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HCI 3278/02

1. The Center for the Defense of the Individual founded by Dr. Lota Salzberger
 2. Adalah – The Legal Center for Arab Minority Rights in Israel
 3. The Association for Civil Rights in Israel
 4. B'tselem – The Israeli Information Center of Human Rights in the Occupied Territories
 5. Kanon – The Palestinian Organization for the Protection of Human and Environmental Rights
 6. Addameer – Prison Support and Human Rights Association
 7. Alhak – The Law in Service of Human Rights
- v.
Commander of the IDF Forces in the West Bank

The Supreme Court Sitting as the High Court of Justice
[April 25, 2002; July 28, 2002, October 15, 2002]
**Before President A. Barak, Justice D. Beinisch and
Justice I. England**

For the petitioners—Dan Yakir; Leah Tzemel; Tarek Ibrahim; Yossi Wolfson;
Hisham Shabaita
For the respondents—Shai Nitzan

JUDGMENT

President A. Barak

Facts

1. Beginning in September of 2000, there was an increase in Palestinian terrorist activity against the Jewish community in Judea and Samaria, the Gaza Strip, and within Israel itself. Hundreds were killed and wounded. In reaction, the army initiated military activities. Hundreds of Palestinians were killed and wounded. Terrorist activity intensified in the beginning of 2002. In March of that year there was an increase of Palestinian terrorist activity. Approximately one hundred and twenty Israeli civilians were killed and hundreds were wounded. In response to the terrorist activity, the government decided, on 29.03.2002, to carry out a large-scale military operation. The goal of the operation, Operation Defensive Wall, was to destroy the Palestinian terrorist infrastructure. During the operation, the Israel Defense Forces [hereinafter the IDF] entered many areas in Judea and Samaria which were under the control of the Palestinian Authority.

2. Within the framework of Operation Defensive wall, the army carried out a wide-ranging operation of detention. The IDF entered

Palestinian cities and villages and detained many suspects. At the height of the activity about 6000 people were detained. Initially, the detentions were carried out in accordance with the standard criminal detention laws of the area, specifically Security Regulations Order 387 (Judea and Samaria)-1970. Since 5.04.2002, the detentions have been carried out under the authority of a special order—Detention in Time of Warfare (Temporary Order) (Judea and Samaria) (Number 1500)-2002 [hereinafter Order 1500]. During the first stage of these detentions, the detainees were brought to temporary facilities, which were set up at brigade headquarters. Here the detainees were initially screened, a process whose duration extended between a few hours and two days. At this point, a substantial number of the detainees were released. During the second stage, those who remained were transferred to a central detention facility in the area, located at Ofer Camp, for further investigation. Several days after the initiation of Operation Defensive Wall, after the detention facilities at Ofer Camp were prepared, the temporary screening facilities were shut down and the initial screening stage also took place at Ofer Camp. The petition before us is directed against the detention conditions at both the initial temporary facilities and at Ofer Camp. In the third stage, some of the detainees were transferred to Kziot Camp. An additional petition directed against the detention conditions at Kziot, HCJ 5591/02, is pending before this Court, and will be dealt with separately. A petition regarding the lawfulness of Order 1500 is also pending before this Court. *See* HCJ 3239/02. The current petition deals only with the temporary detention conditions at the brigade headquarters during the first stage, and the detentions conditions during the second phase at Ofer Camp.

Petitioners' Arguments

3. The petitioners complain about the detention conditions at both the temporary facilities and at Ofer camp. Regarding the temporary facilities, the petitioners claim that the detainees were forced to sit on the ground with their heads bent and their hands down, and that their hands were handcuffed in a rough manner, which caused fierce pains and bruise marks. Furthermore, petitioners claim that the detainees' eyes were covered, that, if they moved or raised their heads, they were exposed to

the physical and verbal abuse of the supervising soldiers, that they remained in this difficult position for hours, and that, during this time, they were exposed to the rigors of the weather and were unable to sleep. Petitioners further assert that detainees were deprived of sustenance, that, though they were permitted to go to the bathroom, permission was not often granted, and that there was no documentation of the possessions that were taken from the detainees, including ID cards, cellular phones and cash.

