At the Supreme Court Sitting as the High Court of Justice

HCJ 7753/23

Before:	Honorable Justice D. Mintz Honorable Justice A. Stein Honorable Justice K. Kabub
The Petitioners:	1. Association for Civil Rights in Israel 2. HaMoked - Center for the Defence of the Individual 3. Physicians for Human Rights – Israel 4. Adalah – Legal Center for Arab Minority Rights in Israel 5. Public Committee against Torture in Israel
	v.
The Respondents:	1. Minister for National Security 2. Commissioner of Israel Prison Service 3. Attorney General
	Petition for *Order Nisi;* Response on behalf of the Respondents; Reply to the Response on behalf of the Petitioners
Representing the Petitioners:	Adv. Reut Schaer; Adv. Ann Soccio; Adv. Oded Feller
Representing the Respondent :	Adv. Moria Freeman; Adv. Sivan Dagan

Judgment

Justice K. Kabub:

1. The petition at hand concerns the request of the Petitioners for several Orders *Nisi* concerning the detention conditions of administrative and criminal detainees and security prisoners in the custody of Israel Prison Service (hereinafter respectively: **Security Detainees** and **IPS**) since "Iron Swords" war broke out and a state of emergency was declared.

More specifically, the Petitioners request that we issue Orders *Nisi* ordering the Respondents to appear and show cause:

> "a. Why the regular water supply to the security wing shall not be immediately resumed.
>
> b. Why the restrictions imposed on the access of the security detainees and prisoners to health clinics and medical treatment shall not be immediately lifted.
>
> c. Why the restrictions imposed on lawyer meetings with security detainees and prisoners shall not be immediately lifted.
>
> d. Why the restrictions imposed on security prisoners by virtue of the state of emergency declared in the prisons by the Respondents on October 7, 2023 shall not be lifted (hereinafter: the **Emergency Policy**) including the prohibition on holding personal items, preventing access to the canteen, interruptions of the lighting, preventing exit from the cells and any restriction imposed under this policy.
>
> e. Why the Respondents shall not immediately publish the Emergency Policy according to which the IPS operates, including the restrictions imposed by virtue thereof on certain populations and classes of prisoners".
>
> Along with the petition, the Petitioners filed an application for interim orders instructing the Respondents:
>
> "a. To renew the water connection for sanitation and bathing purposes in all the security prison wings, regularly and continuously.
>
> b. To immediately lift the restrictions on the access of the prisoners and detainees to medical treatment.
>
> c. To immediately cancel any provision limiting visits between lawyers and security prisoners."

The Relevant Facts

2. As is known, and as I have already noted in my judgment in HCJ 7650/23 **Association for Civil Rights in Israel v. Minister for National Security** (October 30, 2023), on the morning of October 7, 2023 the citizens of the state of Israel, the security forces, including the police and the incarceration bodies, woke up to a murderous terror attack. Needless to say that significant military activity is now underway both in the south and in the north of the country as well as in the Judea and Samaria arena, aimed at thwarting terrorist attacks, in the framework of which many activists were arrested.

3. The petition at hand describes a series of "extreme measures" which were allegedly taken against security detainees, and which "**violate their fundamental rights**" and render their incarceration conditions "**inhumane**", under the 'cover' of the state of emergency which was declared in the country. The petition is mainly based on news published in the press and on the affidavits of various position holders in Petitioners 2 and 3 and additional lawyers, on the basis of information given to them by security detainees with whom they have met; on information given to them by families of security detainees; and on "**information received from the various lawyers after they have tried to visit the prisons**."

   It should already be clarified that no concrete petitioner was joined to the petition and no power of attorney on behalf of any security detainee was attached thereto, and the petition fails to mention the name of any security detainee who made the allegations specified therein. As noted below, the petitioners justified this fact by the detainees' alleged concern that they shall be harmed as a result of their complaints.

