



The Supreme Court sitting as the High Court of Justice

**HCJ 3368/10
HCJ 4057/10**

Before: The Honorable Justice E. Arbel
The Honorable Justice I. Amit
The Honorable Justice U. Shoham

The Petitioners in HCJ 3368/10: 1. The Ministry of Palestinian Prisoners
2. Adv. Fahmi Shakirat
3. Adv. Kamil Sabbagh
4. Adv. Kareem Ajwa

The Petitioners in HCJ 4057/10 The Association for Civil Rights *et al.*

v.

The Respondent in HCJ 3368/10: 1. The Minister of Defense

The Respondent in HCJ 3368/10
and in HCJ 4057/10 2. GOC Central Command, Commander of IDF
Forces in the Region

Petition to Grant an Order *Nisi*

Date of Session: 14th of Sivan, 5773 (May 23, 2013)

On behalf of the Petitioners
in HCJ 3368/10: Adv. S. Ben Natan

On behalf of the Petitioners
in HCJ 4057/10: Adv. L. Margalit

On behalf of the Respondents: Adv. A. Helman

PARTIAL JUDGMENT

Justice E. Arbel:

The Petitions before us, the hearings of which were united, address the question why not shorten the periods of detention which are prescribed in the security legislation in the Judea and Samaria region, including in the Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) (no. 1651), 5770-2009 (hereinafter: the "**Security Provisions Order**" or the "**Order**"), which came into effect on May 2, 2010. In the framework of the Petitions, this Court was requested to determine periods of detention which shall be shorter than those determined in the Security Provisions

Order, as required under international law and in a manner that corresponds with the periods of detention that are customary in Israel.

Background

1. Petitioner 1 in HCJ 3368/10 is the Ministry of Prisoners' Affairs in the Palestinian Authority, to which, under the security legislation, most of the detainees belong, and which attends to their welfare, their families, their legal representation and which engages lawyers who are members of the Israel and Palestinian Bar Associations. Petitioners 2-4 are lawyers who represent, on behalf of the Ministry of Prisoners' Affairs, suspects who are detainees under the security legislation. The Petitioners in HCJ 4057/10 are the Association for Civil Rights in Israel, "Yesh Din" – Volunteers for Human Rights and the Public Committee against Torture in Israel.
2. The Petitioners filed their Petitions in light of the legal reality that existed at the time the Petitions were filed, pursuant to which the law applicable to Israeli citizens in the Judea and Samaria region (hereinafter: the "**Region**"), is different than the law applicable to Palestinians in the Region. In the framework of the Petitions, the said Petitioners requested to shorten the periods of detention prescribed in the Security Provisions Order such that they will be the equivalent to the periods applicable to Israeli citizens in the Region and will correspond to the periods of detention that are customary in Israel.

The Law that was in Effect at the Time the Petitions were Filed

3. The period of the pre-indictment detention and the period of detention until the end of proceedings are grounded in Article C of Chapter C of the Security Provisions Order, which addresses the arrest and release of Palestinian detainees in the Region. Sections 31 and 32 of the Security Provisions Order prescribed the following with respect to detention prior to judicial review:
 - "31. (a) A soldier may arrest, without an arrest warrant, any person violating the provisions of this order or if there is cause to suspect that he committed an offense under this order.
 - (b) A person arrested in accordance with sub-section (a) shall be transferred as soon as possible to a police station or place of detention as determined in this order.
 - (c) An arrest warrant against a person arrested in accordance with sub-section (a) must be received within a reasonable time; if an arrest warrant is not given within 96 hours from the time of his arrest - he shall be released.
 - (d) The Commander of the IDF Forces in the Region may authorize any person to order the release of a person arrested in accordance with sub-section (a), provided that no arrest warrant pursuant to the provisions of this article was issued against such detainee.
32. (a) A police officer who has reasonable grounds to assume that a person violated the provisions of this order or who becomes aware that the

investigation material that was gathered against the person who was arrested in accordance with sub-section 31(a) necessitates his continued detention, is authorized to issue a written arrest warrant for a period which shall not exceed eight days from the time of his arrest.

- (b) If an arrest warrant as noted was issued for a period shorter than eight days from the time of his arrest, a police officer may extend it in writing, from time to time, provided that the total periods of detention shall not exceed eight days from the time of his arrest."

With respect to the extension of the detention prior to the filing of an indictment, Sections 37 and 38 of the Security Provisions Order prescribe as follows:

"37. A judge is authorized to grant an arrest warrant and to extend the duration of the detention, provided that the arrest warrant or the detention extension shall not be for a period exceeding thirty days at a time and that the total period of detention in accordance with this section shall not exceed ninety days.

38. A Military Court of Appeals judge, may, at the request of the Region's legal counsel, order the extension of the detention of a person who was arrested under Section 37, or his renewed arrest, for a period which shall not exceed three months; if such an arrest warrant is granted for a period of less than three months, a Military Court of Appeals judge may extend it from time to time, provided that the total period of detention in accordance with this section shall not exceed three months."

With respect to the period of detention until the end of proceedings, Section 44 of the Security Provisions Order provides as follows:

"44. The matter of a defendant who after being indicted was held under detention for the same indictment for a cumulative period that amounted to two years and whose trial in the court of first instance did not end with a verdict, shall be brought before a judge of the Military Court of Appeals. The judge will hear the defendant's matter and order his release, conditionally or unconditionally, unless the judge believed that the circumstances of the matter, including the severity of the offense attributed to the defendant and his level of dangerousness, the fear of him fleeing justice and the reasons for the prolonging of proceedings, do not justify his release.

- (b) If the judge decides that the circumstances of the matter do not justify the defendant's release, the judge may instruct the defendant's continued detention for a period which shall not exceed six months, and may reorder this from time to time."

In accordance with that which is stated above, at the time the Petitions were filed with this Court, a suspect who was arrested under the Security Provisions Order could have been held under detention up to eight days without judicial review, up to 90 days before the filing of an indictment, and with court approval – up to six months. Additionally, a defendant could have, before his trial was completed, been held under open ended detention, subject to periodic extensions every six

month, after two years from the commencement of his detention.

4. As opposed to the detention periods applicable to Palestinians in the Region, which are listed in the Security Provision Order, Israeli law prescribes detention for citizens of up to 24 hours (which can be extended up to 48 hours) until being brought before judicial review, detention of up to 30 days, which can be extended up to 75 days with the Attorney General's approval, before filing of an indictment, and detention of nine months, which can be periodically extended every three months, until the end of proceedings (Sections 17, 29, 30, 59, 60, 61 and 62 of the Criminal Procedure (Enforcement Powers – Arrests) Law, 5756-1996). Additionally, certain exceptions are prescribed in the Israeli law with respect to suspects who are arrested for security offenses and with respect to minors who have been arrested (Criminal Procedure (Arrest of a Security Offense Suspect (Temporary Provision) Law, 5766-2006 and the Youth (Adjudication, Punishment and Methods of Treatment) Law 5731-1971).