4. The petitioners also complain about the inhumane conditions at Ofer Camp. They claim that the facilities are exceedingly overcrowded. The detainees were transferred into tents or "shelters," which do not shield the detainees against the rigors of the weather. The detainees were not supplied with sufficient mattresses, nor were the mattresses that were supplied of reasonable quality. Furthermore, petitioners assert that the detainees did not receive enough blankets, and that the food that they were provided with was insufficient and of poor quality. Meals were served in small bowls, without plates or other eating utensils. They were not provided with clothing. There were not enough bathroom stalls, nor were they supplied with sufficient toilet paper. The showers did not have hot water, nor was there sufficient soap. Furthermore, they assert that, other than painkillers, they received no medical treatment.

5. The petitioners ask that we order the respondent to provide minimal humane detention conditions – which will be reasonable and appropriate – both during the first stage of detention at the temporary facilities and also during the second stage of detention in Ofer Camp. These conditions must be both suitable and respectable. The petitioners also ask that we order the respondent to allow representatives of human rights organizations to visit Ofer Camp and observe the conditions of detention provided there.

Statement of the State Attorney

6. In the response brief submitted on 24.4.2002, the respondent notes that, at the beginning of Operation Defensive wall, due to the large number of persons being detained, it was impossible to immediately

provide all of the detainees with completely suitable detention conditions. Therefore, for a relatively short period of time, not all of the detainees were provided with completely acceptable detention conditions. Nevertheless, the army equipped itself very quickly. Most of the temporary facilities were shut down. The conditions in Ofer Camp were improved such that all of the detainees are now provided with reasonable detention conditions which meet the standards recognized by both Israeli and international law.

7. Regarding the conditions in the temporary facilities, respondent notes that the detainees remained there only a short period of time – usually for only a few hours, and no longer than forty-eight. There, the detainees went through preliminarily interrogation and tentative screening. Respondent notes that the temporary facilities were not equipped for long-term detentions and the conditions there provided were absolutely minimal. Nevertheless, respondent noted that to the best of his knowledge, the detainees had been supplied with drinking water, sustenance and medical treatment by doctors on location. The detainees had access to the bathrooms. Regarding the handcuffs, it was emphasized that the manner of handcuffing the petitioners complain of is prohibited, and that soldiers have no permission to employ such methods. Respondent asserts that each complaint will be dealt with individually. Regarding the failure to document the possessions seized from the detainees, it was noted that at the beginning of the period there had apparently been deficiencies in the matter, due to the lack of awareness of those running the facilities. The situation was quickly remedied, with an order being issued to precisely document of all possessions seized from detainees. To the best of the respondent's knowledge, this order has been implemented. With respect to the complaint that the detainees should be held in a shelter shielded from the weather, the respondent points out that the temporary facilities were intended to hold detainees for very short periods of time. Some of the detainees were provided with shelter, whether in tents or in permanent buildings. With regard to the claim that the detainees were subject to the verbal and physical abuse of the soldiers, respondent asserts that such activity is prohibited. He adds that the detainees can complain about such matters to the commanders in the respective facilities.

8. As to Ofer Camp: respondent asserts that some of the detainees were moved there after an initial screening at the temporary facilities. When the temporary facilities were shut down, all of the detainees were moved to the Ofer Camp. Between 29.03.2002 and 22.04.2002, over the course of about three weeks, about 3,000 detainees were brought to the facility. After being screened and interrogated, about 1,420 of those detained were released, a figure that is correct as of 22.04.2002. About 240 detainees had been moved to other detention facilities as of that date, such that by 24.04.2002 approximately 1,340 detainees were being held in Ofer Camp. Ordinarily, Ofer Camp has the capacity to hold about 450 detainees. The facility is divided into five "detention divisions." Five tents, designed to hold 100 detainees each, are located in four of these divisions. Three tents are located in the fifth division, each designed to hold fifty persons.

