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At the Supreme Court
Sitting as the High Court of Justice

H CJ 1664/15

- In the matter of:
1. _____ al Ghul, ID No. _____
 2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**
Represented by counsel, Adv. Andre Rosenthal
15 Salah a-Din St., P.O.Box 19405, Jerusalem 91194
Tel: 6280458, Fax: 6221148

The Petitioners

v.

Military Commander of the West Bank
Represented by the State Attorney's Office

The Respondent

Petition for *Order Nisi*

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering him to appear and show cause, why he should not revoke an "Order Prohibiting Entry into the West Bank" which was signed by the respondent on December 3, 2014, and is valid from the date it was signed until June 1, 2015. A copy of the order is attached hereto and marked **P/1**.

The grounds for the petition are as follows:

1. Petitioner 1 (hereinafter: the **petitioner**), _____ al Ghul, a thirty one years old bachelor, intends to get married this coming May, and works for a public health association for six years.

By the end of 2006, he was sentenced by the Judea military court for one year imprisonment for disorderly conduct and membership of an unauthorized association, offenses which were committed in March 2006 – nine years ago. Since then the petitioner was not put to trial.

About three years ago the petitioner was interrogated by the Israel Security Agency (ISA).

The petitioner lived with his family in Ras al 'Amud, prior to the issue of a removal order issued against him, which entered into effect on November 30, 2014 and which will be valid until April 30, 2015. The case concerning said additional order is pending before this honorable court, in HCJ 978/15 which is scheduled for a hearing before a panel of the President on March 16, 2015.

On December 7, 2014, the petitioner was summoned by phone by the Israel Police, and on December 8, 2014, the order was served on his authorized representative who received it from the Israel Police that morning on behalf of the petitioner.

On December 12, 2014, the petitioner was summoned by the Israel Police to the Russian Compound, where he was interrogated about his life and actions in general.

A copy of the summons is attached and marked **P/2**.

Petitioner's affidavit is attached and marked **P/3**.

2. Petitioner 2 is a human rights organization, which has taken upon itself, *inter alia*, to assist Palestinians, victims of cruelty or deprivation by state authorities, including by protecting their status and rights before the authorities, either in its own name as a public petitioner or as counsel for persons whose rights have been violated.
3. On December 17, 2014, petitioner's counsel wrote to the respondent, to the electronic mail which appears on the order itself, Exhibit P/1: pniot-tsibur@mail.id.il
4. On December 28, 2014, petitioner's counsel submitted an objection in petitioner's matter. Said objection was transmitted by electronic mail, as stipulated in the order and according to the address which appeared therein, as well as by facsimile. A soldier named Shiran, from respondent's bureau in Beit-El, confirmed receipt of the facsimile.

A copy of the objection is attached and marked **P/4**.

A copy of the facsimile transmission is attached and marked **P/5**. The facsimile number of respondent's office, 9977326 appears under the caption "successful".

5. On February 9, 2015, petitioner's counsel turned to respondent's legal advisor and requested to find out what was the status of petitioner's objection.

In response, respondent's legal advisor informed that the objection has not been received. In said letter, for the first time, a different e-mail address was mentioned to which the objection should have been sent. Instead of *pniot-tsibur* as written at the bottom of the order itself, Exhibit P/1, it should have been *pniot-tzibur*. The letter does not explain why the facsimile which was sent to the bureau of respondent's legal advisor, and the receipt of which was confirmed by a soldier from said bureau, as mentioned above, was not responded to.

6. On February 24, 2015, the respondent rejected the objection and left the order in force.

A copy of the rejection is attached and marked **P/6**.

Petitioners' Arguments

7. The petitioners argue that an administrative authority may not violate a person's right unless he was given proper opportunity to be heard. In the case at hand this was not done and as specified above, due to a typographical error, and the failure of the legal advisor's bureau to respond, the objection was examined by the respondent about two months after it was submitted.