4. As it emerges from the *orders nisi* which were requested and quoted above, the petition includes six different heads:

   a. Allegations concerning the water supply to the security wings in the incarceration facilities (hereinafter: the **First Head**) – in brief it was alleged that "**the connection to water in the incarceration cells and showers in the security wings was disconnected**". Consequently, the petitioners alleged that "prisoners are forced to stay in severely overcrowded cells with their excrement floating in the toilet" and that there were even reports of prisoners who "**have not showered for several days.**"

   b. Allegations that security detainees are allegedly denied access to medical treatment (hereinafter: the **Second Head**) - in this context, it was alleged that "**with the exception of chronic patients, the prisoners are prohibited from going to the clinic and likewise the medics do not arrive to the wings**" and that "**pre-arranged medical treatments have been canceled**".

   c. Allegations concerning restrictions which were allegedly imposed on meetings of security detainees with their lawyers (hereinafter: the **Third Head**) - in this regard, the petitioners argued that the IPS limits "**the possibility of holding meetings with lawyers and it was made possible only in isolated cases**", while with respect to "**security detainees who are not sentenced, it is made possible only in exceptional cases, at the discretion of the prison**." Finally, it was alleged that "**in some facilities only minor prisoners and female prisoners are allowed to meet lawyers**".

   d. Allegations concerning additional restrictions imposed on the daily life in prison (hereinafter: the **Fourth Head**) - it was alleged that the prisoners are locked in their cells "**during all hours of the day and night**" with the exception of "**15-30 minute exits at most**". In addition, the petitioners alleged that the electrical sockets in the cells were shut-off and that the use of lighting was limited. The petition describes

that "**the natural light entering the cell through a small porthole does not illuminate the cell making it impossible to read, and the prisoners stay in partial darkness all day long**".

e. Allegations concerning different restrictions which were imposed on benefits given to detainees before the state of emergency was declared (hereinafter: the **Fifth Issue**) – it was *inter alia* alleged that "**personal clothing items of detainees were seized and confiscated**"; "**books, newspapers and writing tools were confiscated**"; "**it was prohibited to bring blankets into the cells**"; "**electric appliances were also confiscated […] such as electric kettles, fans and shavers**"; "**Televisions and radios were removed from the security prisoners' wings or were disconnected and reading newspapers or listening to the radio was prohibited**"; that "**the possibility of security prisoners to purchase products in the canteen, including cigarettes and food products**" was blocked; it was further alleged that they were denied of "**the possibility [...] to cook their own food**"; In addition, it was alleged that "**visits of family members and conjugal meetings were cancelled**"; and that "**the duration of telephone calls [...] was limited to a few single minutes**".

f. Finally, the petitioners alleged that the policy manifested in the first five heads of the petition was not made known to the prisoners or to the public at large (hereinafter: the **Sixth Head**), and therefore they "**are in complete uncertainty as to the rules that apply to the prisoners and they are dependent on scraps of information from the media**."

5. On October 11, 2023 Petitioners 1-3 and 5 wrote to Respondent 2 (hereinafter: the **Commissioner**) regarding a "**severe violation of the rights of detainees in IPS's custody against the backdrop of the war in Gaza**". In said letter, only some of the factual allegations specified in the petition at hand were raised, and a demand was made "**to commence an immediate and urgent investigation of the allegations that violence is employed against security prisoners and to take steps against those responsible for that**". Three days later, on October 14, 2023, Petitioner 4 wrote to Respondent 2 and Respondent 3 about the "**disconnection of water and electricity in the security wings of Israeli prisons**", the above 'following' the letter dated October 11, 2023. About a week later, on October 22, 2023, a reminder was sent to the Respondents with respect to the letter dated October 11, 2023, via electronic mail. After three additional days have passed and after said communications remained unanswered, the petition at hand was filed on October 25, 2023.

6. The petition argues that the restrictions described above and which were allegedly imposed on the security detainees, unlawfully violate their rights to dignity and health as well as their right to counsel. It was also argued that said restrictions were imposed without any explicit authorization and contrary to the provisions of the law applicable to these matters. In addition it was argued that in any event they serve "**no legitimate purpose, other than abuse and humiliation for the sake of abuse and humiliation**", and therefore are disproportionate, even if imposed with authority. Finally it was argued, that the distinction between security detainees and other detainees has no pertinent justification, and hence, constitutes inappropriate discrimination, all of the

above when "**it seems that its sole purpose is to collectively punish said population of prisoners against the backdrop of the war**".

7. As aforesaid, simultaneously with the filing of the petition the Petitioners requested interim orders as specified above. They have also requested to schedule an urgent hearing in the Petition. Already on the day on which the Petition was filed, I instructed the Respondents to submit a brief preliminary response, while denying the applications for interim orders and an urgent hearing in the Petition. I have also denied Petitioners' request to re-visit my foregoing decision on October 30, 2023.

