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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

4 Abu Ovadiah Street, Jerusalem, 97200

Tel: 02-6283555 Fax: 02-6276317

The Petitioners

v.

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

Represented by the State Attorney

Ministry of Justice, Jerusalem

Tel: 02-6466681 Fax: 02-6467011

The Respondents

Respondents' Reply

Pursuant to the decision of the honorable Judge E. Fogelman the respondents are hereby honored to file their reply to paragraph 10 of the petitioners' application dated 18 October, 2007.

1. This petition is concerned with a writ for habeas corpus on the basis of the petitioners' application that the place of detention of petitioner 1 (hereinafter the "**petitioner**") be delivered to his family. The petitioner's place of detention was delivered to the petitioners' counsel on 17 October, 2007, and this matter has been resolved.

2. As to the general subject of recording the movements of detainees in the Israel Prison Services (hereinafter: the “**IPS**”), the subject matter of paragraph 10 of the petitioner’s reply:

Commission Order No. 04.27.00 regulates the absorption of detainees into the IPS from police custody, including recording them (MS/1)

The IPS routinely updates, the entries and exits of prisoners and detainees in its recording system including departing prison for various needs (e.g.: court appearances etc.) as well as transfers between various prisons. This involves the movements of many hundreds of prisoners and detainees on a daily basis.

3. As a result of a mishap with respect to the petitioner, in addition to another case at Oholey Kedar prison, the prison command issued an internal guideline outlining the series of recording activities that must be undertaken with respect to recording detainees of the class of the petitioner (MS/2)
4. We further note, that from a general perspective the Commissioner of the IPS has appointed an investigative team whose goal it is to check the operational modes of the recording offices in the prisons, in light of, among other things, the significant increase in the daily number of prisoner movements which must be recorded in the system, as a result of the increase in number of prisoners because of the transfer of IDF and Israel Police holding facilities to the IPS. The team is meant to deal with, among other things, recording procedures, supervision, control, guidance and qualification of the registrars, the registrar standards, etc.
5. As to the request for a costs order, the respondents request that it be left within the honorable court’s discretion. We do however wish to note, with regard to the amount of the costs, that the information pertaining to the whereabouts of petitioner 1 was delivered to his counsel a short time after the filing of the petition, so that there was no need in holding a hearing on this matter.
6. This notice is supported by the affidavit of Deputy Warden Ofra Klinger, Prisoner Department Head at the IPS.

Today: 24 Heshvan 5768

05 November 2007

Appendix: MSI (faxed copy)

Einav Golomb

Senior Deputy to the State Attorney

Commission Order

**Responsible Factor:
Head of Security and the
Prisoner**

Chapter 04- Prisoners

Effective from: 1.8.01

Order No. : 04.27.00

Last updated: 12.11.06

The absorption of detainees from police custody- The recording and control of their detention under the law

General

1. The Israel Prison Services (IPS) shall absorb detainees from police custody pursuant to the following rules:
 - a. The Prisoner department shall decide in coordination with the District Prisoner Officers and with the Reconnaissance Department at the National Headquarters the number of prisoners that shall be absorbed every week from police custody to IPS custody, no prisoner shall be absorbed from police custody if he is not included in the allocation that has been pre- determined.
 - b. Only the following detainee population groups shall be absorbed:
 - 1) Persons detained until the end of the proceedings.
 - 2) Detainees against whom an indictment has not yet been filed at prisons which shall be determined by the Commissioner.
 - 3) Administrative detainees.
 - 4) Unlawful combatants.
 - c. The following documents with respect to the absorbed detainee shall be received from the police:
 - 1) Police data form pertaining to the detainee including all the required particulars which in turn include information about the expected summons to the court and the date of filing of the indictment (see appendix B attached).
 - 2) The indictment (in the case of persons detained until the end of the proceedings)

- 3) A valid arrest warrant (which includes all the particulars) including a warrant for his remand in custody, or which clearly notes that the detainee has been arrested until a verdict is given or some other decision has been reached in his trial.
 - 4) A copy of the judge's decision that the prisoner will be held in remand, or will be held until a verdict is given or some other decision has been reached in his trial.
- d. The absorption of a detainee requires safeguarding: One must act according to the Security and Prisoner Administration procedures in this matter.
 - e. If the detainee is transferred to the IPS through the Nahshon unit, the commander of the accompanying team shall examine to see that they have all the required documentation detailed in sub-paragraph (c) above. Without all these documents a detainee shall not be transferred to the IPS. If the detainee is transferred directly by the police, the examinations shall be carried out by the registrar. If not all the required information has been received, the detainee shall be returned in accordance with a decision by the commander or his deputy of the police detention center from which he was transferred.
 - f. An administrative detainee shall be absorbed by approval of the Head of the Prisoner Department. If this involves an administrative prisoner in terms of an order issued by virtue of the Emergency Powers (Detentions) Law 5739-1979 there is a requirement to denote the place of confinement, and any change to the place of confinement requires the approval of the person who issued the order.
 - g. An illegal combatant shall be absorbed by the IPS by a confinement order signed by the (IDF) Chief of Staff.
 - h. Within 24 hours from the detention of a detainee all the particulars of such detainee shall be typed by the Registrar into the Zohar computer system.
 - i. The detainee's signature on the personal bond - the prisoners' officer or registered person in charge who holds the rank of an officer, or in their absence the IPS Officer, are authorized to verify the detainee's signature on the bond which was issued in accordance with a judge's decision pursuant to section 49(a) of the Criminal Procedure (Powers - Enforcement - Detentions) Law 5756- 1996.

