1. Detainee Rights

Torture

In the area of human rights in Israel and the Occupied Territories, the year 1999 will without doubt be remembered by the Supreme Court's judgment, finally banning the use of torture during interrogations carried out by the General Security Services (GSS). The judgment marked the culmination of a long public and legal struggle, in which HaMoked: Center for the Defence of the Individual has played a central role.

In the beginning of 1996, HaMoked initiated an intensive project, representing detainees who were being tortured during their interrogation. Dozens of petitions were submitted against the GSS, in which the Supreme Court was requested to order the cessation of all techniques that involve physical pressure. These petitions assisted individual detainees, as the State preferred to halt the use of physical pressure in individual cases, rather than submit to a principled hearing over the legality of torture before the Supreme Court.

In addition, these petitions made it impossible for the Supreme Court to ignore the issue of torture. The judges were repeatedly exposed to detailed detainee declarations, explicitly documenting the interrogation techniques of the GSS, while the State failed to deny or challenge their accuracy. The flow of petitions in individual cases also made it difficult for the Supreme Court to continue to refrain from ruling on the broad claim raised in these petitions, that the interrogation methods employed by the GSS are unconstitutional, despite the permission granted to interrogators to employ such methods under the conclusions of the Landau Commission Report. The Supreme Court rejected the State's request to dismiss a number of the pending petitions submitted by HaMoked, after the conclusion of the interrogations in the specific cases concerned, accepting the argument of HaMoked's attorneys that the Court must finally rule in principal with regard to what is permitted and prohibited during GSS interrogations.

Furthermore, the continuing litigation made it difficult for the GSS to deny the facts. The methods systematically employed in the course of interrogations had become transparent. Representatives of the GSS could no longer rely on the "ticking bomb" argument before the Court, claiming that the methods were applied only in the rare and exceptional circumstances of a bomb set to imminently explode. The State's lawyers only found themselves in trouble in attempting to justify the methods of torture, already known to the Court, as merely instrumental measures required to protect the interrogators or to prevent contact between those being interrogated.

It was against this background that the Court rendered its decision in September 1999. The group of cases on which the Court's landmark decision was based, included the petition of Wa'el Ka'kie, submitted three years earlier by HaMoked. Shortly after submitting the petition Ka'kie had been released from detention, but he continues to suffer from the psychological trauma experienced during his torture.

HaMoked was represented before the special panel of nine Supreme Court judges by Eliahu Abram, director of the organization's legal department. Attorney Abram submitted to the Court a comprehensive brief based on international legal instruments and judgments. The

central claim of the brief was that any inhuman or degrading treatment or torture of detainees is absolutely prohibited by international law without any exception. The Court accepted this argument. In the relevant passage of the Court's ruling Honorable President Barak held:

"This conclusion is in perfect accord with various International Law treaties – to which Israel is a signatory – which prohibit the use of torture, 'cruel, inhuman treatment' and 'degrading treatment'. These prohibitions are 'absolute'. There are no exceptions to them and there is no room for balancing".

In retrospect the Court's decision may appear inevitable. In reality, the decision was far from expected. The final result was the culmination of a public and international struggle, particularly waged to mobilize the opinion of the international legal community, together with highly determined and thorough legal work before the court. All this was accomplished through partnership and cooperation among the concerned Israeli human rights organizations that worked together in order to bring about this long-awaited decision.

The struggle against torture did not, however, come to a conclusion with the Supreme Court's ruling. Immediately following the Court's announcement the head of the GSS placed before the government and the public an unambiguous demand for amendments to the law, that would grant the interrogators of the GSS the authority to employ "special" interrogation techniques, without which he could not guarantee the security of Israel. This initiative that would make the State of Israel the only country in the world to permit torture through its laws, won at the initial stage the full support of the opposition, the Prime Minister and the Attorney General. In response HaMoked alerted international organizations in order to encourage them to express their objections. In January 2000, the Prime Minister was reported to have accepted the recommendation of the Justice Ministry not to introduce new legislation at this time that would permit "special" interrogation techniques. The principal justification given for the change in the Prime Minister's position was the vehement international opposition to any such legislation.