Respondents' Response

8. On November 10, 2023, Respondents' preliminary response to the petition was submitted, in which they have addressed the numerous allegations which had been raised therein, in an orderly manner. Briefly, the Respondents argued that the petition was based, at least with respect to its first, second and third heads, "**on incorrect factual bases**". Alongside the above it was clarified that as of the day the war broke out in the beginning of the previous month, it was decided to limit the scope of routine activities with respect to **all detainees**, and with respect to the security detainees it was decided to **limit their movements to the minimum required by law**, their interactions in and among themselves and between them and the outside world and the contact between said security detainees and the staff of the incarceration facilities; "**all of the above for the realization of a security purpose of maintaining the security of the state, the prison guards and the discipline and order in the prisons**" as the differences between the public of security detainees and the general public of detainees require (hereinafter: the **Security Purpose**).

The Response emphasized that as of the commencement of the war "substantial intelligence indications were received" of the detainees' hostile intentions, their desire to communicate with the outside world as well as of their ability to harm the incarceration facilities and their staff members. To support the above, the Respondents suggested transferring to the court, for its review, a confidential intelligence opinion (hereinafter: the **Intelligence Opinion**).

Moreover, the Response noted that in the period which followed the commencement of the war "**hundreds of sim cards, radios, cellular phones and parts of radios and cellular phone, improvised daggers and […] inciting materials**" were found. It was further clarified that "**a considerable part of the prohibited equipment was found <u>in the public areas of the wings, including in the showers</u>, the window frames, the canteen, and inside the engines of refrigerators and freezers, as well as inside food items, bulb sockets, toilet cubicles and more**". It was also noted that "**in the last few days indications were received of detainees' attempts to convey messages [...] on their way to the wing showers**" and to transfer "**notes on the way to the showers**". All of the above in view of a dramatic increase in the number of detainees held by the IPS from the beginning of the war, with a substantial increase in the number of security detainees.

9. Moreover, contrary to what was said in the sixth head of the petition, which concerned non-publication of the policy, it was clarified that the aforementioned policy was manifested in temporary orders dated October 16, 2023 and October 26, 2023 (hereinafter: the **Temporary Orders**), which were issued by virtue of the authority vested in the Commissioner according to Sections 80 and 80A(b) of the Prisons Ordinance [New Version], 1971 (hereinafter: the **Prisons Ordinance**), and posted - like the other directives and instructions of the Commissioner - on the IPS's website. In any case, it was emphasized that this policy is examined according to situation assessments taken **on a daily basis** by the highest ranks of the IPS. In this last context it should be emphasized that the petition is supported by three affidavits: the affidavit of the deputy commissioner and head of IPS's Operations Division – Major General Moni (Meimon) Bitan; Head of the Prisoner's Division at the IPS – Major General Ayala Chaim; and Head of the Department of Prisoners Medicine at the IPS - Dr. Miriam Madar

The above in brief, and now in more detail.

10. With respect to the **first** head of the petition it was clarified that water is not cut off from the sinks and toilettes in the cells. Hence, there is no basis to the allegation that the sanitary conditions therein are harmed. It was also noted that in the wings in which the showers are located outside the cell (this is the case in most security wings), the detainees are given access to hot showers during at least one hour a day. It was also clarified that indeed, before the war broke out and before a state of emergency was declared which is more forcefully felt in the security wings, access to showers was allowed for longer periods of time, but the purpose of the current policy is to limit detainees' movements which allow them to realize hostile intentions, according to the indications and attempts which were described above – within the limits of the law.

11. With respect to the **second** head of the petition it was emphasized that the medical treatment which is required to maintain the detainees' health is given to **all detainees according to need**. With respect to emergency medicine, evacuations are also made according to need during wartime, and no change has occurred in this regard. With respect to medical treatments which are not urgent, it was explained that some of those treatments were cancelled or postponed by hospitals and clinics, as was also naturally done with respect to the general civil population. At the same time – it was clarified that the IPS acts to provide alternative solutions, for instance, by telephone consultation with specialists. It was also stated that all the routine medical follow-ups continue to take place at this time.

12. With respect to the **third** head of the petition it was clarified that **a sweeping prohibition on meetings between detainees and their lawyers was not imposed**, as alleged in the petition. At the same time, considering the substantial increase in the number of detainees and the restrictions on gatherings which were defined by the Home Front Command in view of the war, it was noted that at this time **priority is given** to meetings of detainees held for interrogation purposes and new detainees with their lawyers, and only lastly to sentenced prisoners, the above also according to the applicable provisions of the law; Therefore, and although meetings are not denied, it was clarified that indeed the waiting time for a meeting is somewhat longer. This and nothing more.

