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

HCJ 2901/02

Before The Honorable Vice-President S. Levin
The Honorable I. England
The Honorable A. Grunis

The Petitioner: **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger (Reg. Assoc.)**

v.

The Respondent: **Commander of the IDF Forces in the West Bank**

Petition for Order Nisi and Temporary Injunction

Date of session: 25 Nissan 5762 (7 April 2002)

For the Petitioner: Attorneys Dan Yakir, Yossi Wolfson, Tarek Ibrahim

For the Respondent: Attorney Malkiel Blass

Judgment

1. In March of this year, during the fighting in which the army is involved in the region, a large number of individuals were arrested, some 1600 in number, among them apparently also persons whose names appear on the list attached to the petition. The objective of the combat, as stated in the Respondent's response, is, *inter alia*, to arrest persons belonging to the various terrorist organizations, and to collect weapons and materiel. During the fighting, the detainees were taken for classification, and when it was found that there were no grounds for their detention, they were released. Approximately 760 detainees have already been released in this manner.

In the petition before us, which is a public petition, and is filed by four human rights organizations, the Petitioners object to the sweeping order to prohibit meetings between the detainees mentioned in the said list, and other detainees, with attorneys, and it – in light of the reports that the Petitioners received about the harm to the bodily integrity and human dignity of the detainees, including torture – so it is contended, by the breaking of toes, reports that the Petitioners contend justify allowing the detainees to meet with their attorneys.

2. It is indisputable that a detainee generally has a right to meet with an attorney, which is a fundamental right, but there are circumstances in which it is to be postponed for a certain period of time for reasons of public safety and welfare.

The action in the course of which the fighting is taking place is being conducted pursuant to government decision to crush all the parts and elements of the Palestinian terrorist infrastructure. The legal basis for detaining the individuals herein is found in several orders issued by the authorities, among them Order No. 1500, which was issued on 5 April 2002 by the Commander of IDF Forces in Judea and Samaria, and was to remain in effect for two months. The said order defines “detainee” as a person who was arrested during the fighting in the region and “the circumstances of his detention raise the suspicion as to the detainee that he endangers or is liable to endanger the security of the region, the safety of IDF forces or public safety” (Section 1). The order allows a duly authorized officer to order in writing that a person be held in detention for a period not to exceed 18 days (Section 2) with provision regarding reduction or extension of the detention. Section 3 of the Order states as follows:

3. a. Notwithstanding the provisions of sections 78B and 78C of the Order Regarding Security Provisions, a detainee will not meet with an attorney during the period of the detention.

b. Prohibiting a meeting of a detainee with an attorney at the end of the period of the detention will be done only upon the order of an approving authority...

Section 2(b) of the Order states that a detainee will be given the opportunity to make his case no later than eight days from the day of his detention (hereinafter – the classification process).

3. The petition before us does not relate individually to certain detainees; rather, the petition is a public petition, in which the Petitioners do not condemn the detentions in and of themselves; their only contention is that the Respondent must allow detainees to meet [with attorneys] generally as long as it is not found that they are wanted persons or terrorists, and afterwards in the classification process and in the periods subsequent thereto.

In our opinion, it is inconceivable that during combat actions and at times close thereto, the Respondent will allow persons to meet with attorneys, where as regards the said persons a fear exists that they endanger or are liable to endanger the security of the region, the safety of IDF forces, or public safety, until such time that conditions allow consideration of the individual circumstances of each and every detainee. We have not found any basis – within the general petition filed with us – to grant the Petitioners the Order Nisi.

However, it is clear that, when, within a reasonable time, the conditions enable considering the individual circumstances of the detainee, the Respondent must consider if it is proper to issue an order prohibiting meeting [with attorney] as to each particular detainee. In brief: we did not deem it proper, in the context of the petition before us, to interfere with the sweeping order issued by the Respondent regarding the prohibition on detainees from meeting with their attorneys.

4. As regards the Petitioners' contention that the detainees are being physically harmed and tortured – the Respondent is correct in stating that attention should not be given to such matters when the petition does not include specific contentions. Physical harm of detainees and torture are forbidden and it may be assumed that the Respondent will investigate any contention of this kind upon its submission.

For the above reasons, we deny the petition.

Given today, 25 Nissan 5762 (7 April 2002).

[signed]
Vice-President

[signed]
Justice

[signed]
Justice