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At the Supreme Court
Sitting as the High Court of Justice

HCJ 2901/02

In the matter of:

- 1. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
- 2. The Association for Civil Rights in Israel**
- 3. B'Tselem – The Information Center for Human Rights in the Occupied Territories**
- 4. Physicians for Human Rights**

represented by attorneys Yossi Wolfson (Lic. No. 26174) and/or Tarek Ibrahim (Lic. No. 31081) and/or Adi Landau (Lic. No. 29189) and/or Hisham Shabaita (Lic. No. 18362) and/or Tamir Blank (Lic. No. 30016), 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

v.

Commander of the IDF Forces in the West Bank

Judea and Samaria Division Headquarters, Mil.
Post 01149, IDF
Tel: 02-9970200; Fax: 02-9970436

The Respondent

Petition for Order Nisi and Temporary Injunction

A petition is hereby filed for an order nisi directed to the Respondent ordering him to explain why he does not allow a meeting between attorneys, including attorneys on behalf of the petitioners, and the detainees in the list attached to the petition (Appendix P/1) and with other detainees in Ofer Camp, and why the sweeping order prohibiting meeting with the hundreds of detainees is not revoked, if such an order exists.

Petition for Temporary Injunction

The Honorable Court is further requested to issue a temporary injunction enjoining the Respondent from using physical forces against detainees in Ofer Camp in the course of their interrogation.

Petition for Urgent Hearing

The Honorable Court is requested to set an urgent date for the hearing, as early as the weekend. The request is made in light of the increasing reports of harm to the bodily integrity and human dignity of the detainees in the camp, including **torture by breaking fingers**, which reports require attorneys to meet with the detainees in order to protect their rights.

Grounds for the petition for a temporary injunction and urgent hearing

According to *reliable* information that reached B'Tselem *from an Israeli source in Ofer Camp*, the detainees in the camp are subject to **torture, including the breaking of fingers**, during interrogation. Testimonies given to human rights organizations from detainees who have been released from the camp indicate that severe physical violence is used against the detainees in the camp. A sweeping order prohibits all the detainees in Ofer Camp from meeting with an attorney.

A temporary injunction is necessary to ensure that the prohibition on meeting with an attorney will not be exploited to use violence and torture against the detainees, in violation of law and by taking advantage of their isolation from the outside world.

For this reason, urgent judicial intervention is necessary to deal with the actions taking place in Ofer Camp, and thus the request is made for an urgent hearing.

The grounds for the petition are as follows:

The facts

1. In the past week, hundreds of persons were detained in the West Bank, first in the area of Ramallah and then in other cities. More than one thousand persons have been detained. Most of the detainees are held in a detention camp that was opened in Ofer Camp, which is located between Givat Ze'ev and Bitunya.
2. Following the release of some of the detainees from the camp in recent days, human rights organizations began to receive reports about the conditions in the camp and about the severe violence against the detainees during the period of their arrest, while they were taken into detention, and in the camp itself.
3. The human rights organizations requested the Respondent to arrange the entry of attorneys and representatives of the organizations into the camp so that they could learn about the conditions in which the detainees were being held.

4. In her letter on behalf of Petitioner 2 of 4 April 2002 to the OC Central Command, Attorney Sharon Avraham-Weiss described the testimonies received by Petitioner 2, as follows:

When they got off the bus, one of the persons who gave a testimony slipped and fell in the mud. The soldiers went over to him, grabbed his legs, and dragged him back and forth in the mud. Then they put him up against the wall, pulled his hair, and banged his head into the wall. Later, the soldiers ordered the detainees to sit down and get up, time after time. Then the detainees were taken into a room. While waiting there, the person giving the testimony heard noises coming from adjacent rooms that sounded like heads banging into the wall...

