At the Supreme Court **HCJ 8696/07**

Sitting as the High Court of Justice

Re: 1. _____ **Mishi**
2**. HaMoked: Center for the Defence of the Individual founded by Dr. Lute Salzberger - registered non profit organization**

Represented by attorneys Yadin Elam (lic. no. 39475) and/or Sigi Ben-Ari (lic. no. 37566) and/or Abeer Jubran (lic. No. 44346) and/or Yossi Wolfson (Lic. No. 26174) and/or Yotam Ben Hillel (lic. No. 35418) and/or Hava Matras- Iron (lic. no 35174) and/or Ido Blum (lic. No. 44538)
Of HaMoked: Center for the Defence of the Individual founded by Dr. Lute Salzberger
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The Petitioners

v.

1. **Commander of the Army Forces in the West Bank**
2. **Commissioner of the Israel Prison Services**

The Respondents

Application by Consent to respond to the Respondents' Reply

The honorable court is hereby requested to permit the petitioners to respond to the respondent's reply. The respondents' counsel, Adv. Golomb, has kindly consented to the actual filing of this notice on behalf of the petitioners.

The grounds for the petition are as follows

1. On 23 October, 2007 the honorable judge Fogelman ordered the respondents to relate to paragraph 10 of the petitioners' application.

2. In the abovementioned paragraph 10 the petitioners requested that the respondents inform the honorable court "why the Israel Prison Services (hereinafter: the "**IPS"**) does not as prescribed by law write down in real time the place of imprisonment of the prisoners, their final destination should they be transferred, and what actions the IPS shall adopt in order to prevent future failures as it has committed itself to so do".

3. On 5 November, 2007 the respondent's reply was received, and behold it conceals more than it reveals… The respondents have attached, as appendix 1 to their reply, the Israel Prison Service Commissioner's Order No. 04.27.00 which is headlined "**absorbing detainees from police custody – their recording and supervising their detention according to the law"** The problem is that both petitioner 1 and the three prisoners whose cases were raised in paragraphs 5 and 6 of the petitioners' application by consent, dated 18 October, 2007 (hereinafter: the "**application") -** were not transferred to the Israeli Prison Services from police custody! All those prisoners (and many in their position) were moved around from facility to facility, all of which were under the responsibility of the Israel Prison Services, and therefore the abovementioned Order is not relevant to their cases.

   So for example petitioner 1 was transferred from Kishon prison to Ohaley Kedar prison (both of which are facilities under the IPS's jurisdiction); Mr. Shawish (whose matter was discussed in paragraphs 5-11 in appendix 2 of the application) – was moved around from Ofer prison to Hadarim prison to Magen prison (all three of which are under the IPS's jurisdiction); Mr. Afana (whose matter was discussed in paragraphs 12-13 in appendix 2 of the application) was transferred from Kishon prison to another prison and returned after 9 days to Kishon prison, without registering the place he was transferred to or the place where he returned from; and Mr. Swalmah (whose matter was discussed in paragraph 6 of the application) was transferred from Shikmah prison to Ohaley Kedar prison (both of which are facilities under the IPS's jurisdiction) where he stayed for four full days without being registered. The legal framework for recording prisoners is therefore not found in the Commissioner's Order, which the respondents attached, but rather in the provisions of the Law that the petitioners cited in paragraph 4 of the application in terms of which:

   > "When receiving a person in prison the prison director shall see to it the particulars that have been determined are recorded". (Section 4 of the Prison Order (new version) 5732-1971)

And also:

> "**At prison an updated and accurate registry shall be operated with respect to all the prisoners who are held there** which includes the authority for their imprisonment and indicates the period of imprisonment or detention". (Paragraph 1 of provision 5.06 of the Israel Prison Services provisions; all emphases in this application are mine – Y. E.).