- a. As aforesaid, a prisoner shall not be received into the IPS from police custody without a Police Information Form pertaining to the prisoner; this form is critically necessary for the sake of safeguarding the prisoner from harm to his person or to other prisoners, prevents his escape and preserves his health.
- b. Scrupulous care must be taken to ensure that the form contains all the particulars that must be included therein, as well as any information required by the IPS for the purposes of detaining the prisoner.
- c. The information form shall be prepared in duplicate and shall bear the full name and signature of the police officer. One copy of the form shall be retained by the police officer and the other copy shall be delivered to the accompanying team at the IPS. The commander of the reconnaissance team shall deliver the form together with an authority for the arrest to the prison registrar. If the transfer occurs directly from the police to the prison the form shall be delivered to the prison registrar.
- d. The commander of the prison in which the prisoner has been absorbed will act in accordance with the recorded information in the form and shall adopt all the necessary measures to ensure the prisoner's welfare.
- e. If it shall become clear that the recorded information in the form is incorrect it shall be reported to head of the Prisoner Department - the Head of the Prisoner Department shall in turn report this to the Head of the Operations and Reconnaissance Department for the purposes of arranging for a clarification and for determining the detainee's place of detention.
- f. An information form shall not be prepared for prisoners in the custody of the IPS who have been temporarily transferred to a police facility for the purposes of an interrogation, or court appearance.

3.

- a. Sections 59-62 of The Criminal Procedure (Powers- Enforcements- Detentions) Law 5756-1996 determines time limits for holding a person in detention:
 - (1) A recent detainee against whom a charge sheet had not been served within 75 days of his arrest shall be released from detention with or without posting bail.
 - (2) A detainee against whom a charge sheet has been served, and after having been served with the charge sheet has been in detention for that very charge for a cumulative period of 30 days, but whose trial

has not yet begun – shall be released from detention unless the court decides to postpone the trial without releasing him.

- (3) A detainee against whom a charge sheet has been served, and after having been served with the charge sheet has been in detention for that very charge for a cumulative period of nine months but where a final decision has still to be reached, shall be released from detention, unless a Supreme Court Judge has ordered that his detention be extended. At the end of the extension period (the first or supplementary) and in the absence of a further extension, he shall be released from detention.

b. In order to avoid the unlawful detention of a detainee the registration shall adopt the following steps immediately upon absorbing the detainee:

- (1) An examination to see whether the detainee has any lawful confinement authority.
- (2) Type in the date of serving the charge sheet in cases where this is relevant.
- (3) Type a memorandum: taking note of the time when 30 days will have elapsed from the date of serving the charge sheet (the time period shall at this stage be calculated by hand).
- (4) Type a memorandum: taking note of the time when nine months will have elapsed from the date of serving the charge sheet.
- (5) Providing information to the detainee with regard to the contents of sections 59-62 of the Criminal Procedure Law and giving notice to the detainee that if the provisions of these sections apply to him the detainee must immediately inform the registrar through the wing commander. The notice shall be given in writing and shall be delivered to the prisoner, a copy of which shall be filed in the prisoner's file (see appendix 1).
- (6) It shall be made clear that nothing in this absolves the prison authorities from carrying out the regular controls as shall be detailed below.

c. For control purposes the prison registrar shall every month produce between 3 and 5 of the following print-outs and shall carry out the following activities:

- (1) **The production of the print-out of the detainee whose trial has not yet begun.**

This print-out shall include a list of detainees including information pertaining to the dates of their summonses to court, and which over the course of that month 30 days will have passed since the date of their indictments.

The registrar shall examine with the aid of this print-out those detainees for whom no summons has been issued in the [criminal] file for which they have been detained and for which they are awaiting trial ever since their indictment.

The detainees shall be summoned to register and the registrar will confirm with them whether their trial has begun. If it shall become clear that their trial has not begun or that the matter is not straightforward the registrar shall apply by telegram to the district attorney's office that filed the indictment and shall caution them that the detainee has not yet been summonsed to court and on the specified date he shall have completed 30 days in detention. If the 30-day period had already passed from the date on which the indictment was served and the detainee's trial had not yet begun he shall be released from his detention.

