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[Emblem of the State of Israel]

**The Courts**

**The Court for Administrative Matters in Haifa**

**PP 598/05**

**Before the Honorable Justice R. Shapira**

**Date: 20 April 2005**

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In the matter of:

                     **Samara**  
**Jordanian passport No.**

**The Petitioner**

v.

**Commander of Kishon Detention Center**

**The Respondent**

Present:

Counsel for the Petitioner: Attorney Ms. Ben Ari  
Counsel for the Respondent: Attorney Ms. Sheinhart

**Protocol**

**Counsel for the Petitioner:**

Although I was just informed that the Petitioner is not located in Kishon Detention Center, and was apparently moved to another prison, I would like to raise before the court a few contentions that relate to the Petitioner and point out a systemic problem, as we see it.

Our assistance was sought when the Petitioner was detained in November. We were told that he was being held in the interrogations wing in Kishon , before Kishon was handed over to the IPS [Israel Prison Service]. On 6 March, the family came and asked us again to locate him. The Control Center for detainees contacted Kishon , which informed the Control Center that he was not there, and for several days they couldn't locate him. Later, it was found that he was being held in the General Security Service wing. We requested permission to visit him, and were told there was no such detainee. We thought there was trouble locating him because he did not have an identity card, but they usually give a fictitious number, which did not help in these particular searches. Ultimately, the attorney saw him, but only after he insisted that the detainee was there. When we realized that he was not listed as a detainee anywhere, I sent a letter to the commander of the detention center and to other officials. Nobody did anything; there continued to be no record of him. The Petitioner was interrogated for 40 days, and though the interrogation ended, he

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continued to be held in that wing, with its poor conditions. Even after he was ordered to be held until the end of the proceedings, he was kept in that wing. The reason why is unclear.

We have filed a number of prisoner's petitions for detainees who were being held until the end of proceedings and were still being held in the GSS [General Security Service] wing. Upon receipt of the petition, they were taken away. Regarding the recording of detainees, I am afraid we are finding there is a problem in Kishon . In the course of our involvement in the case of the Petitioner herein, another person was also being held in the interrogations wing in Kishon for two weeks. He has now moved, but during those two weeks, there was no record of him there.

I sent a letter to the commander of Kishon regarding the other detainee, and was informed that he was being held in Qezi'ot [Detention Center], but the family sent the Red Cross, and it ended up that he was not there. The commander of Kishon contended that he had never been at Kishon , and now we have information that he was there for two weeks.

**Counsel for the Respondent:**

The comments that my colleague made just now were not made to us previously, and I am unable to relate to them.

The comments surprise me. \_\_\_ Samara was represented by a counsel also at the earlier hearings. There is no dispute that a record must be kept for every detainee, but I am surprised that an attempt is made to paint a picture in which people are not to be found, yet their counsel is in contact with them. I refer to the letter of Major Hirsch, attached as Appendix 3 to the petition, that indicates that the difficulty in locating Samara resulted, in part, from the imprecise personal details that were provided, the family names that were given; the moment that the right personal details are given, they will be able to locate him within a short period of time.

I have never encountered a family that had difficulty in locating, and all were being held in a security wing. It is difficult to draw conclusions from an isolated case.

**Counsel for the Petitioner:**

The second detainee had an identity card, and there was no record for him either. Why wasn't there a record even a month after we contacted the officials?

Regarding the conditions, too, I assume it is known that there are more than a few cases in which detainees whose interrogation had ended were still being held in the interrogations wing. I request

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a ruling in principle on this point. I refer to the decision of Justice Zamir regarding administrative detention.

**Counsel for the Respondent:**

It is impossible to give a ruling in principle, because every case has to be determined on its merits. If, in a particular case, the court sees that the decision was not reasonable, and was based on extraneous considerations and/or was not based on substantive reasons, the court can, of course, interfere, but as long as the court does not have information on the situation of the detainees in each facility at a particular moment, and information about the system's needs, both regarding detainees and convicts, it is impossible to state categorically and inclusively that it is never justifiable to hold a detainee until the end of proceedings in one facility or another. There are times in which the system's needs are such that, with the best of intentions, it is not possible to find an available space in another facility, and at the moment that a space becomes available, the prisoner or detainee will be moved to the other facility. Therefore, I request that theoretical rulings not be given, certainly in the absence of all the information. We, too, were not prepared for this.

Regarding the specific issue, we relate to petitions in the most practical manner and with a desire to rectify problems or malfunctions that wrong the particular petitioner. In this case, apparently, the moment that the malfunctions were resolved, both regarding the detention conditions and regarding keeping him in a place that was designated for persons who were not being held until the end of proceedings, and also to his being recorded, these things were resolved. I believe that the petition should be denied, but beyond that, there is no objection that the court state the obvious, that Kishon must maintain a precise record of the prisoners and detainees.

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**Decision**

This is a Detainee's Petition, made in the framework of detention until the end of proceedings regarding a security matter. The petition was filed regarding his detention conditions in Kishon Detention Center. Shortly before the hearing on the petition, it was decided to move him to Gilboa' Prison (according to what we were told by the legal department of the General Security Service), and as far as the court could determine, the detainee is being held in Megiddo Prison.

It should be mentioned that his transfer to another detention center was made two days before the hearing on the petition, and, in such circumstances, it is hard to avoid the impression that the filing of the petition is that which led to his transfer to another prison, either because the legal department of the IPS instructed the relevant officials to rectify the flaws mentioned in the petition, or out of a desire that the issues not be thoroughly investigated.

In any event, now, with the Petitioner having been moved to another prison, the matters raised in the petition dealing with the detention conditions of the specific petitioner in Kishon Detention Center are no longer relevant.

The petition indicates, as does another document filed by the Petitioner's counsel, which relates to another detainee, that, apparently, the record of that petitioner in Kishon Detention Center was improper in that there was no record of him, and when his attorneys contacted the detention center, they were told that he was not being held in Kishon Detention Center.

The Respondent's counsel agrees that the record must be proper, up-to-date, and be kept in a manner that makes it possible to check and verify the holding of a detainee in any detention facility at any time.

It is not now possible in the context of this petition to investigate whether the failure to record the Petitioner, and whether the report that was given to his attorney that the Petitioner was not detained in Kishon Detention Center (which was later found to be wrong), resulted from a malfunction or was deliberate. Accordingly, it should be made clear that there is an obligation to make a precise record of every person staying in every detention facility, and that it must be done in a way that enables his relatives to locate him. Such a record is required both by statute and by previous rulings of the Supreme Court, and these provisions must be complied with.

