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HCJ 5591/02

1. _____ Yassin
2. _____ Siam
3. _____ Alaba'ad
4. _____ Mansuer
5. _____ Basharat
6. _____ Shabana—Hebron
7. _____ Fiad
8. **Adalah—The Legal Center for Arab Minority Rights in Israel**
9. **Kanun—The Palestinian Organization for the Protecion of Human and Enviormental Rights**
10. **The Center for the Defense of the Individual founded by Dr. Lota Zetzberger**
11. **B'tselem—The Israeli Information Center of Human Rights in the Occupied Territories**
12. **Addameer—Prison Support and Human Rights Association**
13. **Alhak—The Law in Service of Human Rights**
14. **Almrah Center—Legal Social Center**
15. **Nadi Alasir Alfalstini—West Bank**
16. **The Public Committee Against Torture in Israel**
17. **Physicians for Human Rights**

v.

**1. Yoni Ben-David—Commander of the Kziot Military
Camp—Kziot Detention Facility**

2. Binyamin Ben-Eliezer—Minster of Defense

3.

The Supreme Court Sitting as the High Court of Justice

[December 18, 2002]

Before President A. Barak, Justices D. Beinisch and I. England

Petition to the Supreme Court sitting as the High Court of Justice.

Facts: In the context of IDF operations against the terrorist infrastructure in areas of the Palestinian Authority (“Operation Defensive Wall”), thousands of suspects were detained. Due to overcrowding, some of these petitioners were transferred to the Kziot detention facility in the Negev region. Most of the detainees were detained pursuant to administrative detention orders. This petition concerns the detention conditions of these detainees.

Held: The Supreme Court held that the presumption of innocence should be applied to the detainees, as they are being held under administrative detention orders, and have neither been tried nor convicted. The Court further held that the army must ensure that the detainees be treated humanely, and in recognition of their essential human dignity. In determining whether the detainees were being treated humanely, the Court had recourse to domestic Israeli law as well as international law. Concerning the petition at hand, the Court held that, due to inadequate preparation on the part of the army, the initial conditions of detention did not meet minimum standards. In the intervening time, however, the army had improved conditions to the point where they did meet Israeli and international standards.

Basic Laws cited:

Basic Law: Human Dignity and Liberty

Legislation cited:

Emergency Powers (Detentions) Law-1979

Criminal Procedure (Jurisdiction and Enforcement—Detentions) Law-1996, §§
1(c), 9(a)

Regulations cited:

Emergency Powers Regulations (Detention) (Holding Conditions in Administrative Detention)-1981, §§ 5(a), 5(b), 6(a), 6(b), 8(a), 8(c)
Emergency Regulations (Offences Committed in Israeli-Held Areas—Jurisdiction and Legal Assistance)-1967
Criminal Procedure Regulations (Jurisdiction and Enforcement—Detentions) (Holding Conditions in Detention)-1997

Treaties Cited:

The International Covenant on Civil and Political Rights (1966),
Geneva Convention Relative to the Protection of Civilian Persons in Time of War-1949

Israeli Supreme Court cases cited:

- [1] HCJ 3278/02 *The Center for the Defense of the Individual founded by Dr. Lota Salzberger v. Commander of the IDF Forces in the West Bank*, IsrSC 57(1) 385
- [2] HCJ 253/88 *Sajadia v. The Minister of Defense*, IsrSC 42(3) 801
- [3] HCJ 2320/98 *El-Amla v. Commander of the IDF Forces in the West Bank*, IsrSC 52(3) 246
- [4] HCJ 8259/96 *The Association for the Protection of the Rights of Jewish Civilians in Israel v. Commander of the IDF Forces in the West Bank*, IsrSC (unreported decision)
- [5] HCJ 355/79 *Catlan v. The Prison Service*, IsrSC 34(3) 294
- [6] CA 5942/92 *John Doe v. John Doe*, IsrSC 35(1) 536
- [7] HCJ 221/80 *Darvish v. The Prison Service*, IsrSC 50(2) 749
- [8] HCJ 1622/96 *Abad Al Rahman Al Ahmed v. The General Defense Service*, IsrSC 38(2) 826
- [9] HCJ 337/84 *Hokma v. The Minister of the Interior*, IsrSC 50(4) 136
- [10] CA 4463/94 *Golan v. The Prison Services*, IsrSC 52(5) 826
- [11] HCJLA 6561/97 *The State of Israel v. Mendelson*, IsrSC 52(5) 849
- [12] HCJLA. 823/96 *Vanunu v. The Prison Service*, IsrSC 51(2) 873
- [13] HCJ 3114/02 *Barake v. The Minister of Defense*, IsrSC 56(3) 11