(2) The production of the print-out of the detainee whose verdict has yet to be given

This print-out shall include a list of detainees who shall have completed over the course of that month, 9 months in detention from the date upon which the indictment was served upon them.

The registrar shall apply to the head of the prisoner registration and management in the Prisoner Department noting the particulars of the prisoner and the legal details for the proposes of applying to the State Attorney's Office to clarify whether there was a court decision to extend the detention period over and above nine months.

If there was a judge's decision to extend the detention period over and above these nine months, the head of the prisoner registration and management in the Prisoner Department shall inform the prison registrar who applied to him of this and shall send him a copy of the

judge's decision. If the detention period had been extended under the law, the detainee shall be released upon completion of nine months from the date of serving the indictment

d. Prisoners' Officer Supervision in Prison

The file of every new prisoner who is absorbed in the prison shall be examined within a week of the Prisoners' officer receiving the detainee. The prisoner's officer shall examine the detainee's file as well as the compatibility between the information in the file and the information that has been typed into the "Zohar" system pertaining to the detainee. The results of this examination shall be recorded in writing and shall be filed in the prisoner's file.

Below is the detailed list of matters that shall be examined by the prisoners' officer:

- (1) Whether the detention order contains all the particulars
 - (2) Whether there is a police information file pertaining to the detainee which contains all the necessary particulars.
 - (3) Whether there is a judicial decision in favor of detention.
 - (4) Whether there is an indictment for the relevant cases
 - (5) Whether the detention order was typed into the "Zohar" system without any errors.
 - (6) Whether the date of serving the indictment, the memorandum for the thirty day period, and the date for the expiry of the nine month period have been typed in.
 - (7) Whether pictures of the detainee are located in his file.
 - (8) Whether the detainee was signed in the detention notice form (see appendix 1)
- e. In all cases where the detainee raises an objection before the Branch Commander on the constitutionality of his detention or delivers to him information pertaining to his summons to appear before the court the Branch Commander must transfer the appeal in writing for further handling by the person in charge of registration.
- f. Inspection by District Prisoner Officer:**
- The District Prisoner Officer will examine the arrest warrant and indictment received from the registrar. During his inspection of the prison where detainees

are held, he will also conduct a random examination of all the particulars detailed in section d. above.

- g. Handling of the personal effects of the prisoner/detainee and of his deposit, shall be carried out as specified in the regulations of Commission Order 04.29.00 "Admission of Prisoners in Prison."

4. **Transmission of a copy of the indictment to an intelligence officer:** The person responsible for registration shall transfer a copy of the writ of indictment against the detainee to the Intelligence Officer at the prison. The Intelligence Officer shall read the writ of indictment and shall examine whether the prospective witnesses that shall testify at trial are also prisoners and whether as a result thereof there is some foreseeable danger to the prisoner or to the witnesses, which would require that he take action in the matter in accordance with the guidelines of the Chief Intelligence Officer
5. **Executing authority:**
 - a. **At prison:** Prison Commander.
 - b. **At the District:** The District Prison Officer
 - c. **Headquarters Responsibility:** Head of Prisoner Department
6. Previous updates: 15 January, 2003.

Israel Prison Services
-Confidential-

Command Office
Ohaley Kedar Prison
Date: 19 Heshvan, 5768
31 October, 2007
File: AS -31
Document: 80832507

Wing 10 Sergeant
Registration Office
Shift Commander
Prisoner Officer

**Re: Procedure for the Absorption and Delivery of Detainees
in the Special Department – 10, Ohaley Kedar**

1. General

- a. Department 10 is a special department.
- b. Because of its uniqueness the absorption and delivery of detainees in this department does not follow the routine procedure as shall be detailed below.
- c. These guidelines are for the purpose of defining in detail the measures that must be taken when absorbing/ releasing a detainee to/ from Department 10 which has its own regulations with respect to registration

2. Aims

- a. To regulate the schedule of activities at the time of absorbing/releasing a detainee to/from special department 10 in the computer system and in the books

3. Method

- a. Special Nahshon accompanying team to arrive with the order for recording in the logs at the absorption center.
- b. The Prison registrar shall register the detainees in the log and shall also type the absorption/release in the "Zohar" computer system before making identification of the detainees in the special department, by the shift commander.
- c. The shift commander shall identify the detainees in the special department in accordance with the Orders and shall sign this in the log, and at the conclusion he shall return the log and orders for registration.

4. Responsibility

- a. Registration
- b. Shift Commander

Best wishes,

**Rina Harel, Deputy Warden
Commander O. K. Prison**