13. With respect to the **fourth** head of the petition it was clarified that the detainees receive the daily outdoor hour that they are entitled to according to Regulation 6(a) of the Prisons (incarceration conditions) Regulations, 2010 (hereinafter: the **Incarceration Regulations**), as opposed to the previous situation in which they have received longer outdoor hours than required by law. The Respondents noted that the electricity supply to the outlets in the incarceration cells was indeed cut-off, to prevent the detainees from charging prohibited cellular phones and to "reduce the risk of using means to harm the staff", such as boiling of water or oil in a kettle. However, it was clarified that "**in specific cells in cases of medical need, access to electricity was maintained**". With respect to the lighting conditions in the cells, it was explained that from the beginning of the war attempts were made by detainees to produce electricity from the lighting plugs, and therefore lighting was limited "**during the day [only] when sufficient natural light is available.**"

14. With respect to the **fifth** head of the petition it was emphasized that the allegations clearly pertain to "**benefits**" which had been granted in the past, as opposed to the rights vested in the detainees. In this context it was clarified that indeed, the security detainees were deprived of the possibility to cook their own meals, **a possibility which anyway is not given to detainees who are not security detainees**, to prevent the concealment of prohibited equipment in the food or in the cookware used for the preparation thereof. Instead, the detainees receive three meals a day, according to the law.

    It was also noted that the detainees are not prohibited from bringing blankets into the cells and that hygiene products are supplied to the detainees on a regular basis. Indeed, personal belongings are collected from the cells, including written inciting materials of different kinds and electric products such as – kettles, shavers and cooking plates, which at this time may pose a threat to the safety of the staff.

    The Respondents noted that momentarily **the security detainees do not have access to the canteen**, for the security reasons specified above, and that anyway their needs are provided by the IPS. In addition, their access to radio and television was blocked, as a result of the need to cut-off electricity supply to the cells and due to the desire to limit their contacts with the outside world, which may lead to **extreme incidents** or to **prison riots in the wings**; all of the above, in view of several incidents which occurred after the beginning of the war in a number of cells in which smuggled radios were found.

    With respect to family visits, it was clarified that at this time, and due to gathering restrictions, **no family visits take place in all wings**, including the criminal wings; and either way, family visits constitute a "**clear connection with the outside world**" which should be prevented for the purpose of maintaining the security of the state, the safety of the prison staff and the order in the facilities.

15. According to the foregoing, the Respondents are of the opinion that the petition should be dismissed *in limine*. First, it was argued as aforesaid that the petition is based on **incorrect factual bases**. In particular, it was argued that it is not factually supported by the concrete case of any specific security detainee, to the extent which even raises the question whether the Petitioners have **standing** before the High Court of Justice. Meanwhile, the Respondents argued that the petition should also be dismissed in view of

the existence of an **effective alternative remedy**, namely, the filing of a prisoner's petition with the district court, based on individual circumstances with respect of which legal proceedings may be conducted, according to the ruling of this court on the matter, *inter alia*, in HCJ 1143/22 **"Dror for the Family" Association v. the Minister of Internal Security**, paragraph 6 (April 14, 2023) (hereinafter: **Dror for the Family**)). It was also emphasized that two prisoner petitions concerning some the issues raised in the petition at hand had long been submitted and are about to be heard in hearings scheduled before the district court in the month of December (PP 33591-10-23; PP 42935-10-23).

16. The Respondents argued further that the petition should also be dismissed on its merit, since the changes which were indeed made in the general incarceration policy, and particularly with respect to security detainees, were made with authority, according to all the provisions of the law applicable to these matters, and anyway - they were based on the foregoing security purpose, drawing a proper distinction between security detainees and other prisoners, according to the needs of the hour in these hard times and on the basis of continuous security and intelligence assessments and a daily examination of the necessity of said restrictions.

Petitioners' Reply and the Intelligence Opinion

17. On November 13, 2023 the Petitioners submitted an application to reply to the preliminary response on behalf of the Respondents. In my decision dated November 14, 2023 I allowed the Petitioners to submit a concise reply to the preliminary response on behalf of the Respondents commenting that it does not open the door to new arguments. In addition, Petitioners' position with respect to Respondents' suggestion concerning the intelligence opinion was requested. On the same day, the Petitioners notified that they had no objection that the court would review the intelligence opinion, reiterating their request that the petition shall be heard by a panel.

    Accordingly, on November 19, 2023, the intelligence opinion and the reply to the response were submitted.