The Claims of the Petitioners in HCJ 3368/10

5. The Petitioners claim, through Adv. Smadar Ben Natan, that the periods of detention prescribed in the Security Provisions Order that applies to the Palestinians in the Region are significantly longer than the standards prescribed for such matters both in international law and in the corresponding periods in Israel. They claim that these periods infringe the right to due process and the protection against arbitrary infringement of liberty which are granted to the residents of the Region, both by virtue of international law and by virtue of the fundamental principles of Israeli law. According to the Petitioners, although at hand are two different regions that are subject to different legal regimes, however both are under the control of the State of Israel.
6. The Petitioners further claim that the far-reaching changes that have occurred in Israeli law have hardly been reflected in the military legislation in the Region. They claim that experience shows that the extended periods of detention impact the manner in which arrest and interrogation procedures are conducted, such that they excessively infringe detainees' rights: *de facto*, the detention of detainees who are arrested in an initial arrest, is not requested to be extended before the lapse of the eight days allowed by the Security Provisions Order; many of them are not interrogated at all during entire days of this detention period and during subsequent detention periods; in many cases, detainees are released after four, five or even eight days without procedures being taken with respect thereto and without a cause of arrest against them being examined by a judge. According to the Petitioners, such an extended period of detention creates fertile ground for inappropriate treatment, for pressure and violence in the interrogation, such as the arrest of a relative without any real cause as a means of pressure.
7. The Petitioners add that the proceedings at the Military Courts after the filing of an indictment, are conducted ponderously: Most of the cases end with plea bargains since defendants know that if they chose to conduct a trial, they will stay in detention for a long and unlimited period of time; in the few cases that do go to trial, the periods of time between hearings are extended, the number of judges is small in relation to the volume of the cases, and this reality is created and

encouraged by the unlimited detention until the end of proceedings.

8. The Petitioners further state that until the implementation of the Disengagement Plan, detainees from the Gaza Strip were subject to the provisions of the Security Provisions Order and that since the Disengagement detainees from the Gaza Strip are brought for detention extensions before the Israeli Courts, subject to Israeli law. According to them, the Israeli law also applies to the population of the settlers. According to the Petitioners, this reality constitutes a violation of equality among people – a legal apartheid. The Petitioners emphasize that not all of the offenses addressed in the Military Courts are security offenses, but the laws of detention apply to all of the detainees.
9. According to the Petitioners, the judicial review in the detention proceedings is an integral part of the suspect's right to due process. The very lengthy periods of detention are not justified due to security needs or due to circumstances that are unique to the Region. Therefore, they claim, there is a duty to act in accordance with similar standards in protecting human rights in the procedural criminal proceeding and they request to cancel Sections 31A, 32 and 44 of the Security Provisions Order, to shorten the periods of detention and to determine periods of detention that correspond to those that are customary in Israel.

The Claims of the Petitioners in HCJ 4057/10

10. These Petitioners, through Adv. Lila Margalit, also requested to amend the Security Provisions Order and they raise similar claims against the periods of detention prescribed in the Order. They claim that the periods of detention severely and gravely infringe the fundamental rights of the Palestinian residents of the Region, their right to liberty and their right to be free of arbitrary arrest, as well as their right to due process, dignity and equality, to appropriate means of supervision in order to ensure fair interrogation and in order to prevent torture. These detainees are subject, so they argue, to illegitimate methods of interrogation and to improper treatment on behalf of the interrogation authorities. These infringements derive, according to the Petitioners, both from the fact that their treatment is arbitrarily different than the treatment of Israelis living in the Region and from the duration of the periods of detention which in and of themselves are exaggerated. According to the Petitioners, these infringements are contrary to the provisions of the customary and contractual international law applicable in the Region and to the principles of Israeli public law which apply to Israeli authorities. They argue that these infringements do not serve an appropriate purpose, are not proportionate and are not reasonable. According to the Petitioners' opinion, it is hard to describe a more severe and grave infringement of human rights than the illegitimate situation in which two "categories" of people who are distinguished from each other based on their national origin, are living beside each other. Even regardless of the discrimination allegation, the Petitioners claim that the periods of detention in the Security Provisions Order are contrary to the principles of international law which apply to the Region and to the principles of public law that apply to any action of Israeli authorities. According to them, immediate and frequent judicial review of the detention of a suspect is a necessary condition of its reasonableness and proportionality; an extended detention without judicial review is not proportionate.

11. The Petitioners add that the military prosecution's claim that the judicial review of the detention is to be delayed in order to enable the "formulation of a reasonable suspicion", attests that the Order is used for making arbitrary arrests, without there being a reasonable suspicion against the detainee. Therefore, the Petitioners claim that the initial detention period of Palestinian detainees is meant to enable arresting people without there being a reasonable suspicion against them; to protect the interrogation authorities from the court's "intervention", to grant the interrogators "minimal time" to exhaust the interrogation, to avoid the "disturbance" thereof that is involved in presenting the suspect before the judge, and to avoid the logistical difficulties involved in applying immediate judicial review.
12. According to the Petitioners, the lack of distinction between minors and adults in the security legislation regarding the periods of detention and the lack of sufficient consideration of the principle of the child's best interest during arrests of minors, result in a disproportionate infringement of children's rights which are grounded in international law and which are recognized by Israeli Law. The basic premises that Palestinian minors are worthy of less protection than Israeli minors also living in the Region, is, in their opinion, illegitimate.
13. The Petitioners add that the judicial review of the detention is meant to ensure the justification, from the outset, of the continued denial of a person's liberty and that there is no place to delay it in order to enable the authorities to progress with their interrogation. Additionally, judicial review also has a role in supervising the manner the interrogation is conducted and serves as an important guarantee against the application of illegitimate means of pressure during interrogation and against the use of the detention itself to make the suspect feel completely disconnected from the outside world and subject to the mercy of his interrogators, while his dignity and his right to be silent are being infringed. According to the Petitioners, interrogation that is far from the court's watchful eye, could lead to the use of illegitimate means of interrogation which violate the detainee's dignity and even the integrity of his body, and therefore, in their opinion, constitutes a breach of the State's duty to prevent torture and inhumane treatment of detainees. The lack of judicial supervision is even more severely significant in cases in which the Palestinian detainee is prohibited from meeting with a lawyer, contrary to international law. According to the Petitioners, the concern regarding the use of illegitimate means of interrogation against Palestinians is not a mere concern, and they refer to reports that were published by human rights organizations in 2007. According to them, purely logistic considerations or administrative difficulties cannot justify the infringement of a human's right to liberty, equality and dignity.

The Respondents' Response

14. The Respondents' response was presented by Adv. Aner Helman. Even since the letters of response to the Petitioners' approaches, prior to the filing of the Petition, the Respondents stated that the issue of shortening the periods of detention in the Region is being examined in the framework of in-depth staff work that has commenced long ago. It was further written that the security legislation is based on security and public order considerations and this is also true with respect the

laws of detention, and that the differences between the law customary in the Region and the law customary in the State of Israel in this context derive from relevant security considerations.

15. In the response which was filed on the Respondents' behalf to this Court on January 9, 2010, the Respondents reiterated their claim that it is not for no reason that the periods of detention prescribed in the Security Provisions Order are different than those prescribed in Israeli law. According to the Respondents, the nature of an area that is held under belligerent occupation (*occupatio bellica*), even if long-term occupation, necessitates that the special security conditions prevailing therein dictate that different arrangements be prescribed than those customary in the occupying state.
16. For example, due to the security situation, the ability to move in the Region is limited, and at times, in light of security conditions which delay or prevent reaching the location, it is not possible to perform interrogations expeditiously, or even at all, in the area; some of the areas of the Region are under Palestinian control and it is not possible or very difficult to reach witnesses and suspects living there; in many cases, suspects who need to be interrogated find shelter in areas that are under Palestinian control making their interrogations and the interrogations of their accomplices who were arrested by the security forces, difficult; in most of the cases, the potential witnesses refuse to cooperate with the security forces, making interrogations difficult; in security interrogations the persons being interrogated acted out of nationalist and ideological motivation, and their interrogation is very difficult. Naturally, there is a minimal period of time that is required until their interrogations will produce initial evidence to support the intelligence information that has been received. At times, a certain interval is required between the time information is received and the time it can be used against the party being interrogated, since using intelligence information very soon after its receipt could "burn" the source of information and at times could even risk his life; in a large share of the security interrogations it is not possible to determine the location and time of the arrest in advance, resulting in the delay of the initial interrogation and it being more difficult; all of the detainees who are suspected of committing severe security offenses are transferred to one of four interrogation facilities which are located in Israel for their interrogation. At times, such transfer, in and of itself, requires not insignificant amounts of time. It is also necessary to exhaust the initial interrogation of the person being interrogated before bringing him before a judge, so as to avoid the possibility of him escaping to the Region; at times it is necessary to arrest many hundreds of people, like for example during the period of the "Defensive Shield" operation in 2002, and it is not possible to prepare to bring all of them before a judge during a short period of time.
17. The Respondents argue that these grounds require determining that it is appropriate to allow detaining a suspect for a reasonable period of time that is required in order to formulate initial evidentiary material prior to bringing him before a judge. The Respondents further state that international law does not limit the number of days that a person may be detained without judicial involvement, but rather expresses a principle pursuant to which the decision regarding the detention should be brought to a judge without delay.

