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At the Supreme Court
Sitting as the High Court of Justice

HCJ 6138/10

HaMoked: Center for the Defence of the Individual

represented by counsel, Adv. Daniel Shenhar et al.
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioner

v.

Attorney General

represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: ; Fax: 02-6467011

The Respondent

Preliminary Response on behalf of the Respondent

1. In accordance with the decisions of Honorable Justice Vogelman of August 19, 2010 and November 30, 2010, the Respondent hereby respectfully submits his response to the petition.
2. The first concrete relief sought in the petition is the Court's instruction that the Respondent examine 17 complaints submitted by the Petitioner against ISA interrogators in an efficient and timely manner and provide the Petitioner with the results of the examination. The complaints were attached to the petition as exhibits P/1 a-q.

The petition seeks a second, general relief, concerning instructing the Respondent to formulate a new general procedure for examining complaints such as the aforesaid.

3. The Respondent argues that the petition must be rejected *in limine* as the first relief sought therein has become moot and as with respect second relief, the Petitioner has made no prior communications to the Respondent on this matter.

As detailed below.

The first relief sought in the petition having been rendered moot

4. The Court is thoroughly familiar with the procedure which has been in use with respect to examining complaints by individuals interrogated by the ISA: complaints by ISA interrogees are examined by the Inspector of Complaints by ISA Interrogees (hereinafter: **the Inspector**), who submits his findings to the Person in Charge of the Inspector of Complaints by ISA Interrogees who is a senior advocate with the State Attorney's Office.

The Person in Charge of the Inspector of Complaints by ISA Interrogees at the State Attorney's Office is the official who makes the decision on complaints by ISA interrogees and the person who informs the complainants of this decision. In some cases, the opinion of the Person in Charge is transferred to the State Attorney and the Attorney General for a final decision.

5. Over the past year, there has been a significant delay in providing decisions on complaints by ISA interrogees. This has been caused by the need to find a replacement for the Person in Charge of the Inspector of Complaints by ISA Interrogees at the State Attorney's office after the person holding the position had gone on maternity leave. We regret the delay caused as a result thereof.
6. In any case, the Respondent seeks to update the Honorable Court that the first relief sought in the petition is no longer relevant, as the Person in Charge of the Inspector of Complaints by ISA Interrogees has already reached a decision on all 17 complaints regarding interrogees. Detailed letters regarding these decisions have already been sent to the Petitioner.

As such, the Respondent will argue that the first relief sought in the Petition has become moot and must be deleted.

Rejection *in limine* of the second relief sought in the petition

7. As stated above, the Petitioner also seeks a general relief in the form of establishing a new procedure with regards to the manner in which complaints such as the above are examined.
8. However, the Petitioner has not made any prior communication to the Respondent with respect to his request to establish a new procedure. The Petitioner's request for establishing a new procedure is based, in effect, solely on the delay in providing the decisions of the Person in Charge of the Inspector of Complaints by ISA Interrogees during 2009 and 2010. As stated in sec. 5 above, the delay in providing the decisions of the Person in Charge of the Inspector of Complaints by ISA Interrogees during 2009 and 2010 is indeed regrettable, however, a solution which is designed to prevent further delays has already been found.
9. Under these circumstances, according to case law, the second, general, relief must be rejected out of hand, and the State requests the Honorable Court to do so.
10. Beyond necessity and solely in order to provide a full picture, we seek to notify the Court that recently, there has been a most significant development on the issue of how complaints against ISA interrogators would be handled in future.

We wish to inform, on this issue, that the Attorney General has decided, with the agreement of the State Attorney, the Head of the ISA and the Ministry of Justice Chief of Staff, that the Inspector position shall no longer be administratively under the ISA (albeit – professionally – the Inspector has been receiving instructions from the Ministry of Justice for some time). Instead, the Inspector shall be an employee of the Ministry of Justice and responsibility for the examination of complaints by ISA interrogees will be fully transferred to the Ministry of Justice.

Staff work on the implementation of the Attorney General's decision is currently underway.

Conclusion

11. In conclusion, the Respondents argue that since the first relief sought in the petition has become moot and since the second relief sought in the petition must be rejected *in limine* due to lack of exhaustion of remedies, the entire petition must be rejected *in limine*.

Today, 4 Shvat 5771
9 January 2011

[signed]
Aner Helman, Adv.
Person in Charge of HCJ Petitions
State Attorney's Office