18. It is obvious that in their reply, which way laid out in 15 pages and dozens of pages which were attached as appendices, the Petitioners tried to strengthen the factual infrastructure underlying the petition, particularly with respect to its second and third heads. Accordingly, it contained 'testimonies' of lawyers allegedly representing security detainees pursuant to which in several cases the possibility to meet with their clients was denied for a long time. It was also argued that "**It clearly emerges from testimonies gathered by the Petitioners that the ban prohibiting prisoners from exiting their cells is sweepingly enforced, including in cases in which detainees wish to access medical clinics for medical treatment**". In addition, the Petitioners disputed the security purpose which was pursued by the Respondents in their response. In that regard it was argued that there is no connection between the foregoing purpose and "**shutting off the lights in the cells causing the detainees to stay in partial darkness, the water cut-offs which occurred in the last weeks of the fighting, the confiscation of all of detainees' books and clothes, and the distribution of insufficient and poor quality food**".

Finally, and with respect to Respondents' argument concerning an alternative remedy, the Petitioners argued that since the petition challenges a general policy implemented by the IPS, in the spirit of Respondent 1, it should not be discussed in the framework of a prisoner petition, although they have admitted that it is indeed possible. In addition, it was argued that "**lawyers testify that they were unable to coordinate and hold meetings with their clients since the outbreak of the war. Hence, suggesting that security detainees should file petitions is ridiculous". It was also noted that "there exists a well-founded concern of harassment which may be directed against any of them [the security detainees, K.K] complaining or reporting that their rights were violated**".

19. At the same time, the Respondents presented to us the intelligence opinion, which was intended, as stated in their response, to substantiate the security purpose underlying the different steps taken by the IPS, given the intelligence indications which were received concerning the motivation of the detainees to contact the outside world, their hostile intentions and their ability to realize these intentions.

20. Having reviewed the entire material presented to me, I have come to the conclusion that the petition should be dismissed *in limine* and on its merits; according and subject to the following.

Deliberation and Decision

Preliminary comment – Procedure, substance and the relation between them

21. The rule is that the power of the High Court of Justice according to Section 15(c) of the Basic Law: The Judiciary is a discretionary power (HCJFH 4894/96 **Ferber v. Israel Police, National Headquarters Jerusalem**, IsrSC 50(4) 21, 26 (1996)). Accordingly, "**Over the years a set of rules was established by the High Court of Justice in its judgments specifying a host of cases and circumstances in which remedy shall not be granted to the petitioner**" (***Ibid***., page 26). These 'procedural' rules are in fact 'pre-requisites', on the basis of which this court shall dismiss a petition brought to it even without examining it on its merits (***Ibid***., page 26; Daphne Barak-Erez **Administrative Law** Volume D – Procedural Administrative Law 277 (2017) (hereinafter: **Barak-Erez**)). Accordingly, *inter alia*, threshold causes were established concerning lack of authority; the availability of an alternative relief; failure to exhaust remedies; failure to join relevant respondents; delay; *res judicata*; unclean hands; premature petition; lack of standing of a public petitioner due, *inter alia*, to the existence of a direct victim; general petition; theoretical petitioner; and more (see: Itzhak Zamir **The Administrative Authority** Volume C – Judicial Scrutiny; Threshold conditions 1679-1697 (2014) (hereinafter: **Zamir**)).

22. The procedure and the substance, in this context as well as in their general context, are intertwined (see for instance: HCJ 2905/20 **The Movement for the Quality of Government in Israel v. Israel Knesset**, paragraphs 77-78 of the opinion of Deputy President (retired) H. Melcer (July 12, 2021)); Noam Sohlberg "Keep the Law and Do Justice" ***Din U'Dvarim*** H 13, 22-24 (2014); Issachar Rosen-Zvi The Reform in Civil Procedure: A Guide 32 (Second Edition 2023)). Accordingly, we have often discussed

in our judgments the substantial reasons underlying the threshold conditions in administrative law (see for instance: HCJ 7637/23 **Kashta v. Israel Defence Forces**, paragraph 11 (November 6, 2023) (hereinafter: **Kashta**); HCJ 7675/23 **Amaro v. Commander of IDF Forces in the West Bank** (October 23, 2023) (hereinafter: **Amaro**), emphasizing that these reasons are even reinforced where, like in the case at hand, we are concerned with a public petitioner (see for instance: Kashta, paragraph 11, and the references there). The above was explained in the past by Justice **N. Sohlberg** with respect to the **failure to exhaust remedies**, but his words also apply to other threshold conditions:

> "We are not concerned with a procedural matter but rather with substance: good order, efficiency, saving resources, focusing on the dispute and marking the milestones towards its resolution; exercising professional discretion; enriching the discourse between the citizen and the authority; mutual respect between the judicial authority and the executive authority; All of the above require exhaustion of remedies first, and judicial scrutiny later" (HCJ 112/12 ***Adam Teva Va-Din* - Israeli Association for the Defense of Environment v. Government of Israel**, paragraph 8 (May 24,.2012)).