[14]

Foreign Books cited:

[15] J.S. Pictet, Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958)

[16]

Petition denied.

For the petitioners—Morad Alsana; Hasan Gabarin; Mahmud Gabarin

For the respondents—Shai Nitzan

JUDGMENT

President A. Barak

This petition concerns the detention conditions of detainees from Judea and Samaria who are being held in administrative detention at the Kziot detention facility.

Facts

1. Both Israel and the area have suffered intense terrorist activity. In Operation Defensive Wall, the government decided to pursue military operations against the Palestinian terrorist infrastructure in Judea and Samaria. Within the framework of this operation, many suspects have been detained. *See* HCJ 3278/02 *The Center for the Defense of the Individual founded by Dr. Lota Salzberger v. Commander of the IDF Forces in the West Bank* [1]. The detainees were originally held in temporary facilities which were set up in brigade headquarters. After an initial screening took place, those who were chosen to remain in detention were moved to the Ofer Camp detention facility in Judea and Samaria. Due to overcrowding, some of the detainees were moved to the detention facility in Kziot, which is located in the Negev, in the south of Israel.

2. Kziot Camp was opened in the second half of the 1980s. It primarily held administrative detainees from the area. The conditions of the detention in the camp were the subject of a comprehensive examination by this Court in HCJ 253/88 *Sajadia v. The Minister of Defense* [2]. The facility was shut down during the second half of the 1990s. In April 2002, once it became clear that Israel would continue holding a substantial number of detainees for security reasons, and that it would be impossible to hold them in Ofer Camp, Kziot Camp was reopened on short notice. The majority of the detainees are being held at Kziot Camp under administrative arrest warrants which were issued against them in the area.

Arguments

3. Petitioners complain about the conditions of the detention in Kziot Camp. Their chief complaint concerns the fact that the detainees are being held in tents. Petitioners claim that tents do not provide suitable means of detention. The tents do not shield against the rigors of desert weather, such as heat during the day and cold during the night. The tents cannot be shut and, as such, sand, mosquitoes, crickets, insects and reptiles enter the tents and disturb the detainees. The petitioners also complain of overcrowding in the tents. Furthermore, they contend that the food that the detainees are supplied with is insufficient and of low-quality. The detainees, who are exposed to the intense heat of the Negev, are not supplied with cold water. The detainees do not receive sufficient clothing, and they are unable to launder the little clothing they do receive. The beds are such that it is difficult for the detainees to sleep properly. The beds are actually wooden beds with mattresses that rise 10 to 15 centimeters above the ground. As a result, many of the detainees wake up in the middle of the night to find their faces or bodies covered with crickets and insects. Petitioners claim that the amount of soap supplied is insufficient, and that there are not enough showers. There are no toilet seats in the bathrooms. The

doctor is not easily accessible nor does he speak Arabic. The petitioners complain that 220 volt electricity does not run through the tents. Consequently, the detainees are unable to use electrical appliances, especially televisions and fans. The detainees are not permitted to communicate with their families via telephone. They are not provided with newspapers and books, nor is there a canteen on location.

