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At the Supreme Court Sitting as the High Court of Justice

HCJ 7637/23

Before: Honorable Justice Y. Willner
Honorable Justice O. Grosskopf
Honorable Justice . K. Kabub

The Petitioners:

1. _____ Kashta
2. _____ Lubad
3. _____ Shalach
4. _____ Abu Safi
5. _____ Kulab
6. _____ Sha'at
7. _____ Abu Hashem
8. _____ Al-Zarabi
9. _____ Abu Sultan
10. _____ 'Aduan
11. HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger
12. Gisha – Legal Center for Freedom of Movement
13. Public Committee against Torture in Israel
14. Physicians for Human Rights – Israel
15. Adalah – Legal Center for Arab Minority Rights in Israel
16. Association for Civil Rights in Israel

v.

The Respondents:

1. Israel Defense Forces
2. Chief Military Police Officer
3. Commissioner of Israel Prison Service
4. Commissioner of Israel Police

Petition for *Order Nisi*; Notice on behalf of the State; Request on behalf of the Petitioners

Representing the Petitioners: Adv. Nadia Daqqa; Adv. Osnat Cohen-Lifshitz

Representing the Respondent : Adv. Avi Milikovski; Adv. Michal Danieli

Judgment

Justice K. Kabub:

1. The petition at hand concerns the request of Petitioners 1-10, ten Gaza Strip residents (hereinafter: the **Petitioners**) and Petitioners 11-16, six registered associations (hereinafter: the **Public Petitioners**) for a writ of *Habeas Corpus*, as stated in the petition. In fact we are requested to order the Respondents, military bodies, the Israel Prison Service and the Israel Police, as follows:

"a. Inform the families of Petitioners 1-10 (hereinafter: the Petitioners) and additional hundreds in their condition, who were staying in Israel on the eve of the war by virtue of entry permits for work purposes or for medical purposes, who were arrested by the security forces in recent days and whose whereabouts are unknown; whether they are held by any of them or by anyone on their behalf; where they are held and by virtue of which law; have they been released or transferred to another body – when, where and to whose hand; and what do they know about their whereabouts at this time. To the extent that the Petitioners are held by an Israeli authority unlawfully, **including in an undeclared incarceration facility**, the court is requested to order that they be released to the West Bank. Alternatively, and to the extent that they are held in an incarceration facility which had not served previously as a declared incarceration facility, to instruct that the order declaring it an incarceration facility be presented.

b. Give the Petitioners (11-16) all the names and whereabouts of Palestinians, Gaza Strip residents, who had been lawfully staying in Israel before the war broke out, and are apparently held as of this time by any one of the Respondents or on their behalf within the territory of the state of Israel or the West Bank.

c. Hold in their possession, or in the possession of any of them, updated information concerning the detention and place of incarceration of each detainee, resident of the Gaza Strip, held by any of the state authorities, and conduct registration, as required by law and in real time, of the detainees' place of incarceration and enable anyone requesting it to receive said information forthwith."

2. The petition ostensibly details the story of the Petitioners and "hundreds more", residents of the Gaza Strip, who had been staying in Israel by virtue of a permit, on the morning of October 7, 2023, when the Swords of Iron war broke out after the state of Israel and its citizens had been attacked by a murderous terror attack. It is alleged in the petition that "[from] **numerous requests... received from the family members of hundreds of Gaza Strip residents**" and "**from publications in the press from recent days it emerges that about 4,000 Gaza Strip residents who had entered Israel before the**