23. As is well known, "**Alongside the expansion of the scope of legal standing, the rule is that normally the court shall not accept a public petition where there is a private victim in the background who does not apply to the court and does not request relief for the harm caused to them**" (HCJ 651/03 **Association for Civil Rights in Israel v. Chairman of the Central Election Committee for the Sixteenth Knesset**, IsrSC 57(2) 62, 69 (2003)). However, there is an 'exception to the exception' with respect to the legal standing of a public petitioner (for more see: Ibid., pages 70-72; HCJ 962/07 **Liran v. Attorney General**, paragraph 15 (April 1, 2007) (hereinafter: **Liran**). Accordingly, for instance, an organization purporting to represent direct victims may serve as a proper petitioner in appropriate cases (see for instance: HCJ 11437/05 ***Kav LaOved* v. Ministry of the Interior**, IsrSC 64(3), 122, 146 (2011); Barak-Erez, page 293).

However, either way in the labyrinth of the legal standing, it is clear that a petition filed by a **public petitioner** where there are **many individual victims**, without any evidence or direct grievance of any such petitioner to support it, may harm the factual basis underlying the petition and encumber the hearing thereof (HCJ 1759/94 **Sarozberg v. Minister of Defense**, IsrSC 55(1), 625, 631-632 (1994) (hereafter: **Sarozberg**); HCJ 3172/23 **The Union of Journalists in Israel v. *HaLikud***, paragraph 7 (June 8, 2023) (hereinafter: **Avraham**); **Liran**, paragraph 14)). This is true, even if said flaw does not lead to the dismissal of the petition *in limine*. Such a petition may even adversely affect the separation of powers, 'dragging' this court into an unnecessary or theoretical review of the decisions of other authorities, when it is unclear whether the concrete victims are even interested in such a review (see and compare: **Avraham**, paragraph 7; **Liran**, paragraph 14; with respect to the rule concerning a 'theoretical petition', see for instance: PPA 5898/10 **Majadba v. Israel Prison Service**, paragraph 5 (November 23, 2020) (hereinafter: **Majadba**)).

24. In addition, as aforesaid, failure to meet the **exhaustion of remedies** requirement, which includes the obligation to give the authority a **sufficient period of time** to examine the allegations and formulate a proper response – may lead to similar results, including troubling this court for no good reason or presenting before it a petition based on a shaky factual basis (see for instance: **Amaro**; HCJ 2220/21 **Civil Investigation Committee v. Attorney General**, paragraph 12 (May 9, 2021)).

25. Moreover. As a general rule, "**This court will not hear petitions involving different matters, even if they have a common subject matter**" (HCJ 5584/21 **Liran-Shaked v. Ministry of Health**, paragraph 4 (August 17, 2021)), since, binding together many different remedies, which are based on a different set of facts, "**renders the discussion in the petition inapplicable**" (HCJ 7768/23 **Herzliya Association for its Inhabitants v. Government of Israel**, paragraph 3 (November 6, 2023); See also: **Zamir**, page 1858).

26. In addition, in most cases, this court will not hear a petition when an **alternative remedy** is available, for instance, when the petitioner can apply to another legal instance vested with a parallel subject matter jurisdiction (see for instance: **Dror for the Family Association**, paragraph 6; HCJ 4283/14 **Adalah v. Israel Prison Service** (June 17, 2014)); The above, *inter alia*, since the very act of granting a certain judicial instance subject matter jurisdiction expresses the legislator's position that, as a general rule, it will be appropriate and effective if petitioner's arguments are heard by said judicial instance (see for instance: **Majadba**, paragraphs 10-11; HCJ 8071/01 **Ya'akobovitch v. Attorney General**, IsrSC 57(1), 121, 129-131 (2002); **Zamir**, pages 2045-2046).