18. Having said that, the Respondents notified that in recent years staff work has been conducted in the IDF and further on in the Ministry of Justice, by the Deputy Attorney General (Criminal Matters), together with the Deputy Attorney General (Special Assignments) and the Deputy Attorney General (Consultation), which is meant to examine the possibility of shortening the maximum periods of detention in the Region. The Respondents updated that in the framework of the staff work, a decision was reached that, considering the current security situation, at this time, it is possible to significantly shorten the maximum period of detention until bringing a detainee before a judge, however it is not appropriate to make the arrangement which shall be applicable in the Region in this matter the same as the arrangement which is applicable in Israel. The Respondents specified the manner of shortening the periods of detention:
19. With respect to offenses that are not security offenses, it was decided that, as a rule, the authority of an initial detention until presentation before a judge shall be for 48 hours; additionally, it will be possible to delay the presentation of the detainee before a judge for an additional 48 hours, as per the decision of an administrative authority, if there is a special cause, such as, for example, urgent acts of interrogation. It was further decided that the arrangement shall be re-examined upon the lapse of two years from the effective date of the amendment of the Order. As for detainees of security offenses, it was decided that the rule that shall be prescribed is that the initial period of detention until presentation before a judge shall be 96 hours at most, with an administrative party being able to extend such period by 48 additional hours, in cases in which the Head of the Interrogation Department at the Israel Security Agency is convinced that interrupting the interrogation in order to bring a detainee before a judge could result in substantially prejudicing the interrogation. It was also decided that in very special circumstances it will be possible for an administrative party to extend the period of detention until being brought before a judge by 48 additional hours, beyond the above said 11(*sic.*) hours (six days), in cases in which the head of the Interrogation Division at the Israel Security Agency is convinced that interrupting the interrogation in order to bring a detainee before a judge could result in harming the performance of an essential act of interrogation that is meant to prevent harm in human lives. Considering the concern that was raised by security entities regarding the operational implications of these modifications, it was determined that this arrangement would be examined upon the lapse of two years from the date the amendment to the Order became effective.
20. It was further decided that the extension of an initial detention by a judge will not exceed 20 days and that it will be possible to re-extend the detention for additional periods which shall not exceed 15 additional days each. The extension of detention prior to the filing of an indictment which exceed 60 days shall be subject to the approval of a senior legal authority in the Region.
21. The Respondents added that in the framework of the staff work it was decided to add a provision to the Order pursuant to which if a person was arrested and his interrogation ended he shall be released from detention, however, if the prosecutor declared that they are about to file an indictment against him and the court was convinced that there is *prima facie* cause to request his detention until the end of

proceedings, the judge may extend the detention on this ground for a period which shall not exceed eight days. It was also decided that at the initial stage the period of detention until the beginning of trial shall be 60 days, and that the possibility of shortening this period to 30 days shall be examined upon the lapse of two years.

22. The Respondents further updated that it was decided to amend Section 44 of the Security Provisions Order so that with respect to offenses that are not security offenses, the period stated for holding the first hearing before a judge in the matter of a detainee who is under detention until the end of proceedings shall be one year from the date the indictment was filed. With respect to security offenses, the period currently stated in the Order – two years – shall remain in effect, and this matter shall also be examined upon the lapse of two years from the time the arrangement shall become effective. The Respondents estimated that the required adjustments to the modifications shall last approximately six to nine months and that the Order shall be amended accordingly, immediately thereafter.
23. The Respondents requested to dismiss *in limine* the relief requested in HCJ 4057/10 to make the periods of detention of minors in the Region the same as the periods of detention of minors in Israel, and claimed that the Petitioners did not exhaust the proceedings in this matter. According to them, this matter should not be mixed with the matter of the detention of adults in the Region. According to the Respondents this is a "premature petition" since it was already decided to conduct staff work on this matter as well.

Hearing of the Petitions and Update Notice

24. On January 12, 2011, a hearing took place in this Court before President D. Beinisch and Justices N. Hendel and I. Amit. At the end of the hearing it was decided that within five months the Respondents would file an update notice together with a draft of the Order which shall be issued in accordance with the principles that were formulated. The Bench of Judges even instructed the Respondents to consider its remarks when drafting the Order, especially with respect to the duration of the period of time until first bringing a detainee before a judge and with respect to the period of detention until the end of proceedings after an indictment has been filed.
25. On June 1, 2011, the Respondents filed an update notice, and according thereto, in an additional meeting that was held following the court hearing, it was decided to shorten the period until a detainee, who is detained until the end of proceedings for security offense, is brought before a judge, from two years to 18 months. It was further decided that it is vital that the manner of the actual implementation of the arrangement which the staff work decided upon with respect to the maximum period of detention until bringing a suspect before a judge, be examined for a period of approximately two years, before an additional re-examination of the matter. In the framework of this notice, the Respondents added that it is essential, prior to actually shortening the detention periods in the Region, to examine the developments that were scheduled to occur in the Region in September 2011 onwards, in light of the Palestinian Authority's notice that it intends to approach the United Nations General Assembly this month with a request to recognize the

"State of Palestine". The Respondents updated that the staff work has not yet been completed and that they expect the Order to be amended during the month of January, 2012.

26. Both the Petitioners in HCJ 3368/10 and the Petitioners in HCJ 4057/10 responded to that stated in the update notice. According to them, the shortening of the detention period that the Respondents declared is insignificant and cannot cure the severe defects and infringement of rights that are embodied in the security legislation in the Region. According to the Petitioners, the changes that were made shall not have any practical impact on the arrest procedures of Palestinians who are residents of the Region and will not lead to a significant tightening of the judicial supervision of the periods of detention and to an improvement in the infringement of the right to liberty, of due process and of the presumption of innocence. The Petitioners reiterated their claim that judicial review is an integral part of the arrest process and that there is no justification to delay the judicial review for such an extended period of time. They argued that the initial detention period and the detention until the end of proceedings period constitute an arbitrary infringement of the right to liberty and therefore they insist on their petitions to issue an order *nisi* in the Petitions and to instruct the Military Commander in the Region to determine periods of detention that correspond with international standards and with those that are customary in Israel. The Petitioners further claimed that there is no reason not to amend the Order due to uncertain future developments.
27. The Petitioners in HCJ 4057/10 added that the list of security offenses that is included in the Order spans over dozens of sections and includes offenses such as conducting a procession or an unlicensed meeting, waving a flag without a permit, printing "material which has political significance" without a license from the Military Commander, and the like. The list also includes many "public order" offenses such as throwing objects, disturbing a soldier, breaching curfew or a closed military zone order and the like, thus making the arrangement that relates to offenses that are not security offenses predominantly theoretical. In their opinion, the appropriate criterion for determining the periods of detention is the timeframe applicable to Israelis who also live in the Region. The Petitioners also drew attention to the inconsistencies between the Respondents' notice and the draft of the Order. According to them, the amendment of the Order should not be avoided due to a concern regarding unusual events.