war, including persons who had entered with entry permits, are currently held in incarceration facilities in Israel." It is further alleged that Petitioner 11, HaMoked Center for the Defence of the Individual, contacted **"in the matter of the Petitioners and about 300 additional individuals, the incarceration control center and requested to locate them, but was informed by the latter with respect to each and every one that [he] 'was not located'"**. This is, in fact, the factual infrastructure underlying the petition, on the basis of which the Petitioners and the Public Petitioners raised a long list of arguments which include reference to international law as well as to the domestic law which applies to *'Habeas Corpus'* petitions of Judea and Samaria residents including Section 53(a) of the Order regarding Security Provisions [Consolidated Version], 2009 (hereinafter: the **Order regarding Security Provisions**). To complete the picture it should be noted that on October 12, 2023, HaMoked sent a letter to the Attorney General **"to clarify the incarceration policy of residents from the Gaza Strip who were arrested by Israel, either in the course of combat or only due to the fact that they are Gaza Strip residents."** It should be noted that as of the petition's submission date, the relevant bodies had yet to respond to the inquiries. In another letter, also from October 12, 2023, the Attorney General, the Minister of Defense and the Coordinator of Government Activities in the Territories, were requested by the Public Petitioners (excluding Petitioner 13), *inter alia* **"to act towards releasing, to the West Bank, the protected workers held in incarceration facilities against their will. In addition we request that you give us a comprehensive list of all the workers held by you and the location of their incarceration [...]"**. It should be noted that a letter was also sent by HaMoked to the High Court of Justice Department at the State Attorney's Office requesting it to conduct a 'pre-HCJ' proceeding in the matter, which was rejected; the above, on the grounds that the department **"does not currently handle pre-HCJ requests concerning the location of detainees, residents of the Gaza Strip"**.

3. To complete the picture it should also be noted that on October 11, 2023, eleven days before the petition was submitted, Petitioner 11 had submitted a petition to the High Court of Justice against the same respondents, alongside two Gaza Strip residents, who allegedly arrived, on October 7, 2023, to the Erez Checkpoint area, ostensibly in the framework of their work as journalists, to document the events which took place in the terror attack against the southern settlements and military bases in the area (HCJ 7439/23; hereinafter: the **Additional Petition**). In the context of the Additional Petition, HaMoked requested the same exact remedies which were requested by the Public Petitioners on the **general** level in the petition at hand, namely – remedies B and C above. The above, in addition to the remedies which were requested on the **individual** level with respect to the two additional petitioners.
4. In a reasoned judgment dated October 31, 2023 the Additional Petition was dismissed on both the general and individual levels (Judgment given by Justices **N. Sohlberg, Y. Willner** and **R. Ronen**); the above due to the fact that the petitioners in said petition were unable to point at a legal source obligating the Respondents to disclose to HaMoked or the family members of detainees, residents of the Gaza Strip, information about the location of their incarceration. In addition, the third remedy in the petition before us concerning the registration of the location of the incarceration of Gaza Strip residents was rejected for lack of adequate factual infrastructure.

It was accordingly held that there is no room to apply to Gaza Strip residents the law which applies to the Judea and Samaria area, including Section 53(a) of the Order regarding Security Provisions. It was also clarified that in the past, about a decade ago, relatives of detainees, Gaza Strip residents, were offered *ex gratia* to contact the incarceration control center, in completely different security circumstances, and that said arrangement did not obligate any of the Respondents in the current circumstances.

5. On October 24, 2023 I ordered the State Attorney's Office to notify which authority may be contacted by the **Petitioners** to obtain details regarding the location of their incarceration, if they are indeed incarcerated. Notice as aforesaid was given on October 29, 2023, following which, without disregarding Petitioners' request "**to provide details about the request to said authority**" only the **Petitioners** were requested to notify whether, in view of the state's notice, they were still standing by their petition. On October 30, 2023 we were requested to delete the petition without an order for costs while "**reserving all the arguments, for the purpose of examining the proposed course of action.**"

Hence our judgment.

