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**The Jerusalem Supreme Court**

**HCJ 4410/08-D'**

Before:

**The Honorable Registrar Geula Levin**

The petitioners:

1. \_\_\_\_\_ **Mahmoud**
2. \_\_\_\_\_ **Mahmoud**
3. \_\_\_\_\_ **Mahmoud**
4. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger**

- Versus -

The respondents:

1. **The Central District State Attorney's Office**
2. **The State Attorney**
3. **The Attorney General**

**Application for a Costs Ruling**

**Decision**

Before me is an application for a costs order for the filing of the title petition.

1. In the petition the petitioners complained about the fact that they have been waiting for approximately five years for a clarification into the circumstances of the shooting incident that resulted in the death of the youth \_\_\_\_\_ Mahmoud (hereinafter: the "**deceased**"). The court was requested to instruct the respondents to decide without delay whether or not they were going to place those involved in the shooting incident on trial. Additionally, the respondents were requested to detail the reasons, the result of which a decision to commit to trial had been delayed for approximately a year and a half, despite the fact that the incident took place in 2003 and the police investigation was completed at the end of 2006. In the petition the petitioners detailed the applications that were made over the years to the state authorities, with the purpose of bringing about the investigation into the incident and a commission to trial. As they claim, they applied on 10 September, 2003 to the prosecutor of the central command with a demand that he open an investigation into the

incident. After a number of reminders they were given the reply (on 25 February, 2004) that the IDF soldiers were not involved in the incident and they were advised to apply to the Police Investigation Department at the Ministry of Justice. An application to this party was answered (on 27 May, 2005) with a reply that the issue was not within the jurisdiction of the Police Investigation Department and the complaint was forwarded to the officer of the District of Judea and Samaria Investigations Department of the Israel Police. This party informed the petitioners (on 30 March, 2005) that the file had already been transferred for a decision by the chief military prosecutor on 31 August, 2004. After much time had passed without a decision from the chief military prosecutor the petitioners applied to him directly (on 18 August, 2005). In the reply the petitioners were informed (on 26 September, 2005) that attempts to clarify the factual basis were unsuccessful and the file had been returned to the District of Judea and Samaria Investigations Department of the Israel Police. On 10 April, 2006 the petitioners were informed by the District of Judea and Samaria Police that the incident had been investigated subject to the various restrictions and to the bringing of the events to their attention so long after it had happened. Since the investigation into the case had not been completed the petitioners applied over the course of 2006 to the Commander of the District of Judea and Samaria Police, to the attorney general, and to the state attorney with a demand that the investigation into the case proceeds. On 31 December, 2006 the petitioners were informed by the District of Judea and Samaria Police that the investigation had been completed and that the case was transferred for the perusal and decision of the central district prosecutor. Over the course of 2007 the petitioners applied a number of times to the Central District State Attorney's Office requesting to receive an update with regards to a decision in the case. After a year and a half had passed and after receiving no substantive reply, (on 18 May, 2008) the title petition was filed.

2. In its preliminary reply to the petition, which the respondents filed on 12 June, 2008, the respondents announced that on 19 May, 2008, even before the whole issue of the petition became known to the Central District State Attorney's Office, a decision was passed in the matter of the investigation file. The decision that was passed was to close the file for lack of culpability of the involved parties to the incident. In its initial reply the respondents noted that in May 2007 after examining the file, the handling prosecutor gave his recommendation. In August 2007 the decision of the prosecutor in charge was also given and the file was transferred for the perusal of the central prosecutor, and the latter decided, as stated, on 19 May, 2008 to close the file.
3. In light of the respondents' reply the petitioners were requested to announce whether they would be prepared to withdraw the petition. The petitioners declared that they had decided to withdraw the petition but insisted that there be a costs order.

In its application for a costs order the petitioners claimed that the respondents were very slow-moving in the exercise of their authority. The filing of the petition was justified in their opinion, since a year and a half had passed since the file was transferred for a decision by respondent 1 without ever receiving from them any substantive reference to it. According to what is being claimed

a delay such as this in passing a decision affects the legal rights of the petitioners. The petitioners emphasized the rights to receive the investigation material in order to file an appeal on the decision to close the investigation file, and noted that with the passing of time, the prospects for the appeal to be upheld became lower.

4. The respondents, on the other hand are of the opinion that in the circumstances of the case there is no place for a costs order. The respondents emphasize in their response that before respondent 1 was even informed of the filing of the petition, the decision to close the file was passed. The filing of the petition was not the factor that motivated respondent 1 to pass its decision to close the file. While it is true that respondent 1's notice of its decision was delivered to the petitioners some time after that (on 12 June, 2008) already in its preliminary reply it was written that a decision had been passed and a letter of reply would be issued within a reasonable time. The respondents added that in the circumstances of the case, and taking into account the fact that we are dealing with a relatively complex investigation file, the time required for them to pass a decision on the file was not excessively long, certainly not that long to justify the filing of a petition. They note that it was decided to transfer this file, which is not a matter of routine, for further examination by the state prosecutor, and it was this that led, as it naturally would, to the lengthening of the handling period. Finally the respondents claim that the most recent application of the petitioners to the respondents was half a year before the filing of the petition. A brief clarification, even telephonic, before the filing of the petition, would most likely have rendered the need to file the petition superfluous and as such would have avoided the attendant outlay.
5. After I studied the application and the file in general while paying attention to the yardsticks that have been established in H CJ 842/93 **Al Nesarreh v. Minister of Construction and Housing**, *Piskei Din* 48(4) 217, I have reached the conclusion that the application should be partially upheld. The petitioners tried to receive relief from the respondents before applying to court. They applied to respondent 1 on a number of occasions with a request to update them with regard to the decisions passed in the investigation file. When no substantive reply to their applications was given, and in light of the long time that had passed since the events of the incident and since it was transferred to respondent 1, a petition was filed with the court. In this situation, one cannot say that the petition was premature and that it was not preceded by an exhaustion of proceedings. In the circumstances of the case, paying attention to the course of events and to the continuous proceedings prior to the transfer of the file to respondent 1, there was justification, from an objective viewpoint, in filing the petition. In this case the main point centers on the question whether from the petitioner's viewpoint, filing the petition was necessary, and not the question as to the casual link between the filing of the petition and the relief that would be received. Nonetheless, in determining the amount of costs one has to take into account the fact that the decision was passed without any connection to the filing of the petition and that the court proceeding was put to an end very quickly without any need to hold a hearing. Paying attention to the overall considerations and to the general circumstances of the case, the respondents shall pay the petitioners attorney fees in the amount of NIS 3,000.

This amount was determined even without proof on behalf of the petitioners with regard to their expenses. This amount shall bear linkage differentials and interest as prescribed by law, from the date of the decision until the day of actual payment.

Given today, 8 Tevet 5769 (4 January, 2009).

Geula Levin

Registrar