Supreme Court of Israel sitting as the High Court of Justice

The Ministry of Palestinian Prisoners and ors v The Minister of Defense and ors

Petitions 3368/10, 4057/10

Before judges E. Arbel, Y Amit, U. Shoham Petitioners in HCJ Case 3368/10: 1. The Ministry of Palestinian Prisoners 2. Adv. Fahmi Shakirat 3. Adv. Kamil Sabag 4. Adv. Karim Ajwa Petitioners in HCJ Case 4057/10: 1. ACRI and others Vs. 1. The Minister of Defense 2. Head of the Central Command, the commander of IDF forces in the Judea and Samaria region Petition in request of an order nisi Date: May 23, 2013 Petition 3368/10 - Adv. Smadar Ben Natan - petition 4057/10
Adv. Laila Margalit
Representing the State Adv. A. Hellman

In this judgment, the Supreme Court of Israel, sitting as the High Court of Justice considers the different time periods before which a suspect must be brought before a judge in Israel and the West Bank and within the West Bank depending on whether the suspect is Palestinian or an Israeli citizen living in a settlement – The Applicants argued that the different time periods amount to unlawful discrimination under Israeli and international law – The Court noted that the respondents have taken significant steps to amend the military law applied to Palestinians in the West Bank so as to reduce (but not eliminate) the differences in the law and determined that the differences were fair and proportional in the circumstances – The Court did not directly address the appellants claim regarding discrimination based on whether a suspect is Palestinian or an Israeli settler.

Judge Edna Arbel (Judges Amit and Shoham in agreement)

We are dealing with several petitions, which are being heard as one, regarding the question of why should the detention terms stipulated in the Order (Military Order), which came into effect on 2 May 2010, not be shortened. The petitions include a request that this Court reduces the detention terms in the Order in accordance with international law and Israeli civilian law.

Background

1. Petitioner no. 1 in High Court Judgment (HCJ) case 3368/10 is the Ministry of Prisoner Affairs in the Palestinian Authority (PA Ministry). Most of those detained under the Military Order are under the PA Ministry's authority, and it takes care of their well-being and their families, their legal representation through attorneys who are members of the Palestinian and Israeli bar. Petitioners nos. 2-3 are attorneys representing detainees suspected of committing security related offenses, on behalf of the PA Ministry. The petitioners in HCJ case 4057/10 are the Association for Civil Rights in Israel (ACRI), Yesh Din - Volunteers for Human Rights, and the Public Committee Against torture in Israel (PCATI).

2. The petitions were submitted in accordance with the legal reality which existed at the time of their submission. According to this reality, the law which applies to Israeli citizens in the Judea and Samaria region (the Region) (West Bank) differs from the law which applies to Palestinians in the Region (West Bank). The petitioners have asked to shorten the detention terms stipulated by the Military Order, so they would be equal to the terms applied to Israeli citizens in the Region (West Bank) (Settlers), as well as detention terms within Israel.

The legal situation at the time of submission of the petitions

3. Detention terms, including detention until the end of legal procedures, are to be found in clause C of article C of the Military Order, dealing with the detention and release of Palestinian detainees in the Region (West Bank). Articles 31 and 32 of the Military Order state, as to the length of detention before judicial review:

31.(A) A soldier is authorized to 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 Subsection (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 Subsection (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 IDF Forces in the Area is entitled to authorize any person to order the release of a person arrested in accordance with Subsection (A), provided that no arrest warrant under the provisions of this article was issued against the detainee.

32.(A) A police officer, who has reasonable grounds to believe that a person violated the provisions of this order or it became known to him that the investigation material gathered against the arrested person as noted in Subsection 31(A) require the continuation of his arrest, is authorized to issue an arrest warrant in writing and for a period no longer than eight days from the time of his arrest.

(B) If an arrest warrant as noted is issued for a period shorter than eight days from the time of his arrest, a police officer is authorized to extend it in writing from time to time, provided that the total arrest period does not exceed eight days from the time of the arrest.

As to the extension of detention before indictment, articles 37 and 38 of the Order state:

37. A judge is authorized to give an arrest warrant and extend the length of detention, provided that the arrest warrant or the remand does not exceed a period of thirty days at a time, and that the total period of detention in accordance with this section not be longer than ninety days.

38. A judge of the military court of appeals is authorized, at the request of the legal advisor of the region, to order the remand of a person arrested in accordance with Section 37 or his renewed arrest, for a period not to exceed three months; if an arrest warrant as noted is given for a period shorter than three months, a judge of the military court of appeals is authorized to extend it from time to time, provided that the total period of detention in accordance with this section does not exceed three months.

As to the extension of detention until the end of procedures, article 44 of the Military Order states:

44.(A) If a defendant, after the filing of charges against him, was held in detention under the same indictment for a cumulative period of up to two years, and his trial in the first instance did not end with a verdict, his matter will be brought before a judge of the military court of appeals.

The judge will hear the matter of the defendant and order his release, conditionally or without conditions, unless the judge believes that the circumstances of the matter, including the severity of the offense attributed to the defendant and his level of dangerousness, the fear of his fleeing justice and the reasons for the prolonging of proceedings, do not justify his release.

(B) If a judge decides that the circumstances of the matter do not justify release of the defendant, the judge is entitled to order the continued holding of the defendant under detention for a period not exceeding six months, and to reorder this from time to time.

In accordance with this legislation, detainees suspected of security related offenses according to the Military Order could be held in custody for up to eight days without legal review, for up to 90 days before an indictment was submitted, and for up to six months with the court's approval. In addition, pending the end of a detainee's trial, he/she could have been held in indefinite detention subject to periodic extensions every six months, in the first two years following arrest.

4. Unlike the detention terms applying to Palestinians in the region, and stipulated by the Order, Israeli law stipulates a detention term of up to 24 hours for citizens under arrest (with a possible extension to 48 hours), before a judicial review takes place. Pre-indictment detention is restricted to 30 days, which may be extended to up to 75 days by the approval of the Israeli

Attorney General. Detention until the end of proceedings is restricted to nine months, with possible extensions every three months. Israeli law also stipulates certain exceptions in the case of detainees who are suspected of security related offenses, as well as minors in detention.

Claims presented by the petitioners in HCJ case 3368/10

5. The petitioners, through attorney Smadar Ben Natan, have argued that the detention terms set by the Military Order, which applies to Palestinians in the Region (West Bank), are significantly longer than terms set by international legal standards as well as the corresponding provisions in Israel. They believe that these terms violate the right to a fair procedure and the right to defend oneself from arbitrary violations of the liberties granted to the residents of the region by international law as well as the basic principles of Israeli law. The petitioners have argued that these are indeed two different regions under a different regime, but both are under control of the State of Israel.