Deliberation and Decision

6. Following my review I decided that the request to delete the petition **while reserving all the arguments** should not be accepted; instead, I found that the petition in as much as it relates to the first remedy should be deleted since it became redundant, and that it should be dismissed in as much as it relates to its two additional heads.
7. I can only join the words of Justice **N. Sohlberg** in his judgment in the Additional Petition, as follows:

"After IDF forces left the Gaza Strip area in 2005, Israel no longer effectively controls it. The state of Israel no longer maintains in the Gaza Strip a permanent military presence; Israel does not exercise therein governmental powers; and there is another governmental body in the area, having the ability to exercise them. Accordingly, the obligations entrenched in international law according to the laws of belligerent occupation assumed by Israel, have terminated. The transition from a security presence and effective control to a physical separation from the Gaza Strip was translated, on the legal level, to transition from the application of the laws of belligerent occupation to the application of the laws of war and the rules of Public Law." (*Ibid.*, paragraph 12).

8. Considering the above, it is clear that also in the case at hand, the Petitioners and the Public Petitioners were unable to point at a legal source justifying the grant of the remedies requested by them. And note well, as stated in the judgment given in the Additional Petition, orders issued by virtue of the authority vested in the military commander of the **Judea and Samaria** area, including the Order regarding Security Provisions and Section 53(a) thereof, **do not apply in the Gaza Strip area or to its**

residents, and therefore they impose no obligation on the Respondents in the case at hand.

9. Nevertheless, it seems that Petitioners' matter has been resolved, considering their request to delete the petition, and the above was done, as stated in the judgment in the Additional Petition – *ex gratia*. In these circumstances, and following my decision dated October 30, 2023, I accept Petitioners' request, and their request only, to delete the petition, in as much as the first remedy is concerned, without 'reserving the arguments' which were solved.
10. This is not the case as far as the two additional remedies which were requested in the petition at hand are concerned, which should be dismissed on their merit as stated above, and in view of the judgment which was given by this court in the Additional Petition.
11. It should be noted that anyway the third remedy which was requested in the petition should have been rejected forthwith, since it is completely unclear what is the factual basis underlying the allegation that the state authorities do not document the incarceration of Gaza Strip residents held in the territory of the state of Israel (see also: the **judgment in the Additional Petition**, paragraph 18). As known, petitioners requesting remedy from the High Court of Justice should base their petition on suitable factual and legal infrastructure for the purpose of having their allegations examined, and mere general allegations do not suffice. It has already been noted in long standing judgments that the aforesaid applies even more forcefully to a public petitioner (see a few of many: HCJ 4631/22 **Rosenblatt v. Minister of Housing and Building** (September 14, 2022), paragraphs 9-8 and the references there; HCJ 5884/22 **Shomron Regional Council v. Prime Minister's Office** (September 4, 2023), paragraph 8)). Accordingly, about three decades ago, Justice **M. Cheshin** has already alluded to public petitions which are mainly based, as is the case before us, on information from the press:

By way of exaggeration we shall say that a person picks up the morning paper or the evening paper, swiftly skims over the different news articles until focusing on one article, and once they find what they find they call their friends: let's go to Jerusalem – to the Supreme Court. They so say and do. A petition to the court is inscribed en route, and standing before the court with a defective petition in their hands, said petitioners request an extension to amend the defects. It is a new custom which I find unacceptable. We must all remember and keep: a person wishing to be treated with dignity – shall firstly treat their colleagues with dignity, and a person living in a glass house should not throw stones (HCJ 2148/94 **Gilbert v. President of the Supreme Court and Chairman of the Investigating Committee for the Investigation of Massacre in Hebron**, IsrSC 48(3) 573, 800 (1994)).

12. Prior to conclusion I wish to note that I find Petitioner 11's procedural conduct to be flawed, using time and again, **and simultaneously**, the **individual** cases of different petitioners as legal hangers on which to base arguments and through which to request remedies on the **general** level, all of the above – mentioning in the petition at hand the

fact of the Additional Petition parenthetically, without elaborating on it, concealing more than they reveal.

13. In conclusion: the petition is deleted in part and dismissed in part, all as specified in paragraph 6 above.
14. With respect to the costs. In view of the entire circumstances I obligate the Public Petitioners to pay Respondents' costs in a total sum of NIS 3,000.

Given today, 22 Heshvan 5784 (November 6, 2023).

JUSTICE

JUSTICE

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