

Translation Disclaimer: The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Hebrew language. In the event of any discrepancies between the English translation and the Hebrew original, the Hebrew original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Hebrew original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

At the Supreme Court Sitting as the High Court of Justice

HCJ 4127/09
HCJ 4128/09

Before: **Honorable President D. Beinisch**
Honorable Justice M. Naor
Honorable Justice E. Hayut

The Petitioners in HCJ 4127/09: 1. **Zaghal**
2. **HaMoked - Center for the Defence of the Individual,**
founded by Dr. Lotte Salzberger

The Petitioners in HCJ 4128/09 1. **Zaghal**
2. **HaMoked - Center for the Defence of the Individual,**
founded by Dr. Lotte Salzberger

v.

The Respondent in HCJ 4127/09 and
in HCJ 4128/09 : **Israel Prison Service Commissioner**

Petition for *Order Nisi*

Session date: 29 Kislev 5770 (9 December 2009)

Representing the Petitioners in HCJ
4127/09 and in HCJ 4128/09: Att. Daniel Shenhar; Att. Sigi Ben Ari

Representing the Respondent in HCJ
4127/09 and in HCJ 4128/09: Att. Neta Oren

Judgment

President D. Beinisch

1. The petitioners in both petitions before us, residents of Jerusalem, are former inmates who were tried for security offences in the past. Both have been released for a number of years. Both seek to visit two prisoners who are their brothers. One prisoner was sentenced to 27 years imprisonment for offences against security and involvement in terrorist attacks. He began serving his sentence on 9 October 1998. The other prisoner is serving a sentence of 16.5 years imprisonment beginning 10 October 1998, both for the same type of offences. Both petitioners' requests to visit the prison were rejected by the competent official due to their being former inmates and in accordance with the authority set forth in Regulation 30(A) of the Prison Regulations and the Israel Prison Service (IPS) Commissioner's Orders. Regulation 30(A) stipulates that "a person who was a criminal prisoner shall not visit a prisoner in prison other than with the commissioner's approval". The aforesaid authority was delegated to prison commanders and their deputies pursuant to the Prison Ordinance. The regulation grants the IPS commissioner discretion to allow visits by former inmates and provides guidance as to the manner in which the discretion found in Commissioner's Office Ordinance 04.42.00 is to be exercised. According to this ordinance, possibilities for allowing former inmates to visit prisons were expanded and tests were put in place with the purpose of making the visits more available. The ordinance includes a list of considerations, most of which are listed in Section. 17 of Ordinance 04.42.00, including considerations regarding both the applicant and the inmate. The premise of the aforementioned Commissioner's Office Ordinance is that entry of a former inmate for a visit is to be allowed unless there is information regarding his involvement in criminal activity, or the meeting might pose a risk to state security or other risks to order and discipline in the prison. Therefore, the ordinance sets criteria for examining an application for a visit according to the degree of relation to the inmate, the time that has elapsed since imprisonment and more (on this issue see HCJ 5154/06 **HaMoked: Center for the Defence of the Individual et al. v. Minister of Public Security et al.** (unpublished) 12 March 2009)).

According to the respondent, the applications submitted by the petitioners in the cases at bar to visit the prison were rejected "due to the existence of current intelligence information regarding the petitioners' involvement in the Hamas organization and the involvement of the inmates regarding whom the visit was requested in planning and executing a number of terrorist activities in the framework of the organization, as well as the continued activity of the second inmate in the organization from within the prison".

2. Two claims made by the respondent rose in the hearing before us. The first is a preliminary claim according to which the inmates with whom the visit was requested were not named as parties to the petition. The respondent also claimed that this petition should have been filed by the inmates with whom the visit was requested in the context of prisoner petitions at the Magistrates' Court to begin with, rather than through a "bypass route" to this court and that for this reason it should be rejected.

On the merits of the petition, the respondent claimed that the refusal to allow the visits was reasonable and that it had been decided due to relevant considerations in accordance with the aforementioned Commissioner's Office Ordinance 04.42.00.

3. As for the preliminary claim, we are of the opinion that the interested party, who wishes to actualize the visit, is the inmate who is imprisoned and it is he who should request the visit, as, in any event, a visit to the prison would not be permitted without request or authorization by the prisoner. We are also of the opinion that in all matters pertaining to prison visits, the cause for requesting the visit is the prisoner's and without his involvement and his interest in the visit, the visitor does not have independent cause. Therefore, it is appropriate that petitions such as this are submitted and reviewed in the framework of prisoners' petitions and pursuant to an appeal by them through the process set forth in section 62Q of the Prison Ordinance. In general, the cause shown by the "visitor" is weaker than that shown by a prisoner wishing to receive visits. Therefore, extraordinary circumstances are

required in order for an independent petition by the person wishing to visit to be reviewed through a petition which is not a prisoner's petition.

In the case at bar, we granted the request to review the petition on its merits, despite the fact that we have not found extraordinary circumstances as aforesaid. With the consent of counsels for the petitioners, we reviewed the confidential security material. After the review, we have found no cause to intervene in the respondent's decision to prevent the requisite visits as there are grounds in the intelligence material for the respondent's assessment that the visits constitute a security risk considering the identity and organizational affiliation of the inmates and their brothers who wish to visit them.

As an aside to the judgment, we shall add that the respondent was also right in considering the fact that the inmates are not cut off from their close relatives and other relations – their mother and sisters visit them in accordance with prison procedures.

Therefore, the petitions are rejected.

Given today, 29 Kislev 5770 (9 December 2009) in the presence of Parties' counsels.

President

Justice

Justice

This copy is subject to editorial and textual changes 09041270_N07.doc DZ

Information Center Tel; 02-6593666, website www.court.gov.il