Additional Update Notices

28. On November 22, 2011, the Respondents filed an additional update notice, according to which, it was told in meetings that were held at the Deputy Attorney General (Criminal Matters), that the IDF has completed the staff work examining adding the necessary staff positions at the military courts and at the Judea and Samaria Region Prosecution in order to shorten the detention period in the Region and that a decision was even already reached to add the new necessary staff positions, subject to the amendment to the Order becoming effective and to the time required for the procedure of selecting and appointing new judges to the court. It was also clarified that due to a dispute between the Ministry of Finance and the Ministry of Public Security regarding the source of the budget, there is

still no budgetary solution for the Police and Prison Service's needs for implementing the staff work and that a few additional months shall be required after such a solution is found in order to recruit and train personnel and purchase and receive additional vehicles. On December 22, 2011, the Respondents filed an additional update notice informing that the dispute regarding the budget source was still unresolved, and this is what they informed on January 16, 2012, as well.

29. On February 6, 2012, the Respondents filed an additional update notice that the budget dispute regarding financing the detention periods in the Region was resolved. The Respondents further updated that on December 2, 2012 (*sic.*), the Commander of the IDF Forces in the Region signed the Security Provisions Order (Amendment no. 16) (Judea and Samaria) (no. 1685) 5772-2012 (hereinafter: the "**Amending Order**"), which shortened the period of detention in the Region in accordance with the conclusions of the staff work that had been done, and prescribed that its provisions shall become effective gradually, such that the last changes shall become effective on August 1, 2012.

The Petitioners' Response

30. The Petitioners in HCJ 3368/10 welcomed the amendments made to the Amending Order. However they claimed that a review of the language of the Amending Order reveals that there are significant differences between the changes declared in the Respondents' response and the actual language of the Amending Order. For example, the Petitioners noted that a security offenses detainee can be held under detention for two periods of 96 hours, i.e. eight days, and only be brought before a judge upon the completion thereof, and the same is true in the case of a non-security offenses detainee. The Petitioners claimed that the shortening of the detention period that was applied is insignificant and does not cure the severe infringement of the detainees' rights under the security legislation in the Region. They claimed that in the case of security offenses, which are the majority of the offenses that are addressed in the Region, the Amending Order does not, in effect, shorten the period of detention before initial judicial review. The Petitioners added that the Amending Order shortens the period of detention until the end of proceedings in security offenses in an insignificant manner from two years to a year and a half, which can be extended indefinitely, and that no change was made with respect to minors and that there is no distinction between a minor and an adult with respect to the detention laws. According to the Petitioners, these changes shall hardly have any practical impact on the procedures of detaining the Region's residents and will not lead to a significant tightening of the judicial supervision of the periods of detention and to an improvement with respect to the infringement of the right to liberty, the right to due process and the presumption of innocence. The Petitioners mentioned with respect to the initial detention period, that judicial review is an integral part of the arrest process and that this is the stage where it is necessary to present the court with only reasonable suspicion which is meant to exist upon the actual arrest. Therefore, in their opinion, there is no justification for delaying the judicial review for such a long period. Interrogation difficulties should be presented before the judge to justify the extension of the detention, including in security offenses.

31. The Petitioners further claimed that the European Court of Human Rights ruled

that an initial detention period of four days without judicial review breaches the right to be free of arbitrary detention. Therefore they are of the opinion that a period of detention of four to eight days before judicial review constitutes an arbitrary infringement of the right to liberty in violation of the Basic Law: Human Dignity and Liberty, and is illegal. According to them, a period of detention of a year and a half infringes the defendant's presumption of innocence and constitutes an arbitrary infringement of his right to liberty, since it is based only on *prima facie* evidence and amounts to an infringement of his right to a fair trial, as it constitutes a negative incentive to conduct trials and examine the charge.

32. The Petitioners in HCJ 4057/12 also responded to the Respondents' update notice. They also welcomed the Respondents' notice regarding the amendments made to the Amending Order but claimed that they cannot cure the flaw of illegality embedded therein, since even after the amendment, the Palestinian residents of the Region will continue to be subject to exaggerated and discriminating periods of detention which severely infringe their rights. The Petitioners emphasized again that immediate and frequent judicial review of arrest for interrogation purposes is a necessary condition for the reasonableness, proportionality and legality of the detention and that in the absence thereof, it is not possible to prevent arbitrary detention, it is not possible to protect the rights of the suspect and it is not possible to ensure a fair criminal procedure. The Petitioners reiterated their argument that an arrest that is not arbitrary is meant, to begin with, to be based on a reasonable suspicion and that the judicial review constitutes a part of the formulation of the legality thereof. According to them, the special difficulties that characterize the interrogations in the Territories are not at all relevant to examining the legality of the arrest to begin with, and therefore should have no implication on the amount of time until first bringing a detainee before a judge. According to the Petitioners, the Respondents did not provide grounds which could justify the discriminating policy also with respect to the other periods of detention. The Petitioners stated that the Respondents did not refer to minors in their notice and according to them, the list of security offenses is still "all inclusive", and a situation in which an Israeli detainee who lives in the Region and is suspected of a security offense must be brought before a judge within 24 hours while a Palestinian must be brought before a judge only after an *a-priori* period of four days, cannot be justified.

In light of President **D. Beinisch's** retirement, President **A. Grunis** appointed me to hear the Petition on March 14, 2012.

Additional Hearing of the Petition

33. On April 23, 2012, we held an additional hearing of the Petition, in which the Petitioners presented their claims regarding four matters: the time until bringing a detainee before a judge, the detention of minors, the definition of security offenses pursuant to the Order, and the period of the extension of a detention until the end of proceedings. At the beginning of the hearing, the attorney for the Respondents filed the Amending Order with respect to Section 31 of the Order. According to the amendment, a detention prior to being brought before a judge in special circumstances was limited to a period which shall not exceed 96 hours from the time the suspect was arrested, and can, in special circumstances, specified in the

Order, be repeatedly extended by two additional days at a time, in accordance with approval by very senior echelons.

34. With regard to minors, it was discovered in the hearing that a new Security Provisions Order was meant to come into effect in August, 2012, and the age of minors in the Region was also recently changed to 18 years of age (instead of the previous 16 years). The Respondents requested to monitor the change for one year from the time it became effective, to monitor the wardens' training procedures, and to consider the state of affairs following the lapse of such period. As such, we ruled that the Respondents shall file update notices with respect to the results of the change by no later than December 1, 2012.
35. As for the matter of the offenses defined as security offenses, we ruled in a decision at the end of the hearing that the matter was not raised in the Petitions and an order *nisi* was not requested with respect thereto, other than in the framework of the responses to the Respondents' update notices. Having said that, we found it appropriate that the Respondents consider our remarks, especially the question whether it is appropriate to relate to the security offenses as one assemblage rather than excluding some of them from the definition of security offenses that appear in the Third Addendum of the Security Provisions Order.
36. With respect to the detention until the end of proceedings, the Respondents' attorney notified that it was decided to shorten the period of detention to 18 months in security offenses. Since we were of the opinion that this is still a lengthy period and it is appropriate that the matter be re-examined, we instructed that this be addressed in the framework of the update notice that was to be filed. We also ruled that after filing the update notice, the Petitioners would be able to respond thereto, and that we would thereafter decide regarding the further treatment of the Petitions.