6. The petitioners have argued that the far reaching changes which have taken place under Israeli law have hardly been evident in the military legislation of the Region (West Bank). According to them, experience has taught one that the lengthy detention terms affect the way in which arrest and interrogation procedures take place, such that the rights of detainees are being violated much more than required: In fact, detainees at the initial stage of their detention are not brought to court to have their detention extended until the eighth day of their detention, the last day allowed by the Order. Moreover, many of them are not interrogated at all throughout entire days of their detention or subsequent detention terms. In many cases, detainees are released after four, five or eight days without any procedure being pursued in their case, and without any judicial review of the grounds of their arrest. The petitioners have argued that such lengthy detention terms are often fertile grounds for inadequate treatment, pressure and violence during interrogation, including the arrest of a suspect's relative without any grounds, as a means of pressure.

7. The petitioners have also argued that procedures in the (military) courts, following indictments, are conducted at a slow pace. Most cases end in plea bargains, since defendants know that if they choose to conduct a trial, they will remain in detention for a long and unlimited period. At the few trials that do take place, the periods in between subsequent sessions are long, the number of judges is small in comparison to the volume of cases, and unlimited detention until the end of proceedings creates and perpetuates this reality.

8. The petitioners have argued that until the implementation of the 2005 Disengagement Plan, detainees from the Gaza Strip had been subject to the (Military) Order, and since then, detainees from Gaza are brought before Israeli courts under Israeli (civilian) law, for the purpose of having their detention extended. They add that Israeli settlers are also subject to Israeli (civilian) law. This reality brings about, in the view of the petitioners, a violation of equality between human beings - legally enshrined apartheid. The petitioners stress that not all offenses tried by the military courts are security related, but the laws of detention apply to all detainees.

9. According to the petitioners, judicial review of detention proceedings is an integral part of a suspect's right to a fair trial. The very long detention terms cannot be justified by security needs or circumstances that are unique to the region. Therefore, they argue that there exists a duty to follow similar standards in upholding human rights during the procedural criminal proceeding. Therefore, they have asked for the abolition of articles 31a, 32 and 44 of the Order, for the shortening of detention terms and for the setting of detention terms that would correspond to those in Israel.

The petitioners' claims in HCJ case 4057/10

10. These petitioners too, represented by attorney Laila Margalit, have asked for the (Military) Order to be amended, and their claims against the length of detention terms are similar. According to them, such detention terms constitute a grave violation of the elementary rights of the Palestinian residents of the Region (West Bank), their right to liberty and their right to be free from arbitrary detention, as well as their right to a fair legal procedure, their right to dignity, their right to equality, and their right to suitable monitoring procedures for ensuring fair interrogation and preventing torture. These detainees, according to the petitioners, are exposed to illicit methods of interrogation and inappropriate treatment at the hands of the interrogative authorities. The petitioners have argued that such violations stem both from the fact that their treatment is significantly different from the treatment of Israelis living in the Region (West Bank) (settlers) and from the excessive length of the detention terms *per se*. According to the petitioners, such violations run contrary to principles of international law applying to the Region (West Bank), as well as the principles of public law which apply to any action by the Israeli authorities. They argue that immediate and frequent judicial review of a suspect's detention is a necessary condition for the proportionality and fairness of that detention, adding that lengthy detention without trial is disproportional.

11. The petitioners add that the military prosecution's claim that the judicial review of an arrest should be delayed in order to allow for the "consolidation of reasonable suspicion", attests to the fact that the (military) Order is being used to conduct arbitrary arrests without such reasonable suspicion against the detainee. Therefore, the petitioners argue that the preliminary detention period, for Palestinian detainees, is meant to: allow for the detention of people without any reasonable suspicion against them; to protect the interrogation authorities from the court's "intervention"; to allow the interrogators a "minimal time period" to complete the interrogation, prevent its "disruption" involving having the suspect brought before a judge, and prevent the logistical difficulties involved in holding an immediate judicial review.

12. The petitioners argue that the lack of any distinction between minors and adults in the security legislation regarding arrest periods, and the lack of sufficient consideration of the principle of the child's well-being during the arrest of a minor bring about a disproportional violation of the child's rights, anchored in international law and recognized by Israeli (civilian) law. The basic assumption that Palestinian minors are worthy of lesser protection in comparison to Israeli minors also residing in the area (West Bank), is unjustified, in their view.

13. The petitioners add that a judicial review of arrests is meant in the first place to ensure the justification for the denial of a person's liberty, and that there is no reason to delay this review in order to allow the authorities to make progress with their interrogation. In addition, a judicial review plays a role in the monitoring of the way in which an interrogation is conducted. It is an important guarantee against the exertion of illicit means of pressure during an interrogation, as well as the use of the detention *per se* to instill a sense of total isolation from the outside world in the detainee, a sense of being completely at the mercy of her or his interrogators, while violating her/his right to remain silent as well as violating their dignity. The petitioners also argue that an interrogation taking place far away from the monitoring eye of the court may bring about the use of illicit means of interrogation, which violates the detainee's dignity, as well as the physical integrity of her/his body. Therefore, this policy amounts, in their opinion, to a violation of the state's duty to prevent torture and inhumane treatment of detainees. The lack of judicial review is assigned an even more grave significance in cases in which the Palestinian detainee is not allowed to meet a lawyer, which runs contrary to international law. The petitioners claim that the fear of the use of illicit means of interrogation against Palestinians is not unfounded. They refer to reports published by human rights groups in 2007. According to the petitioners, logistical considerations or logistical difficulties per se cannot justify a violation of the human right to liberty, equality and dignity.

The Respondents' Response

14. The respondents have replied through Adv. Aner Helman. As early as the submission of their response to the petitioners' appeal, the respondents stated that the issue of shortening detention terms in the Region (West Bank) was being examined as part of thorough staff work which had recently begun. They added that the security legislation was based on security considerations and public order, and that this regarding these changes, it was decided that this arrangement would be re-examined after two years from the date in which amendments to the (military) Order take effect.

15. In addition, it was decided that a preliminary extension of an arrest period by a judge would not exceed 20 days, and that the arrest could be extended by additional periods not exceeding 15 days at a time. The extension of a pre-indictment arrest beyond 60 days will require an authorization by a senior legal official in the Region (West Bank). In their response, the respondents have regarded the laws of arrest as well. They state that the differences between the law in the area (West Bank) and the law practiced in the State of Israel stemmed from matter-of-fact security considerations.

16. In their comments submitted on 9 January 2010, the respondents reiterated their claim that there are good grounds for the detention terms stipulated by the (military) Order being different from those stipulated under Israeli (civilian) law. According to them, it is the nature of a belligerently administered area, including one held for many years, that the special security conditions which prevail in it dictate the stipulation of arrangements that differ from those practiced in the administering state.