4. In respondents' reply, they claim that the petition was submitted at the end of June 2002. As such, the evidence presented by the petition consists of affidavits submitted by detainees who were held in Kziot Camp in April, and the last of which was submitted at the beginning of May. Those were the first months of the detention facility's renewed operation, which was reopened on short notice. Between the submission of the petition and the submission of respondents' reply brief on October 11, 2002, the facility underwent many improvements. Most of petitioners' claims have been resolved. In June of 2002, the Attorney-General visited the detention facility, observed the detention conditions and listened to the complaints of the detainees. During his visit he observed that although the living conditions were not comfortable, especially due to overcrowding and the climate, they were nevertheless reasonable in relation to the reality in Israel. He added that the conditions did not substantially differ from those provided to the soldiers who carry out detention operations and security functions in the facility, or from the conditions provided to IDF soldiers in general. While visiting the facility, the Attorney-General investigated various options for improving the detention conditions. Since then, these suggestions have been implemented. At the time that respondents submitted their reply the facility held 939 detainees, dispersed throughout four divisions. Each division was divided into four sub-divisions. Located within each sub-

division were three double “12 tents,” in which 20 detainees were held.

5. Referring directly to the specific claims made by the petitioners, respondents asserted that the tents are not overcrowded. Respondents claim that the tents in the facility provide suitable protection against the rigors of the weather. The quality and quantity of the food provided to the detainees is satisfactory. In the summer, they are supplied with a large quantity of ice. The wooden beds and mattresses meet the same standards as those provided to IDF soldiers. There is no want of clothing in the facility. A fountain with a large number of faucets may be found in every sub-division. The detainees are supplied with a sufficient amount of soap. The level of personal hygiene in the bathrooms and showers is satisfactory. There is an infirmary operating in the facility which employs three doctors and thirteen medics. Medical inspections are performed daily in the facility. When necessary, patients are quickly transferred to the central hospital in the Negev, Soroka Hospital in Beer Sheva. There is also a dental clinic on location, which employs a dentist. For security reasons, detainees are not permitted to use telephones to call out of the facility. The detainees maintain communication with their families via letters. The Red Cross visits the facility. The detainees are provided with Hebrew and Arabic newspapers, and they are allowed to use battery-powered radios. The Red Cross has provided games and a ping-pong table to each sub-division. There is an operational canteen in the facility. For security reasons, the sub-divisions are not connected to 220-volt electricity—all tents are illuminated by 24-volt light bulbs. At night, after the detainees are accounted for, extension chords are utilized in order to allow the detainees to watch television.

Arguments of October 15, 2002

6. In oral arguments, petitioners admitted that improvements had been made since the submission of their petition. Nevertheless, they claim, these improvements are insufficient. Petitioners reiterated their claims against the use of tents and the lack of 220-volt electricity. They complained of insufficient bathroom stalls and cleaning equipment.

Additionally, they complained that snakes and mice had been found in the area. Petitioners protested the absence of tables in the facility, which forces the detainees to eat by their beds, which consequently become filthy. Respondents answered that the old tents had been replaced with new ones. They asserted that the location is now sprayed for snakes and other animals. However, regarding the issue of electricity, security considerations prevent any change in the situation.

Normative Framework

7. It is appropriate to open this discussion with the normative framework of this case, as was done by Justice Shamgar in *Sajadia* [2]. This is in response to the possible claim that, since the detainees being held in Kziot Camp are terrorists who have harmed innocent people, we should not consider their detention conditions. This argument is fundamentally incorrect. Those being detained in the Kziot Camp have not been tried; needless to say, they have not been convicted. They still enjoy the presumption of innocence. Justice Shamgar expressed this notion in *Sajadia* [2]:

An administrative detainee has not been convicted, nor is he carrying out a sentence. He is detained in accordance with a decision made by an administrative-military authority, as an exceptional emergency means due to security reasons The aim of the detention is to prevent security hazards, which arise from actions that the detainee is liable to commit, where there is no reasonable possibility of preventing such hazards through standard legal action, such as criminal proceedings, or by taking administrative steps with milder consequences.... The difference between a convicted prisoner and a detainee being held in order to prevent security hazards, is manifest in the status of the administrative detainee and his detention conditions.

