

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 in Jerusalem
Sitting as the High Court of Justice

HCJ 7964/95

In the matter of:

1. _____ **Abu Iyash**
2. _____ **Abu Iyash**
3. _____ **Bilbisi**
4. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger (Reg. Assoc.)**

all represented by Attorney Andre Rosenthal
33 Jaffa Street, Jerusalem, 94221
Tel. 250458 Fax. 259626

The Petitioners

v.

The General Security Service

The Respondent

Petition for Order Nisi and Temporary Injunction

The Honorable Court is requested to summon the Respondent to appear and show cause why it tortures Petitioners 1, 2, and 3 and uses the shaking method when interrogating them.

As interim relief, the Honorable Court is requested to order the Respondent not to use this method until completion of the proceedings in this file.

Because of the nature of the petition, the Honorable Court is requested to hear the matter in an expedited manner.

The grounds of the petition are as follows:

1. Petitioner 1, 29, is a resident of Beit Omer, single, and a social worker at a rehabilitation center in Hebron, was arrested at his home on 11 December 1995 and was taken to the interrogations wing at Ashkelon Prison.

2. Pursuant to Section 4 (1) of the Criminal Procedure Regulations (Meeting of Detainee with Attorney), 5742 – 1981, the Respondent prevented the undersigned from meeting Petitioner 1 for a period of seven days.

The Respondent did not exercise its authority pursuant to Section 4 (b) of the Regulations following the filing of the petition with this Honorable Court in HCJ 7752/95, *Abu Iyash et al. v. General Security Service*.

3. On 20 December 1995, Petitioner 1 was allowed to meet with the undersigned. Also, the undersigned was informed that the Israel Police Force intended to request, on 20 December 1995, that the Military Court sitting in Ashkelon Prison extend the Petitioner's detention.
4. During the course of the hearing, the following contentions were made to the Military Court judge:
 - A. Petitioner 1 had been interrogated intensively on Tuesday, Wednesday, and Thursday of the previous week; when he was not being interrogated, he was held in the painful *shabach* position, that is, his hands were bound behind his back and tied by a noose to the wall, while he was seated on a small chair with a sack covering his head. Petitioner 1 was also prevented from sleeping throughout this period of his interrogation.
 - B. On Friday and Saturday, the Petitioner was not interrogated and was held in his cell by himself.
 - C. On Sunday, his interrogation resumed, as described above in Subsection A.
 - D. On Tuesday, 19 December, at around 3:00 A.M., an interrogator named Simon grabbed Petitioner 1 by his shoulders and shook him. After being shaken and while Petitioner 1 was sitting in front of another interrogator, named Sari, he began to suffer from a lack of air and strong chest pains, and requested to see a physician.
 - E. The Petitioner was taken to the Ashkelon Prison's clinic for examination. He was given an ECG and the results were given to the prison's physician, who decided that, based on the test results, he should be taken to the emergency room of the nearby hospital.

- F. Petitioner 1 was examined in the emergency room of Barzilai Hospital, where it was determined that he was suffering from “atypical chest pain.” Petitioner 1 was returned to the prison’s clinic, where he spent the night. A copy of the medical file was not provided to the Petitioner’s counsel, although the Waiver of Medical Confidentiality form was submitted to the head of the clinic, because the medical officer for the Southern Sector of the Prisons Service refused to authorize it.
 - G. On 20 December 1995, prior to the hearing in the Military Court, another ECG was performed, and the results were the same as the first test. Despite this, the physician stated that Petitioner 1 was sufficiently fit for the interrogation to continue.
 - H. It should be mentioned that the Petitioner was an administrative detainee twice in the past, once in 1992 for five months and a second time in 1993, for four months. The interrogators contend that he had carried out acts on behalf of the Popular Front, including shooting at vehicles, which the Petitioner denies.
 - I. On the eve of the submission of the request to extend his detention, Petitioner 1 made no confession to the police.
 - J. The Military Court extended the detention of Petitioner 1 for twenty-one days. The court expressed no opinion on the torturing described above. A copy of the court’s decision is attached hereto and marked P/1.
 - K. An affidavit of Petitioner 1 is attached hereto and marked P/2.
5. Petitioner 2 is the brother of Petitioner 1, and he, too, was arrested on 11 December 1995, in Beit Omer. Petitioner 2 is a business administration student at the Jerusalem Open University. As in the case with Petitioner 1, the Respondent relied on Section 4 (a) of the Criminal Procedure Regulations (Meeting of Detainee with Attorney), 5742 – 1981, to prevent Petitioner 2 from meeting with the undersigned for a period of seven days.
6. At the time of the hearing on the extension of the detention of Petitioner 2, the court was provided the following information:
- A. Petitioner 2 was interrogated from Tuesday to Thursday last week and was held in the *shabach* position on and off. He did not sleep.