Additional Update Notice

37. On December 16, 2012, the Respondents filed an additional update notice. First of all, the Respondents informed that the review of the results of the shortening of the periods of detention in the Region indicated that by dedicating effort the Respondents have managed to implement the shortened periods of detention as prescribed in the Amending Order. The Respondents added that following the remarks of this Court in the hearing and the decision it issued at the end of the hearing, the Commander of the IDF Forces in the Region amended the Security Provisions Order regarding the detention of minors, the definition of the security offenses and the period of extension of detention until the end of proceedings:
38. With respect to the detention of minors, the Respondents updated that it was decided to act to amend the security legislation and to prescribe special periods of detention until being brought before a judge and until the end of proceedings, for minors in the Region, which as a rule, shall be shorter than the corresponding periods of detention for adults. In this context, the Respondents informed that on November 28, 2012, the Commander of the IDF Forces in the Region signed two new amendments to the Security Provisions Order: Security Provisions Order (Amendment no. 25) (Judea and Samaria) (no. 1711), 5772-2012 (hereinafter:

"**Order no. 1711**"). The Respondents noted that according to Order no. 1711, as from April 2, 2013, the maximum period of detention of a "youth", as defined in the Security Provisions Order, i.e. a person who is at least 12 years but not yet 14 years old, until being brought before a judge shall be 24 hours from the time of arrest, with a possibility of an additional 24 hours extension due to an urgent act of interrogation. It was decided that this period shall apply to the detention of a "youth" for both security offenses and offenses which are not security offenses. Additionally, the Respondents noted that beginning from such time, the maximum period of detention of a "young adult", as defined in the Security Provisions Order, i.e. a person who is at least 14 years old but not yet 16 years old, until being brought before a judge shall be 48 hours from the time of the arrest, with a possibility of an additional 48 hours extension due to an urgent act of interrogation. It was decided that this maximum period of detention shall apply to the detention of a "young adult" for both security offenses and offenses that are not security offenses. The Respondents further noted that such maximum period of detention applies also to minors over the age of 16 and to adults in the Region who are detained for offenses that are not security offenses.

39. According to the Respondents this is a very significant shortening of the maximum period of detention until being brought before a judge for all suspects aged 12-14 and for suspects of security offenses aged 14-16, compared to the periods of detention until being brought before a judge for adult suspects for the said offenses, which were also significantly shortened in the framework of the Amending Order. The Respondents added that the maximum periods of detention until being brought before a judge which apply to adults shall continue to apply with respect to minors over the age of 14 for offenses which are not security offenses, and with respect to minors over the age of 16 for security offenses, as stated in the Amending Order.
40. With respect to the period of detention until the end of proceedings for minors in the Region, the Respondents further stated that Order no. 1711 prescribes that the period of detention until the end of proceedings for a minor, i.e. any defendant who is less than 18 years old, shall be only one year. Additionally, the detention of minors until the end of proceedings can be extended by a Military Court of Appeals judge, upon the lapse of a year of detention, for a period which shall not exceed three months, which the judge may re-order. It was noted that such provision applies with respect to minors who are accused of security offenses and offenses which are not security offenses.
41. As for the definition of security offenses, the Respondents updated that in the framework of the Security Provisions Order (Amendment no. 26) (Judea and Samaria) (no. 1712), 5772-2012 (hereinafter: "**Order no. 1712**"), approximately a third of the security offenses that were previously listed were removed from the Third Addendum of the Security Provisions Order which defines "Security Offenses", and one offense (offense under Section 222 of the Security Provisions Order) was added, and therefore, Order no. 1712 actually resulted in the significant shortening of the maximum periods of detention of those who are suspected and accused of the many offenses that were removed from the Third Addendum. The Respondents noted that there was a significant change even in the matter of adults since approximately a third of the offenses that were previously

defined as "security offenses" are no longer defined as such, and therefore the period of detention until the end of proceedings for anyone suspected of committing them shall be 12 months rather than 18 months. The Respondents claim that the implementation of such significant changes in the various periods of detention necessitates granting an opportunity, prior to considering additional changes, to examine the implications thereof on the law enforcement system in the Region and on its ability to function. Therefore, it was decided that at this time it is inappropriate to change the periods of detention until the end of proceedings for adults in the Region. The Respondents were of the opinion that in doing so, a worthy balance was struck between all of the relevant considerations, while granting obvious preference to the rights of minor defendants over those of the adults.

The Petitioners' Responses

42. The Petitioners in HCJ 4057/10 responded to the Update Notice. They welcomed the significant shortening of the period of detention applying to minors aged 12-14 and the additional amendments of which the Respondents informed. However, in their opinion, the Petition has not yet been exhausted since even after the amendments, the periods of detention applicable to Palestinians in the Territories, minors and adults alike, remain exaggerated, discriminating and contrary to the law. According to them, to this day, the Respondents have still not raised any legitimate reason which could justify the continued severe discrimination in this matter between Palestinians and Israelis in the Region. According to the Petitioners, even after the amendments to the Order, it is possible to hold a suspect up to eight days without any judicial review, if he is suspected of an offense which is classified as a security offense, including offenses such as throwing rocks (including towards property) and organizing a protest without a license. Such an extended period of detention also applies to minors who are 16 years old or older. In offenses that are not security offenses, the bringing of a suspect before a judge can be delayed up to 96 hours, even when at hand is a minor who is 14 or 15 years old. The Petitioners mentioned that an arrest is meant to be based, to begin with, on a reasonable suspicion, and that the judicial review constitutes part of the formulation of the legality of the initial detention regardless of the severity of the offense. According to them, the difficulties that characterize the interrogations in the Territories are not relevant to the examination of the legality of the arrest to begin with, and therefore should have no implication on the amount of time until first bringing a detainee before a judge.
43. As for minors, the Petitioners claimed that even after the amendment of the Order it will still be possible to hold a minor aged 12 or 13 for an entire day until bringing him before a judge, or for two days if there is a need to perform an urgent act of interrogation, and a minor 14-15 years old can even be held under detention up to 96 hours for ordinary offenses, prior to being brought before a judge. This, as opposed to an Israeli 12 or 13 year old minor from the Region who must be brought before a judge within 12 hours or 24 hours in certain cases. The Petitioners added that even after the amendment, the prohibition against holding Israeli minors who live in the Region under detention until the end of proceedings, is not applied to minors under the age of 14. Additionally, a longer period of detention until the end of proceedings shall continue to apply to minors, a year as

opposed to six months, and this period can be extended for longer periods of time, three months, compared to 45 days at a time under Israeli law. The Petitioners complained that the extension of a detention of a Palestinian suspect under the age of 14 or until his release without indictment, was not shortened.

