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**At the District Court in Haifa**

**PP 598/05**

In the matter of:

1.            **Samara, Jordanian passport No.**  
being held in the interrogations wing of Kishon  
Detention Center  
  
represented by attorneys Sigi Ben-Ari (Lic. No.  
37566) and/or Yossi Wolfson (Lic. No. 26174) and/or  
Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or  
Shirin Batshon (Lic. No. 32737) and/or Hava Matras-  
Ivron (Lic. No. 35174) and/or Gil Gan-Mor (Lic. No.  
37962)  
of HaMoked: Center for the Defence of the Individual  
founded by Dr. Lotte Salzberger  
4 Abu Obeidah Street, Jerusalem 97200  
Tel. 02-6283555; Fax 02-6276317

**The Petitioner**

v.

**Commander of Kishon Detention Center**

represented by the Haifa District Attorney's Office

**The Respondent**

### **Detainee's Petition**

The Honorable Court is requested to order the Respondent to appear and show cause:

- A. Why he is holding the Petitioner in Kishon Detention Center without recording him in the place in which he is being detained, contrary to law.
- B. Why he is holding the Petitioner, until the end of proceedings against him, in the interrogations wing of Kishon Detention Center, in which the Petitioner's rights are being violated.

### **Request for Urgent Hearing**

The Honorable Court is requested to set an urgent date for hearing of the petition. In the petition herein, the Petitioner complains about the failure to record his presence in the facility and about the conditions in which he is being held in Kishon Detention Center, in gross

violation of rights granted him by law. Experience has shown that by setting a date for hearing, the claim for relief is resolved and becomes moot. Therefore, the Honorable Court is requested to grant this request.

### **The grounds for the petition**

#### **The Petitioner and the legal proceedings against him**

1. The Petitioner, who was born in 1982 and has no identity card, was detained on 9 November 2004, and since that time has been held in the interrogations wing operated by the General Security Service [GSS] in Kishon Detention Center, which is under the Respondent's command.
2. For 29 days, from 10 November to 8 December 2004, the Petitioner was prevented from meeting with his attorney by orders given, for the good of the interrogation, by the head of the interrogation and the head of the interrogations division of the GSS.
3. During the period 16 November 2004 to 4 January 2005, the detention of the Petitioner was extended three times by the Samaria Military Court, for the needs of the interrogation and for filing a criminal indictment against him. Between 14 and 27 January 2005, the Samaria Military Court extended his detention three times to enable the filing of an indictment.
4. On 27 January 2005, a partial indictment as part of File 1218/05 was filed against the Petitioner in the Samaria Military Court, and the Petitioner was detained until the end of the legal proceedings against him.

A copy of the decision to detain the Petitioner until the end of the proceedings is attached hereto as Appendix P/1.

5. On 7 March 2005, an amended indictment was filed against the Petitioner.
6. In a hearing on 14 March 2005 in the Samaria Military Court, the Petitioner was not present, apparently because the authorities were unable to find out where he was being detained.

A copy of the protocol of the hearing of 14 March 2005 is attached hereto as Appendix P/2.

#### **Failure to record the Petitioner in his place of detention**

7. HaMoked: Center for the Defence of the Individual is a human rights organization that is involved, *inter alia*, in aiding residents of the Occupied Territories in locating the place in which detainees are being held by Israeli security forces. See, for

example, the judgment in HCJ 6757/95, *Hirbawi v. Commander of the IDF Forces in the Region, Taqdin Elyon* 96(1), 103.

8. On 6 March 2005, HaMoked: Center for the Defence of the Individual contacted the Control Center for IDF prisons in an attempt to locate the Petitioner. Two days later, on 8 March in the morning, the Control Center replied that the Petitioner had not been located. The same day, another reply was received from the Control Center, indicating that the Petitioner had been located and was being held in Kishon Detention Center.
9. The next day, 9 March 2005, HaMoked called Kishon Detention Center to arrange a meeting between an attorney and the Petitioner. The official at Kishon Detention Center informed HaMoked that the Petitioner did not appear on the computer and was not being held there. Ms. Ilana Ivgi, of the Prisoners Department of the Israel Prison Service [IPS], confirmed that the Petitioner's name did not appear on the IPS computer screen. After receiving these responses, HaMoked contacted Major Morris Hirsch, of the Judea and Samaria and the Gaza Region judge advocate's office, who confirmed, on 10 March 2005, that the Petitioner was being held at Kishon Detention Center.