- B. He was not interrogated on Friday and Saturday and was held in a windowless cell 2.5 meters X 2.5 meters in size, containing a mattress, blankets, water faucet, and toilet.
 - C. The interrogation of Petitioner 2 recommenced on Sunday, and on Monday, he was shaken by an interrogator named Major, and by two other interrogators. When one interrogator became tired, another replaced him. When shaking him, the interrogators held him by the lapel. Both his head and the upper part of his body hurt.
 - D. On 19 December 1995, Petitioner 2 was examined by a physician at the petitioner's request. The physician determined that he had kidney problems. He had not suffered such problems previously. In the case of this petitioner as well, the medical officer for the Southern Sector of the Prisons Service refused to provide a copy of the medical file to the petitioner's counsel.
 - E. Petitioner 2 was questioned regarding a suspicion that he was a member of the Popular Front and regarding activity on behalf of the organization, which the Petitioner completely denied. No confession had been given to the police prior to the hearing on the Police Force's request to extend his detention.
 - F. Petitioner 2 was held in administrative detention for five months in 1989, and was previously sentenced by the Military Court in Hebron to two months' imprisonment for stone-throwing. In 1993, he was arrested for seven days and then released.
 - G. The affidavit of Petitioner 2 is attached hereto and marked P/3.
7. As in the case of Petitioner 1, the Military Court did not express any opinion on the torture of the Petitioner and extended his detention by twenty-one days. A copy of the court's decision is attached hereto and marked P/4.
8. Petitioner 3, 27, a resident of Jabala, is married and has three children. He owns a clothes factory in Jabala in which he employs 60-70 employees. He was arrested on 6 December 1995 at Erez checkpoint when he requested to replace his magnetic card. His detention was extended by twenty-one days a few days ago.

9.
 - A. During the interrogation by the Respondent, Petitioner 3 was held in the interrogation room or in the *shabach* position, described above, and was deprived of sleep.
 - B. The interrogators also shake him. He recalls that interrogators named Captain Hadi and Midhat shook him and continued to shake him at frequent intervals. His shirt was torn as a result.
 - C. Petitioner 3 complained of headaches and was examined by a physician, who gave him aspirin.
 - D. During a visit by counsel on 20 December, Petitioner 3 showed him marks on the upper part of his body.
 - E. His hands were swollen from being cuffed for hours on end.
 - F. Petitioner 3 has difficulty walking because of the movements that the interrogators force him to do, and his thighs hurt as a result. When he refuses to do the movements, the interrogators hold him by the cuffs and force him to do the movements.
 - G. The interrogators of Petitioner 3 contend that he has information about persons in Islamic Jihad with whom he has ties, and that he was in a vehicle in Israel at the time of the attack at Beit Lid. The Petitioner does not recall where he was at the time of the attack. The Petitioner does not know anybody who has ties with Islamic Jihad. No testimony was taken from him.
 - H. The affidavit of Petitioner 3 is attached hereto and marked P/5.
10. Petitioner 4 is a non-profit society whose purpose is to aid persons who fall victim to violence, maltreatment, or violation of their fundamental rights by governmental authorities, particularly by assisting persons who need help in submitting their complaints to the authorities.
11. The interrogation methods that the Respondent uses against Petitioners 1, 2, and 3 cause them severe pain and suffering: grabbing Petitioner 1's shoulders and shaking him caused a heart malfunction and a feeling of insufficient supply of oxygen to the lungs. Grabbing Petitioner 2's lapel of his garment and shaking him caused him headaches and kidney

problems. Grabbing Petitioner 3 by the lapel of his garment and shaking him caused him headaches.