27. **And from the procedure to the substance** – we see that the above procedural flaws which over time have crystalized into a basket of threshold conditions, may, at times, disturb the good order, thwarting this court and causing it to trespass on the territory of other authorities, where it is neither appropriate nor required. Moreover, often these flaws may result in a petition having an inaccurate factual basis, a redundant petition or a petition that is difficult to discuss. As is known, this reason alone suffices to dismiss the petition at hand *in limne*. Appropriate to this last matter are the words of Justice **I. Zamir**:

> "In every matter brought before the court, a factual infrastructure [should be –K.K.] laid which should be supported by evidence. This applies to every matter and to every court, and this is particularly so in petitions filed with the High Court of Justice, since this court does not usually hear witnesses and does not determine the facts by itself, but rather relies mainly on the words of the parties, hence the special importance attributed by this court to a full and reliable presentation of the facts relevant to the matter by both the petitioner and the respondent. For this reason the petitioner is required, according to Regulation 4 of the Rules of Procedure in the High Court of Justice, 1984, to support any petition with an affidavit verifying the facts stated in the petition. It is also customary to add to the petition additional documents, to the extent that the petitioner has them in their possession or may reasonably obtain them, to substantiate the facts alleged in the petition. These are the fundamental principles. Therefore, if the factual

infrastructure of the petition is shaky, it may suffice to dismiss the petition" (**Sarozberg**, pages 630-631).

From the general to the particular

The petition should be dismissed *in limine*

28. The petition at hand, as originally submitted, had many of the foregoing flaws. Accordingly, the petition consists of **six different heads**, which are based on different, although interfacing sets of facts. It referred to all the incarceration facilities operated by the IPS, regardless of the natural differences between the conditions which can be given to the detainees in each facility and regardless of the differences between one wing and another, and between one cell and another. It pertains to the matter of a large and indefinite number of security detainees despite the uniqueness of each case. In addition, it refers to security prisoners, criminal and administrative detainees as one piece, despite the different legal rules which apply to prisoners and detainees, both in general and in the case at hand in particular.

And note well, there is a great difference between the petition at hand and other petitions that this court was willing to hear in the past with respect to general matters concerning detainees, for instance – with respect to the minimal living space allocated to each detainee (HCJ 1892/14 **Association for Civil Rights in Israel v. Minister for Internal Security** (June 13, 2017)) or with respect to a prisoner's right to sleep in a bed (HCJ 4634/04 **Physicians for Human Rights v**. **Minister for Internal Security**, IsrSC 62(1) 762 (2007)). Said petitions were indeed concerned with the matter of all the prisoners and even all the detainees, without a concrete petitioner, but they have all focused on one single subject matter and the same applies to the remedy which was requested therein – in a manner which enabled the court to discuss them efficiently and receive data from the respondents on behalf of the state.

29. In addition, it is doubtful whether in view of the fact that in their first application the Petitioners did not specify all of the heads of the petition, the total period of time which passed before they submitted this petition is sufficient, and I have already had the chance to point out recently that even if the petition seems to be urgent, appropriate exhaustion of remedies should be meticulously maintained (see: **Amaro**).

30. And as if this is not enough, I do not think that it was appropriate to submit the petition without attaching to it, originally and even as part of Petitioners' reply, any **direct testimony** of a security detainee reinforcing, on the factual level, their allegations, certainly when in view of the fact that there are prisoners who had submitted prisoner petitions with respect to some of the issues which were brought up in the petition at hand.

31. All of the foregoing flaws could have been accepted, if each one stood alone, and provided that they did not lead to the petition's factual flaws, at least in its original version. These factual flaws led to the fact that in the petition at hand we were requested, *inter alia*, **to interfere with a policy which is not even implemented by the Respondents and in fact – to issue unnecessary orders (including interim orders)**

instructing the state to do things that according to its statements it does anyway, or to refrain from doing things it had never done.

32. It is clear that the above suffices to dismiss the petition. My above conclusion stands although in their reply to the response, the petitioners presented a weightier factual infrastructure, mainly with respect to the second and third heads of the petition. However, even if I was willing to disregard the difficulties concerning the evidentiary weight of the affidavits and facts which were attached to the reply to the response and the fact that indeed we are concerned with an attempt to improve petitioners' position which amounts to an **amendment of the petition** – it would not have changed my conclusion that the petition should be dismissed, since, anyway, I found no cause for judicial interference, for the following reasons.

The petition should also be dismissed on its merits

33. As stated above, at least with respect to the second and third heads of the petition, there are factual gaps which can be pointed at between the petition and Respondents' statements concerning their policy. Accordingly, for instance, the Respondents declared that according to the policy established by the Commissioner – no sweeping ban was imposed on the access of detainees to medical treatments or to meetings with lawyers. The Petitioners, on their part, pointed at incidents which are, allegedly, inconsistent with this policy. This factual controversy relates to the legal controversy between the parties concerning the appropriate instance which should hear these claims. The Petitioners were of the opinion, as aforesaid, that since the petition challenges a **comprehensive policy**, it should be reviewed by the High Court of Justice, while the Respondents were of the opinion that it should be dismissed due to the fact that an effective alternative remedy is available, namely, the submission of a prisoner petition to the district court.