44. The Petitioners added that despite the removal of approximately a third of the security offenses from the Third Addendum of the Order, it still includes a wide variety of offenses that do not justify lengthy periods of detention, such as, for example, the throwing of objects, including throwing rocks towards property, organizing protest without a license and the breach of a closed military zone order. According to them, leaving these offenses in the list was meant to serve considerations that are totally irrelevant to the interrogation needs, such as deterrence considerations. At the very least, leaving them in the list does not comply with the proportionality criterion. According to the Petitioners, there is no justification to hold Palestinian detainees who are suspected of security offenses up to 96 hours without judicial review, when according to the Amending Order judicial review can be delayed for up to six or eight days at terms that are much more lenient than those that are required for the detention of Israelis living in the Region and who are suspected of severe security offense. In their opinion, there is also no justification to set a longer period of time for the period of detention until the end of proceedings in security offenses. Determining a period of detention until the end of proceedings that is too long will result, in the Petitioners' opinion, in disproportionate infringement of the defendant's right to liberty and prejudices the fairness of the criminal process, particularly when the extended period is automatically pre-determined and does not require special approval. In their opinion, the expectation of lengthy detention could result in defendants admitting to that which is attributed to them only to avoid an extended stay in jail. According to them, the lack of stringent limits on the length of a trial allows a delay of justice which could even interfere with the discovery of the truth. The Petitioners stated that the matter of the definition of the security offenses did not appear in the Petition because the special periods of detention for security offenses were first prescribed by the Respondents in their response to the Petition. Therefore, the legality and the proportionality of the duration of the periods of detention for security offenses as well as for other offenses, constitute, so they argue, an integral part of the reliefs that were requested in the Petition to begin with.
45. The Petitioners reiterated their objections regarding the period of detention until the end of proceedings that applies to adults in security offenses, which was not shortened in the Amending Order, as well as with respect to holding a suspect up to eight days until being brought before a judge if detained in a "combat arrest", as stated in Section 33 of the Security Provisions Order. The Petitioners emphasized their claim that the proper criterion to examine the reasonableness and proportionality of the periods of detention that apply to the Palestinian residents of the Territories is the timeframe that applies to Israelis also living in the Region.
46. The Petitioners in H CJ 3368/10 notified that they join that which was stated in the response of the Petitioners in H CJ 4057/10. According to them, the differences between the legislation in the Region and the legislation in Israel will remain unfathomable even after the changes that were made to the Order, which in and of

themselves are welcome.

An Additional Hearing of the Petition

47. In a hearing we held on May 23, 2013, the parties reiterated their main arguments: The Petitioners claimed that the amendments made in the Amending Order are not sufficient and that they maintain their petitions. The attorney representing the State requested to separate the matter of the detention of minors from the Petitions being addressed and requested to enable the system to examine the implementation of the amendments to the Order over a reasonable period of time in order to ensure that "things work" and adopt educated decisions. The attorney representing the State stated that upon the lapse of the period, the periods of detention will be re-examined, as the system does not rest on its laurels.

48. On October 29, 2013, the Respondents filed an additional update notice. The Respondents informed that on September 30, 2013, the Commander of the IDF Forces in the Region signed Security Provisions Order (Amendment no. 35) (Judea and Samaria) (no. 1727) (hereinafter: "**Order no. 1727**"), which came into effect on the date of the signing thereof. According to Order no. 1727, the provisions of Article G, Chapter E of the Security Provisions Order, including, the age of minors in the Region, shall from now on be "permanent provisions". The Respondents also updated that since the last hearing of the Petitions, and further to additional staff work, on September 1, 2013, the Commander of the IDF Forces in the Region signed Security Provisions Order (Amendment no. 34) (Judea and Samaria) (no. 1726), 5773-2013 (hereinafter: "**Order no. 1726**"), which came into effect on October 6, 2013. Order no. 1726 introduced an additional significant shortening of the periods of judicial detention of minors for interrogation purposes, resulting in a Military Court judge being able to order the arrest of a minor for interrogation purposes for a period of 15 days and extend the detention for additional periods which shall not exceed 10 days each, provided that the total periods of consecutive detention with respect to the same event shall not exceed 40 days. A Military Court of Appeals judge may, at the request of the Military Advocate General, extend the detention beyond the first 40 days, for additional periods which shall not exceed 90 days each.

49. Additionally, Order no. 1726 prescribed periods of judicial detention for interrogation purposes for adults that are similar to those applicable in Israel, such that a Military Court judge may order the arrest of an adult suspect for interrogation purposes for a period of 20 days and extend the period for additional periods which shall not exceed 15 days each, provided that the total periods of consecutive detention with respect to the same event shall not exceed 75 days. A Military Court of Appeals judge may, at the request of the Military Advocate General, extend the detention beyond the first 75 days, for additional periods which shall not exceed 90 days each.

50. According to the Respondents, it is evident that following the coming into force of Order no. 1726, the maximum judicial detention periods of adults for interrogation purposes in the Region are now **identical** to the periods of detention for interrogation purposes of adults in Israel, *mutatis mutandis*, except for two matters: one, the maximum period of the first judicial detention order (20 days in

the Region compared to 15 in Israel), and two, the requirement to receive the approval of the Attorney General for the request to extend the detention for interrogation purposes beyond 30 days in Israel, compared to the approval of the Military Advocate General, which is only required beyond 75 days in the Region. Considering the previous update notices and this present one, the Respondents are of the opinion that the Petitions have exhausted themselves and should be dismissed.

51. On December 30, 2013, the Petitioners in HCJ 4057/10 filed a response to the update notice. According to them, the notice reflects the flawed approach which is guiding the Respondents, who on the one hand prescribed discriminating and exaggerated periods of detention for Palestinians and on the other hand, ostensibly adopted the principle of equality. The Petitioners welcome the Respondents' decision to distinguish between minors and adults with respect to the periods of judicial detention for interrogation purposes and to somewhat shorten the periods applicable to Palestinian minors, however object to the arbitrary determination of longer periods of detention for Palestinian minors as opposed to the periods of detention prescribed for Israeli minors living in the Region and compare them. The Petitioners add that the differences between to the periods of judicial detention for adults are not solely "technical", since while as a rule an Israeli adult suspect in the Region cannot be detained for more than 30 days with respect to the same event, a Palestinian adult suspect can be detained for 75 days and his detention can even be extended without adopting the basic rule pursuant to which upon the lapse of 75 days, "he shall be released from detention, with or without bail". According to the Petitioners, the Respondents have not yet, to this day, provided any legal reasons for the discriminating periods of detention which are imposed upon the Palestinians.

Discussion and Ruling

52. A person's right to liberty is a constitutional right that is grounded in Section 5 of the Basic Law: Human Dignity and Liberty, where it is prescribed that: "There shall be no deprivation or restriction of the liberty of a person by imprisonment, detention, or any other way." The importance and centrality of the right to liberty in a democratic regime also stems from the implications of denying the liberty for the injured person and for the damage that could be caused thereto as a result thereof. The denial of liberty is not expressed only in a person merely being subject to the custody of the State, but also is felt each and every day, during the period when a person is subject to the rules of conduct and discipline that are customary in the place of custody and which also limit his liberty (see HCJ 2605/05 **The Law and Business Academic Center v. The Minister of Finance**, paragraph 25 of President D. Beinisch's decision (November 19, 2009)). The right to due process prior to a person's liberty being denied derives from the right to liberty, and it is even warranted that he will be given the opportunity to respond and voice his arguments prior to this fundamental right being denied (LCrimA 837/12 **The State of Israel v. Gusakov**, paragraph 29 (November 20, 2012)). On the other hand, it is in the public interest to expose criminals and prevent crime, and certainly to try and thwart security offenses. Therefore, it is necessary to strike a balance in the constant tension that exists in the Israeli reality, between security and protecting the rights of someone suspected of committing an offense.

This tension emerges also in the matter before us – the periods of detention of Palestinians who are residents of the Region.

