

[emblem of the State of Israel]

At the Supreme Court, sitting as the High Court of Justice

HCJ 42099-10-24

Before: Honorable Justice Ofer Grosskopf
Honorable Justice Khaled Kabub
Honorable Justice Ruth Ronnen

Petitioner: 1.  al-Faq'awi
2.  al-Faq'awi
v.

Respondent: 1. Israel Defense Forces
2. Chief Military Police Officer
3. Commissioner of the Israel Prison Service
4. National Security Council
5. Attorney General
6. Chief Military Prosecutor

Petition for Writ of Habeas Corpus, Preliminary Response on behalf of
the Respondents

Counsel for Petitioner: Adv. Nadine Abu 'Arafah

Counsel for Respondent: Adv. Matanya Rozin

Judgment

Justice Khaled Kabub:

The petition is a request for a writ of habeas corpus, which would require the respondents to disclose the current whereabouts of the petitioners, who, it is alleged, were apprehended by security forces more than six months ago.

In their preliminary response dated November 14, 2024, the respondents stated that an inquiry revealed that the petitioners were no longer alive and that, on April 7, 2024, the Military Police Criminal Investigation Department launched an investigation into the circumstances of their demise. The investigation is still underway. It was further stated that, based on the materials collected thus far, the suspicion was that the petitioners met their end subsequent to their arrest, but it was stressed that no further details could be provided at that stage. In these circumstances, the respondents argued that the petition herein had been exhausted and should be dismissed.

To complete the picture, it is noted that, contrary to what is stated in the preliminary response, a reply by Military Police officials, dated July 25, 2024, to a communication sent to the incarceration control room by

HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger, stated, with respect to each of the petitioners, that “an inquiry revealed that we have no indication of the arrest or detention of the person named in the request”.

From here, our judgment proceeds.

After reviewing the matter, we have found that in the circumstances of this case, the petition, in its current form, has indeed been exhausted and should be dismissed.

The dismissal of the petition notwithstanding, we stress that we are by no means satisfied with the error made by Military Police officials. It should be said at once that, despite the backlog facing the relevant officials, and perhaps precisely because of it, they must carefully verify the facts as they truly are, in each and every case before providing a response. The competent officials are expected to investigate this grave incident and establish procedures to prevent such mishaps in the future. Likewise, in view of the discrepancy between the response given in July and the response provided in these proceedings, and comparing this to the date on which the investigation was opened, the relevant individuals are expected to remain in contact with counsel for the petitioners’ family with regard to the Military Police investigation into the circumstances of their deaths, subject to any applicable law and procedure. Furthermore, it is hereby clarified that the petition, in its current form, is dismissed without prejudice, and the parties may present their arguments in future proceedings, should there be any.

Given today, 18 Cheshvan 5785 (November 19, 2024).

[signed]	[signed]	[signed]
_____ Ofer Grosskopf Justice	_____ Khaled Kabub Justice	_____ Ruth Ronnen Justice