9. The number of detainees transferred to Ofer Camp upon its opening greatly exceeded its standard or expanded capacity. In its standard capacity, Ofer is designed to hold 400 persons. In its expanded capacity, it is designed to 700 detainees, such that thirty, instead of twenty, detainees reside in each tent. A severe situation of overcrowding developed. In order to resolve this problem, four permanent shelters were quickly erected, using beams which had been found in the facility. These were to provide temporary shelter for detainees. These shelters were equipped with wooden beds and chemical bathrooms. Later, showers were also installed in the shelters. The shelters were prepared within a number of days. Thus, the most severe overcrowding problem, which had caused some detainees to remain without shelter for a short period of time, was temporarily resolved.

10. Along with the above-mentioned activity, three days after the initiation of Operation Defensive wall, a decision was made to set up seven additional detention divisions in Ofer Camp. These areas were opened on 24.04.2002. They are designed to hold about 500 detainees. The detainees who had been residing in the shelters were moved to these divisions. Two more divisions are scheduled to be opened within the next few days. Detainees who are currently being held in the other detention

divisions will be moved to the new divisions, thus relieving the overcrowding in the other facilities. The respondent is of the opinion that the facility, after being so expanded, provides reasonable detention conditions.

11. The respondent extensively covered the issue of the detention conditions at Ofer Camp. According to the respondent, as stated, since the completion of the construction activities on 24.04.2002, the issue of overcrowding no longer presents a problem. There are three bathrooms and three showers located in each of the detention divisions, and the water in the showers may be heated. The detainees are supplied with toilet paper, soap, toothbrushes and shaving brushes. The detainees sleep on wooden beds with mattresses, which are the same as those used by the IDF. Initially, the number of blankets available was insufficient. This problem was solved within a number of days, and each detainee is now supplied with at least three or four blankets. Regarding the issue of clothing, each detainee was originally supplied with one change of clothes. However, due to the large number of detainees, many of them soon found themselves lacking extra sets of clothing. This problem was resolved on 23.04.2002, when a sufficient quantity of clothing arrived at the facility. As of the time the response was submitted on 24.02.2002, each of the detainees had received at least one, if not two, changes of clothes. Each of the detainees is provided with a coat. Regarding the issue of sustenance, during the first few days of the facility's operation, the food lacked in quantity and variety. Within a matter of days, a sufficient amount of food was brought into Ofer Camp, and there is no longer a deficiency in the food supply. The food supplied is now sufficient and varied. A doctor is always available on location. As part of his reception into the facility, each detainee undergoes a medical examination. Medical inspections are regularly carried out. When it becomes necessary, detainees are moved to a hospital. After arriving at the facility, each detainee receives a postcard and is allowed to communicate the details of his detention, including his location, to his family. These postcards are transferred to the Palestinian Authority. Ofer Camp has two tents in which detainees may meet with their attorneys. Since 14.04.2002, the Red Cross has been allowed to enter the facility, and their representatives have been visiting the site without

restriction. They converse with each of the detainees in the facility. They meet with the commanding officials and relate their comments about the detention conditions.

12. The respondent concluded by objecting to allowing the petitioners' attorneys to visit Ofer camp. He claimed that there are no legal grounds for such a request. As noted, representatives of the Red Cross visit the facility freely, and this ensures that an outside, international body supervises the facility.

The First Hearing – April 25, 2002

13. Upon receiving the respondent's response brief, we held the first hearing in this matter. The petitioners emphasized that the army should have prepared itself for the large number of persons who were to be detained, and that this oversight was a consequence of the army's disrespect towards the fundamental rights of the detainees. The petitioners complained about the sleeping difficulties caused by the wooden beds and thin mattresses. Three blankets are insufficient. The food is occasionally served cold. The detainees do not receive hot drinks. Petitioners reiterated their request that the petitioners' attorneys be allowed to visit Ofer Camp. The respondent stated that, regardless and independent of this petition, the army has learned the necessary lessons from its initial experiences. The facility is no longer overcrowded and its occupancy is decreasing daily. The sleeping conditions match the IDF standards. Each of the detainees receives four or five blankets, and upon request is provided with additional blankets. The food provided is sufficient and is in accordance with IDF nourishment charts.

14. During the oral arguments we asked whether the respondent would allow the petitioners' attorneys to visit Ofer Camp. The respondent pointed out that the attorneys do not have visitation rights. Nevertheless, petitioner agreed to allow a joint visit, with both himself and the petitioners, to the facility. At the end of the hearing, we decided to postpone this proceeding to a later date. We noted before us that five representatives of the petitioners would be permitted to visit Ofer Camp, along with the respondent's attorney. We ordered that within five days

after the visit, the petitioners' counsel should submit a statement. The respondent would then be granted five additional days to submit his response. We decided that the petition would be decided based on the contents of those statements.