8. **A.** The respondent rejected said argument based on the judgment in H CJ 4348/10 **Neria Ofan v. GOC Home Front Command**, where the court stipulates that a hearing before the authority, which is about to impinge on a fundamental human right, is the rule. However, the court accepts the possibility that in "exceptional cases" a hearing may be held after the administrative act was executed.

B. The petitioner in **Ofan** argued that the order which entered into force on May 2, 2010, was delivered to him only on May 24, 2010. The court noted in that case as follows:

"It seems that in the case at hand a preliminary hearing could not be held, since had the petitioner known of the intention to issue the order against him before the decision was made, there was a substantial risk that he would have avoided receiving it, similar to a previous order issued against him in the Area, thus, frustrating the important purpose of the order as described above."

The petitioner argues that unlike the **Ofan** case, there was no attempt of disavowal on his part, when he arrived to the police station to receive the current order as well as when he came to receive the order which prohibited him from entering Jerusalem. In addition, there was no attempt on his part to refrain from arriving to the interrogation, as will be specified below.

Furthermore. The order was signed on December 3, 2014 but was delivered to the petitioner only on December 8, 2014.

C. The petitioners argue that a preliminary hearing would have reconciled with the nature of the authority and the purpose of the law and would not have frustrated the proper functioning of the administrative authority, namely, the respondent, and would not have materially impinged on any other important interest.

D. In H CJ 1546/06 **Gezawi v. Military Commander of the West Bank** this honorable court held, in connection with the need to interrogate an administrative detainee as soon as possible after the issue of the order, as follows:

(3) According to the basic principles of human dignity – which rules apply to everybody, even to suspects of very serious offenses, and even detestable and shameful, whose respect of mankind is as far as the east is from the west - there is an obligation to interrogate a person as soon as possible after his arrest, and to present to him the information which can be presented to him and which is not privileged information. The purpose, beyond the argument of mistaken identity etc., is that a person will not be detained without having been given the opportunity, even if he fails to use it, to present a version against his detention and to try to convince. As aforesaid, the material presented to him should reflect the maximum which may be presented to him from the open material."

E. In the case at hand the petitioner was not interrogated in connection with the order. It should be noted that in the objection which was submitted against the removal order, the petitioner was summoned for interrogation, before the GOC Home Front Command decided to reject his objection. In the interrogation dated February 2, 201 [sic] he was told that he was "suspected of being a member of an unauthorized association as it was against the law." The interrogation was

held in the central division Hof, in a police station in Haifa. The entire interrogation focused on suspicions concerning petitioner's activity in Jerusalem.

A copy of the interrogation is attached and marked **P/7**.

9. The petitioners argue that the above two reasons, the failure to hold a hearing before the issue of the order, and the failure to interrogate the petitioner along with the disrespectful manner by which his objection was handled, as described above, are fundamental flaws which should result in the revocation of the order.
10. The petitioners argue that the Order is marked by an additional flaw as it is sweeping and encompasses the entire area of the West Bank and is not limited to a specific geographical area, as a result of which petitioner's freedom of movement is excessively injured.
11. The petitioners argue that the fact that the petitioner was not informed of the nature of the deeds attributed to him and was not given an opportunity to refer to any such suspicions, is also a fundamental flaw which should lead to the revocation of the order.
12. The petitioners argue that the fact that only intelligence material was used, and that the entire data concerning the quality of the human sources and the nature of the relations with them was not brought to respondent's attention before he decided to rely on the privileged information and issue the order – is also a material flaw which should lead to the revocation of the order.

The privileged information derives from intelligence work and is based on dependency relations between the informant and the agent. The weakness of the human source - such as his need to obtain certain services or benefits from the state - is used by the agent to induce and obligate the source to provide information. Even if the information is obtained from several sources - each source has the same weakness and the reliability of the information is dubious.

13. The petitioners argue that the duration of the Order does not meet the proportionality test, in view of the fact since 2006 the petitioner was involved in any criminal activity.
14. Therefore, in view of all of the above, the honorable court is requested to issue an order as requested and after hearing the parties, make it absolute.

Jerusalem, today March 2, 2015.

(signature)

Andre Rosenthal, Advocate
Counsel to the petitioners