A copy of the letter from Major Hirsch is attached hereto as Appendix P/3.

10. That same day, HaMoked called the Control Center to determine whether the computer listed the Petitioner as being held in Kishon Detention Center. HaMoked was informed that he did not appear on the Control Center's computer. HaMoked then called Kishon Detention Center and received a similar response.
11. On 11 March 2005, an attorney on behalf of HaMoked went to Kishon Detention Center to visit the Petitioner. Upon arrival, he was told that the Petitioner was not listed on the computer, and hence was not detained there. Only following a lengthy delay and the insistence of the attorney was it "discovered" that the Petitioner was being held in the facility.
12. On 22 March 2005, after finding that the Petitioner had not yet been listed on the records in his place of detention, the Petitioner's counsel wrote to the Respondent, demanding that the detainee be recorded and that a thorough investigation be made into why he was not recorded, and why the flaw had not been rectified when it was uncovered.

A copy of the letter of 22 March 2005 is attached hereto as Appendix P/4.

13. On 28 March 2005, the Petitioner's counsel sent a reminder letter to the Respondent.

A copy of the letter of 28 March 2005 is attached hereto as Appendix P/5.

14. The letter of the Petitioner's counsel to the Respondent remained unanswered.
15. As of 7 April 2005, the Petitioner was not recorded in the facility in which he was being held. On that day, his counsel went to Kishon Detention Center to visit the Petitioner. At the registration office, following a check of the computer terminal, she was told that there was no record of the Petitioner, and that he was not being held there. Only after the Petitioner's counsel insisted that the Petitioner was being detained in the interrogations wing of the detention center was it confirmed that he was being held there, and the request to visit him was granted.

**The conditions in which the Petitioner is being held in Kishon Detention Center**

16. During his stay in the interrogations wing of Kishon Detention Center, the Petitioner has been kept in a number of cells. The cells were 1.5X3.0 meters and accommodated at least two more detainees.
17. The cells do not have a window and no sunlight enters. Air comes in through an air-duct. The cells are illuminated by two light bulbs.
18. The Petitioner and the other detainees in the cell slept on mattresses on the ground.
19. The toilets in the cells are not separated from the living area.
20. The cells do not have a shower. Once or twice a week, a GSS agent would come and offer the Petitioner and the others in the cell a chance to go and take a shower.
21. Since arriving at the interrogations wing, the Petitioner has not once been permitted to take a walk in the yard.
22. Since his detention, the Petitioner has not been in contact with his family. He is not permitted to receive visits or to send or receive letters. Only once, after his interrogation ended, he was allowed to make a telephone call to his mother.
23. The Petitioner suffers earaches. He has made repeated requests to be examined by a physician, but to no avail.
24. Following a two-day hunger strike by the Petitioner, he was moved, on 6 April 2004, to Cell 11 in the interrogations wing. This cell was larger than the one he had previously been kept in. Six other detainees shared the cell with him, three of whom, as far as he knows, were being held until the end of legal proceedings against them. The conditions in Cell 11 were identical to those described above, with one difference: this cell had a shower. There was no separation between the toilet and

shower, and the living area. Three of the seven detainees in the cell slept on mattresses spread out on the floor, while the four others slept on beds.

The Petitioner's affidavit of 7 April 2004 is attached hereto as Appendix P/6.

### **The legal argument**

25. The fundamental rights of man in Israel are also given to prisoners. Denial of a person's liberty by imprisonment severely restricts the prisoner's freedom of movement, but does not justify denial of other human rights to which he is entitled as a human being.

