



International Commission of Jurists, Swedish Section

**Report from the second hearing in the High Court of Justice
Jerusalem, 15 December 2004**

**“FACILITY 1391”
- a secret prison**

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Gothenburg, Sweden, 1 February 2005

Background

At the request of Hamoked (the Center for the Defence of the Individual), we were appointed by the Swedish section of the International Commission of Jurists (ICJ-S) as trial observers to attend a trial in the Supreme Court, sitting as the High Court of Justice in Jerusalem on 1 December 2003.

The trial concerned a case where Hamoked had filed a petition to direct the State of Israel, the Israel Defence Forces, the General Security Service, the Israel Police Force and the Commander of the detention facility known as "Facility 1391", to examine the legality of this facility. It was also a request to the High Court to issue a temporary injunction, to not hold a person in custody in the detention facility until the completion of the proceedings of the petition.

The first hearing

The hearing was held in The High Court of Justice in Jerusalem on 1 December 2003. At the end of the hearing, the High Court of Justice issued an *order nisi* regarding the secrecy of the physical location of the facility named "Facility 1391" and required the State Attorney to explain, within 45 days, the reason for the secrecy.

(See our report from the first hearing: "Facility 1391 a secret prison" on www.icj-sweden.org)

The second hearing

We were appointed as trial observers also to the second hearing in the High Court of Justice, which was held a year later, on 15 December 2004.

The hearing took place in one of the courtrooms in the High Court of Justice in Jerusalem. There was no problem for us to enter the court.

Present in the court room were:

1. The three judges; A. Barak, J. Türkel and Y. Adiel
2. Two attorneys from HaMoked; Lea Tsemel and Yosef Wolfson
3. The State Attorney; Shay Nizzan
4. Two servicemen responsible for taking minutes
5. Trial observers and an interpreter
6. Visitors

A summary of the hearing

The first part of the hearing was open and concerned the State's arguments.

One of the judges observed that it was problematic for a democratic state to maintain detention facilities without mentioning the place for it, because this could give a detainee the feeling to be kept in "the air". The judge also stated that detainees have the fundamental right to know where they are. Only the number "1391" as a marker for the place tells them nothing.

Another judge discussed the interpretation given by the State, which claimed that providing an address complied with its constitutional obligation to inform the family and attorney of the "place".

At the State's request, the second part of the hearing was held *ex parte*, during which the court suggested a number of proposals to the State to resolve the matter. The State will respond within sixty days. In the interim period, the State must inform the court, *ex parte*, about any person held in the facility, and the court will render a decision on the particular case, as necessary.

International law and principles

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

adopted by General Assembly 9 December 1988

see: G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No.49) at 298, U.N. Doc. A 43/49 (1988).

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 12

1. There shall be duly recorded:
 - (a) The reasons for the arrest;
 - (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
 - (c) The identity of the law enforcement officials concerned;
 - (d) Precise information concerning the place of custody (underlined by us);
2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Standard Minimum Rules for the Treatment of Prisoners

adopted 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

see: U.N. doc. A/CONF/611, annex 1, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res.2076, 62 U.N. ESCOR supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

Register

7. In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:
 - a. Information concerning his identity"

Contact with the outside world.

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.
- 38.1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
- 38.2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

Notification of death, illness, transfer, etc.

- 44.3. Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949

Article 23,

“No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations. Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location (underlined by us) of prisoner of war camps. Whenever military considerations permit, prisoner of war camps shall be indicated in the daytime by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such. “

Article 126,

states that representatives of the Protecting Powers and representatives of the Red Cross shall have permission to go to all places where prisoners of war may be, including places of internment, and that these visits shall only be prohibited for imperative military necessity, and only as an exceptional and temporary measure.

The Geneva Convention (IV) relative to the Protection of Civilians in Time of War, 1949

Article 76,

“Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.....”

Article 83,

“The Detaining Power shall give the enemy Powers, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of places of internment.....”

Comments

The first part of the second hearing was public and the second part was held *ex parte*. Many young school children and policemen under training came and went during the public hearing.

The lawyers focused on the interpretation of “the place of detention” and said that it is meaningless to say e.g. to a mother that her son is placed in “Facility 1391”, because she will never understand where her son is placed. The lawyers also said that there is no legal base for the government to hold a person in a secret detention centre.

We believe that it cannot be in line with international standards to only refer to the geographical location as “Facility 1391”. The interpretation of “place of detention or custody” must refer to a place which can be located geographically according to some of the above related principles and articles. Information of the geographical location of the detention centre shall be given to the detained person (principle 12 second paragraph above). To declare a detention centre only with a codename is meaningless, because, obviously, no one can understand where this place is located. International Committee of the Red Cross (ICRC) cannot visit a detention centre with secret location. This is a violation of international law.

More information about the hearings on “Facility 1391” and the details about the petitions, the responses and decisions, can be found on; www.hamoked.org