Sajadia, [2] at 821. In the same spirit Justice Bach noted:

With all due respect for security considerations, we must not forget that we are talking about detainees deprived of liberty without their having been convicted of any crime in standard criminal proceedings. We must not be satisfied with a situation in which the detention conditions of these detainees are poorer than the conditions of prisoners who have been sentenced to imprisonment after being convicted.

Sajadia, [2] at 831. In a different context, Justice Zamir indicated that:

Administrative detention deprives an individual of his liberty in the most severe fashion. Liberty is denied, not by the court, but rather by an administrative authority; not by a judicial proceeding, but rather by an administrative decision.

HCJ 2320/98 *El-Amla v. Commander of the IDF Forces in the West Bank* [3].

Not only should we not allow the detention conditions of administrative detainees to fall short of those of convicted prisoners, we should also strive to ensure that the conditions of detainees surpass those provided to prisoners. These detainees continue to enjoy the presumption of innocence. *See* HCJ 8259/96 *The Association for the Protection of the Rights of Jewish Civilians in Israel v. Commander of the IDF Forces in the West Bank* (unreported case) [4]. This approach was established by the Emergency Powers Regulations (Detention) (Holding Conditions in

Administrative Detention)-1981 [hereinafter the Detention Regulations]. The security considerations that led to the detention of these people do not justify holding them under unsatisfactory conditions.

8. The detainees were lawfully deprived of their liberty. They were not, however, stripped of their humanity. In an affair that occurred more than twenty years ago, prior to the legislation of the Basic Law: Human Dignity and Liberty, I remarked:

Every person in Israel enjoys the basic right to bodily integrity and the protection of his dignity as a human being.... Convicts and detainees are also entitled to the protection of their bodily integrity and human dignity. Prison walls do not come between the detainee and his human dignity.

HCI 355/79 *Catlan v. The Prison Service* [5]. This is especially true after the enactment of the Basic Law: Human Dignity and Liberty, “which does not focus on the proclamation of the existence of fundamental rights, but rather on their essence, their extent and their practical realization.” CA 5942/92 *John Doe v. John Doe* [6]. (Shamgar, P.) Therefore, the army must ensure that the detainees be treated humanely, and in recognition of their human dignity. See *The Center for the Defense of the Individual*, [1] at par. 22. The detention conditions must guarantee civilized and humane life. HCI 221/80 *Darvish v. The Prison Service* [7]. Human dignity, which constitutes the foundation of the Basic Law: Human Dignity and Liberty, together with the values of Israel as a Jewish and democratic state, forms the normative lens through which we examine the detention conditions of detainees. This framework is not one-sided. Human liberty is not its sole consideration. Nor is national security its sole consideration. The framework attempts to achieve a balance—at times delicate—between the need to

guarantee conditions of detention as humane as possible and the need to guarantee national security.

9. An important legal source with regard to detention conditions is the Emergency Powers (Detention) Law-1979. The Detention Regulations were set out pursuant to the grant of authority contained in this law. These regulations set forth the standards that govern the detention conditions of those who are administratively detained in Israel. They also apply to whoever is detained in the area pursuant to security legislation. This is established in regulation 6(b) of the Emergency Regulations (Offences Committed in Israeli-Held Areas—Jurisdiction and Legal Assistance)-1967, which states:

Where an arrest warrant or detention order has been issued against any person in the area, pursuant to the proclamation or the order of a commander, such a warrant or order may be executed in Israel in the same manner that arrest warrants and detention orders are executed in Israel; and that person may be transferred, for detention, to the area where the crime was committed.