17. Thus for example, due to the security conditions, the freedom of movement in the area (West Bank) is restricted, and sometimes an interrogation cannot be conducted quickly enough on the ground, or cannot be conducted at all, in view of the security conditions which delay or prevent the arrival in the place. Parts of the area (West Bank) are under Palestinian control and there is no possibility of, or there is a great difficulty in, reaching witnesses and suspects residing in those parts. In many cases suspects wanted for interrogation go into hiding in areas under Palestinian control (Area A), which make their interrogation and the interrogation of their accomplices in Israeli detention more difficult. In most cases, potential witnesses refuse to cooperate with the security forces, which makes it difficult to conduct the investigation. In security related investigations, those being interrogated have acted out of nationalist and ideological motivation, and their interrogation is more difficult. It is only natural that a minimal time span is required for their interrogations to produce preliminary evidence corroborating the intelligence which has been received. Some distance may also be required between the date in which the

information is received and the date in which it can be used vis-a-vis the detainee being interrogated, since the use of intelligence close to the time of its reception may "burn" the source and sometimes even jeopardize his life. In a major part of security related interrogations, there is no possibility of determining the place and time of the arrest in advance, which makes the initial interrogation more difficult. All detainees suspected of committing security related offenses are transferred to one of four interrogation centers inside the State of Israel. This transfer in itself often requires a lengthy amount of time. Furthermore, one cannot refrain from exhausting the detainee's initial interrogation before he is brought before a judge, in order to prevent him from fleeing back to the area; Sometimes it is necessary to arrest hundreds of people, such as the time of operation Defensive Shield in 2002, and it is impossible to organize and bring all of them before a judge on such short notice.

18. The aforementioned grounds necessitate in the view of the respondents, the conclusion that it should be allowed to hold a suspect in detention for a reasonable period required for the consolidation of preliminary evidence materials before he is brought before a judge. The respondents also state that international law does not specify the number of days during which a person may be detained without judicial involvement, but only states a principle according to which the decision to arrest that person should be brought to the attention of a judge without any delay.

19. However, the respondents have made it known that in recent years, staff work had been conducted at the IDF and later at the Ministry of Justice, headed by the Deputy Attorney General (penal matters), the Deputy Attorney General (special tasks), and the Deputy Attorney General (advice), examining the possibility of shortening maximum arrest terms in the Region (West Bank). The respondents have updated us, saying that as part of that work, a decision had been made that subject to the current security conditions, it is possible at this time to reduce substantially the maximum detention term until a detainee is brought before a judge, but there are no grounds for equating the legal arrangement within Israel in this matter to the arrangement applicable in the Region (West Bank). The respondents have provided details about the shortening of arrest terms.

20. In the case of offenses that are not security related, it was decided that as a rule, the preliminary detention period prior to judicial review would be 48 hours. In addition, this may be extended by another 48 hours, if an administrative authority finds it necessary on special grounds, such as urgent interrogation actions. It was also decided that after two years from the date in which the amendment to the (military) Order takes effect, the arrangement will

be reexamined. In the case of detainees on security related grounds, it was decided that the preliminary detention period until being brought before a judge would amount to no more than 96 hours with the possible extension of this period by an additional 48 hours, by an administrative authority, when the head of the department of investigations in the General Security Service (GSS) (Shin Bet) is convinced that stopping the interrogation for the purpose of bringing the detainee before a judge may cause substantial harm to the interrogation. It was also decided that under special circumstances it would be possible to extend the term of arrest until the detainees is brought before a judge, by yet another 48 hours beyond the aforementioned terms, which amount to six days. This can be done when the head of the department of investigations in the GSS is convinced that stopping the interrogation for the purpose of bringing the detainee before a judge may harm essential investigative actions intended to prevent the taking of human lives. Considering the fears raised by the security establishment regarding the operational implications of the changes, it was decided that their implications would be re-examined following two years from their coming into effect.

21. The respondents have added that as part of the administrative work, it was decided to add an instruction to the (military) Order, stipulating that if a person has been arrested and his interrogation has ended, that person will be released from detention, but if a prosecutor declares that the aforementioned person is about to be indicted and the court is convinced that there is are *prima facie* grounds for remanding the defendant in custody until the end of proceedings, the judge may extend the arrest on these grounds for a period not exceeding eight days. It was also decided that at first, detention until the beginning of the defendant's trial could span up to 60 days, and in two years time, the possibility of reducing this period to 30 days would be examined.

22. The respondents have also notified the court that it was decided to amend article 44 of the (military) Order, so that in the case of offenses that are unrelated to security matters, the stipulated period until the first hearing in the case of a detainees arrested until the end of proceedings would span one year from the time of indictment. In the case of security related offenses, the currently stipulated period - two years, will remain as it is, and this matter too will be examined following two years from their coming into effect. The respondents have estimated that the organization process towards implementing the changes would require six to nine months, and the Order would be amended immediately following this.

23. The respondents have asked that the Court reject, in line the request in petition 4057/10, to equate the arrest periods for minors in the Region (West Bank) and the arrest periods for minors in Israel. The respondents have argued that

that the petitioners had not exhausted the legal proceedings in this matter. They argue that this matter should not be intertwined with the matter of arrests of adults in the region. The respondents have argued that this was a "premature petition", since it had been decided to conduct administrative work on this issue as well.

Hearing of the petitions and an update notice

24. On 12 January 2011, this Court, chaired by President D. Beinish and judges Hendel and Amit held a session. At the end of this session, it was decided that the respondents would submit an Update Notice within five months, including the wording of the order which would be issued according to the principles which are agreed on. The tribunal also instructed the respondents to consider its comments in their work on the (military) Order, especially regarding the amount of time before a detainee is brought before a judge for the first time, as well as the matter of the duration of the post-indictment arrest period until the end of proceedings.

25. On 1 June 2011, the respondents submitted an Update Notice, according to which it had been decided after the previous court session to shorten the arrest term for detainees being held in custody until the end of proceedings on security related charges, from two years to 18 months. It was also decided that the way in which the arrangements (formulated in the administrative work) are implemented must be examined when it comes to the maximum detention term until a suspect is brought before a judge. This process of examination should take two years, according to the respondents, before further decisions are made on this matter. As part of the aforementioned Update Notice, the respondents have added that it would be essential to examine the developments which were supposed to occur in the Region (West Bank) starting in September 2011, before any arrest terms in the region are reduced. The reason provided by the respondents was the Palestinian Authority's announcement that it would turn to the United Nations General Assembly (UNGA) in that month to recognize the "State of Palestine". The respondents have updated that the administrative work had not ended, and they expect the (military) Order to be amended in January 2012.

26. The petitioners in HCJ case 3368/10, as well as the petitioners in HCJ case 4057/10 have responded to the aforementioned Update Notice. According to them, a shortening of the arrest periods, as announced by the respondents, would be insignificant, and would not suffice to rectify the severe flaws and the violations of rights embodied by the security legislation in the Region (West Bank). The petitioners argue that the changes that have been made would not have any practical impact on the arrest procedures for Palestinian residents of the Region (West Bank), and these changes would not lead to

significant tightening of the judicial supervision of arrest terms, nor would they lead to an improvement regarding the violation of the right to liberty, the right to a fair procedure and the presumption of innocence. The petitioners have reiterated their claim that judicial review is an integral part of the arrest procedure, and that there is no justification for delaying the judicial review for such a lengthy period. They also argue that the initial arrest period, as well as arrest until the end of proceedings, amount to the arbitrary violation of the right to liberty, and therefore, they reaffirmed their petitions for an order nisi and instruct the military commander in the Region (West Bank) to determine arrest periods which would conform to international standards, as well as those practiced inside Israel. The petitioners have also argued that there are no grounds for not carrying out the amendment to the (military) Order due to uncertain future developments.