15. Implementing the decision to allow the visit raised a number of difficulties. During their visit, petitioners' counsel requested that they be allowed to converse directly with the detainees. The respondent asserted that the visit was being allowed *ex gratia*, and that he had initially indicated that the visitors would not be allowed to converse with the detainees. He added that one of the petitioners' representatives, who had requested to meet with the detainees, was charged with disruption of legal proceedings for relaying messages illegally. The petitioners' attorneys could learn of the detainees' complaints from their individual lawyers, who are in constant contact with them. In light of this response, the petitioners' attorney refused to proceed with the visit. They requested that we order the respondent to allow the petitioners' attorneys to meet with representatives of the detainees during their visit. We decided to advise the parties, on 8.05.2002, that military personnel in the facility escort the visitors during their visit and decide, in exercise of their discretion, whether to allow the visitors to meet with representatives of the detainees.

16. Petitioners' attorneys visited Ofer Camp on 22.05.2002. Representatives of the State Attorney, the Judge Advocate-General and the commanders of the camp also attended. The visit included entrance into a standard detention division where the detainees reside and the detention division where the kitchen is located. Petitioners' attorneys were permitted to speak with a number of the detainees' representatives. The respondent informed us that, despite the agreement between the parties, the petitioners' representatives spread out among the tents and began talking to various detainees, disregarding the pleas made by the respondent's representatives.

17. After the visit we received supplementary statements from both parties. The petitioners noted that the physical conditions of the camp had been improved since the petition had been submitted. Nevertheless,

the visit – which did not allow detailed or thorough observation of detention conditions – revealed a long list of issues which have yet to be resolved. According to the petitioners, the following principle problems surfaced: detainees do not receive sufficient medical treatment for their illnesses; the tents are overcrowded; twenty two detainees are held in each tent; other than the sleeping areas, there is no room for the detainees to move around; it is difficult to sleep on the thin five centimeter mattresses of the wooden beds; the heat in the tents is unbearable; the three showers and three bathrooms in each division are insufficient; the maintenance of the stalls is deficient; the quantity of clothing provided is insufficient; the detainees are not provided with games or reading materials, save the Koran. The petitioners' attorney listed other problems in a separate letter to the respondent.

18. In his supplementary statement, the respondent complained about the behavior of petitioners' counsel during their visit in the Camp. His response also addressed the claims made by the petitioners. Regarding medical treatment, he noted that there is an infirmary in Ofer Camp, which employs a large staff of five doctors, medics and pharmacists. The stock of medications is sufficient. A doctor or medic inspects every detainee as is necessary. When the medical treatment offered by the facility does not suffice, the detainee is moved to a hospital. With regard to the crowding in the tents, at the time of the visit 900 detainees were residing at the facility. At most, each tent held twenty-two detainees. The area of each tent is sixty square meters. The wooden beds are lined up along both sides of the tents. In the center of the tents, there is an empty space 1.4 meters wide for passage. The number of bathrooms and showers – three per 100 detainees – is absolutely reasonable, considering the fact that access to these six stalls is unlimited throughout the day. With respect to the claim regarding the absence of books and games, the respondent informed us that the Red Cross provides the detainees with both.

The Second Hearing – July 28, 2002

19. Upon receiving statements from both parties we held a second hearing. The petitioners' attorneys limited their claims to the physical

conditions in which the detainees were being held. They repeated the claims that they had presented in their supplementary statement, while complaining of the overcrowding and heat in the tents, the absence of dining tables which causes the detainees to eat on the floor, the sleeping difficulties, the insufficient quantity of clothing provided and the small number of bathrooms and showers.