In *Sajadia* [2] the court held, based on this regulation, that Kziot Camp must heed the Detention Regulations as well. *See also* HCJ 1622/96 *Abad Al Rahman Al Ahmed v. The General Defense Service* [8]. Regulation 5(a) of these regulations states that “a detainee in a detention facility shall receive the same meal portion provided to the jailers in that detention location.” The regulations do not specify that there must be an operative canteen in the facility. However, they do specify that “in a detention facility

which has a canteen, the commanding officer may permit the detainees to purchase goods there.” The regulations also state that “a detainee is entitled to receive medical treatment and medical equipment, as is demanded by his health condition.” *See* Regulation 6(b). Regulation 6(a) specifies that “a detainee shall be examined monthly by a doctor designated by the commander, and at any time where it becomes necessary to do so.” The Detention Regulations also state that “a detainee is entitled ... to receive bathing and cleaning materials as necessary,” regulation 8(a), as is he entitled “to receive newspapers and books for reading, as has been decided by the commander” regulation 8(c).

10. Aside from these regulations, which concern the conditions of administrative detention, comprehensive rules concerning the conditions of “regular” detention may be found in other legislation and regulations. Section 9(a) of the Criminal Procedure (Jurisdiction and Enforcement—Detentions) Law-1996 states that “a detainee shall be held under suitable conditions, which shall not harm his health or dignity.” Detailed instructions may be found in the Criminal Procedure Regulations (Jurisdiction and Enforcement—Detentions) (Holding Conditions in Detention)-1997.

We shall now turn to the provisions of international law regarding detention conditions.

International Law

11. Israel is not an isolated island. She a member of an international system, which has set out standards concerning conditions of detention. The most significant of these may be found in article 10(1) of the International Covenant on Civil and Political Rights (1966), which states:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

This rule, which has the force of customary international law, *see The Center for the Defense of the Individual*, [1] at par. 23, is in harmony with the Basic Law: Human Dignity and Liberty, which protects the dignity of all persons, including detainees. Another important source of international law is the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. These principles were endorsed by the United Nations General Assembly in 1988. They establish principles for all forms of detention, including administrative detention. These principles, even if they are not directly binding in internal Israeli law, set forth standards by which any reasonable government authority should act. In this matter we must also refer to article 11(1) of the Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and Fight Against Terrorism, which asserts that:

A person deprived of his/her liberty for terrorist activities must in all circumstances be treated with due respect for human dignity.

12. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War [hereinafter The Fourth Geneva Convention] provides an additional legal source for examination of the detention conditions in Kziot Camp. This convention sets forth comprehensive arrangements concerning conditions of detention. The validity of the convention with regard to the detention

conditions at Kziot is not a subject of dispute before us, as Israel sees itself as bound by the humanitarian provisions of the convention. We have reviewed the details of these provisions in *The Center for the Protection of the Individual* [1], at par.23.

13. Israeli common law provides an additional legal source concerning this matter. Our common law includes a long list of judgments concerning the conditions of detention in Israel. These judgments are founded on the need to strike a proper balance between the liberty of the individual and the security needs of the public. Justice M. Elon explained the guiding principle of this balance:

It is an important principle that every civil right to which a person is entitled is preserved even when he is imprisoned or detained. Imprisonment does not deprive anyone of any right, unless such deprivation is an inherent part of detention—such as taking away one’s freedom of movement—or where an explicit statute refers to this matter.

HCJ 337/84 *Hokma v. The Minister of the Interior*, [9] at 832. In the same spirit Justice Matza wrote:

It is a firmly established precept that, even between prison walls, a person’s fundamental rights “survive.” Such rights belong to the prisoner (as well as the detainee) even within his prison cell. The only exceptions to this rule are the prisoner’s right to freedom of

movement and other limitations which are inherent to depriving him of his personal liberty, or which are based on explicit legal instructions.

CA 4463/94 *Golan v. The Prison Services*, [10] at 152-53. Justice Matza continued, [10] at 155:

We do not allow the deprivation of basic human rights, which the prisoners require. These rights consists not only of the prisoner's right to eat, drink and sleep, but also the right to have these needs supplied in a civilized manner.