53. As mentioned, the purpose of the laws of detention, including in the Region, is to strike a balance between the public interest of exposing and preventing crime and protecting the rights of the suspect. One must remember that the Region has unique characteristics which derive from the security reality and the essence of the military rule applicable there, from the security needs and from the difficulties of enforcing the law, in light of the absence of Israeli control in part of the area. There is no dispute that constant judicial review of the process of arrest for interrogation purposes is important for the protection of human rights, however the continuity of the interrogation is important for the purpose of realizing the objective of the interrogation: exposing the truth. Exposing the truth quickly and efficiently is especially important when the security of the State and its citizens are at stake.
54. The dilemma, therefore, is clear: on the one hand, the conduct of a proper legal procedure is an essential element to secure the proportionality and constitutionality of an arrest for interrogation purposes, and in principle, the appearance of the suspect before a judge should not be regarded as an obstacle, but rather as a fundamental condition for an effective and constitutional arrest for interrogation purposes (CHR 8823/07 **Anonymous v. The State of Israel**, paragraph 32 (February 11, 2010)). This follows from the customary fundamental approach that judicial involvement is an integral part of the arrest process. It is not "external" judicial review of the arrest, but rather an integral part of the formulation of the arrest itself. This is a constitutional approach that views the judicial involvement in the arrest procedure an essential part of the protection of individual liberties:

"The judicial involvement is the barricade against arbitrariness: it is warranted from the principle of the rule of law (see *Brogan v. United Kingdom* (1988) 11 EHRR 117, 134). It guarantees that the delicate balance between individual liberties and the security of the general public – a balance that lies at the basis of the laws of arrest – shall be preserved (see ADA10/94 **Anonymous v. The Minister of Defense**, IsrSC 53(1) 97, 105)." (HCJ 3239/02 **Marav v. Commander of IDF Forces in Judea and Samaria**, IsrSC 54(2) 349, 368 (2003))."

The meaning of this is that it is necessary to adjust the interrogation methods to the need to interrupt them at a certain stage of the interrogation in order to allow an effective and fair judicial procedure to take place. An interrogation that takes place over a period of time, when the person being interrogated is in detention and cannot appear before the court and voice what he has to say, could result in disproportionate infringement of human dignity and liberty.

On the other hand, we cannot ignore the fact that the security legislation which is the subject of our discussion was created in light of a complex security situation in a territory that is occupied under belligerent occupation (*occupatio bellica*), that the special security conditions applicable there dictate the determination of arrangements that are different than those that are customary in the occupying

state. This reality has, *inter alia*, resulted in the detention of Palestinian suspects prior to being brought before a judge, for periods of time that are longer than those of Israeli suspects. In this context, it is important to remember, for example, as the Respondents have clarified, that due to the security situation, the ability to move in the Region is limited and that part of the area is under Palestinian control. The security conditions could, therefore, prevent, or delay, the interrogation parties from reaching the arena, and could make the collection of testimony and evidence more difficult. Additionally, according to the Respondents, potential witnesses do not cooperate with the interrogation parties, either due to their sympathy towards the suspects or due to their hostility towards the State of Israel. According to the Respondents this also creates genuine difficulty in interrogations and greatly delays the ability to formulate initial evidence against the suspect. Furthermore, intelligence material that was received has to be used carefully and often it is necessary to wait before using it so as not to give away the source of the information or god forbid risk his life. Additionally, there is an enhanced concern in the Region of fleeing into areas that are under the Palestinian Authority's control, such that it will not be possible re-arrest such person who was released from detention. In such conditions, the interrogation of the detainees is complicated and complex and at times a longer period of time is necessary to exhaust the interrogation before bringing the detainee before a judge.

55. As mentioned, the Petitioners claim that the balance between the need to maintain the security of the general public and the State and the need to protect human rights, dignity and liberty, which is reflected in the Security Provisions Order is not the proper balance even after the amendment thereof, while the Respondents request to examine the implementation of that which is stated in the Amending Order before being able to reach any conclusions on the matter. This is the state of affairs in the case at hand. In any case, it appears that the parties to the Petition share the opinion that judicial review is an essential tool for protecting the legality and propriety of the arrest and share the aspiration to shorten the periods of detention of the Palestinian residents of the Region as much as possible and to apply statutory arrangements thereon which are as similar as possible to those that are customary in Israel, in terms of the degree of protection they provide to the suspect's or defendant's rights. This was also the spirit of what was expressed in this Court, when the matter was presented before it in the past. The Supreme Court expressed its opinion and ruled that:

"It is time to apply statutory arrangements in the Military Courts which are similar to those prescribed in the Arrests Law in Israel, in order to protect the rights of defendants; all subject to the unique characteristics of the Region. This is the case with respect to dictating periods of a detention from the time of filing an indictment and until the commencement of the trial (Section 60 of the Arrests Law which does not have a corresponding statutory arrangement in the Region); with respect to limiting the period of the detention between the end of interrogation and the filing of an indictment (Section 17(d) of the Arrests Law, a matter which also does not have a corresponding statutory arrangement in the Region); and with respect to shortening the periods of detention prescribed in the security legislation that applies in the Region, as

they are significantly longer than those prescribed in the Arrests Law in Israel" (HCJ 10720/06 **Farid v. The Military Court of Appeals** (February 11, 2007)).

56. Indeed, a consequence of this aspiration is the changes that were made to the arrangements of arrests of Palestinian detainees who are residents of the Region. During the course of the Petition, the Respondents took far reaching measures with respect to shortening the said periods of detention, so as to make them more similar to the periods of detention customary in Israel. For the sake of good order and in order to clarify the matter, I shall present the changes that were made to the Security Provisions Order since the Petitions were filed, in the following table:

	Previous Law	New Law (the Amending Order)
Initial detention until being brought before a judge for offenses that are not security offenses	Eight days	<u>Minors:</u> 12-14 year olds: 24 hours 14-18 year olds: 48 hours <u>Adults:</u> 48 hours + an option to extend up to 96 hours
Initial detention until being brought before a judge for security offenses	Eight days	<u>Minors:</u> 12-14 year olds: 24 hours 14-16 year olds: 48 hours 16-18 year olds: 96 hours <u>Adults:</u> 96 hours + an option to extend up to 8 days
Judicial detention for interrogation purposes prior to filing an indictment	30 days - Can be extended for additional periods which shall not exceed 30 days each time, provided that the total consecutive periods with respect to the same event shall not exceed 90 days. - Can be extended beyond the 90 days for three additional months.	<u>Minors:</u> 15 days - Can be extended for additional periods of up to 10 days each time, provided that the total consecutive periods with respect to the same event shall not exceed 40 days. - Can be extended beyond the 40 days for additional periods which shall not exceed 90 days each. <u>Adults:</u> 20 days - Can be extended for periods of up to 15 days each time, provided that the total consecutive periods with respect to the same event shall not exceed 75 days. - Can be extended beyond the 75 days for additional periods which shall not exceed 90 days each.
"Bridge Detention" for the purpose of filing an indictment	Unlimited	Eight days
Detention after filing indictment and before the commencement of the trial	Unlimited	60 days
Detention until the end of proceedings in offenses that are not security offenses	Two years - Extensions of up to six months each.	<u>Minors:</u> A year - Extensions of up to three months each. <u>Adults:</u> A year - Extensions of up to six months each.
Detention until the end of proceedings in security offenses	Two years - Extensions of up to six months each.	<u>Minors:</u> A year - Extensions of up to three months each. <u>Adults:</u> 18 months - Extensions of up to six months each.

