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At the Supreme Court
Sitting as the High Court of Justice

HCJ 7984/11

HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
Represented by counsel, Adv. Daniel Shenhar
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The Petitioner

v.

Israel Prison Service
Represented by the State Attorney's Office,
Ministry of Justice, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondent

Preliminary Response on behalf of the Respondent

In accordance with the decisions of the Honorable Court, the Respondent hereby respectfully submits his preliminary response as follows:

1. The principal subject of the petition is Petitioner's request that the Respondent show cause "why it should not improve holding conditions at the Petah Tikva detention facility which is under its responsibility so that they are compatible with the lawful rights of the individuals incarcerated", or alternatively, why the Respondent does not transfer the detainees to a facility which offers reasonable and lawful holding conditions. The Petitioner also requests that the Honorable Court order the Respondent to show cause "why he does not ensure that the detainees are transferred to a holding facility which offers conditions that meet legal standards as early as possible following the conclusion of their interrogation".
2. The Respondent will argue that although he disputes the contention of the Petitioner concerning the existence of inappropriate holding conditions at the detention facility

that is the subject of the petition, it is inappropriate to deliberate the petition before us at this time because at this time it is not relevant.

3. Thus, in accordance with the declaration of the Respondent and the Israel Security Agency (ISA), at this time, the detention facility that is the subject of the petition is undergoing renovation which will continue for several months. Said renovation will include the improvement of the infrastructure at the facility including the installation of an air conditioning system in all of the cells, the renovation of the plumbing system, the installation of new sanitary fixtures, painting the cells and more. It must be indicated that during said renovation, detainees are not held at the detention facility that is the subject of the petition.
4. Under these circumstances, and in consideration of the fact that the remedies requested of this Honorable Court are by intrinsically forward looking remedies, the Respondent believes that it is inappropriate at this time to hold a hearing on the petition before us, as the factual situation in all that regards the facility that is the subject of the petition will change and in any event, no detainees are being held there at this time.

At the same time, it should be clarified that nothing in the above statement implies agreement with the contention of the Petitioner regarding inadequate holding conditions that existed at the facility prior to the renovation.

5. Furthermore, it should be noted that the petition before us raises claims by HaMoked: Center for the Defence of the Individual concerning conditions of confinement in a detention facility.

We will recall that Article 62A of the Prisons Ordinance (New Version), 5731 – 1971 determines that:

“A prisoner is entitled to submit to the District Court whose area of jurisdiction includes the prison in which the prisoner is held (hereinafter in this article – the court) a petition against state authorities and officials serving under the law, in any matter pertaining to his imprisonment or detention”.

The Respondent believes that inasmuch as grievances concerning the conditions of confinement in the facility that is the subject of the petition arise in **future**, an alternate remedy is available in relation to this matter in the form of a Prisoner's Petition submitted by one of the inmates held in the facility who seeks to argue against his conditions of confinement. Consequently, on the face of it, there is no justification for the Honorable Court to deliberate a general petition of this type, as each prisoner is entitled to submit an appeal regarding his conditions of incarceration to the competent court.

Regarding the alternate remedy in the form of the submission of a Prisoner's Petition see for example HCJ 4531/09 **Fahri Barghouti et al. v. Israel Prison Service** (unpublished, delivered on 16.6.10). Regarding the submission of a public petition where there is a specific petitioner see for example HCJ 1759/94 **Srosberg v. the Minister of Defense** IsrSC 58(1), 625 (1994).

6. In light of the above, it appears that the petition before us must be dismissed at this time.

Alternatively, should the Honorable Court determine that it is appropriate to deliberate the petition in the form in which it was submitted and not in the framework of a Prisoner's Petition to the competent court, and should the Court determine that it is appropriate to provide an update when the renovation of the facility that is the subject of the petition is completed, the Respondents request to submit an updating notice by January 1, 2013.

Today,
5 Av 5772
24 July 2012

[signed]
Hila Gorni, Adv.
Senior Deputy at the State Attorney's Office