27. The petitioner in HCJ case 4057/10 have also argued that the list of security related offenses mentioned in the decree spans tens of charges, including offenses such as holding a procession or an assembly without a permit, waving a flag without a permit, the printing of "material of political significance" without a license by the military commander etc. The list also includes numerous "public order" offenses, such as throwing objects, obstructing a soldier, the violation of a curfew or a closed military zone order etc, in a manner which renders the arrangement for offenses that are not security related substantially theoretical. According to them, the proper criteria for determining arrest periods are the restrictions imposed on Israelis who also reside in the Region (West Bank) (settlers). The petitioners have also pointed out there was a discrepancy between the respondents' notice and the draft of the (military) Order. They argue that one should not refrain from amending the order for fear of exceptional events.

Further Update Notices

28. On 22 November 2011, the respondents submitted an additional Update Notice, according to which it had been stated during meetings held at the office of the Deputy Attorney General (penal matters) that the IDF has completed the administrative work to examine the number of necessary staff positions to be added to the military courts and the Judea and Samaria (West Bank), for the purpose of shortening arrest periods. The respondents have also notified this Court that it had been decided to add the necessary staff positions, subject to the amendment coming into effect, and the time required for conducting the procedures of selecting and appointing new judges in the (military) court. It was also stated that there was still no budget solution for the needs of the Israeli Police and the Israeli Prison Service regarding the implementation of the administrative work, and that after a solution is found a

few additional months would be required for the recruiting and training of personnel, and also for the acquisition and reception of additional vehicles. On 22 December 2011, an additional Update Notice was submitted by the respondents, stating that the dispute on the issue of the budgetary source has still not been resolved, and the same was stated in an Update Notice on 16 January 2012.

29. On 6 February 2012, the respondents submitted a new Update Notice, stating that the budgetary dispute regarding the financing of arrest periods in the region had been resolved. They also stated that on 2 December 2012, the commander of IDF Forces in the Region (West Bank) had signed the (military) Order (amendment number 16), to be known as *The Amending Order*, shortening detention terms in the region according to the conclusions drawn through the administrative work, and that it had been stipulated that the provisions would gradually come into effect so that the last amendment would be effective starting on 1 August 2012.

The Petitioners' response

30. The petitioners in HCJ case 3368/10 have welcomed the amendments made through the Amending (military) Order. However, they also argue that a reading of the Amending Order shows that there are substantial differences between the changes announced in the respondents' response and the wording of the Amending (military) Order. Thus for example, the petitioners state that a detainee on security related grounds may be held for two 96 hour arrest terms i.e. eight days, and be brought before a judge only at the end of these terms, and the same goes for a detainee held on grounds that are not related to security issues. The petitioners argue that the shortening of arrest periods was insignificant, and did not suffice to rectify the severe violation of detainee rights by the security regulation in the Region (West Bank). They argue that in fact the Amending (military) Order does not shorten arrest terms before an initial judicial review in the case of security related offenses, which constitute the majority of offenses in the region. They also argue that the Amending (military) Order shortens the period of arrest until the end of proceedings on security related charges in an insignificant manner, from two years to a year and a half, which could be extended without any restriction. The petitioners add that regarding minors, no changes have been made, and there is no distinction between a minor and an adult when it comes to the laws of arrest. The petitioners argue that these changes will have little practical impact on the arrest procedures in the Region (West Bank), and they will not lead to a significant tightening of judicial review of arrest periods or a rectification of the violation of the right to liberty, the right to a fair procedure and the presumption of innocence. The petitioners argue that judicial review is an

integral part of the arrest procedure when it comes to the initial detention term, and that at this stage the court needs only be presented with a reasonable suspicion which is supposed to exist at the time of arrest. therefore, there is no justification in their opinion, for delaying the judicial review by such a lengthy period. Difficulties in the interrogation or investigation need to be presented to the judge for the purpose of justifying the extension of an arrest, including security related offenses.

31. The petitioners have also argued that the European Court of Human Rights has ruled that an initial arrest period of four days without judicial review violates the right to liberty from arbitrary detention. Therefore, in their opinion, an arrest period of four to eight days before judicial review amounts to an arbitrary violation of the right to liberty, which runs contrary to the Basic Law: Human Dignity and Liberty, and is illegal. They argue that an arrest period of a year and a half violates the defendant's presumption of innocence, and amounts to an arbitrary violation of the right to liberty, since it is based only on *prima facie* evidence, to the extent of violating the defendant's right to a fair trial, since it creates a negative incentive against conducting a trial and examining the defendant's guilt.

32. The petitioners in HCJ case 4057/12 have also responded to the respondents' Update Notice. They too have welcomed the respondents' announcement of changes in the Amending (military) Order, but have argued that these would not suffice to rectify the flaw of its grave illegality, since even after the amendment Palestinian residents of the area (West Bank) will still be subjected to discriminatory and excessive arrest terms, which violate their rights in a grave and severe manner. The petitioners have reiterated once more that an immediate and frequent judicial review of an arrest for the purpose of interrogation is a necessary condition for its being reasonable, proportionate and legal, and that without it, it would be impossible to prevent arbitrary detention, defend the rights of suspects and ensure a fair legal procedure. The petitioners have reiterated their claim that a non-arbitrary arrests should be founded in the first place on reasonable suspicion, and that the judicial review is a part of its legality. They argue that the special difficulties which characterize investigations in the territories (West Bank) are entirely irrelevant to the examination of the legality of an arrest in the first place, and therefore, these difficulties should have no bearing on the duration of time before an a detainee is brought before a judge for the first time. The petitioners also argue that in the matter of other arrest periods too, the respondents had not come up with arguments which could justify the discriminatory policy. The petitioners have stated that the respondents had not addresses the matter of minors in their Update Notice, and according to them, the list of security related offenses is still "all encompassing", and there could be no justification for a situation in

which an Israeli detainee who resides in the area and is suspected of security related offenses must be brought before a judge within 24 hours, while a Palestinian detainee on such charges must be brought before a judge following an apriori period of four days.

In view of President Beinish's retirement, President A. Gronis has appointed me to hear the petition on 14 March 2012.

An additional hearing of the petition

33. On 23 April 2012 we held an additional hearing of the petition, during which the petitioners presented their case on four issues: the time elapsing until a detainee is brought before a judge, the arrest of minors, the definition of security related offenses according to the (military) Order, and the duration of the detention period for arrest until the end of proceedings. At the beginning of the hearing, the representative of the respondents submitted the Amending Order, referring to article 31 of the (military) Order. According to the amendment, an arrest before being brought before a judge under special circumstances has been restricted to a term not exceeding 96 hours from the suspect's arrest, with the possibility of extension by an additional two days, as many times as necessary, under special circumstances detailed in the (military) Order, and by authorization of very senior echelons.