20. The respondent admitted that, in fact, when the detentions first began, the detainees were not provided with minimal detention conditions. Nevertheless, within a matter of days these were improved, such that Ofer Camp now operates reasonably and satisfactorily. Five hundred and eighty detainees currently reside in the eight detention divisions. Regarding the congestion in the tents, he pointed out that each currently holds only fourteen detainees. There is a space of 45 centimeters between each of the beds. Sustenance is provided according to the IDF nourishment chart. Detainees who desire are permitted to have their own food brought in by visiting families. Every detainee is supplied with three sets of clothing. Some of the detainees prefer not to wear the military garments provided. They are permitted to wear their own clothing, which is brought to them by their families. The respondent added that the Red Cross regularly visits the facility, and that each detainee is free to speak with them. Every detainee is entitled to meet with his attorney who may lodge, in his name, concrete and specific complaints regarding his condition.

The Third Hearing – October 15, 2002

21. During the third and final hearing in this matter, the parties repeated their basic positions. The petitioners' attorney noted the difficult situation that the detainees faced in the first stages of detention. He claims that even now the detainees' rights are being violated. The overcrowding persists; the beds are unsuitable for sleeping; the bathrooms are inappropriate; a number of the faucets are malfunctioning and the facility is not equipped for the winter. In his response brief the respondent noted that, in the first stages of detention, "there was a big mess." In time, the conditions have been improved and they now meet legal requirements. With regard to crowding, it was indicated that the

facility is designed to hold 1,100 persons, and it now holds only 900 detainees. As such, overcrowding is no longer an issue. The beds meet IDF standards. The missing faucets were taken by the detainees themselves, and in any case had already been repaired. The facility is equipped for the winter, and the drainage problem has been solved.

The Normative Framework

22. The detention conditions in the area are primarily laid down by the Imprisonment Facility Operation (West Bank) Order 29-1967 [hereinafter, the Imprisonment Order]. This order provides directives regarding the conditions of imprisonment in the area. Most of its provisions, save the following three, have no bearing on the matter at hand. First, the order specifies that "prisoners shall be provided with appropriate nourishment that will guarantee the preservation of their health," Imprisonment Order, § 4, that "prisoners shall be provided with necessary medical treatment," Imprisonment Order § 5(a), and that "prisoners shall receive a receipt when their family identification and personal ID cards are taken," Imprisonment Order § 7.

23. These specific provisions are subject to the general principles of customary international law. They are also subject to the directives regarding detention conditions set out in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War-1949 [hereinafter, the Fourth Geneva Convention]. As is well-known, Israel considers itself bound by the humanitarian directives of this Convention. The respondent reiterated this commitment while in his response to the petition before us. The directives of the Geneva Convention regarding detention conditions are clearly of a humanitarian nature; therefore they should be adhered to. The question of whether or not the Basic Law: Human Dignity and Liberty applies to detention conditions in the area need not be answered here. The general principles of administrative law, which apply to Israeli soldiers in the area, are sufficient for this matter. *See* H CJ 393/82 *Jamait Askan v. IDF Commander in Judea and Samaria*, IsrSC 37(4) 785. According to these principles, the army must act, *inter alia*, reasonably and proportionately, while striking a proper balance between the liberty of the individual and the needs of the public. One may learn about the

proper standards of reasonableness and proportionality from the Standard Minimum Rules for Treatment of Prisoners. These standards were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and were ratified by the United Nations in 1957 and in 1977. *See* HCJ 221/80 *Darvish v. The Prison Service*, IsrSC 35(1) 536, 539-40, [hereinafter *Darvish*]; HCJ 540-546/86 *Yosef v. Administrator of the Central Prison in Judea and Samaria*, IsrSC 40(1) 567, 573, [hereinafter *Yosef*]; HCJ 253/88 *Sajadia v. The Minister of Defense*, IsrSC 42(3) 801, 832, [hereinafter *Sajadia*]. These standards apply to all imprisoned persons, including detainees. Needless to say, these general standards must always be adjusted to the specific circumstances, with regard to time and place, while ensuring adherence to at least the bare minimum. Justice Bach has noted:

One should not infer from this that all of the directives of the convention regarding the detention conditions of administrative detainees must be followed blindly. Each and every directive should be examined with regard to its significance, its indispensability, and its adjustment to the special circumstances of the detention facility which is the subject of our proceeding.

