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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCJ 6796/12**  
**HCJ 1173/13**  
**HCJ 1797/13**

\_\_\_\_\_ **Musleh et al.,**  
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**The Petitioners in HCJ 6796/12**

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**The Petitioners in HCJ 1173/13**  
**The Petitioners in HCJ 1797/13**

v.

**IDF Commander in the Judea and Samaria Area et al.**  
Represented by the State Attorney's Office  
Ministry of Justice, Jerusalem  
Tel.: 02-6466472; Fax: 02-6467011

**The Respondents in all Petitions**

**An Additional Updating Notice on behalf of the State**

1. According to the decision of the Honorable President Grunis dated May 4, 2014, the respondents (hereinafter: the **state**) hereby respectfully submit this additional updating notice.
2. The three above captioned petitions concern the transfer of certain terrorists' bodies to their families.

3. As will be specified below, notwithstanding the efforts lead by the head of the branch for identification and burial in the IDF (hereinafter: **head of the branch for identification and burial**), the state was unable to locate two of the four bodies being the subject matter of the petition in HCJ 6796/12, as well as the two bodies being the subject matter in HCJ 1173/13 and in HCJ 1797/13.
4. The state will argue that in view of the fact that the above four bodies were not located, despite the efforts which were made to locate them, and in view of the fact that according to the evaluation of the competent professional official, the head of the branch for identification and burial, the possibilities to try to locate these four bodies were exhausted – it is practically impossible to accept petitioners' requests in the three above captioned petitions and transfer the bodies to their families.
5. Therefore, the state will argue that the three above captioned petitions should be denied (see and compare: HCJ 8792/10 **Dolah v. IDF Commander in the Judea and Samaria Area** (reported in the Judicial Authority Website, February 26, 2013)).

### **General**

6. Within the framework of comprehensive administrative work which took place since 2013, IDF agencies and the security establishment assumed upon themselves the responsibility to try to locate terrorists' bodies whose return was requested by their family members, and with respect of whom it was argued that they were held in Israel or by the Israeli authorities, and to transfer them to their families.
7. It is important to note in this context, that the IDF is in charge of cemeteries designated for the burial of terrorists, which are exclusively managed by it. However, in connection with the matter at hand, the vast majority of the bodies whose transfer was requested by their families, was not interred in the military cemeteries for enemy casualties, and thus, were not buried by the IDF.

The fact that the IDF was not involved in the burial of terrorists who were buried in civil cemeteries within the territory of the state of Israel, has obviously encumbered the ability to collect data and rely on the authenticity and accuracy of the details which were collected from various sources.

8. Within the framework of data collection in an attempt to locate the bodies whose location and transfer to the families was requested, the professional agencies in the IDF, headed by the head of the branch for identification and burial, turned to all agencies, which according to evaluations, could have possibly had in their possession relevant information, including: the National Insurance Institute (which is responsible for giving directions for the burial of unidentified bodies and for funding such burials); the Forensic Institute (being the agency which handles most of the bodies), Israel Police (which assumed responsibility over scenes in which terror attacks took place and over the findings therein), and various IDF agencies.

In addition, private companies which acted for the National Insurance Institute in connection with the burial of unidentified bodies were contacted, and among other things, the drivers of the vehicles who transferred the different bodies to the locations in which they were buried, were also approached.

9. The entire data received from the above described data collection process, enabled the IDF and the security establishment to compose a status report, which enabled the location of the burial places of many of the bodies whose location was requested.

10. Later on, the professional agencies, subject to the approval of the Jerusalem District Court, as specified in the updating notice on behalf of the state dated January 23, 2014, removed bodies from possible burial places which were identified, and compared DNA samples which were taken from the bodies that were dug up from their graves, with those of their possible family members.

When a match was found in the DNA tests – the specific body was transferred to the family members.

11. As the honorable court was notified in the updating notice on behalf of the state dated April 30, 2014, 29 bodies were transferred to the families after their identification by DNA tests. It should be noted that at the time, petitions were filed with the court only with respect to some of said bodies.

The return of the 29 bodies to their respective families, resulted in the deletion of the vast majority of the petitions which were pending before the honorable court and in which the transfer of the terrorists' bodies to their families was requested, including four of the seven petitions which should have been heard jointly on May 29, 2013.