The soldiers began to call the detainees by name to be interrogated. The blindfold was removed and the persons giving the testimonies went down to the interrogation rooms, each in his turn. The first detainee was threatened that if he did not provide names, he would be taken to another interrogator who would not show him compassion. His eyes were again covered and his hands tied behind him, and he was taken back to the room where he had been kept before the interrogation. When the turn of the second detainee came, he told his interrogators that he is a doctor and asked on what grounds he had been detained. The interrogators told him that, because they do not know which of the detainees are terrorists and which are not, everybody was detained ... *No food was provided to the detainees throughout the entire period of their detention.*

In her letter, Attorney Avraham-Weiss requested that, in any location in which detainees are held, clear rules be implemented to protect their dignity and health. The attorney requested, *inter alia*, that violence against, and humiliation of, the civilian population be forbidden during their detention and interrogation by security forces, and that arrangements be made for the entry of representatives of human rights organizations into the detention facilities to enable them to learn about the conditions in which the detainees were being held.

A copy of the letter was sent to the legal advisor of the Respondent and to the State Attorney's Office.

No reply has been received yet to the letter, which was sent on behalf of Petitioner 2.

The letter is attached hereto as Appendix P/2.

5. On 4 April 2002, Petitioner 1 wrote to the deputy legal advisor of the Respondent, as follows:

Initial reports to us from individuals who were released from the camp paint an extremely grave picture of subhuman conditions that violate human dignity and even endanger the detainees' health.

These detainees were forced to spend their nights outdoors, were given wooden bunks without mattresses, and only one blanket per detainee.

Hasty organization cannot justify treatment of this kind, which is brutal and inhumane, and degrades human dignity.

In her letter, Petitioner 1 requested, *inter alia*, that

the entry of representatives of human rights organizations and of attorneys into the camp be arranged to enable them to learn about the conditions in which the detainees are held. This matter, too, must be done urgently; if not today, then over the course of the weekend.

A copy of the letter was also sent to the State Attorney's Office.

As of the present time, this letter, too, has received no reply.

The letter is attached hereto as Appendix P/3.

6. This afternoon, Petitioner 3 received information from an Israeli source in Ofer Camp regarding the use of torture in the camp. According to the information, breaking the toes of interrogees was among the methods used.
7. Upon receipt of this information, at 13:30 P.M. or thereabouts, Attorney Wolfson, on behalf of Petitioner 1, telephoned the deputy legal advisor of the West Bank, Lt. Col. Yair Lutstein. Attorney Wolfson informed Lt. Col. Lutstein about the torture taking place in Ofer Camp, and requested that attorneys be allowed to visit the camp immediately. Lt. Col. Lutstein said that there is an order prohibiting meeting with an

attorney regarding all the detainees held in the camp, and that he will send the order to Petitioner 1.

In follow-up to the conversation, Attorney Wolfson sent to Lt. Col. Lutstein the letter attached hereto and marked P/4, to which P/3, which had been previously sent, was attached.

8. No further response, nor a copy of the order, has been received from Lt. Col. Lutstein.

Legal argument

9. A detainee has a fundamental right to meet with, and be represented by, an attorney. This right now has constitutional status, being enshrined in the Basic Law: Human Dignity and Liberty.

HCJ 3412/91, Sufiyan Abdallah v. Commander of IDF Forces in the Gaza Strip, Piskei Din 47 (2) 843, 847.

HCJ 4330/93, Ganem v. Israel Bar Association, Piskei Din 50 (4) 221, 233-234.

10. The rights to meet with an attorney is enshrined in the military legislation in the West Bank in Section 78C(b) of the Order Regarding Security Regulations (Judea and Samaria) (No. 378), 5730 – 1970, which states as follows:

Where a detainee requests to meet with an attorney or an attorney who was appointed by a relative of a detainee requests to meet with the detainee – the official in charge of the interrogation will allow the meeting if he does not have reason to deny it as set forth in subsection (c) below.

Subsection (c)(1) directs:

The official in charge of the interrogation may, upon decision given in writing, direct that a detainee not be allowed to meet with an attorney for a period or periods that shall not exceed jointly 15 days from the day the detention begins, if he believes that such prohibition is necessary for reasons related to the security of the region or that the good of the interrogation requires it.

11. The authority to prevent a detainee from meeting with an attorney is exceptional in its scope, a deviation from a paramount principle of law. Consequently, exceptional

caution must be taken in exercising this means. The cause for the action must be absolute, and the connection between the prohibition and the reason for the prohibition must be one of necessity and not one of convenience or of plain and ordinary benefit.

