

The translation attempts to remain true to the original legal terminology though in some cases this was not wholly feasible.

In the Supreme Court
Sitting as the High Court of Justice

HCJ 4054/95

The Association for Civil Rights in Israel

by Attorneys Dana Bricksman and/or Eliyahu Avram and/or Neta Ziv and/or Dan Yakir and/or Dana Alexander and/or Yehuda Ben Dor and/or Yisrael Doron and/or Hadas Tagari and/or Moshe Cohen and/or Beki Cohen Keshet from the Association for Civil Rights in Israel

Petitioner

Against

1. The Prime Minister of Israel
2. Minister of Justice
3. Minister of the Police
4. Minister for Environmental Affairs
together as members of the Ministerial Committee for Matters of
the Shabak
5. Chief of the General Security Service

represented by the State Attorney, Ministry of Justice

Respondents

PETITION FOR AN ORDER NISI AND INTERIM INJUNCTION

This petition is submitted for the issuance of an Order Nisi directed to the Respondents to stand before the Court and give reason why they do not instruct the interrogators for the General Security Service (hereinafter: "Shabak") to refrain from violently shaking interrogatees during their interrogations.

Request for Temporary Order

The Honorable Court is requested to issue before it an interim injunction which directs the Respondents to prohibit absolutely, Shabak interrogators from violently shaking interrogatees during their interrogation, until the completion of the hearing in this petition.

The continuation of the employment of the shaking method in interrogations may cause irreparable damage to Shabak interrogatees: brain swelling, damage to nerve

fibres and even death, and therefore the use of this must be halted immediately. The harm that may be caused by continuing to employ this shaking method until the petition is complete, is unquantifiably greater than any harm which may be caused if the use of this method is halted until the completion of the hearing on this petition.

The Facts of the Petition:

Opening:

1. This petition addresses the rights of the person to dignity, physical integrity and to life. We are dealing with an interrogation method which directly violates each one of these rights. This is a method frequently employed in Shabak interrogations during which physical pressure is used against the interrogatee: He is shaken violently by the upper body, forwards and backwards, in a manner that causes the neck and the head to thrust rapidly in different directions.

On April 26, 1995, Mr. Abdel Samad Harizat died as result of this method. On April 22, he was violently shaken forwards and backwards a number of times by Shabak interrogators when he was being held in the Russian Compound in Jerusalem. The death of Abdel Samed Harizat, and the medical opinion that was issued following the death, proved that the method of violent shaking may cause irreparable brain damage to interrogatees and even their death. Despite this, the Respondents have refrained, to the best of the Petitioner's knowledge, from prohibiting the use of the dangerous and fatal shaking method in Shabak interrogations.

2. For the first time, this petition raises before the Honorable Court the question of the legality of a specific and defined interrogation method. Regarding this method, the government authorities have actually admitted to two points: that this method is permissible for Shabak interrogators according to internal guidelines; and that it caused directly the death of a person while he was in interrogation.

The position of the Petitioner is that it is prohibited to employ violence against the body of a person during interrogation and to torture him. Nevertheless, this petition is limited to the question of the legality of one interrogation method which poses a real threat to life....

The Petitioner

4. The Petitioner is a non-profit organization working to preserve the civil and human rights in the State of Israel and in the territories under its control. Among other things, the Petitioner deals with the rights of detainees and interrogatees.

The Respondents:

5. Respondent No. 1 [the Prime Minister] is the person in charge for the State of Israel for the activities of the Shabak. He appointed Respondent 5 to stand at the head of the Shabak and to command its interrogators.

6. Respondents 1 through 4 are members of the Ministerial Committee Regarding Matters of the Shabak [hereinafter "Ministerial Committee"]. The Ministerial

Committee was organized following the recommendations of the Investigatory Commission Regarding Interrogation Methods of the General Security Service Regarding Hostile Terrorist Activity, from October 30, 1987 (hereinafter - the Landau Commission). In Section 4.19(d) of its recommendations, the Landau Commission recommended that the Prime Minister establish a ministerial committee in a limited composition to deal with exceptional cases regarding the Shabak and "would fulfill the role of oversight regarding the group of means of pressure permitted in interrogations of hostile terrorist activities of the Service."

The Government of Israel adopted the Landau Commission recommendations and the Prime Minister set up in accordance to the recommendations the said Ministerial Committee.

7. To best of the Petitioner's knowledge, the Ministerial Committee meets from time to time to reconsider and approve the interrogation methods permitted for Shabak interrogators and the practice of exceptional permits in interrogations that are allocated to Shabak interrogators.

Sequence of Events:

8. On May 2, 1995, following the first pathological findings regarding the cause of death of Abdel Samad Harizat, the Petitioner wrote a letter to Respondent No. 1. In the letter, the Petitioner demanded from the Ministerial Committee and at its head Respondent No. 1, to void completely the shaking method in Shabak interrogations...