### **H CJ 6796/12**

12. Two of the four bodies whose transfer was requested to the families in this specific petition, were located and have already been transferred to the families (the body of the son of petitioners 4-5 and the body of the daughter of petitioners 6-7).
13. Two of the additional bodies being the subject matter of the petition in H CJ 6796/12 – the body of the husband of petitioner 1 (the father of petitioner 2), and the body of the brother of petitioner 3 (hereinafter: the **two additional bodies**) – which were allegedly killed in 1968 and 1974, respectively – **were not located.**
14. With respect to the two additional bodies, inquiries were made to find out whether the IDF authorities, the National Insurance Institute and the Forensic Institute had any records which could facilitate their location, and for this purpose each and every detail which was available to the professional agencies was used (based mostly on the information contained in the petition), such as the date, place and type of the incident, the names of the two terrorists, etc.
15. The inquiries made *vis-à-vis* the National Insurance Institute and the Forensic Institute were vain, as it turned out that said institutes had no information concerning the burial place of the two additional bodies. As specified in the petition, this case concerns two terrorists who were killed during incidents which took place 46 and 42 years ago, and the inquiry indicated that the two above institutes did not keep information of that sort from those years.
16. Furthermore, an examination which was conducted in the cemeteries for enemy casualties controlled by the IDF indicated that there was no registration or record of the burial of the two additional bodies, and no information was located concerning the involvement of the IDF or of the State of Israel in the handling or burial thereof.
17. The head of the branch for identification and burial, who is the professional official in charge of this area in the IDF, is of the opinion that under the circumstances, the possibilities to locate the two additional bodies were exhausted.
18. The state will argue that under these circumstances the petition in H CJ 6796/12 – should be deleted.

- A. With respect to petitioners' request to transfer the two additional bodies to the families, the state would like to refer to the words of the honorable court in HCJ 8359/01 **Abu Meyazar v. The State of Israel** (reported in the Judicial Authority Website, December 18, 2003) in a similar situation, as follows:

In view of the updating notice of the state as set forth in notice 3 submitted on its behalf, there is no orderly registration and recording of the burial of terrorists in the cemetery located in the Adam bridge area in the Jordan Valley, in which enemy casualties were buried until May 1972. Under these circumstances it is, regretfully, impossible to locate the body of the petitioner 1's father.

Under these circumstances petitioners' counsel notified that he did not wish to pursue the petition. The petition is deleted.

- B. Petitioners' request to identify the bodies of terrorists who were removed from their graves by the execution of genetic tests, before the transfer thereof to the families – became redundant, since, as aforesaid, the 29 bodies of the terrorists who had been located and identified, were transferred to the families after the execution of appropriate DNA tests.

### **HCJ 1173/13 and HCJ 2380/12**

19. The petition in HCJ 1173/13 is one of the seven petitions the hearing of which was joined, and in which updating notices were submitted over the course of the last year and a half to the Honorable President Grunis.
20. The hearing of the petition in HCJ 2380/13 was not joined with the hearing of the seven other petitions, and according to the decision of the Honorable Justice Joubran dated April 4, 2013, the hearing thereof would be postponed until after judgment was rendered in the above captioned petitions.

However, in view of the fact that, as described below, there was a connection between the attempts to locate the bodies being the subject matter of the petitions in HCJ 1173/13 and in HCJ 2380/13, and for the completion of the picture only, it seems that it would be appropriate to bring to the attention of the honorable court, already within the context of this updating notice, the information concerning the body being the subject matter of the petition in HCJ 1380/13.

21. Inquiries were also made as to whether the IDF authorities, the National Insurance Institute, Israel Police or the Forensic Institute had any records which could lead to the location of the bodies of the two terrorists being the subject matter of the petitions in HCJ 1173/13 and in HCJ 2380/13.
22. A thorough examination indicated, based on information located in the examination, that the bodies of the two terrorists being the subject matter of the petitions in HCJ 1173/13 and in HCJ 2380/13 were apparently buried as "unidentified bodies" with funding provided by the National Insurance Institute. The examination also indicated that these two bodies were apparently buried in a cemetery in the southern part of Israel.
23. An analysis of the records which were obtained from the Forensic Institute, the National Insurance Institute and additional information which was received, pointed at specific graves in a cemetery located in the southern part of Israel, in which it was estimated, that various bodies the location of which was sought, were buried, including the two bodies being the subject matter of the petitions in HCJ 1173/13 and in HCJ 2380/13.

