel, there is no significance in providing information on where the facility is physically located.

The rights of the detainees held in Facility 1391 and the rights of their families are not harmed in any way, even in the instance in which the physical location of the facility is not known.

29. We repeat and emphasize that the fact that the location of the facility is classified does not derogate from the detainee's rights, also as regards delivery of notification of the detention and of the detention facility in which the detainee is held, as required by law, and as is customarily practiced in regard to detainees in other houses of detention; and also as regards to meeting with counsel and receiving visits, either of relatives or of the Red Cross (in cases in which there is no reason to prevent such visits), for detainees are transferred from the facility to meet with counsel and to meet with visitors.

It should further be emphasized that an individual who contacts the Control Center regarding a detainee in Facility 1391 receives the complete information from the Control Center, as well as a clear address for directing requests, applications, and letters.

30. The Petitioners further argue that the physical location of the detention facility cannot be allowed to remain secret, for control checks would then be impossible.

In response, it should be said, first, that the purpose of Section 78A of the Order is, as stated, to ensure that individuals do not disappear and that their relatives know about their detention and that they have an address to obtain information about the detainee and to maintain contact with him, so that that they can provide assistance in protecting his rights.

There is no connection between this purpose and the need to ensure that the conditions in the houses of detention comply with the relevant requirements of law.

We should add that responsibility for maintaining proper conditions in the houses of detention lies with the official with authority for declaring the house of detention, and not with the relatives of the detainee.

Insofar as military prisons are involved, the competent official is the Minister of Defence, and it is his duty to ensure that the conditions in the houses of detention comply with the law.

Indeed, to ensure that the declared prisons comply with the law, regular checks are made in accordance with the internal procedures of the judge advocate's office.

Checks of this kind are held, of course, also in Facility 1391, when detainees are held in the facility.

31. Furthermore, every detainee is entitled, of course, to raise objections regarding the conditions of his detention and even to have the matter undergo judicial review, and, where necessary, there is nothing to prevent the facility from being opened to Israeli judges to conduct such review.

We make the further observation that the Petitioners raised no contentions regarding the detention conditions in Facility 1391.

32. Finally, we emphasize that **the purpose of Section 78A of the Order can be attained without revealing the physical location of the facility. Contrarily, the purpose for which the physical location of the facility remains secret will be completely thwarted when it is revealed, and raises the fear that grave harm will be done to state security.**

Because of the fear of harm to state security, it is not possible to provide further details in this public response, but there is nothing, of course, to prevent presentation of the details to the court, *ex parte*, if the Petitioners consent thereto.

33. In sum, the petition should be denied for the reason that the matter of the Petitioners, as to whom the information was requested, has been resolved, and the orders nisi issued by this Honorable Court became moot, in that the Petitioners received complete details on the detention of the detainees, where they were held and are being held, and pursuant to which law.

We have also seen that the application of the Petitioners to adjudicate, in a general manner and as to the principles involved, the matter of Facility 1391 is inconsistent with the relief requested in the petition and with the text of the order nisi that was

subsequently issued, nor is it justifiable substantively, there being no concrete factual foundation that requires the court to hear the matter.

Furthermore, delivery of notification of the detention that includes the fact of the detention and the name of the facility in which the detainee is being held, and which includes a clear address for the purpose of requests and applications, meets the requirements of the Order and fulfills its purpose.

34. To verify the general facts in this response, attached hereto are the affidavits of Captain Morris Hirsch, assistant legal advisor for Judea and Samaria, and of the person referred to as Adi, who is in charge of Facility 1391.

In light of the above, the Honorable Court is requested to deny the petition.

Today: 9 Sivan 5763

9 June 2003

[signed]

Udit Corinaldi-Sirkis

Senior Deputy A to the State's Attorney

AFFIDAVIT

I, referred to as “Adi” (complete details are on file at the HCJ Division of the State Attorney’s Office), after being warned that I must state the truth and that if I do not do so, I shall be subject to punishment set by statute, hereby declare as follows:

1. I am the individual in charge of Facility 1391.
2. This affidavit is made in support of the Respondent’s response in HCJ 10327/02 and HCJ 8696/02.
3. The facts set forth in the response relating to Facility 1391 are the truth to the best of my knowledge.

9 June 2003

Date

[signed]

Signature of the declarant

Confirmation

I the undersigned, Advocate Eyal Elad, hereby confirm that on 9 June 2003, the individual referred to as “Adi,” whom I personally know and whose details are on file in my office, appeared before me in Tel-Aviv, and after I warned him that he must state the truth and that if he does not do so, he will be subject to punishment by statute, confirmed the accuracy of his above affidavit and signed it.

Elad Eyal

Advocate

Lic. No. _____

Seal

[signed]

Signature

SEAL

Military Justice Order (Designation of Site as Military Prison),
5762 – 2002

Pursuant to my authority under Section 505 of the Military Justice Law, 5715 – 1955, I order as follows:

Facility 1391 is hereby designated a military prison.

16 April 2002
Date

[signed]
Binyamin Ben-Eliezer
Minister of Defence