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At the Supreme Court in Jerusalem **HCJ 9332/02**
Sitting as the High Court of Justice

Before The Honorable Registrar Boaz Okun

The Petitioners: **1. I. Jarar**
2. HaMoked: Center of the Defence of the Individual, founded by Dr. Lotte Salzberger (Reg. Assoc.)

v.

The Respondent: **Commander of IDF Forces in Judea and Samaria**

Application for Order for Costs

Decision

The Petitioners filed a petition for a writ of habeas corpus directed to the Respondent and requiring him to show cause why he does not notify the Petitioner's family of what befell him following his detention by Israeli security forces. After filing the petition, the Respondent stated that the detainee was detained in the detention facility in Ofer Camp pursuant to a detention order regarding him that was issued on 27 October 2002, which was in effect from the day of arrest until 7 November 2002.

Subsequently, the Petitioners withdrew their petition, but requested that the Respondent be ordered to pay costs.

The Respondent opposes the imposition of costs. The Respondent notes that, as early as the day after the petition was filed, 4 November 2002, the court was provided the requisite details. In doing so, the Respondent laid out before the court the difficulties it faces when requested to provide information on the detention of persons and their whereabouts. This information is provided by means of the Control Center of the Military Police (HCJ 6757/95, *Hirbawi v. Commander of IDF Forces in Judea and Samaria*). The Respondent contends that, when the Control Center receives a request to locate a specific detainee, it is necessary to make a thorough and comprehensive check with all the security bodies that hold Palestinian detainees, among them the Prisons Service, the army, detention facilities of the Israel Police Force and other bodies. The Respondent explains that, in light of the increasing gravity of the security situation, the number of Palestinian detainees has increased significantly, and

security forces now *detain thousands of Palestinians.* As a result, there has been a sharp increase in requests made to the Control Center to locate persons who, it is contended, were detained by security forces. The Respondent believes that the many officials in the field whose principal efforts are aimed at fighting and thwarting terrorist acts are not available at the specific moment to provide information to the Control Center.

For these reasons, the Respondent believes that it is improper to order payment of costs in favor of the Petitioner, who contacted the Control Center only once immediately after the detention, and the detainee was not located because of the short time that passed from the time of arrest to the time that the request and investigation were made.

Providing information on the arrest and location of the detainee is indeed a cornerstone of the right to due process (compare the Criminal Procedure (Enforcement Powers – Detention) Law, 5756 – 1996, Section 33(a); see also Section 78A(b) of the Order Regarding Defence Regulations (Amendment No. 53) (Judea) (No. 1220), 5748 – 1988). The provision of information is a means of control and supervision, but it is important from a human perspective in that the detainee loses control over his life in a single moment. The importance of thorough reporting to the relatives whose family member disappeared "without explanation" cannot be exaggerated. Giving public notification is a guarantee against misuse of the state's capability to detain individuals, and prevents unrestrained use of this capability. Indeed, the power of the state, regardless of how good its intentions may be, is great. Without reporting this power might get out of control, even when explained by security considerations. Concession or flexibility intrinsically entails risks. Experience teaches us that the excessive use of power, which is not timely eradicated, creates a new reality. The power is not like a boomerang; when it is released, it does not return. Therefore, the authority is commanded to give meaningful attention in all matters related to the exercise of detention powers. This attention requires immediate reporting of the detention.

The difficulties encountered by the Control Center are understandable. It is also understandable that the great number of detainees imposes a burden on the Control Center. However, every detainee is a person. He stands as an individual. Infringement of his rights is not lessened because of other detainees. Furthermore, the number of detainees is nothing new, and the officials who provide information must make timely preparation to provide the information that they are required to provide. Indeed, a human right generally comes at the expense of another interest, at times indirectly, and most often directly. But, as regards a basic right, it is tested out against the "price" that we are willing to pay. Therefore, it is hard to conceive that one bureaucratic reason or another will prevent the provision of information regarding a person who has been detained by the security forces. If the increased number of

people being detained requires additional preparations, entailing additional costs – so be it. In Reh. HCJ 4191/97, *Rakanat v. National Labor Court,* President Barak held:

> Human rights cost money. Ensuring equality costs money. Usually, the demand to pay "the price" is made to the government (see HCJ 7081/93, *Buzer v. Maccabim-Reut Local Council, Piskei Din* 50 (1) 19, 27). But the place of human rights, such as equality, applies in relations between individuals, who must bear the necessary cost (see the comments of Justice Dorner in *Miller*, p. 142). This is the price that should be and must be paid to ensure that we are a society that safeguards human rights and respects equality. Certainly, this is so when the demand for equality is set forth explicitly by the legislature.

Furthermore, the Respondent's response is not persuasive also by its own account, insofar as financial costs are concerned. It disregards the fact that inquiries by means of the Supreme Court entail substantial resources, which are not less than those that the Respondent expends to provide the appropriate and timely information. Turning the court into a "mail box" for inquiries of this kind is burdensome and complicated in every aspect, and should be prevented (and not only in this area). In this case, the petition was not premature, because the request did not result in a substantive response nor even that the response would be provided the next day. The Respondent did not even take the trouble to explain why it was not possible to respond, and the Petitioner was not located until four days had passed from the time of his arrest.

In these circumstances, the Respondent failed to provide meaningful reasons to refrain from providing information at the first opportunity. It is proper that the Respondent be obligated to pay petition costs in the amount of NIS 5,000.

Given today, 20 December 2002.

[signed]
Boaz Okun
Registrar