34. On the matter of minors, it became apparent during the hearing that a new (military) order was supposed to come into effect in August 2012, with a change in the age of minors to 18 years in the Region (West Bank) as well (instead of the previous age of 16). The respondents have asked that the change be monitored for a year from the day of its coming into effect, as well as for the monitoring of the wardens' training process. They have also asked for a consideration of the state of affairs following said one year term. Thus, we ruled that the respondents would submit Update Notices as to the results of the changes, no later than 1 December 2012.

35. As for the matter of offenses defined as security related offenses, we ruled in our decision at the end of the hearing that the issue had not been raised in the petitione, and no *order nisi* had been requested, except for requests within the responses to the respondents' Update Notices. However, we found that the respondents would do wisely to take our comments into consideration, especially on the question of whether it is appropriate to refer to security related offenses as a single complex, and whether there are no grounds to

remove some of them from the realm of defined security related offenses, as detailed in the third addendum to the (military) Order.

36. Regarding arrest until the end of proceedings, the representative of the respondents has announced that it had been decided to shorten the arrest period to 18 months for security related offenses. Since we were of the opinion that this was still a lengthy period and the issue should be re-examined, we ruled that this would be given due reference in the next Update Notice. We also ruled that after the submission of the Update Notice, the petitioners would be able to respond to it, and after that we would decide on any further handling of the petitions.

An additional Update Notice

37. On 16 December 2012, the respondents submitted an additional Update Notice on their own behalf. First, they stated that a review of the results of the shortening of arrest terms in the Region (West Bank) had yielded the conclusion that the respondents have strenuously managed to implement the shortened arrest periods as stipulated by the Amending (military) Order. The respondents added that following this Court's comments during the hearing and its decision given at the end of the hearing, the Commander of the IDF Forces in the Region (West Bank) has amended the (military) Order on the issue of arresting minors, the definition of security related offenses and also the duration of detention periods until the end of proceedings.

38. As for the arrest of minors, the respondents have updated this Court that it had been decided to take action towards amending the security legislation and stipulate special arrest periods for minors in the Region (West Bank) until they are brought before a (military) judge, and until the end of proceedings, which would be, as a rule, shorter than the analogous arrest periods for adults. The respondents have announced in this context that on 28 November 2012 the Commander of the IDF Forces in the Region (West Bank) had signed two new amendments to the (military) Order. They have stated that according to the amendments, the maximum arrest period until being brought before a judge in the case of a "youth" as defined by the (military) Order, i.e. a person aged at least 12 but no more than 14, would amount to 24 hours from the time of arrest, with the possible extension by an additional 24 hours due to urgent investigative activity. It was decided that this term would apply to the arrest of a "youth" in security related offenses as well as other offenses. In addition, the respondents have stated that that starting from the aforementioned date, the maximum arrest period until being brought before a judge in the case of "soft adults", as defined by the (military) Order. i.e. a person aged at least 14 but no

more than 16, would amount to 48 hours from the time of arrest, with a possible extension by an additional 48 hours due to urgent investigative activity. It was decided that this maximal arrest period would apply in the case of a "soft adult" in security related offenses as well as other offenses. The respondents have also stated that this maximal arrest period would also apply to minors over the age of 16 as well as adults in the region who are arrested for offenses not related to security matters.

39. According to the respondents, this amounts to a significant shortening of the maximal arrest period until being brought before a judge for all suspects aged 12-14, as well as suspects in security related offenses aged 14-16, in comparison to arrest periods until being brought before a judge for adult suspects in the same offenses, which have also been significantly shortened as part of the Amending (military) Order. The respondents have furthermore added that in the case of minors aged more than 14 suspected of offences that are not security-related, as well as minors aged over 16 suspected of security related offenses, the maximal arrest periods applying to adults until being brought before a judge would continue to apply, as stipulated by the Amending (military) Order.

40. The respondents have also stated that as for arrests until the end of proceedings in the case of minors in the Region (West Bank), the (military) Order stipulated that detention until the end of proceedings in the case of minors, i.e. any defendant aged less than 18, would amount to one year only. In addition to that, the arrest of a minor may be extended by a judge at the Military Appeal Court following a year of detention by no more than three months, and the judge may repeatedly rule in this manner. It was also stated that this provision applies to minors accused of security related offenses as well as other offenses.

41. As for the definition of security related offenses, the respondents have notified this court that within amendment number 26 to the (military) Order (hereby referred to as Order 1712), around one third of the offenses which had been listed in the third addendum to the Order, which defines "security related offenses", were removed from the addendum, and one offense was added (an offense based on article 222 of the Order). Therefore, according to the respondents, (military) Order 1712 has in fact brought about a significant shortening of maximum arrest periods in the case of suspects and defendants on the numerous charges removed from the third addendum. The respondents have also stated that a significant change had been made in the case of adults, since around one third of the offenses previously defined as "security related" are no longer defined as such, and therefore those suspected of committing such offenses would be arrested for 12 months until the end of proceedings,

rather than 18 months. According to the respondents, the introduction of such significant changes in various arrest periods necessitates a period in which the implications of these changes for the law enforcement system in the region, and its ability to function, could be examined, before additional changes are considered. Therefore, it was decided that there was no need at the moment to change the duration of arrest until the end of proceedings in the case of adults in the region. Thus, according to the respondents, the right balance has been struck between the various relevant considerations, while assigning the appropriate priority to the rights of minor defendants over adult defendants.

The petitioners' response

42. The petitioners in HCJ case 4057/10 have responded to the Update Notice. They have welcomed the significant shortening of arrest periods in the case of minors aged 12-14, as well as the additional amendments announced by the respondents. However, according to them, the petition has not been exhausted because even after the amendments, the arrest periods applying to Palestinians in the Territories (West Bank), minors and adults alike, remain excessive, discriminatory and run contrary to the law. They have argued that the respondents had brought no legitimate argument so far which could justify the continuation of the severe discrimination between Palestinians and Israelis in the Region (West Bank) (settlers) in this matter. The petitioners have also argued that even after amendments to the (military) Order, a suspect may be held in detention for up to eight days without any judicial review, if he or she is suspected of an offense which is classified as security related, including offenses such as stone throwing (including the throwing of stones at property), and the organizing of an unlicensed demonstration. This lengthy arrest period applies also to minors aged 16 and above. In the case of offenses which are not security related, it is possible to delay the bringing of a suspect before a judge by up to 96 hours, even if that defendant is a 14 or 15-year-old minor. The petitioners have stated that an arrest is supposed to be based on a reasonable suspicion in the first place, and that a judicial review was a necessary condition for the legality of the arrest, regardless of the gravity of the offense. They argue that the difficulties which characterize investigations in the Territories (West Bank) are irrelevant to the examination of the legality of the arrest in the first place, and therefore, these difficulties should have no bearing on the period elapsing before a detainee is brought before a judge for the first time.