**It is firmly entrenched in our law that the fundamental rights of man “survive” also behind prison walls, and are granted to the prisoner (and the detainee) also in his prison cell. Exceptions to this rule relate to the right to freedom of movement, which is denied as a result of his imprisonment, and the restrictions placed on his ability to exercise his other rights; some of the restrictions follow from the denial of his personal freedom, and some of the restrictions are expressly set forth in law... The assumption is that the human rights of the prisoner includes all the rights and liberties given to every citizen and resident, except for the freedom of movement denied him following his incarceration (PPA 4463/94, *Golan v. Prison Service*, *Piskei Din* 50(4) 136, 152-153).**

See also H CJ 337/84, *Huqma v. Minister of the Interior*, *Piskei Din* 38(2) 826, 832; H CJ 540/84, *Yusuf v. Director, Central Prison of Judea and Samaria*, *Piskei Din* 40(1) 567, 573; CrimR 3734/92, *the State of Israel v. 'Azazima*, *Piskei Din* 46(5) 72, 75; H CJ 365/97, *Katlan v. Prison Service*, [*Piskei*] *Piskei Din* 34 (3) 72, 78.

26. The court held more than once that, when a person is imprisoned, the court becomes the protector of his rights as a prisoner:

**Indeed, the court is the one that put the prisoners behind prison walls, but now, when the walls close on them, the court is the father of the prisoners (CApp 7440/97, *the State of Israel v. Avi Golan*, *Piskei Din* 52(1) 1, 8).**

27. It is unnecessary to write at length on the detainee's right to have his place of detention clearly known to all. Maintaining a record of a detainee in the place where

he is being held is a prerequisite to exercise of his rights. Only then can his family and attorney check with the persons in charge of the place of detention about his status, the condition of his health, the detention conditions, if and when it is possible to visit him, and the like. Only in this way can they act to ensure exercise of his rights as a detainee. Also, the right of a detainee to be present at the legal proceedings against him depends on a proper record being kept in his place of detention.

28. The failure to record the Petitioner in the place of detention severely impairs his and his family's fundamental rights. A governmental system that does not ensure that a detainee is listed on the records of the place where he is being held, and does not ensure the availability of that information, fails to meet its duty and misuses its function.
29. Because of the paramount importance of recording a detainee in the place in which he is being held, the obligation to record the detention is set forth in primary legislation. Article 4 of Pequddat Bate ha-Sohar (Nosah Hadash) [the Prisons Ordinance (New Version)], 5732–1971, states that:

**Upon the admission of any person to prison, the prison manager shall cause to be recorded such particulars regarding such person as may be prescribed.**

30. The failure to record the Petitioner in the place of detention for the period proceeding 6 March 2005, at least, constitutes a flagrant breach of the statute and of his rights. This breach is greatly aggravated in light of the failure to rectify the failure, despite the repeated warnings made by the Petitioner's counsel.
31. Regarding the detention conditions, the Petitioner will contend that the Respondent is detaining him in violation of the provisions of Part B of Hoq Seder ha-Din ha-Pelili (Samkhuyyot Akhifa – Ma'azarim) [the Criminal Procedure (Enforcement Authorities – Detention) Law], 5756–1996, and in violation of Taqqanot Seder ha-Din ha-Pelili (Samkhuyyot Akhifa – Ma'azarim) (Tena'e Hahzaqa be-Ma'azar) [the Criminal Procedure Regulations (Enforcement Authorities – Detention) (Conditions in Detention)], 5757–1997.

These regulations contain, in Rule 1, the following definition:

**Detainee suspected of committing security offenses - a detainee suspected of committing the offenses set forth in Article 35(b) of the Law, as to which an indictment has not yet been filed against him** (emphasis added).

According to this definition, upon filing of the indictment against the Petitioner, the rights of the Petitioner set forth in law are not to be restricted, and the exceptions mentioned in Rule 22 of the regulations do not apply in his matter.

32. Contrary to the provisions of the Criminal Procedure Law and the Criminal Procedure Regulations, the Petitioner is not being provided the rights granted him by law, among them the following: a bed, reasonable lighting and ventilation, separation between the shower and toilet and the living area of the cell, a daily walk, family visitation, and medical treatment.

For the above reasons, the Honorable Court is requested to issue the Order Nisi requested at the beginning of the petition, and after receiving the Respondent's response, to make it absolute, and to order that the Respondent pay the Petitioners' costs and attorney fees.

12 April 2005

\_\_\_\_\_ *[signed]* \_\_\_\_\_

Sigi Ben-Ari, Attorney

Counsel for the Petitioner