The legal situation in the country today is based on the judgment of the Supreme Court. The head of the GSS and the Attorney General have declared their commitment to fully comply with the Court's ruling. Currently there are no permits granting the GSS interrogators permission to use force during interrogations. In addition, the Attorney General will not commit himself in advance, not to bring to trial an interrogator who tortured a suspect during interrogation out of "necessity". However, if an interrogator did contravene the law by employing force during an interrogation, the Attorney General will examine his actions, after the fact, in order to determine whether or not the interrogator acted in circumstances of imminent "necessity", as this defence is defined in the Penal Code. If the GSS interrogator, in the opinion of the Attorney General, did act out of "necessity", he will not face criminal charges.

This legal position, in the opinion of HaMoked, does not yet reflect the total ban against torture under all circumstances required by international law. Despite the Supreme Court's judgment, there remains a loophole wide enough for the exercise of torture during GSS interrogations. As a result HaMoked's attorneys, Tamar Pelleg Sryck and Eliahu Abram, turned to the Ministry of Justice, in a detailed memorandum concerning the Ministry's legislative proposal to incorporate a ban on torture in the Penal Code. HaMoked's attorneys demanded that the proposed law rule out reliance on "necessity" as a defence against the

crime of torture. The Association for Civil Rights in Israel subsequently informed the Ministry of Justice that it fully supports HaMoked's position.

Administrative Detainees

The year 1999 witnessed an additional reduction in the number of administrative detainees held by Israel. HaMoked continues to represent the vast majority of these detainees through its attorney Tamar Pelleg Sryck. At the beginning of the year Israel held over 80 Palestinian administrative detainees; by the end of the year around 15 detainees remained in detention.

Amongst detainees released during the past year – after intensive efforts, both legal and public – was the veteran administrative detainee, Usama Barham, who was released after six years in detention. The dramatic announcement regarding his release was given in the chambers of the Supreme Court, during the hearing of the petition that been submitted for his release by HaMoked. Barham was released under a compromise settlement negotiated by Tamar Pelleg Sryck and the State, after intensive negotiations. Barham committed himself to matters concerning which he had repeatedly stated his intentions in the past - including refraining from any involvement in violent activities. In addition he had to deposit a guarantee and to accept various restrictions on his movements. On the 18th of July1999 the longest-serving administrative detainee was free to go home.

A mid-1999 amendment to the Military Order regulation altered the legal procedures relating to administrative detentions. These changes established mandatory judicial review and periodical reevaluations of the administrative detention orders, and granted the right of appeal to detainees over decisions before the Military Appeals Court. As a result, the case of any administrative detainee who had received a six-month detention order could be brought before a judge at least four times. On the other hand, the opportunity to petition the Supreme Court in such cases has been almost blocked, since the exhaustion of all the above-mentioned military review and appeal procedures, does not leave sufficient time to submit a petition.

A further petition submitted by HaMoked during 1999, was on behalf of the detainee Chalid Jaradat, detained since the beginning of 1997. The petition was however rejected.

During the first half of 1999 HaMoked submitted 77 appeals against administrative detention orders. In 19 cases the period of detention was reduced in agreement with the GSS, a further 18 orders were reduced by the various judges (approximately half of which were not significant reductions) and one order was cancelled because of procedural errors. In the second half of the year, HaMoked represented 39 detainees in their hearings involving judicial reviews or periodical reevaluations (according to the amendments to the administrative detainee order). These procedures led to the immediate release of one detainee, the reduction of 10 orders by at least a month or more, and the further reduction of four detention orders by between two and four weeks. In 20 cases the right to appeal was exercised as stipulated in the amended order. The appeals led to the cancellation of one order, the reduction of a second order by three and a half months and the reduction of a third order (in agreement with the prosecutor) by three weeks.

In the case of the detainee, Aiman Deragme the Military Appeals Court (in two separate decisions) declared that the detention order cannot be extended without the introduction of new significant material. Deragme, had been held in detention without trial since December