Sajadia, at 832. Furthermore, we do not deal here with the imprisonment conditions of prisoners held in prisons. We are dealing with the detention conditions of those being held in detention facilities in the area. These detainees were detained during warfare in the area. According to the security forces, the circumstances of the detentions are such that there is fear that the detainees endanger or are liable to endanger the security of the area, the security of IDF forces, or national security. *See* Order 1500 (the definition of “detainee.”)

24. The basic point of departure for our discussion is the balancing point between the liberty of the individual and the security of the public. On the one hand are the rights of the individual who enjoys the presumption of innocence and desires to live as he wishes. On the other hand lies society’s need to defend itself against those who rise up against it. Detention laws in general, and, more specifically, detention conditions,

reflect this balance. Here we find the position that detainees should be treated humanely and in recognition of their human dignity. This is expressed in article 10 of the 1966 International Covenant on Civil and Political Rights. Israel is a member of this covenant. Article 10 of this covenant is generally recognized as reflecting customary international law. See N. S. Rodley, *The Treatment of Prisoners Under International Law* 27 (2nd ed. 1999). The article states:

All persons deprived of their liberty shall be treated with human dignity and with respect for the inherent dignity of the human person.

See also the first principle of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, G.A. Res. 43/173, U.N. GAOR, 43d Sess., Supp. No. 49, U.N. Doc. A/43/49 (1988). Israel acts according to this principle with regard to all prisoners and detainees. See CApp 7440/97 *State of Israel v. Golan*, IsrSC 52(1) 1; HCJL.A. 6561/97 *The State of Israel v. Mendelson*, IsrSC 52(5) 849; HCJL.A. 823/96 *Wanunu v. The Prison Service*, IsrSC 51(2) 873). Vice President H. Cohen expressed this principle in *Darvish*:

Any person in Israel, who has been sentenced to imprisonment, or lawfully detained, is entitled to be held under humane and civilized conditions. It is not significant that this right has yet to be explicitly stated in legislation: this is one of the fundamental human rights, and in a law-abiding democratic state it is so self-evident that it needs not be written or legislated.

Darvish, at 538. Indeed, the nature of detention necessitates the denial of liberty. Even so, this does not justify the violation of human dignity. It is possible to detain persons in a manner which preserves their human dignity, even as national security and public safety are protected. Compare *Yosef*, at 573. Prisoners should not be crammed like animals into inadequate spaces. Even those suspected of terrorist activity of the worst kind are entitled to conditions of detention which satisfy minimal standards of humane treatment and ensure basic human necessities. How

could we consider ourselves civilized if we did not guarantee civilized standards to those in our custody? Such is the duty of the commander of the area under international law, and such is his duty under our administrative law. Such is the duty of the Israeli government, in accord with its fundamental character: Jewish, democratic and humane. *Compare Yosef*, at 573.

25. In addition to these principles, we must consider the principles and regulations set forth in the Fourth Geneva Convention. Article 27 of the Fourth Geneva Convention sets out the point of departure for the convention:

Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof against and against insults and public curiosity....

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Alongside this general directive, the Fourth Geneva Convention includes a number of directives which refer to specific conditions of detention. We shall examine those directives which are relevant to the petition before us, and which reflect the proper balance between the right of detainees and the security needs of the area. These directives apply to persons in "internment," meaning administrative detention. Apparently, these directives do not apply directly to detentions for the purpose of interrogation, though, indirectly, they do bear heavily on such situations. Thus, there is no reason not to refer to these directives in regard to the detention conditions before us. Some of the detainees being held at Ofer Camp, who are in the last stages of their detention, remain there on the authority of an administrative detention order. The aforementioned directives directly apply to those detainees. The Geneva Convention specifies that detention conditions must preserve the health and personal