HCJ 128/84, *Hazan v. Meir*, *Piskei Din* 38 (2) 24, 27.

HCJ 6302/92, *Rumhiya v. Israel Police Force*, *Piskei Din* 47 (1) 209, 213.

See also HCJ 4965/94, *Kahalani v. Minister of Police Takdin Elyon* 94 (3) 531; HCJ 2568/90, *John Doe v. State of Israel*, *Takdin Elyon* 90 (2) 423.

12. Indeed, more than once this Court has criticized the decision of the competent authorities to forbid a meeting where the prohibition is based on the Order Regarding Security Provisions. In these petitions, the Court studies the available material regarding the detainee under suspicion, and examines in a concrete and individual manner the justification for preventing the meeting between him and his attorney, the length of time of the meeting, and the possibility of easing the prohibition by giving notice to the detainee as to representation or provision of legal advice in another manner.
13. In our case, no individual examination was made as regards the matters of any of the detainees in Ofer Camp. The detainees were detained in large numbers and according to broad criteria, if indeed any criteria were used. Clearly, it cannot be contended that, as regards each and every one of the detainees, allowing them to meet with an attorney would gravely endanger the security of the region or the good of the interrogation. It is also clear that nobody examined in individual terms each and every detainee, exercised his proper discretion, and decided ultimately in each case that the meeting should be prohibited.
14. This Honorable Court has in the past related to the duty to allow detainees and attorneys to meet, also where extensive military actions are involved (in the same matter: in Lebanese territory during the time of the Lebanon War). The Court held:

In light of the Respondents position... there is, in any event, no need to say more on the question of the right of a detainee to meet with counsel. For the avoidance of doubt, I shall add that the relevance of the restrictions, which can derive from *individual* security considerations, are expressed in the explicit norm as set forth in the second paragraph of Article 4 of the Fourth Geneva Convention. (emphasis added) (HCJ

102/82, *Tsemel v. Minister of Defense*, *Piskei Din* 37 (3) 365, 378)

15. Similarly, in reference to deportation orders, the Court justified deportation of large numbers of persons only when it was persuaded by the respondents' argument that:

The orders given in the present case were based on individual information regarding each deportee, that is, on individual grounds... A collection of individual orders each standing on its own... (HCJ 5973/92, *Association for Civil Rights in Israel v. Minister of Defense*, *Piskei Din* 37 (1) 267, 281)

16. The principle is that every detainee is entitled to meet with an attorney.

The detention itself does not inherently result also in the loss of the right of the individual to maintain relations with a person who is competent and able to advise him in matters of law and justice, except in special circumstances, which are set forth in subsections (d), (e), and (f) of Section 29. In other words, the principle is that there is a right to meet with an attorney and to consult with him, so long as special provision does not apply... and, of course, within the boundaries stated there. (HCJ 128/84, cited supra, at page 26)

In our case, the Respondent turned the exceptional into the ordinary, and ordered, in sweeping fashion, the prohibition of most of the detainees in the West Bank from meeting with an attorney. The Respondent misused a narrow exception to the constitutional right set forth in security legislation to provide a response to exceptional cases, and turned it into a general norm.

Denial of the right to meet with an attorney without first conducting a detailed and individual examination as regards each and every one of the Petitioners also breaches their constitutional right, to an extent greater than necessary.

17. In our matter, the Respondent's duty to allow a meeting between the detainees and attorneys has greater strength in light of the many reports on the breach of the rights of the detainees to dignity and to bodily integrity, which is among their most fundamental human rights. These contentions must be investigated, and it is necessary that attorneys meet with the detainees to examine the contentions and take the appropriate legal steps to protect the detainees. The fear also arises that the sweeping prohibition on attorneys from entering Ofer Camp is based on extraneous

reasons, that is, to prevent the conditions in the camp and the events taking place there from being exposed.

For all these reasons, the Honorable Court is requested to issue an Order to show Cause and a Temporary Injunction as requested at the beginning of the petition, and after hearing the response of the Respondent, and make them absolute.

Jerusalem, 32 Nissan 5762, 5 April 2002

[signed]

Tarek N. Ibrahim, Attorney
Representing the Petitioners

[signed]

Yossi Wolfson, Attorney
Representing the Petitioners