57. The difference between the new law (the Amending Order) and the law existing in Israel can be seen in the table below:

	Initial detention until being brought before a judge	Detention before indictment	Detention until end of proceedings	"Bridge Detention " for purpose of filing an indictment
In the Region – Offenses that are not security offenses	48-96 hours	20-75 days	A year + extensions of up to six months each.	Eight days
In Israel - Offenses that are not security offenses	24-48 hours	15-30 days	Nine months + extensions of up to three months each.	Five days
In the Region – Security offenses	96 hours – 8 days	20-75 days	18 months + extensions of up to six months each.	Eight days
In Israel – Security offenses	24-96 hours	20-35 days	Nine months + extensions of up to three months each.	Five days
Minors in the Region – 12-14 years old	24-48 hours	15-40 days <u>Security offenses:</u> 20-75 days	A year	Eight days
Minors in the Region – 14-16 years old	48-96 hours	<u>Offenses that are not security offenses:</u> 15-40 days <u>Security offenses:</u> 20-75 days	A year	Eight days
Minors in the Region – 16-18	Like adults: 48-96-8 days	<u>Offenses that are not security offenses:</u> 15-40 days <u>Security offenses:</u> 20-75 days	A year	Eight days
Minors in Israel – 12-14	12-24 hours	20-40 days	Will not be arrested until the end of proceedings	Five days
Minors in Israel – 14-18	24-48 hours	20-40 days	Six months + extensions of up to 45 days	Five days

			each.	
--	--	--	-------	--

58. The tables I have presented above illustrate the significant changes the Respondents made in the matter at hand. For example, the current maximum period of detention until being brought before a judge for offenses that are not security offenses is 48 hours from the time of the arrest, with an option of extension as per the decision of an administrative authority for additional periods which shall not exceed 48 additional hours due to urgent acts of interrogations. In security offenses the maximum period of detention until being brought before a judge is 96 hours from the time of arrest, with an option of extending the detention by 48 additional hours by an administrative party in unusual circumstances, in which the head of the Interrogation Department at the Israel Security Agency was convinced that the interrogation could be substantially prejudiced. In most special circumstances, it is possible to extend the detention by an additional 48 hours (beyond the said six days), when the head of the Interrogation Division at the Israel Security Agency is convinced that interrupting the interrogation could result in harming the performance of an essential interrogation that is meant to save human lives. The Respondents repeatedly emphasized in their arguments that the new arrangement requires preparations and is scheduled to be reexamined again upon the lapse of two years from the time the Order becomes effective, based on the experience that shall accumulate during such period.
59. A significant change also occurred with respect to the matter of minors. We shall remind that before the Petitions were filed, there was no distinction at all between minors and adults in all of the periods of detention in the Region. Today, the age of minority in the Region increased from 16 to 18, and special arrangements were prescribed for minors based on a division into a number of age groups. Order no. 1711 provides that the maximum period of detention until bringing a "youth", i.e. a person who is at least 12 years old but not yet 14 year old, before a judge, both for security offenses and for offenses that are not security offenses, shall be 24 hours from the arrest, with a possibility of extending by an additional 24 hours due to urgent acts of interrogation; and that the maximum period of detention until bringing a "young adult", i.e. a person who is at least 14 years old but not yet 16 years old, before a judge, both for security offenses and offenses which are not security offenses, shall be 48 hours from the time of the arrest, with a possibility of extending by an additional 48 hours due to urgent acts of interrogation.
60. As for the definition of security offenses, the distinction between security offenses and offenses that are not security offenses for the purpose of the periods of detention in the Region was made by the Respondents only after the Petitions before us were filed. Therefore, the Petitioners' objections regarding this matter were not raised in their Petitions, but rather only in the framework of responses to the Respondents' update notices. The dispute regarding which offenses shall be defined as security offenses, is directly and closely linked to the reliefs that were requested in the Petitions, and in fact is a consequence of these reliefs. Indeed, we found it appropriate that the Respondents consider our remarks in the hearing that was held in the Petitions, *inter alia*, regarding the question whether it is proper to relate to the security offenses as one assemblage rather than excluding some of them from the Order's definitions. Consequently, the Respondents

removed a third of the security offenses listed in the list in the Addendum of the Security Provisions Order and this is to be welcomed. If and to the extent the Petitioners still have objections regarding the offenses listed in the Addendum, they are entitled to voice their objections separately and it is inappropriate to further discuss this matter in the framework of the Petitions before us, which already encompass many matters.

61. Now, therefore, the staff work that was performed jointly with the Ministry of Justice and the Prime Minister Office produced a welcome change in the periods of detention listed in the Security Provisions Order. The change is meant to reduce, as much as possible, the infringement of the rights of the Palestinian detainees. There is no doubt that the State came a long way and significantly and even dramatically shortened the periods of detention applicable to the Palestinian residents of the Region. It is worthy to note the many discussions and long meetings that the State held with the IDF and the Ministry of Justice, together with other government ministries, until reaching the results which are expressed in the Amending Order (and in this respect, the Petitioners' achievements are invaluable. Their efforts to shorten the periods of detention of the Palestinian residents of the Region, bore significant fruit and are commendable).
62. So, considering the differences that stem from the different conditions between Israel and the Region, and in light of the dramatic changes that were just recently made, the "on site" implementation of which must be examined over a period of time – we are of the opinion that the current detention periods which were prescribed for **adults**, who are suspected of committing **security offenses**, in the time period **before the filing of an indictment** – are reasonable and proportionate, and therefore there is no cause for our involvement in this context at the current time. We shall mention that the Respondents requested to examine how the system adjusts to the changes that were made in the Security Provisions Order over a reasonable period of approximately two years, and it is presumed that upon the lapse of the period and in accordance with the on-site reality, the option of further shortening the mentioned periods of detention shall be reconsidered. We therefore assume that the Respondents' policy shall be re-examined from time to time in accordance with the security situation assessments and that if and to the extent it shall be possible to formulate reliefs these shall be applied in the future by the Respondents accordingly, and the periods of detention prescribed in the Amending Order shall be further shortened. Obviously, the Petitioners have the option of voicing their objections regarding the mentioned periods of detention, also upon the lapse of the "adjustment period".
63. Having said that, and without making light of the efforts the Respondents exerted and the important changes they made following the filing of the Petitions, we are not comfortable with three central matters (which partly overlap): Firstly, the periods of time in which Palestinian **minors** who are residents of the Region can be detained. Indeed significant changes were also made with respect to the population of minors, as specified above, however, in light of the special caution and sensitivity that must be applied towards people who are not yet adults, we are of the opinion that it is necessary to continue to monitor what is being done in their matter. The second matter that is not yet exhausted in the current Petitions is

the periods of detention that was prescribed for Palestinians who are suspected or accused of **offenses that are not defined as security offenses**. The reasons presented in the Respondents' response, in its various stages, did not convince us of the need for such long periods of detention for "ordinary" criminal offenses. This is true also with respect to the third matter of **detention until the end of proceedings** of both minors and adults, in security offenses and offenses that are not security offenses (including detention after filing an indictment and prior to the commencement of the trial, which is currently 60 days). The circumstances and constraints which the Respondents indicated, by virtue of which more extended periods of detention are required in the Region, relate primarily to the stage of interrogation and collection of evidence and not to the stage of conducting the trial, after the indictment has been filed. In light of these difficulties, we considered issuing an order *nisi* with respect to the three mentioned matters, however at this stage we decided to leave the Petitions pending and to instruct the Respondents to reconsider how to advance these matters and give notice to such effect in the form of an update notice which is to be filed by September 15, 2014.

In summary, in all that relates to the maximum periods of detention for adults suspected of committing security offenses, at the stage before an indictment is filed; and in the scope of the offenses defined as security offenses – the Petitions are denied without an order for expenses (subject to that stated in paragraphs 60 and 62). However, in all that relates to the periods of detention of minors, the periods of detention of adults in offenses that are not security offenses; and the period of detention until the end of proceedings (of minors and adults, in all classifications of offenses) – the Respondents shall, as mentioned, file an update notice by September 15, 2014.

Given today, 6th of Nissan, 5774 (April 6, 2014).

Justice

Justice

Justice