43. As for minors, the petitioners have argued that even after the amendment to the (military) Order, it is possible to hold a 12 or 13 year old minor in detention for no less than 24 hours until he or she are brought before a (military) judge, or for 48 hours if there is a need to carry out urgent

investigative actions, and that a 14-15 year old minor may be held in detention for up to 96 hours also for regular offenses, before being brought before a (military) judge. This is different from the case of 12 or 13 year old Israeli minors from the Region (West Bank settlers), who must be brought before a judge within 12 hours or 24 hours in some cases. The petitioners have added that even after the amendment, the authorities are not implementing the ban on detention until the end of proceedings in the case of [Palestinian] minors, a ban which applies to Israeli minors residing in the Region (West Bank). In addition, a lengthier arrest period until the end of proceedings, spanning one year as opposed to six months, will continue to apply in the case of minors, and this period can be extended by longer terms, three months at a time, as opposed to 45 days at a time by the Israeli (civilian) law. The petitioners have complained that there was no shortening of the period by which the arrest of a Palestinian suspect under the age of 14 can be extended, as well as the period until the release without charges of such a minor.

44. The petitioners have added that in spite of the removal of one third of security related offenses from the third addendum to the Order, it still includes a wide variety of offenses which do not justify lengthy arrest periods, such as stone throwing, including throwing stones at property, organizing an unlicensed demonstration and required in the arrest of an Israeli who resides in the region and is suspected of committing a grave security related offense. They believe that there is also no justification for the stipulation of a lengthier period regarding arrest periods until the end of proceedings in the case of security related offenses. The stipulation of a period which is too long, for detention until the end of proceedings, brings about a disproportionate violation of the defendant's right to liberty, in the petitioners' view, and also harms the fairness of the criminal process, especially when the lengthy period is automatically determined in advance and does not require a special permit violating a closed military zone order. They argue that if the authorities leave these offenses on the list, this would serve considerations which are entirely irrelevant to the investigative needs, such as deterrence considerations. At the very least, allowing these offenses to remain on the list does not pass the test of proportionality. The petitioners believe that there is no justification for holding Palestinian detainees suspected to security related offenses for up to 96 hours without any judicial review, when, by the Amending (military) Order it is possible to delay judicial review by six or eight days under conditions that are much more lenient than those, in the case of Israeli citizens. They believe that the expectation of a lengthy arrest may cause the defendants to admit to the allegations against them simply in order to avoid a lengthy stay in prison. They believe that the absence of a severe restriction on the duration of the trial allows for an unfair delaying of justice, which can furthermore make it difficult to seek the truth. The petitioners have stated that the issue of defining

security related offenses had not come up in the petition because the special arrest periods for these offenses were determined for the first time by the respondents in their response to the petition. Therefore, the legality and proportionality of the duration of arrest periods for security related offenses, as well as other offenses, is, in the petitioners' opinion, an inseparable part of the legal support which had initially been requested in the petition.

45. The petitioners have once again challenged the arrest period until the end of proceedings in the case of adults suspected of security related offenses, which had not been shortened in the amending (military) Order. They have also challenged the holding of a suspect for up to eight days before being brought before a judge if that suspect has been arrested in a "combative arrest"' as stipulated by article 33 of the (military) Order. The petitioners have insisted that the appropriate criteria for measuring whether arrest periods applying to Palestinian residents of the territories (West Bank) are reasonable and proportional is the time restrictions applying to Israelis who also reside in the Region (West Bank settlers).

46. The petitioners in HCJ case 3368/10 have also stated that they would join the aforementioned statement in the petitioners' response in HCJ case 4057/10. According to the former, the differences between the legal situation in the Region (West Bank) and that in Israel will remain very significant even after the welcomed changes to the (military) Order come into effect.

Another Hearing of the Petition

47. During a hearing we held on 23.5.2013, the two sides reiterated the essence of their arguments: The petitioners argued that the amendments announced by the Amending Order were insufficient, and that they were still petitioning this court. The State representative requested the separation of the issue of arresting minors from the petitions being heard, asking the court to allow the system to examine the implementation of the amendments to the Order throughout a reasonable period of time, in order to ensure that "things are working" and make informed decisions. The State representative stated that following this time, arrest periods would be reexamined since the system "is not stagnant".

48. On 29 October 2013, the respondents submitted an additional Update Notice. They informed the Court that on 30 September 2013, the Commander of the IDF Forces in the Region (West Bank) had signed an amendment to the (military) Order (hereby referred to as (military) Order 1727), which had come into effect on the very same day. According to (military) Order 1727, the instructions of article 7 in chapter 5 of the (military) Order, including the

definition of a minor's age in the Region (West Bank), would now be "permanent instructions". The respondents also stated that following the previous hearing of the petitions, and following additional administrative work, the Commander of the IDF Forces in the Region (West Bank) had signed on 1 September 2013 an amendment to the (military) Order (hereby referred to as (military) Order 1726), which had come into effect on 6 October 2013. According to (military) Order 1726, an additional shortening of the periods of judicial arrest for the purpose of interrogation in the case of minors had been carried out. Thus, a military court judge can decide that a minor should be arrested for the purpose of interrogation for a period of 15 days, and extend the arrest by additional periods not exceeding 10 days at a time, as long as the total duration of consecutive arrest periods related to the relevant event does not exceed 40 days. A military appeals court judge may extend the arrest, at the request of the IDF Military Advocate General, beyond the first 40 days, by additional periods not exceeding 90 days each.

49. Furthermore, in the case of adults, the periods of judicial arrest for the sake of interrogation stipulated in (military) Order 1726 are similar to those in Israel. Thus, a military court judge may decide that an adult suspect should be arrested for 20 days for the purpose of interrogation, and extend the arrest by additional periods not exceeding 15 days at a time, as long as the total duration of consecutive arrest periods related to the relevant event does not exceed 75 days. A military appeals court may extend the arrest, at the request of the IDF Military Advocate General, beyond the first 75 days, for additional periods not exceeding 90 days each.

50. According to the respondents, it is evident that following (military) Order 26 coming into effect, the periods of judicial arrest for the sake of interrogation in the case of adults in the Region (West Bank) are identical now to the analogous periods of judicial arrest in Israel, *mutatis mutandis*, with the exception of two points: First, the maximum duration of the initial judicial arrest warrant (20 days in the Region (West Bank) in comparison to 15 in Israel). Secondly, the requirement of an authorization by the Israeli Attorney General for a request to extend an arrest for the purpose of interrogations beyond 30 days in comparison to the requirement of an authorization by the IDF Attorney General for a request to extend an arrest for the purpose of interrogations beyond 75 days, in the Region (West Bank). In view of the previous Update Notices and the current one, the respondents believe that their petitions have been exhausted, and should be rejected.