12. A. The Petitioners contend that, from the moment that the state signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ratified it on 4 August 1991, it should be held that this method falls within the term “torture” as it is defined in Section 1 of the Convention.
- B. The Honorable Court has already ruled, in Civ. App. 1137/93, *Askar v. Heyms, Piskei Din* 48 (3) 641, 659, the Honorable Justice Heshin writing for the Court, that:

Indeed, it is understood that there is and should be a bridge between law and the convention; that the two are compatible and not inconsistent (see A. Barak, *Interpretation in Law, Vol. 2, Statutory Interpretation* (Nevo, 5753 – 1993) 575

13. The Honorable Court is requested to hold that the acts of the Respondent or persons on its behalf against Petitioners 1, 2, and 3, as described above, are manifestly unlawful.
14. A. The Petitioners contend that even under present legislation – Section 277 of the Penal Law, 5737–1970 – it is absolutely forbidden for a public official to use or order the use of force or violence against a person to squeeze out an admission of, or information about, a criminal offense.
- B. No statute allows interrogators on behalf of the Respondent to hold Petitioners 1, 2, and 3 with their hands bound behind their backs, their legs shackled, sitting for hours on hours on a small chair, suffocating and lacking air because their heads are covered with sacks.
15. The Petitioners refer to the decision of the Honorable Court in H CJ 355/79, *Katlan v. General Security Service, Piskei Din* 34 (3) 294, in which it was held that it is impermissible to give a detainee or prisoner an enema without his consent, even if there is a suspicion that he holds dangerous drugs in his body. In *Katlan*, the Court stated, at page 755:

Clearly, and without need for pondering the a blood test will not be made against the will of the patient, and the

court is not empowered to order this test by force without a clear and express statute enacted by the Knesset. The right not to suffer bodily harm is one of the basic rights of a person in Israel, and is part of the individual's right to personal liberty.

The Petitioners will argue that the interrogation methods that the Respondent uses against them during interrogation must not impair their health.

16. The Petitioners contend that the [Respondent's] use of shaking violates the Basic Law: Human Dignity and Liberty.
17. The Petitioners further contend that even if persons interrogated by General Security Service agents file complaints with the official in charge of complaints in the Department for the Investigation of Police, in the Ministry of Justice, there is no certainty that their complaints will be investigated. The Petitioners' counsel acted in accordance with the recommendation of the Respondent's counsel [i.e., to file such a complaint] in the framework of another petition to this Honorable Court, HCJ 6536/95, *Abu Zaida v. General Security Service*, which also involved shaking. Attached hereto and marked P/6 and P/7 are copies of the complaint and the response of Attorney Schender, head of the Department for the Investigation of Police, in the Ministry of Justice. Attorney Schender writes, in the said Appendix P/7, as follows:

Following a review of all the investigation material, I have concluded that no conclusions can be made vis-à-vis any of the persons who interrogated your client.

The complaint, Appendix P/6, the interrogee contended that:

During his interrogation, primarily over the first six days of interrogation, he was interrogated twenty-four hours a day by a team of interrogators. They prevented him from sleeping for several days. He was interrogated by interrogators who were referred to as Midhat, Avner, Hadi and Najib. His interrogators grabbed the petitioner by the lapel of his garment and shook him for six to ten times. The petitioner lost consciousness as a result of the shaking, and the interrogators lifted him up from the floor and put him on a chair. The muscles in the back of his neck hurt

for several days after he was shaken. The interrogators punched him in the ears, kicked his hands when they were cuffed, demanded that he do physical exercises for a prolonged period, placed him in a cell in which the air conditioner emitted very cold air all night long, kept him in the painful shabach position during breaks from the interrogation – his hands bound behind him, his head covered with a sack, while sitting on a small child’s chair – and played loud music to stupefy him.

The Petitioners contend that the only proper effective legal relief for their complaints set forth herein is intervention by this Honorable Court, and that no other forum exists to do this.

18. Therefore, the Honorable Court is requested to give the orders requested and to make them absolute.

Jerusalem, 20 December 1995

[signed]

Andre Rosenthal, Attorney
Counsel for the Petitioners