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

**H CJ 9332/02**

**The Petitioners:**

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

both represented by attorney Taraq Ibrahim et al., of  
HaMoked: Center for the Defence of the Individual,  
founded by Dr. Lotte Sulzberger,  
4 Abu Obeidah Street, Jerusalem  
Tel. 02-6283555 Fax. 02-6276317

v.

**The Respondent:** **Commander of IDF Forces in Judea and Samaria**  
represented by the State Attorney's Office, Ministry  
of Justice, Jerusalem

**Application to Dismiss the Petition and to  
Impose Costs and Attorneys' Fees on the Respondent**

The Honorable Court is hereby requested to dismiss the petition and order the Respondent to pay the Petitioner's court costs and attorneys' fees.

**The grounds of the application are as follows:**

1. The petition herein involves the Petitioners' request that notification be given to the family of Petitioner 1 of the *place* in which the said Petitioner, who was detained by the Respondent, is located.
2. On 3 November 2002 the Court ordered to Respondent to file a response to the petition no later than 7 November 2002. The following day (4 November 2002), the Respondent filed his response to the petition.
3. In his response, the Respondent stated, as requested, the place where Petitioner 1 was located (Ofar Camp).
4. The chronology of events presented above justifies the imposition of court costs and attorneys' fees on the Respondent, in accordance with the criteria set in H CJ 842/93,

*al-Nasasreh v. Minster of Construction and Housing et al.*, *Piskei Din* 48 (4) 217, 219, as follows:

- A. Regarding the justification for filing a petition (the first criterion), we see that, pursuant to Section 78A(b) of the Order Regarding Defence Regulations (Amendment No. 53) (Judea and Samaria) (No. 1220), 5748 – 1988, where a person from the region is detained, notification is to be given *without delay* of his arrest and of his whereabouts to a relative, unless the detainee requests that such notification not be given. As regards Petitioner 1, such notification was not delivered to his relatives, and after the efforts of Petitioner 2 failed to locate him, the only option left was to file the petition.
  - B. Regarding the exhaustion of administrative proceedings (the second criterion), we see that Petitioner 2 contacted the Control Center of the Military Police – which is the entity charged with supplying information on the location in which detainees from the Occupied Territories are being held, in accordance with the arrangement reached by the parties that was given the effect of a judgment in H CJ 6757/95, *Hirbawi et al. v. Commander of IDF Forces in Judea and Samaria* (published in *Takdin Elyon* 96(1), 103) (the judgment is quoted in Section 5 of the petition) – regarding Petitioner 1. When it received a “negative” response regarding Petitioner 1, it filed a petition with the Court.
  - C. Regarding the delay (the third criterion), we see that three days after the negative response from the Control Center as regards Petitioner 1, the Petitioners turned to the Court for relief.
  - D. As for attaining the relief sought (the fourth criterion), we see that the very filing of the petition is that which led the Respondent to examine thoroughly the matter relating to Petitioner 1, and this examination led to the information being given regarding him.
5. Petitioner 2, a public organization, was compelled to expend donors’ contributions to create a replacement for the service that should have been provided by the Respondent: notifying the families of detainees on the whereabouts of their relatives in detention. When the Respondent’s conduct compels Petitioner 2 to go to court to obtain the information that the families are entitled to receive from the Respondent, it is the Respondent who must bear the costs entailed in the proceeding.
  6. Since the beginning of September, Petitioner 2 has filed *twelve* petitions on behalf of twenty-eight detainees and their families to determine the whereabouts of detainees (H CJ 7688/02, filed 5 September 2002; H CJ 7862/02, filed 12 September 2002; H CJ

7926/02, filed 17 September 2002; HCJ 8417/02, filed 3 October 2002; HCJ 8352/02, filed 2 October 2002; HCJ 8488/02, filed 7 October 2002; HCJ 8648/02, filed 10 October 2002; HCJ 8696/02, filed 10 October 002; HCJ 8983/02, filed 22 October 2002; HCJ 8880/02, filed 17 October 2002; HCJ 9305/02, filed 31 October 2002; and the present petition, which was filed on 3 November 2002). Ordering the Respondent to pay court costs will likely convey the message that he must improve the system for locating detainees so that notification of the detainees' whereabouts can be given to their families *as soon as possible* after the detention began. The repeated malfunctioning of the Control Center, only some of which instances reach the portals of this Honorable Court, provide clear indication to the Respondent that action must be taken. The information on the place where detainees are being held must reach the families; this is a simple and elementary matter, without the necessity of petitions of the kind herein.

7. In HCJ 5829/02, *Albukar et al. v. Commander of IDF Forces in the West Bank*, which was filed by Petitioner 2 and involved locating the whereabouts of Palestinian detainees from the West Bank, the Honorable Court (the Honorable Registrar Boaz Okun, for the Court) imposed on the Respondent petition costs of NIS 5,000 in circumstances similar to the present case, that is, only after Petitioner 2 herein contacted the Control Center of the Military Police, received a negative response, and filed a petition demanding that the Respondent indicate the whereabouts of the detainees. A copy of the Honorable Registrar's decision is attached hereto and marked A/1.
8. In a similar petition (*HCJ 7368/03, Khaled et al. v. Commander of IDF Forces in the West Bank*), this Honorable Court imposed on the Respondent petition costs in the amount of NIS 2,000. A copy of the decision of the Honorable E. Matza, of 23 October 2002, is attached hereto and marked A/2.
9. Simultaneously with the filing of this application and its service upon counsel for Respondent, a demand was served on the Respondent's counsel to respond: *first*, where Petitioner 1 was held prior to the being moved to his present location (that is mentioned in the response), if in fact he was held in another place; and *second*, why the Control Center did not locate the detainee's whereabouts following Petitioner 2's request.
10. Therefore, the Honorable Court is requested to dismiss the petition and order the Respondent to pay the Petitioners' court costs and attorneys' fees.

Jerusalem, 11 November 2002

[signed]

Tareq Ibrahim, Attorney  
Counsel for Petitioners