These decisions and others like them, whether directly or indirectly, provide standards by which we can examine the detention conditions in Kziot. *See, e.g.*, HCJLA 6561/97 *The State of Israel v. Mendelson* [11]; HCJL.A. 823/96 *Vanunu v. The Prison Service* [12]. Furthermore, Israeli administrative law applies to the actions of every government authority in Israel. Thus, these principles apply to the actions of respondents, including the establishment and maintenance of detention conditions. As such, the detention conditions must be reasonable and proportional. *See Center for the Defense of the Individual* [1]. One may learn about the standards of reasonableness and proportionality from the Standard Minimum Rules for Treatment of Prisoners, which were adopted by the United Nations in 1955. *See Droish*, [7] at 539; *Sajadia*, [2] at 832. These standards apply to all forms of imprisonment, including detention. We reviewed the details of these instructions in *Center for the Defense of the Individual*, [1] at par.23.

From the General to the Specific

14. Soon after the reopening of Kziot Camp, conditions of detention there underwent changes. This reopening was done hastily and without preparation. The detention conditions encountered by the first detainees, whose affidavits are attached to this petition, did not meet the necessary minimum standards. There was no justification for this. Operation Defensive Wall was planned in advance. Its main goal was “to prevail over the Palestinian terror infrastructure, and to prevent the recurrence of the terror attacks which have plagued Israel.” *See* HCJ 3114/02 *Barake v. The Minister of Defense* [13]. It was obvious to all—or at least should have been obvious—that one of the consequences of the operation would be a large number of detainees. As such, it was necessary to prepare detention facilities in advance, which would satisfy minimum standards. This was not done.

15. In time, the conditions were improved and the necessary minimum standards were met. In certain matters, the conditions now exceed minimum standards. For example, the tents are no longer overcrowded; the quantity and quality of the food supplied is satisfactory. The detainees are supplied with an adequate quantity of ice. There are sufficient changes of clothes available. The conditions of personal hygiene, as well as the general level of sanitation, are both satisfactory. The medical treatment is satisfactory. The detainees are provided with newspapers, and they are allowed to use battery-operated radios. In each section there are ball games and a ping-pong table. There is an operational canteen on location. In fact, during oral arguments, respondents dropped many of the claims raised in their petition. We will

therefore focus on a number of issues, which have not been resolved.

16. The first issue relates to the detainees' being held in tents. According to petitioners, the environmental conditions in the Negev—with regard to weather conditions, as well as with regard to the sand and insects that easily penetrate the tents—require that the detainees not be held in tents.

In their reply respondents emphasized that the tents provide suitable protection against the rigors of Israeli weather. They added that thousands of soldiers, including those who supervise the detainees in Kziot, regularly reside in tents for long periods of time. However, it must be noted that, while the conditions of the soldiers are both important and relevant to this petition, they cannot provide a decisive answer. Furthermore, the Detention Regulations do not address this matter. Even so, it has been accepted practice—both in Kziot and in the military prison in Megiddo—that detainees and prisoners reside in tents.

17. Article 85 of the Fourth Geneva Convention concerns living conditions. It states that the detaining authority must ensure that the detainees:

[B]e accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigors of the climate and the effects of war.

In Pictet's explanation of this rule, he asks:

Could the term 'buildings or quarters which afford every possible safeguard as regard hygiene and health, and provide efficient protection against the rigors of the climate and the effects of war' be taken to mean camps made up of tents? This practice is allowed in the case of prisoners of war where the Detaining Powers follow the same procedure for their own troops. During the Second World War it proved satisfactory in certain climates when some essential improvements had been carried out (cement floors, brick walls, stone paths and access roads). The same latitude, however could hardly be granted with regard to civilian internees and it seems clear that 'buildings or quarters' must be taken to mean structures of a permanent character.

See J.S. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* 386 (1958). I doubt that Pictet's interpretation is correct. It seems that a better approach would vary according to the time and place. It depends upon the nature of the tents on the one hand, and the conditions of the location on the other. Additionally, a significant factor is whether the detention is short-term or long-term, whether it lasts months or even years. Ultimately, the test is one of reasonableness and proportionality. Thus, we call for this matter to be investigated.