hygiene of the detainees, while protecting them from weather conditions. The detention facility should be properly lit and heated, especially in the late afternoon and until curfew; the sleeping areas should be sufficiently spacious and ventilated; and, in providing bedding, the weather conditions, as well as the age, gender and health conditions of the detainees, should be taken into account. Detainees should be provided with clean and hygienically maintained bathrooms. The detainees should receive a sufficient supply of soap and water for laundry and daily bathing; they should be provided with the necessary equipment to this end. Detainees shall have access to showers, as well as sufficient time for bathing. *See* Fourth Geneva Convention, art. 85. Detainees shall receive daily nourishment which is satisfactory in its quantity, quality and variety, such that it preserves their health and prevents the development of illnesses which originate in malnutrition; detainees shall be allowed to prepare their own food; they shall be provided with a sufficient supply of drinking water. Fourth Geneva Convention, art. 89. Detainees shall be provided with sufficient changes of clothing, appropriate for the weather conditions. Fourth Geneva Convention, art. 90. An infirmary supervised by doctors shall be located in each detention area; detainees shall have unlimited access to medical authorities. Fourth Geneva Convention, art. 91. Detainees shall undergo medical inspections at least once a month. Fourth Geneva Convention, art. 92. The authorities will encourage learning and educational activities. They will also encourage the detainees to engage in sports and games. Sufficient space will be allotted for sporting activities. Fourth Geneva Convention, art. 94. Any items taken from the detainee at the time of his detention shall be returned to him upon his release. Family identification and personal ID cards shall not be seized without providing the detainee with a receipt. Detainees shall never remain without identification. Fourth Geneva Convention, art. 97. The disciplinary order in the detention facility must conform to the principles of humanity. The body and spirit of the detainees shall not be harmed. Fourth Geneva Convention, art. 100. The minimal standards of treating prisoners, which apply to all forms of detention, do not add significant provisions on the matters relevant to this petition. It is sufficient to note the following requirements: detainees require minimal space for sleeping, lighting and heating. Fourth Geneva Convention, reg. 10. Each detainee shall have his own bed. Fourth Geneva Convention,

art. reg. 19. At least one hour of physical activity shall be allowed. Fourth Geneva Convention, art. 21. A doctor from the detention facility shall inspect the conditions of sanitation.

From the General to the Specific

26. In order to implement these specific principles and rules in this case, we must distinguish between the two stages of detention the detainees went through. First, we shall deal with the detention in the temporary facilities. This occurred during the first days of detention. The detainees were held at brigade headquarters, which was not adequately prepared for so many detainees. These special circumstances should be taken into account when examining whether the respondent maintained the necessary detention conditions. In referring to the issue of overcrowding in *Sajadia*, President Shamgar correctly stated:

The existence of extreme crowding at the beginning of the wave of detentions may be explained by the security need for the simultaneous imprisonment of many people.

Sajadia, at 823. Nevertheless, even in such a situation, everything must be done to preserve the minimal standards of detention conditions. These standards were not observed during the initial stages of detentions at the temporary facilities, and this conduct violated the detention order, the international laws which apply to the area and the fundamental principles of Israeli administrative law. It will suffice to note several blatant breaches of these standards: detainees' hands were handcuffed in a rough manner, which resulted in fierce pains and bruise marks; some of the detainees were kept outside for hours, as many as forty-eight, not sheltered from weather conditions and without sufficient access to bathrooms; their possessions were taken from them without being documented. These conditions of detention can not be justified, nor can other deviations from minimal standards be excused by the need to accommodate so many detainees in such a short period of time. The necessity was known in advance. It was expected. Operation Defensive wall was planned in advance. One of its goals was to arrest as many suspected terrorists as possible. As such, the need for minimal detention

conditions was a natural result of the goals of the operation. There was no surprise in the matter. There was the possibility of preparing appropriate divisions with suitable detention conditions. What was done a number of days after the beginning of the operation should have been done several days before it began. Indeed, security needs – which must always be taken into account – did not justify the inadequacies in the conditions of detention in the temporary facilities.

27. During the second phase, the detainees relocated to Ofer Camp. During the first days in which the detainees were received in Ofer Camp, some of the minimal requirements regarding detention conditions were not fulfilled. As we have seen, at the beginning of Operation Defensive Wall, Ofer Camp's capacity was 450 detainees, with the option of expanding to 700. In fact, a much larger number of detainees were brought to the facility. The overcrowding was unbearable. A substantial number of detainees remained unsheltered, exposed to the rigors of weather conditions. Not all of the detainees received a sufficient supply of blankets. These circumstances did not satisfy minimal standards of detention conditions, and had no security justification.