51. Petitioners in HCJ case 4057/10 have submitted on 30 December 2013, a response to the Update Notice. According to them, the notice reflects the wrong conception which guides the respondents, who have stipulated

discriminatory and excessive arrest periods for Palestinians on the one hand, and have purportedly adopted the principle of equality on the other hand. The petitioners welcome the respondents' decision to distinguish between minors and adults regarding the period of arrest for the purpose of interrogation, and shorten to some extent the periods applying to Palestinian minors. However, they disagree with the arbitrary stipulation of longer detention terms for Palestinian minors, in comparison to the periods of arrest stipulated for Israeli minors residing in the Region (West Bank settlers). The petitioners also argue that the differences between the judicial arrest periods in the case of adults are not just "technical", since, as a rule, Israeli adults in the Region (West Bank) cannot be arrested for more than 30 days in relation to an event, while Palestinian adults may be arrested for 75 days, and their arrest may even be extended without adopting the basic rule according to which, the detainees is to be "released from detention, on bail or without bail" after 75 days. According to the petitioners, the respondents have yet to provide any legal arguments as to the discriminatory arrest periods imposed on Palestinians.

The Court's decision

52. A person's right to liberty is a constitutional right, grounded in article 5 of Basic Law: Human Dignity and Liberty, which states that a person's liberty is not to be denied or restricted by arrest, detention or any other way. The importance of the right to liberty in a democratic system also stems from the ramifications of the denial of liberty, for the person affected, and the damage which may be inflicted on her/him as a result. The denial of liberty is embodied not just in the person being in state custody, but also on a daily basis, when the person is subjected to the disciplinary and behavioral rules in the place of custody, which also restrict her/his liberty. The right to a fair procedure before a person's liberty is denied is derived from the right to liberty, and the person should be allowed to respond to the charges and argue her/his case before the right is denied. However, the public interest is also served by exposing criminals and preventing crime, especially when it comes to foiling security related offences. Therefore, one should strike the right balance in the ever existing tension in the Israeli reality, between security needs and the upholding of the rights of suspects. This tension arises in the case before us as well - the length of detention of Palestinian residents of the Region (West Bank).

53. As previously mentioned, the purpose of the laws of arrest, including those in the Region (West Bank), is to balance the public interest in exposing crime and preventing it, and the upholding of the suspect's rights. One should keep in mind that the Region (West Bank) has special characteristics, stemming from the security reality and the essence of the military governance which applies

there, as well as security related needs and difficulties in enforcing the law, in the face of a lack of Israeli control over parts of the territory. One cannot dispute the assertion that ongoing judicial review of the process of arrest for the purpose of interrogation is important for the upholding of human rights, but the continuity is important for the realization of the purpose of the interrogations: the exposure of truth. Exposing the truth quickly and efficiently is especially important when the security of the State and its citizens are in the balance.

54. The dilemma is hence clear: on the one hand, conducting a fair legal procedure is a crucial element in ensuring the proportionality and constitutionality of detention for the purpose of interrogation. And from a principled point of view, one should regard the appearance of a suspect before the judge not as an obstacle, but as an elementary condition for an effective and constitutional detention for the purpose of interrogation. This follows from the common perception of judicial involvement as an integral part of the detention procedure. This judicial review is not "external" to the detention, but an inseparable part of the unfolding detention *per se*. This constitutional perception regards judicial involvement as a necessary condition for protecting individual liberties.

The HCJ has relied on rulings such as *Brogan v. United Kingdom* (1988) 11 EHRR 117 at 134, to argue that:

> "J*udicial involvement is the barrier to arbitrary conduct, it follows from the principle of the rule of law. It ensures that the fine balance between individual liberties and public security is maintained*" (HCJ case 3239/02 Marab vs. The Commander of IDF Forces in Judea and Samaria)

It follows that the methods of interrogation should suit the need to stop the interrogation at some point in order to allow for a fair and effective judicial procedure. A lengthy interrogation, when the defendant is under arrest and cannot argue her/his case before the court, may culminate in the disproportional violation of human dignity and liberty.

On the other hand, one cannot ignore the existence of the security legislation (military law) which we are discussing against the backdrop of a complex security related reality in a territory administered under belligerent conditions. The special security related conditions in that territory (West Bank) dictate the formation of arrangements that are different from those in the administering state.

55. As previously stated, the petitioners have argued that the (military) Order, even after the amendments, reflects an improper balance between the need to maintain public and state security and the need to uphold human rights, human dignity and human liberty. The respondents wish to examine the implementation of the Amending (military) Order before conclusions can be drawn on the matter. That is the state of affairs in this case. One way or another, it seems that both parties to this petition share the opinion that judicial review is an essential tool in the upholding of the legality of the arrest, and also share the aspiration for shortening the arrest terms of Palestinian residents of the Region (West Bank) as much as possible, and implementing statutory arrangements which would be as similar as possible to those in Israel; in terms of the extent of protection they provide for the rights of a suspect or a defendant. That was also the essence of their words in this court, when face with this issue in the past. The Supreme Court opined that:

> *"The time has come to implement in the military court system statutory arrangements similar to those stipulated by the DETENTION LAW in Israel, in order to defend the right of defendants; and all shall be subject to the special characteristics of the region. Thus, for the purpose of stipulating a time period for an arrest starting at the moment of the submission of an indictment, until the date in which the trial starts (article 60 of the Detention Law, which has no analogous statutory arrangement in the region). A restriction of the duration of an arrest between the end of an interrogation and the submission of an indictment (article 17(d) of the Detention Law, which also has no analogous statutory arrangement in the region). And also a shortening of the arrest periods stipulated in the security legislation which applies in the region, since these are significantly longer than those stipulated by the Israeli Detention Law"* (HCJ case 10720/06 Farid v The Military Appeals Court)

56. During the procedures involving this petition, the respondents have taken far reaching steps to shorten said terms of detention, in a way which has brought them close to terms in Israel. For the sake of order and clarity, I will introduce through the following table the amendments to the (military) Order since the submission of the petition:

Type of detention	**Old provisions**	**New provisions**
Preliminary detention until being brought before a judge on charges that are **non-security** issues	8 days	**Minors**: 12-14 - 24 hours 14-18 - 48 hours **Adults:** 48 hours with a possible

		extension to up to 96 hours
Preliminary detention until being brought before a judge on **security** related charges	8 days	**Minors**: 12-14 - 24 hours 14-16 - 48 hours 16-18 - 96 hours **Adults:** 96 hours with a possible extension to up to eight days
Judicial detention for the purpose of pre-indictment interrogation	30 days • With possible extension, for no more than 30 days at a time, as long as all detention terms in continuity, with relation to the relevant case, do not exceed 90 days. • Extension by an additional 90 days is possible	**Minors:** 15 days. • May be extended by additional terms of 10 days each, as long as all the detention terms in continuity, with relation to the relevant case, do not exceed 40 days. • May be extended beyond 40 days, for additional terms not exceeding 90 days each. **Adults:** 20 days. • May be extended by terms of 15 days each, as long as all detention terms in continuity with relation to the relevant case, do not exceed 75 days.