18. The second issue is the height of the beds. Petitioners complain of the height of the beds being 10-15 centimeters. They claim that, as a result, many of the detainees find their faces

covered with insects, which easily enter the tents. In response, respondents argued that the detainees have makeshift beds, which they independently built from the cots found in the sub-sections of the facility. Whether or not this answer has resolved the problem is unclear. We ask that this matter be thoroughly reexamined. For as long as the detainees remain in tents, the army should do all in its power to provide the detainees with reasonable sleeping conditions. The fact that detainees built make-shift beds with their own hands points to the existence of a problem. This fact also indicates that making the beds higher does not raise security issues. In these circumstances, the obligation to resolve this problem rests on respondents. They must address this issue.

19. The third matter which has not been resolved is the absence of toilet seats in the bathrooms. Respondent's reply does not specifically refer to this matter, save the general statement that the authorities consider the level of personal hygiene satisfactory. This matter also requires reexamination.

20. The fourth unresolved issue is the absence of tables for eating. In *The Center for the Defense of the Individual* [1], respondents argued that this matter raises security issues. Respondents did not repeat this argument here. Instead, they argued that erecting tables would cause overcrowding. We presume that, for those who request it, eating on tables, as opposed to on the floor, is one of the conditions which "guarantee civilized and humane life." *Darvish* [7], at 538 (H. Cohen, D.P.) Other than their general argument regarding lack of space, we received no relevant explanation from the respondents. We ask that this matter be thoroughly examined and satisfactorily resolved.

Again in the Matter of Detention Conditions and Judicial Review

21. In this petition we have dealt with the fine details of detention conditions. Such is our duty, and we do not take it lightly. Nevertheless, this is not an optimal arrangement, neither from the perspective of the rights of the detainee, nor from a security perspective. It is necessary that there be an “intermediate body” between the detention authorities and the High Court of Justice. Such a body must be able to carry out prolonged surveillance and supervision. The body must be well informed about security requirements and the needs of the detainees and must be able to advise the respondents about all matters regarding detention conditions. Justice Shamgar emphasized the need for such an arrangement in *Sajadia*, [2] at 825-26:

As such, we find it appropriate to direct the respondents' attention towards the need to determine efficient manners of inspection and supervision. Our suggestion is that the respondents consider nominating a permanent advisory committee, which will carry out constant inspection and will report and advise the respondent on the matter of the detention conditions in the Kziot detention facility. The head of the committee can be a senior military judge from the military tribunal units, and the committee may consist of experts from the fields of medicine, psychology, and jailing management.

We are confident that the respondents will take our suggestions into account, and that the proper steps will be taken in order to realize them.

22. Furthermore, it should be reconsidered whether it is appropriate that the army be responsible for the detention

conditions of administrative detainees from the area. It is our opinion the government should consider placing this responsibility in the hands of the Prison Service. Such a resolution would allow a number of advantages. First, the responsibility of tending to detainees and detention conditions will be placed in the hands of a body whose expertise is in this field. Second, the Prison Service operates in accordance with a intricate system of law. These laws guarantee that an appropriate balance is struck between security needs and the rights of the detainees. For example, under these laws, the detainees will have the opportunity to submit “prisoner petitions,” which will ensure judicial review over their detention conditions. We are well aware of the problems which arise from our suggestion. We ask that the matter be considered both practically and normatively. There should be an investigation concerning whether legislative modification would be necessary for the implementation of this suggestion, or whether it would be possible, and perhaps even necessary, to achieve this result in the context of existing law. *See* section 6 (b) of the Emergency Regulations (Judea and Samaria, and the Gaza Strip—Jurisdiction and Legal Assistance) (Extension of Validity)-1977, *and* section 1(c) of the Criminal Procedure (Jurisdiction and Enforcement—Detention)-1966.

Petition Denied.

Justice D. Beinisch

I agree.

Justice Y. England

I agree.

Petition denied, as per the opinion of President A. Barak
December 18, 2002

TRANSLATED BY: Leora Dahan
EDITED BY: Eli Greenbaum

Comments, questions and suggestions are all welcomed, and may be
directed towards elig@supreme.court.gov.il