9. Respondent No. 1 did not respond to the Petitioner's letter. Despite this, on May 14, 1995, Respondent No. 2 sent the Petitioner a letter stating that he is considering the Petitioner's statement "with responsibility and seriousness", but will await the results of the investigation as to Harizat's cause of death...

10. The Petitioner again turned and demanded from the Ministerial Committee to void the shaking method in interrogations following the completion of the investigation of the Branch Investigating Police [Practices] (hereinafter, "MACHASH") regarding Harizat's cause of death. In its letter from June 11, 1995, to Respondent 2 in which copies were also sent to Respondents 1,3,and 4, the Petitioner indicated that the results of the investigation confirmed that Harizat's death was caused by violently shaking his head during the interrogation...

11. The Petitioner attached a medical opinion of Dr. Robert Kirschner a forensic pathologist. Dr. Kirshner issued his opinion as an expert, accordingly:

It is my opinion with a reasonable degree of medical and scientific certainty that interrogation by shaking poses a grave risk of severe and permanent cerebral injury, including death, to those subjected to such trauma.

12. The Petitioner also attached the statements of three interrogatees who were violently and methodically shaken by Shabak interrogators during their interrogations in the last few months. Each one of them was released at the end of their interrogations without being put on trial. Their statements were taken by Mr. Yuval Ginbar, a researcher at B'tselem. In these statements there is enough to point to the

frequency of this method and the violence that accompanies it. Take for example the Abdel Nasser Al-Qeisi:

He did this with great force. My chest hurt, and my neck was shaken forward and backwards like a rattle, with great force...when the first got tired, the second started. I fainted. They brought me water, sprinkled it on me, and brought me to the medic....

13. The Petitioner still has not received any response to its letter.

14. The Petitioner submitted in the past many complaints to the Government Legal Advisor in the name of detainees who were interrogated by the Shabak regarding violent and degrading interrogation methods. Among these complaints were complaints regarding violent shaking of the interrogatee. The last complaint of this type was from Mr. Hani Salah Muzhir, whom the Petitioner submitted a letter to the government's legal advisor on October 23, 1994. In paragraph 4(d) of the letter, the Petitioner indicated the following in the name of the interrogatee:

When our client was tied with his hands to the low chair and shackled also by his feet, the interrogators, Cohen, Joseph, and Abu Qarim rattled his upper body with great force. These tuggings and pushings caused enormous pains in his neck and shoulders. My client continues to suffer from these pains even after the interrogation ended at the time of taking this affidavit....

15. Until today, the Petitioner has not received a response to this complaint.

Findings of the Investigation As to Harizat's Cause of Death

16. MACHASH investigated the cause of Abdel Samad Harizat's death (hereinafter "the deceased"). MACHASH requested the Jerusalem Magistrate Court on April 26, 1995 to order an autopsy. The autopsy was performed on April 27, 1995. Attorney O. Shendar, director of MACHASH, summarized the findings of the investigation in a report from June 7, 1995...

...

18. According to the findings of the investigation, Harizat's death was caused by swelling and bleeding in his head and damage to his nerve fissures which occurred as a result of whirling of the head, without involving any trauma to the head... [What follows is a discussion of medical findings and of other experts and other reported cases of shaking. Ed.]

Legal Arguments:

29. The shaking method is incompatible with Israeli law and with international law. The method violates a number of sections of the penal law, the guidelines of the Basic Law: Human Dignity and Liberty, the Covenant for Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman and Degrading Punishment and Treatment all of which were ratified by Israel.

[Discussion follows elaborating the violations of the above-mentioned laws. Ed.]

Conclusion:

39. The shaking method is an interrogation method which radically causes harm to the body of a person, his dignity and even his life. The Respondents probably think that this method contributes to the security of the state and the struggle against terrorism. However, it must be kept in mind that the purpose cannot be holier than the means, and that a democratic state must subject its security authorities to the law. In this connection, it is appropriate to quote the words of Justice Barak, even though stated in a minority opinion, which reflects without a doubt the opinion of the Court:

"There is no security without law. The Rule of Law is a component of national security." H CJ 428/86 Barzilai v. State of Israel, Psak-Din 40(3) 505, page 622.

This is the difference between a democratic state and a terrorist organization. This is the difference between the State of Israel and totalitarian states. It cannot be, that in a democratic state upholding the law, people will die in interrogations. It cannot be, that those responsible for interrogations on the political and operation levels will order or permit interrogators to employ interrogation methods which brought about the death of a person in the past, and which may cause serious bodily injury or the death of a person in the future.

Therefore, the Honorable Court is requested to issue an order nisi and an interim injunction as requested in the heading of this petition, and to order the Respondents to instruct the interrogators to refrain from violently shaking interogatees during their interrogations.

Adv. Dana Briksman
For the Petitioner

Adv. Eliyahu Avram
For the Petitioner

June 27, 1995