34. Given the aforesaid, I am of the opinion that there are no grounds for our interference in this form. As we can see, Respondents' stated policy is inconsistent with the **concrete** incidents, which allegedly occurred, according to the Petitioners. However, obviously there is no reason for us to issue an order directing the Respondents to act according to a policy that they already implement according to their declaration, all of the above while we are not discussing a concrete case requesting to obligate the Respondents to enforce this policy.

Anyway, the Respondents are correct in their argument that individual petitioners may submit **individual** prisoner petitions which are not general like the petition at hand – on both aspects of the arguments and the remedies, based on direct testimonies and evidence, whenever they believe that the Respondents act **contrary to above declared policy**; since "A distinction should be drawn between the decisions of the authority, which are sweeping in nature and apply to a group of prisoners with a common denominator or to all inmates […] and the implementation of a procedure or policy in the case of a specific prisoner" (**Majadba**, paragraph 16), while in the latter case a prisoner petition will be the proper way to clarify the allegations.

It should be pointed out that the Respondents are held to implement their **stated policy**, with respect to the rendering of **the required medical treatment**, as well as with respect

to the **coordination of meetings with lawyers as soon as possible according to this policy**, *inter alia*, to enable the submission of prisoner petitions as aforesaid.

35. The above also applies to the first head of the petition, with respect of which the Respondents stated that the water supply was not disconnected and that detainees are provided access to hot showers for at least one hour every day, and on adequate cases according to Regulation 2(c) of the Incarceration Regulations stating that "**if there is no shower in the cell, the incarceration facility shall have an adequate number of showers allowing prisoners to realize their right to a hot shower on a daily basis**." It seems that in their reply the Petitioners have also acknowledged the above, noting that "**This phenomenon has now decreased [disconnection of water supply – K.K.] but the access to showers and hot water remains very limited**".

    At the same time I wish to point out that **the Respondents are held** to implement their **stated policy** on this matter, **like all other provisions of the law**, and that while implementing Regulation 2(c) of the Incarceration Regulations, **they will take into consideration the number of detainees and number of shower cubicles which are available in each facility and wing**.

36. The fourth and fifth heads of the petition should also be dismissed on their merits. It was alleged that Commissioner's policy on these matters was made by virtue of the power vested in her according to Sections 80 and 80A of the Prisons Ordinance. It should be noted that I found reason in Respondents' argument that the Commissioner's policy in this context does not deprive the prisoners from the rights vested in them, but only limits their conditions to the minimum level required by law, and the above is reinforced by the hard times we currently undergo. Hence, having reviewed the intelligence opinion, I found that it well substantiates the **security purpose** mentioned above. The opinion substantiates the concerns openly expressed by the Respondents in their response, which as aforesaid are based on current intelligence assessments made after the war had broken out. It therefore emerges that the **comprehensive policy** applied by the Commissioner is required to maintain the safety of IPS's staff and the safety of the public at large.

    The above steps are also required in view of the difference between the general population of the detainees and the population of the security detainees. With respect to the latter group there is a "**presumption of danger**" which requires a different treatment (see for instance: LHCJA 6956/09 **Yunes v. Israel Prison Service**, paragraph 74 (October 7, 2010); APP 1076/95 **State of Israel v. Kuntar**, IsrSC 50(4) 492, 500-501 (1996)).

    It should be noted that there is no dispute that the fifth head of the petition does indeed concern the benefits given to the detainees, as opposed to the rights vested in them, and I found no cause for judicial interference in that matter.

37. Finally, it seems that the sixth head of the petition, which concerns the publication of Commissioner's policy became redundant, since the temporary orders were posted on the IPS's website, in line with the provisions of Section 80B of the Prisons Ordinance and due to the fact that in their preliminary response the Respondents presented their policy in detail.

38. In conclusion: the petition is hereby dismissed, beyond the letter of the law – without an order for costs.

J U S T I C E

Justice D. Mintz

I concur with the opinion of my colleague Justice K. Kabub. A review of the intelligence material which was presented to us unequivocally supports the opinion.

J U S T I C E

Justice A. Stein

I concur.

J U S T I C E

Decided as stated in the judgment of Justice K. Kabub.

Given today, 10 Kislev 5783 (November 23, 2023).

JUSTICE JUSTICE JUSTICE