

Secret Prison for UFOs

By Majd Bader*

The Israeli Supreme Court's judgment on the subject of the secret prison, code-named 1391, was published on 20 January 2011, quietly and without ceremony.¹ Anyone with great expectations for a resounding legal breakthrough was seriously disappointed. The Supreme Court once again demonstrated its conservative nature with respect to human rights in general and the rights of weak population sectors in particular, but this time it "brilliantly" presented a disturbing innovation, in the form of a seal of approval for the existence of a detention facility the location of which is kept a deep dark secret.

The secret detention facility, code-named 1391, emerged into the limelight more than seven years ago following an investigatory report by Aviv Lavie of *Ha'aretz*.² Until that time the State had not deemed it proper to notify anyone, except for the military and political elite, of its existence, and the issue would probably never have become generally known and would never have been the subject of in-depth public debate.

A reading of the judgment written by Supreme Court Chief Justice Dorit Beinisch, paints a disturbing picture of legal permission for the additional erosion of human rights, in general and the rights of detainees in particular. The matter is all the more worrying due to the nature of the approving entity, which is perceived as the "patron of the rule of law" and the "bastion of human rights" in Israel. It was not produced by the feverish heads of a band of Rabbis for whom racist doctrine is their guiding light.

Under the auspices of the doctrine of balancing between human rights and the public interest, with the security interests placed firmly on the royal throne, the Supreme Court performed its balancing act and, with commendable legal hair-splitting and zigzagging. The Court refrained from stating unequivocally that in "Jewish and democratic" Israel, it is forbidden to have a detention facility whose location is unknown to the public, and that it should be closed down forthwith. Instead, the Supreme Court chose to take the complex, meandering and superfluous road of "appropriate balance" and, after examining the clashing of interests and rights, it reached the conclusion that the basic human rights of the detainees and their families are indeed being violated. However, the infringement is proportional, the court ruled, since the State has suggested an arrangement that would minimize it.

According to the arrangement, the details of which have not been published, the State undertakes not to hold in this facility citizens of Israel or residents of the occupied territory, detainees will not be held in the facility except with the approval of the highest ranks in the military system, and the detention will be for a relatively short time. The Supreme Court also emphasized that the facility is under the supervision of the Military Judge Advocate General and the Ministry of Justice. This arrangement raises many question marks and problems on which the Court refrained from giving its opinion.

¹ See HCJ 9733/03, *HaMoked: Center for the Defence of the Individual v. The State of Israel* (judgment delivered 20.1.2011) available in English at: http://www.hamoked.org/files/2011/113270_eng.pdf

² See Aviv Lavie, "Inside Israel's Secret Prison," *Ha'aretz*, 20 August 2003 available at: <http://replay.waybackmachine.org/20071121052741/http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=331637>

You may ask: for whom is that unknown detention facility intended if the State undertakes not to hold in it Israeli citizens or residents of the occupied territories? And for what is it needed? What is the definition of the "Territories", and are the residents of the Gaza Strip considered for this purpose "residents of the Territories", and if that is not what the Supreme Court was referring to, what does that secret facility exist for? Are we planning to receive visitors from outer space in the near future? It may be wondered why the authorities and even the Supreme Court are concerned that an external objective entity, whether international or local, might inspect the detention facility? There is no satisfactory reply to the question of why "the sacred cow of security" gains the upper hand when the Supreme Court does not demand that the conditions in the facility and what is taking place inside it be inspected by the International Red Cross or the Israeli Public Defender, or by a regular Knesset Member. It is further unclear why the Supreme Court refrained from defining that "very short period" in which a detainee may be held in the facility.

The Supreme Court judgment in this case constitutes a further step in the serious and ongoing violation of the rights of security prisoners and detainees, and even gives this violation legal approval by the highest instance. Reading this judgment together with other disturbing developments, such as the suggestion to establish a parliamentary investigation committee into the financing of human rights organizations and dozens of racist draft laws, the purpose of which is to restrict and repress the Arab minority in Israel, prove that Israel is knowingly and surely sliding towards a dark and oppressive regime.

The fact that this judgment is accepted in appalling serenity, without raising any cry or protest, only adds to the seriousness of the situation. Indeed, Israel is marching confidently towards being a "Jewish phobicraticstate".

* The author is an attorney specializing in international law and human rights law.