4. Not only was the Order that was attached to the respondents' reply of no relevance to the substance of the petition, in paragraph 3 of their response the respondents attach the internal guidelines which were issued by the Ohaley Kedar prison headquarters and which relate to the registration steps that need to be undertaken with relation to the "recording of prisoners of the same type as the petitioner".

   Firstly, the petition did not relate to the recording deficiencies at Ohaley Kedar prison alone and the examples of deficiencies that we raised in the petition and the application did not deal exclusively with recording deficiencies at Ohaley Kedar prison.

   Secondly, it is not clear to the petitioners what is meant by "prisoners of the type of the petitioner". The petitioner is a prisoner like any other prisoner and he is entitled to the same rights that every other prisoner is entitled to. Even the abovementioned internal guidelines do not note what is unique about the prisoners that are incarcerated in wing 10 of Ohaley Kedar prison. To the best of the petitioner's knowledge, the uniqueness of the above mentioned wing is that it is a wing in which agents provocateur are held and to which are brought, over the course of their interrogation by the General Security Services, prisoners who are placed in one cell with these agents provocateur. These facts make the building unique but not the prisoners that are in it and there is nothing that allows a derogation of the rights that other prisoners enjoy.

5. In paragraph 4 of their reply the respondents refer to the establishment of an investigating team that was appointed by respondent 2 with the "aim of investigating the modus operandi of the recording offices in the prisons". The respondents do not reveal what authority the abovementioned investigating team will be vested with, and what period of time has been allocated to the team for them to consolidate their conclusions. The petitioners welcome the establishment of any investigating team which will cause the respondents to fulfill their obligations under the Law. Nonetheless, as written in paragraph 9 of the application, this will not be the first time that the respondents have promised to take action to deal with failures.

   Since in their reply the respondents do not reveal **which actions they have adopted** (aside from the aforesaid establishment of an investigating team) in order to prevent the

failures, the petitioners request that the honorable court instruct the respondents to file a supplementary note within 60 days, in which the respondents shall relate in detail to the work of the investigating team, its conclusions and the actions that have taken by the respondents to implement these conclusions.

6. The respondents refer to the difficulties that have stood in their way as a result of their obligations to record "the movement of many hundreds of prisoners and detainees every single day", which is "a result of the growth in the number of prisoners because of their transfer from the IDF and Israel Police holding facilities to the IPS". Firstly it bears mentioning, that the transfer of IDF holding facilities to the IPS was done, to the best of the petitioners' understanding since the IPS is the entity that is meant it provide the best professional solution for the needs and rights of the imprisoned and therefore it is meant to lessen and not expand the amount of failures. Imposing responsibility for the respondents' failures on the accepting of responsibility for extra holding facilities does not show us that the respondents are aware of the responsibility that has been placed on their shoulders. Also the fact that they need to handle the recording of hundreds of detainees and prisoners in one day does not in any way lessen their responsibility. As Chief Justice (retired) Barak said:

> **"Human rights costs money…**This is the price that should be and must be paid in order 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". (Reh. HCJ **Rakanat v. National Labor Court,** *Piskei Din* 54(5) 330, 355).

7. With reference to the costs order the respondents point out that "the information concerning the whereabouts of petitioner 1 was relayed to his legal counsel a short while after the filing of the petition, and without there being a necessity to hold a hearing on it". This claim is completely outrageous. Firstly, the aforesaid information was delivered more than 24 hours had passed after the filing of the petition was made. Secondly, if the respondents are claiming that this is a short time period, this is the clearest proof that the information concerning the detainee was available to the respondents' various divisions of the respondent to which the petitioner applied, as detailed in paragraphs 3-6 of the petition, and which claimed in turn that they did not have the information with them. Why was there a need to force the petitioners to take up the honorable court's time by filing this petition when the information was available to the respondents?

For these reasons the court is requested to order the respondents to file an updated notice as requested in paragraph 5 above and to order the respondent to pay the petitioners' costs and attorney fees.

16 October, 2007
(T. S. 52467)

Yadin Elam
Counsel for the Petitioners