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At the Supreme Court Sitting as the High Court of Justice

6138/10

Before: **Honorable Justice. A. Grunis**
Honorable Justice Y. Danziger
Honorable Justice U. Vogelman

The Petitioner: HaMoked: Center for the Defence of the Individual

v.

The Respondent: Attorney General

Petition for *order nisi*

Representing the Petitioner: Adv. D. Shenhar

Representing the Respondent: Adv. A. Helman

Judgment

Justice U. Vogelman

1. The Petition at bar concerns the Petitioner's request that we instruct the Respondent to exercise his power to examine the Petitioner's complaints regarding suspected use of torture by ISA interrogators in an efficient and timely manner and provide the Petitioner with the results of the examination. The Petitioner further seeks us to instruct the Respondent to formulate a general procedure for examining complaints with respect to the use of torture.
2. The Petition concerns the matter of 17 individuals who were arrested by the ISA in 2008 and 2009 and who, according to the Petitioner, were subjected to inappropriate and degrading treatment. As a result thereof, 17 complaints were sent to the Inspector of Complaints by ISA Interrogees (hereinafter: **the Inspector**). At the time the Petition was submitted, responses had been received with respect to just four of the 17 complaints and an independent investigation was launched only in one case. According to the Petitioner, it contacted the competent officials repeatedly but to no avail and as such, had no recourse but to request the above remedy.
3. In response, the State argues that the petition must be rejected *in limine*. According to the State, complaints by ISA interrogees are transferred to the Inspector, who submits his findings to the

Person in Charge of the Inspector of Complaints by ISA Interrogees, who is a senior advocate with the State Attorney's Office. According to the State, in the interim, decisions were reached on all 17 complaints which are the subject of the Petition and detailed letters on these decisions were mailed to the Petitioner. Therefore, the relief sought in the petition had become moot. The State also maintains that the second relief sought in the petition must be rejected as the Petitioner had not made any prior communication to the Respondent on this issue.

4. The petition must be rejected *in limine*. As noted by the State, the complaints of the 17 complainants discussed in the petition have been examined by the Inspector and detailed letters regarding the decisions that were made have been sent to the Petitioner. In this state of affairs, the hearing on this relief has been obviated. As commonly known, a petition which has no practical validity – even if it was relevant at the time of submission – will not be heard on its merits (see, HCJ 10026/04 **IBI Investment House v. Head of the Antitrust Authority** (unreported, February 6, 2005). It should be noted that in its response, the State addressed the delay in providing the decisions on complaints by ISA interrogators which was caused by the need to find a replacement for the Person in Charge of the Inspector who had gone on maternity leave. I presume that the measures necessary for preventing future delays in examining complaints will be put in place.
5. The petition must be rejected *in limine* also with respect to the second relief sought therein. As noted by the State, the Petitioner had not made any prior communications to the Respondent with respect to his request to formulate a new general procedure. The common law is that prior to turning to the Courts, the Petitioner must exhaust his remedies and seek relief from the competent administrative authority, allowing it to examine his allegations and formulate its position on the matter (HCJ 6147/10 **A. v. Ministry of Interior** (unreported, October 5, 2010). Where a petition is filed without prior communication to the competent authority, this Court shall not address it due to lack of exhaustion of remedies. As the Petitioner in the case at bar did not do so prior to seeking relief from this Court, there is no room to address his petition. It should be parenthetically noted, that according to the State, a structural change with respect to the Inspector's powers has recently been approved, such that the examination of complaints by ISA interrogees would be fully transferred to the Ministry of Justice. It is therefore appropriate that the Respondent exhaust remedies prior to the completion of the staff work.

The petition is, therefore, dismissed *in limine*.

Given today, 7 Shvat, 5771 (12 January 2011)

Justice

Justice

Justice