



SECRET ARRESTS UNDER COLOR OF LAW

The detention of journalist Majd Kayyal, Adalah's web editor, upon his return from a journalists' conference in Lebanon, has revived the debate in Israel regarding the issue of "secret arrests". When an individual is detained for offenses classified as security offenses, the General Security Service (GSS or Shabak), which carries out the interrogations, exercises the broad powers that are granted to it by law. This authority makes it possible for the GSS to use multiple, highly harmful methods which, when combined, constitute secret arrest. These practices constitute a blatant violation of the detainee's fundamental rights, undermine his/her constitutional right to due process, and provide an opportunity for the use of illegal means of interrogation and torture, while removing the possibilities for public scrutiny, and at times, legal oversight of the detention and the GSS's behavior in the course of the case. This commentary will briefly survey these practices and discuss how they violate the individual's rights during detention.

Prohibition on meeting with legal counsel: The right of a detainee to meet with an attorney is a basic right under Israeli and international law. Yet in cases when a detainee is suspected of security offences, this right becomes conditional. The head of the GSS interrogation team or the head of the interrogation department is authorized to issue an order preventing meetings between the detainee and his/her attorney based on the claim that the meeting may disrupt the interrogation process or endanger public security. The official may extend the order for 10 days and, with court approval, for up to 21 days.

Meeting with an attorney before and during the interrogation is necessary for protecting the individual's right to due process and his/her right against self-incrimination. It protects the person from becoming a victim of the interrogators' manipulations and from providing false confessions. Meeting with counsel is also necessary to provide oversight of the interrogations and to ensure that no illegal interrogation techniques, including torture or ill-treatment, are used. While a detainee is prevented from meeting with an attorney, he or she is cut off from the outside world and contact is limited to the interrogators only.

Secret evidence: By and large, police requests for the extension of detention are based on secret or "classified evidence". However, through discussions with a detainee, an attorney can understand the direction that the interrogation is taking and identify the allegations and circumstances involved in the case. Thus, the attorney can challenge the police's account before the court and effectively argue on behalf of his/her client.

In the case of journalist Kayyal, the court agreed, on the basis of secret evidence, to extend his detention for eight days. At the same time, the court also extended the order preventing meetings with his attorney. Based on the same evidence, the court imposed a gag order on all aspects of the detention and the interrogation for the entirety of the detention.

Gag order: Frequently, when an individual is detained for offenses classified as security offenses, the GSS asks the court to impose a sweeping gag order on the case, including the fact that the individual has been detained, as well as specifics regarding the interrogation and the allegations against him/her. This request is usually supported by "secret evidence", which the individual and his/her attorneys are not allowed to examine or challenge. The ultimate claim made by the interrogation authorities is that publicizing the case would disrupt the course of the interrogation. But at a time of global internet communication and active social media networks, it is impossible to enforce a gag order. Today, anyone who needs to know about the detention will most likely know and "post" about it, usually within hours and certainly within days.

A gag order issued by an Israeli court is only binding on the Israeli media and, in practice, its imposition only serves to remove the interrogation authorities from public scrutiny and criticism. Under a gag order, interrogators do not need to consider the necessity of the individual's detention, or whether their interrogation methods violate the detainee's rights. However, the principal harm of a gag order is that the detainee cannot present his/her full account of the events and defend it before the public.

In the case of Kayyal, the court imposed a gag order after his arrest had already been made public in both the local and international media, and after it was widely circulated in social network sites. The gag order provided a cover for the GSS to continue keeping Kayyal in detention and prohibiting the meeting with a lawyer; but without the gag order, it would have been difficult to continue the prohibition in the face of public scrutiny. It is not surprising, therefore, that immediately before the gag order was lifted, the GSS removed the ban on Kayyal's meeting with counsel, and that as soon as the gag order was lifted, Kayyal was released to house arrest instead.

Absence of audio or video documentation of interrogations: Israeli law stipulates that the authorities must make audio and video recordings of the interrogations of all detainees suspected of committing offenses that carry a maximum sentence of ten years or more. This obligation, however, is not imposed on GSS interrogations of individuals suspected of security offences; the GSS are exempt by law. The absence of audio or video documentation creates opportunities for the use of illegal means of interrogation, including torture or ill-treatment, and denies the detainee the ability to effectively prove the use of illegal techniques. Without the recordings, the detainee cannot prove torture, the manipulation of the interrogators, or the methods used to extract false confessions. If the detainee later argues before the court that the confessions were extracted illegally, he/she will have no evidence other than personal testimony to support the contention, and the courts overwhelmingly favor the account of the interrogation authorities over that of the individual.

In Kayyal's case, most of his interrogations during the course of five days of detention were not documented, not even in writing. He was not asked to sign a statement at the end of the interrogations, as is customary in criminal investigations. This raises serious doubts regarding the nature and legality of the interrogations.

Extension of detention for prolonged periods of time: When an individual is detained for security offenses, the interrogation authorities may ask the court to extend the suspect's detention for up to 15 days, the maximum amount allowed by law. In cases of security interrogations, the courts tend to accept the interrogation authorities' requests, even if not fully, and to impose lengthy periods of detention.

Notably, the only grounds for detention of a suspect in these cases are for the good of the interrogation and/or for the prevention of harm to the public. The court cannot extend a person's detention, even if an offense they allegedly committed is severe, if the interrogation authorities cannot prove that the detention is necessary for the needs of the investigation or that the detainee constitutes a threat to public security. However, an attorney has no practical possibility of challenging the extension of an individual's detention if the request is based on classified secret evidence and if the attorney is prevented from meeting with the detainee.

Summary

Each one of the practices discussed above, in itself, constitutes a grave violation of the detainee's rights and draws heavy suspicion to the entire interrogation. The use of several or all of these practices simultaneously amount to secret arrests and recall methods commonly employed by history's dark regimes. For the GSS, these practices are powerful means to intimidate and threaten the detainee, as well as family members and friends, rather than to facilitate a proper investigation. The use of these practices in Israel must therefore cease immediately.