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

**HCJ 7246/95**

In the matter of:     **1. Hassan**, detained in Ashkelon Prison  
                              **2. HaMoked: Center for the Defence of the Individual**

both represented by Attorney Andre Rosenthal, Lic. No. 11864  
33 Jaffa Street, Jerusalem  
Tel. 250458 Fax. 259626

**The Petitioners**

v.

**General Security Service**

**The Respondent**

## **Petition for Order Nisi and Temporary Injunction**

The Honorable Court is requested to summon the Respondent to appear and show cause why it tortures Petitioner 1, who is ill, during his interrogation, that is, why it places him on a small chair, his hands bound behind him, his legs shackled, and a sack on his head; and why it, or persons on its behalf, beat Petitioner 1 on injured parts of his body.

As interim relief, the Honorable Court is requested to order that the Respondent cease, until the completion of the proceedings herein, holding the Petitioner as described above.

The Court is also requested to expedite the hearing on this petition.

**The grounds for the petition are as follows:**

1. Petitioner 1 has been detained since 17 October 1995, and all this time has been held in the interrogations wing of Ashkelon Prison. A few days after his arrest, he gave a confession to his interrogators in which he apparently admitted to membership and activity in a hostile organization, and to transferring moneys and materiel.
2. In 1990, following an automobile accident, Petitioner 1 underwent surgery on his skull at the government hospital in Ramallah. As a result of the operation, he suffers head and eye pains. Confirmation of the above is attached hereto and marked P/1.
3. Petitioner 1 also suffers from kidney stones and other kidney problems, back and chest spasms, and, since he was arrested, constipation and blood in his stool each time he relieves himself. The prison physician who examined him during his month of detention did not conduct a thorough examination and did not relate to his complaints.
4. For two weeks, Petitioner 1 has been forced throughout the day, except for short periods in which he is taken to interrogation, to sit on a small chair, his hands bound behind him, his legs shackled, and a sack on his head. He does not have air to breathe. The cuffs are tightened as tight as possible and his hands are swollen as a result. His left leg is bruised.

The interrogators give him two or three minutes to eat.

The interrogators demand that he hand over names of activists in an unlawful organization. The Petitioner told them everything he knew a few days after his detention, as mentioned above.

The interrogators threaten that, if he does not provide more names of activists, he will not leave the interrogations wing at Ashkelon Prison alive.

The interrogators or guards beat him on the injured parts of his body. Because his head is covered with a sack, he does not know who is doing the beating.

The interrogators do not allow him to sleep.

The Petitioner's affidavit is attached hereto and marked P/2.

5. Petitioner 2 is a non-profit society whose aim is to assist persons who have fallen victim to acts of violence, maltreatment, or violation of their fundamental rights by the authorities, and in particular assist persons who request help in filing complaints with the authorities.
6. The Honorable Court is requested to hold that the acts of the Respondent, or persons on its behalf, against Petitioner 1, as described above, are manifestly illegal.

7. The State of Israel signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 22 October 1986. On 4 August 1991, the government of Israel ratified the Convention. Section 4 of the Convention states as follows:

- a. Each State Party shall ensure that all acts of torture are offenses under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.**
- b. Each State Party shall make these offenses punishable by appropriate penalties which take into account their grave nature.**

The term “torture” is defined in Section 1 of the Convention, as follows:

For the purposes of the Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incident to lawful sanctions.

The Honorable Court has already ruled, in Civ. App. 1137/93, *Askar v. Heyms*, Piskei Din 48 (3) 641, 659, the Honorable Justice Heshin writing for the Court, that:

Indeed, it is understood that there is and should be a bridge between law and the convention; that the two are compatible and not inconsistent (see A. Barak, *Interpretation in Law, Vol. 2, Statutory Interpretation* (Nevo, 5753 – 1993) 575...

8. The Petitioners contend that even under present legislation – Section 277 of the Penal Law, 5737-1970 – it is absolutely forbidden for a public official to use or order the use of force or violence against a person to squeeze out an admission of, or information about, a criminal offense. No statute allows interrogators on behalf of the Respondent to hold Petitioner 1, an ill person, with his hands bound behind him, his legs shackled, sitting for hours on hours on a small chair, suffocating and lacking air because his head is covered with a sack.
9. The Petitioners further refer to the decision of the Honorable Court in H CJ 355/79, *Katlan v. General Security Service*, Piskei Din 34 (3) 294, in which it was held that it was impermissible to give a