28. Shortly after, Ofer Camp's entered a period of routine operation, during which minimal requirements were satisfied. This was the situation when the respondent first submitted his statement on 24.04.2002, and at the time of the first hearing. Since then, additional improvements have been made. The current conditions essentially satisfy the minimal required conditions, and in some cases, the conditions in Ofer Camp even exceed such minimal requirements. Such a state of affairs is appropriate: "minimal conditions" guarantee, as their name suggests, only the necessary minimum. Israel, as a Jewish and democratic state, should aim to more than the minimum, and the respondent acted admirably in ensuring that, regarding certain matters, the conditions exceed minimum requirements. Even so, two matters still demand improvement. First, the army should reconsider the issue of supplying tables at which the detainees may eat. The explanation offered for the absence of such tables – that the detainees will dismantle the tables, and use them in such a way as will disturb security – is unconvincing. The detainees have not used the wooden beds in this manner, and there is no reason to believe they

will do so with tables. Additionally, concrete tables may be deeply embedded in the ground, thus preventing the detainees from dismantling them. For those accustomed to eat at tables, the need for such tables is part of their human dignity. Detainees are not animals and they should not be forced to eat on the ground. *See Yoseph*, at 575. It is of course possible that there is not enough space for tables, whether in or around the tents. This may require the expansion of the detention camp. The weight and position of this argument has not been explored before us, and we ask that the matter be reconsidered. Second, the respondent must ensure that books, newspapers and games be provided to the detainees. Minimal standards demand this, and the matter should not be left to the Red Cross. It is the respondent's duty, and fulfilling it does not interfere with security. Naturally, if the Red Cross has already supplied the detainees with these items, the respondent is no longer obligated to do so.

Detention Conditions and Judicial Review

29. This Court has always exercised wide-ranging judicial review concerning conditions of imprisonment and detention. The Court has done so regarding Israeli prisoners and detainees. It has done so regarding prisoners and detainees from the area. In all of these cases, the Court thoroughly investigated the arguments, even considering the smallest details of the conditions of detention. Thus, for example, *Darvish* dealt entirely with a security prisoner's right to have a bed in his cell. When necessary, visits were arranged to the prison, *see Yosef*, or the detention facility, *see Sajadia*. Even so, our judicial review is not a substitute for constant review by the proper authorities in the army itself. In *Sajadia*, President Shamgar emphasized this with regard to Kziot Camp, which, like Ofer Camp, holds many detainees from the area:

Considering the structure and function of the Court, it cannot perform continual inspection and supervision; however, constant inspection and proper supervision does allow for addressing and examining issues that may arise in a facility which holds such a large number of detainees. By determining procedures of supervision, it becomes easier to strike the proper balance between providing just and humane conditions,

and the need to maintain internal order and discipline and preserve safety and security

Sajadia, at 825. A similar problem now lies before us. During oral arguments, various suggestions were made. It seems that we are compelled to repeat the recommendation made in *Sajadia* by President Shamgar, to which all the justices there – both Vice- President M. Elon as well as Justice G. Bach – agreed:

As such, we find it appropriate to direct the respondents' attention towards the need to determine efficient manners of inspection and supervision. Our suggestion is that the respondent consider nominating a permanent advisory committee, which will carry out constant inspection and will report and advise the respondent on the matter of the detention conditions in the Kziot detention facility. The head of the committee can be a senior military judge from the military tribunal units, and the committee may consist of experts from the fields of medicine, psychology, and jailing management.

Sajadia, at 825-26. Unfortunately, according to the information we have received, it seems this suggestion has not been put into action. We ask that this recommendation be brought to the attention of the military's Chief of Staff. We are confident that he will act to ensure its implementation.

30. Even more so: constant supervision and inspection are not substitutes for detainee petitions and judicial review. These other options are available to detainees in Israel. *See* Prisons Ordinance [New Version]-1971, § 62A(a). Amending security legislation in order to allow such similar review should be considered. Of course, such an arrangement would not replace judicial supervision by the High Court of Justice. It would, however, provide alternative relief, which would justify limiting the judicial review of this Court to those cases where the situation has not been resolved through these other methods.

Petition Denied.

Justice D. Beinisch

I agree.

Justice I. Englard

I agree.

Petition Denied.
December 18, 2002