24. IDF agencies opened the specific graves in which, according to the information at hand, the bodies of the terrorists whose transfer to the families was requested, should have been buried, and removed the bodies which were buried therein. It should be noted, that in some cases more than one body was removed from a grave.
25. From all of the bodies that were removed from the graves as aforesaid, DNA was produced which was compared with DNA which was produced from the family members of the terrorists being the subject matter of HCJ 1173/13 and HCJ 2380/13, as well as with DNA of additional families.
26. The above comparison indicated that there was no correlation between the DNA which was produced from the bodies which were removed from the graves and the DNA of the family members, the petitioners in HCJ 1173/13 and in HCJ 2380/13.
27. The state has no additional data which can point at another possible burial place of the bodies being the subject matter of the petitions in HCJ 1173/13 and in HCJ 2380/13, other than the graves which were opened based on the current data.

The head of the branch for identification and burial, who is the professional official in charge of this area in the IDF, is of the opinion that under the circumstances of the matter, the possibilities to locate the bodies being the subject matter of the petitions in HCJ 1173/13 and in HCJ 2380/13 were exhausted.

28. The state will argue that under these circumstances the petition in HCJ 1173/13 – should be deleted.

In view of the content of section 22 above, the state is of the opinion that under the circumstances of the matter, the petitioners in HCJ 2380/13 should submit to the honorable court a request for the deletion of said petition.

### **HCJ 1797/13**

29. Inquiries were also made as to whether the IDF authorities, the National Insurance Institute, Israel Police or the Forensic Institute had any records which could lead to the location of the body of the terrorist being the subject matter of the petition in HCJ 1797/13.
30. A thorough examination indicated that the body of the terrorist being the subject matter of the petition in HCJ 1797/13 was buried as an "unidentified body" by EIS, a private burial company, with funding provided by the National Insurance Institute. The examination also indicated that said body was apparently buried in another cemetery in the southern part of Israel.
31. It should be noted that no registration was found in the possession of the National Insurance Institute or any other state agency which was examined, concerning the exact or estimated burial place of the body of the terrorist being the subject matter of the petition in HCJ 1797/13 within the cemetery.

It should be further noted that the National Insurance Institute informed the IDF, that the engagement with EIS was terminated by it at the time, following irregularities which were discovered in the manner by which the burial and the database were managed by the company.

32. We would like to update, that within the framework of the efforts to locate the body of the terrorist being the subject matter of the petition in HCJ 1797/13, the head of the branch for identification and burial turned directly to the managing director of EIS, and was informed by the latter that he had no information concerning the exact burial place of the body being the subject matter of the

petition in HCJ 1797/13, and that he could not assist in the location of its burial place. A visit of the head of the branch for identification and burial in the cemetery did not assist to locate the burial place of the body being the subject matter of the petition in HCJ 1797/13 within the cemetery, either.

33. The state has no additional data which can point at the exact burial place of the body being the subject matter of the petition in HCJ 1797/13.

The head of the branch for identification and burial, who is the professional official in charge of this area in the IDF, is of the opinion that under the circumstances of the matter, the possibilities to locate the body being the subject matter of the petition in HCJ 1797/13 were exhausted.

34. In conclusion, the state will argue that under these circumstances the petition in HCJ 1797/13 – should be deleted.

### **Conclusion**

35. The state transferred 29 bodies of terrorists to their families, after said bodies were identified by DNA tests.
36. Two of the four bodies of the terrorists being the subject matter of the petition in HCJ 6796/12 as well as the three bodies being the subject matter of the petitions in HCJ 1173/13 and in HCJ 2380/13 – were not located, despite the State's efforts, as described above.
37. In view of the fact that according to the evaluation of the professional IDF official, the head of the branch for identification and burial, the possibilities to locate the above five bodies were exhausted, and therefore it was practically impossible to return them to the families, the state will argue that the three above captioned petitions, as well as the petition in HCJ 2380/13 – should be deleted.
38. The facts specified in this updating notice are supported by the affidavit of Lieutenant Colonel Yoav Okanin, who serves as the head of the branch for identification and burial in the IDF.

Today, 9 Heshvan, 5775  
November 2, 2014

(signed)

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Aner Helman, Advocate  
Deputy Director of HCJ Department  
State Attorney's Office