		• May be extended beyond 75 days, by additional terms not exceeding 90 days each.
"Bridging Detention" for the purpose of indictment	No limit	8 days
Post-indictment pre-trial detention	No limit	60 days
Detention until the end of proceedings on charges that are not security related	2 years • May be extended by 6 months at a time	**Minors**: 1 year - May be extended by 3 months at a time. **Adults**: 1 year - May be extended by 6 months at a time.
Detention until the end of proceedings on security related charges	2 years	**Minors**: 1 year - May be extended by 3 months at a time. **Adults:** 18 months - May be extended by 6 months at a time.

57. The new legal situation in the Region (West Bank), following the introduction of the Amending (military) Order, is still different from the legal situation in Israel.

58. The data above show the significant changes which the respondents have made. Thus for example, the maximum detention term until a defendant is brought before a judge in cases unrelated to security issues is 48 hours from the time of arrest, with the possibility of extension according to a decision by an administrative authority. The extension may span additional terms not exceeding another 48 hours, in case of urgent interrogative actions. For security related offenses, the maximum detention term until a defendant is brought before a judge is 96 hours from the time of arrest, with the possibility of extension by an administrative authority, by another 48 hours, under exceptional circumstances, if the Director of the GSS's interrogation department is convinced that real damage may be caused to the interrogation. Under extremely special circumstances, the detention may be extended by an

additional 48 hours (beyond said six days), if the director of the GSS's interrogation department believes that the termination of the interrogation could damage a crucial interrogative action intended to prevent casualties. The respondents have reiterated that the new arrangement necessitates reorganization, and has yet to be examined after two years from the (military) Order coming into effect, based on experience accumulating until that time.

59. There has been a significant change on the issue of minors too. Let us recall that before the petitions were submitted, there had been no distinction between minors and adults for the sake of detention terms in the Region (West Bank). Nowadays, the minor age limit in the region has been raised from 16 years to 18, and special arrangements have been made for minors, based on a categorization into age groups. Thus for example, (military) Order no. 1711 states that the maximum detention term until a "youth" (a person aged at least 12 years but no more than 14) is brought before a judge will be 24 hours from the time of arrest, with the possibility of extension by an additional 24 hours due to urgent interrogative actions, for security related offenses and other offenses as well. The Order also states that the maximum detention term until a "soft adult" (a person aged at least 14 years but no more than 16) is brought before a judge will be 48 hours from the time of arrest, with the possibility of extension by another 48 hours, due to urgent interrogative actions, for security related offenses and other offenses as well.

60. As for the definition of security related offenses, the distinction for this purpose, in the context of extending detention terms in the Region (West Bank), has been carried out by the respondents only after the submission of the petitions being heard by this Court. Therefore, the petitioners' reservations in this matter are not included in their petitions, and have been added in their response to the respondents' Update Notices. The disagreement on the question of which crimes are to be defined as security related offenses is directly and strongly related to the remedies requested by the petitioners, and in fact, this disagreement stems from these requests. Indeed, we are of the opinion that the respondents should take into their consideration our comments during the hearing of the petitions, including comments on the questions of whether one should regard all security related offenses as one whole, or would it be appropriate to remove some of them from the scope and definitions of the (military) Order. Subsequently, the respondents have removed one third of the security related offenses on the list in the addendum to the (military) Order, a move which one should welcome. If the petitioners still have reservations as to the offenses on the list in the addendum, they are free to submit these separately, and there is no need to discuss this issue furthermore in the framework of the petitions before us, which already span numerous issues.

61. Thus, we see that the administrative work carried out in cooperation with the Ministry of Justice and the Prime Minister's Office has yielded a welcomed change in the arrest periods stipulated by the (military) Order. The change was meant to reduce, as much as possible, the violation of the rights of Palestinian detainees. There is no doubt that the State has come a long way and had significantly, even dramatically shortened the arrest periods applying to Palestinian residents of the Region (West Bank). It is noteworthy that numerous meetings and lengthy sessions have been held by the State, the IDF and the Ministry of Justice, in cooperation with other government Ministries, until the results which are reflected by the Amending (military) Order have been produced. (From this point of view, the achievements of the petitioners are as good as gold. Their efforts to bring about a shortening of the arrest periods of Palestinian residents of the region have borne significant fruit, and these efforts are laudable).

62. Thus, considering the differences which arise from the different conditions in Israel; and considering the dramatic changes made recently, whose implementation "on the ground" has yet to be examined over a period - we believe that the current terms of detention set with respect to **adults** suspected of **security related** offenses, during their **pre-indictment** detention term - are **fair and proportional**. Therefore, there are no grounds for our intervention in this matter for the time being. Let us recall that the respondents have asked for a period of two years, to examine the way in which the system adapts to the changes made in the Order. One can assume that in the end of this period, and in accordance with the reality in the Region (West Bank), the possibility of further shortening said detention terms will be considered. We therefore assume that the respondents' policy will be re-examined from time to time, according to the assessments of the security conditions, and if an easing of these aspects can be consolidated, the respondents will take future action accordingly, and shorten the stipulated detention terms yet again. Obviously, the petitioners will also be able to argue against said detention terms following the end of the "adaptation period".

63. Having said that, and without dismissing the efforts invested by the respondents and the important changes they have made following the submission of the petitions, we would like to express our dissatisfaction with three pivotal (somewhat overlapping) matters. First, regarding the terms of detention for Palestinian **minors** in the Region (West Bank), indeed, significant changes have also been made with respect to this group, as previously detailed. However, in view of the prudence and sensitivity with which one should treat those who have not reached adulthood, we believe that further monitoring of this matter is required. Secondly, as to detention terms set for Palestinians accused or suspected of **offenses which are not security**

related, the reasons provided by the respondents, at various stages, were insufficient to convince us of the need for such lengthy detention terms in "standard" criminal offenses. The same holds for the third issue, that of **detention until the end of proceedings**, for both minors and adults, on security related charges and other charges (including post-indictment pre-trial detention, which may span up to 60 days now). The circumstances and events pointed to by the respondents, to justify lengthier detention terms in the region, are predominantly related to the stages of interrogation and evidence collection, and not to the trial stage, which follows indictment. In view of these difficulties, we had considered issuing an *order nisi* in the three aforementioned matters, but at this stage we have decided to leave the petitions pending, instruct the respondents to reconsider how one can make progress in these matters, and submit an update notice by 15 September 2014.

To summarize, in the matters related to maximum detention terms of adults suspected of security related offenses, detainees during the pre-trial stage; and the scope of offenses defined as security related - the petition are rejected without an order for court expenses. However, in the matters related to the detention terms of minors; the detention terms of adults in offenses that are not security related; and detention until the end of proceedings (of both minors and adults, on all charges) - the respondents are to submit an update notice by 15 September 2014, as stated previously.

Ruling issued today, 6 April 2014

END