

7 November 2012

Original: English

**OPEN-ENDED INTERGOVERNMENTAL GROUP
OF EXPERTS ON THE STANDARD MINIMUM RULES
FOR THE TREATMENT OF PRISONERS
BUENOS AIRES, ARGENTINA, 11 – 13 December 2012**

**RESPONSE OF THE GOVERNMENT OF ISRAEL¹
TO NOTE CU 2011/26**

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Part I

General principles

The right of persons under detention to conditions ensuring basic maintenance of their human dignity is acknowledged as a fundamental right in Israeli law. The enactment of *Basic Law: Human Dignity and Liberty* in 1992 has spurred significant legislative reform bearing on the treatment of detainees, as well as policy changes in the education, hiring, and training of police and prison personnel who deal with detainees.

Even before the enactment of the above *Basic Law*, the High Court of Justice repeatedly affirmed the rights of prisoners for dignity. Chief Justice Barrack held that the right to physical integrity and human dignity are granted also to prisoners and detainees and that "The walls of the prison do not separate between the prisoner/detainee and Human Dignity.... The prisoner/detainee is deprived of his freedom but not of his Human character" (H.J.C. 355/79 *Katlan V. The Prisons Service*, (1980)).

Moreover, on November 19th 2009, the Supreme Court held that Amendment no. 28, concerning the privatization of prisons, violates human rights disproportionately and is therefore unconstitutional (H.C.J. 2605/05 *Academic Center of Law and Business, Human Rights Division v. The Minister of Finance*).

Hereinafter, details concerning the conditions of prisoners in the State of Israel will be presented with an emphasis on Supreme Court rulings concerning prisoner's right to dignity and human rights.

Statistics

The Israeli Prisons Service (IPS) operates 15 incarceration facilities in Israel, three of which function as detention facilities and 12 as prisons. From an administrative standpoint, these facilities are divided into three geographic regions (north, central and south), such that in each region there is one maximum-security prison and one

detention facility. There is one incarceration facility, named Neve Tirza, for female prisoners and defendants. The Israeli Police administers nine regional detention facilities; in addition, many of the 60 police stations across the country have several detention cells, generally used for brief detentions or prior to transfer to one of the regional facilities.

There is a certain overlap in the types of populations handled by the Police and the IPS. In addition to convicted criminals sentenced to terms of imprisonment, the IPS facilities are used for detention of persons imprisoned in the context of civil proceedings (such as non-payment of alimony or contempt of court); for certain suspects, defendants and convicts in security-related criminal cases; for administrative detainees; and for defendants remanded until the end of their trial. Suspects in security-related cases who have not been charged with criminal offenses, as well as some who have been formally indicted, may be held during the course of the criminal investigation or the trial in either Police or IPS facilities; if such persons are convicted and sentenced to imprisonment, however, they will serve their sentence in an IPS facility.

In 1996, the *Criminal Procedure (Enforcement Powers - Detention) Law 5756-1996*, and detailed implementing regulations, were enacted, aimed at an overall legislation of this issue which stipulate minimum conditions of detention and detainees' rights. This statute sets minimum standards for all persons in detention; prior to its enactment, such standards had been codified and applied only for persons in the custody of the IPS. Moreover, under Section 7 of the statute and Regulation 2 of the implementing regulations, detainees are to be held only at a detention facility which meets all of the requirements of the law regarding infrastructure, services and detainees' rights. The Minister of Public Security may rescind his/her approval of a particular detention facility at his/her discretion, if the conditions or the detainees' ability to enjoy the full range of their rights under the new law are sufficiently inadequate. If, instead, the Minister orders that certain shortcomings at a facility be repaired to comply with the provisions of the law, and they are not so repaired within a reasonable time, then the Minister must rescind his/her declaration that the facility is fit for operation (*Criminal Procedure (Enforcement Powers - Arrest and Detention)(Conditions of Detention) Regulations 5757-1997, Reg. 2*).

Supervision by Public Authorities

Detention conditions and treatment of detainees are subject to several overlapping systems of review and supervision by public authorities. There are four existing layers of institutions with review authority over the workings of the prisons and detention facilities. First, the IPS maintains Prisoners Complaint Ombudsman with internal review departments, which are charged with ensuring compliance with standing orders in force. Second, the State Comptroller has general authority to examine the operation of any official entity. It has used this power to investigate detention practices, though not, thus far, in relation to physical conditions of detention. In addition, both the IPS and the Israel Police have independent, high-ranking governmental comptrollers with broad powers. Under the *Prisons Ordinance*, the Attorney-General and Justices of the Supreme Court are granted full review powers *ex officio* with regard to any prison facility in the country; District and Magistrate's Court judges have review powers over prisons within the area of their jurisdiction. In addition, the Minister for Public Security has used his authority to appoint literally dozens of official visitors to evaluate the operations of prisons. These Visitors are comprised of lawyers from the Ministry of Justice and other Government Ministries that are being appointed annually, either for a specific prison or nationwide. Finally, two Knesset Committees -- the Constitution, Legislation and Law Committee and the Interior Committee -- have assumed review powers over detention facilities to ensure compliance with legislative requirements and protection of the rights of detainees.

Official Visitors are allowed to enter the prisons at any given time (unless special temporary circumstances apply), inspect the state of affairs, prisoners' care, prison management, the degree of compliance with any legislative or other provisions, etc. The visitor may speak with any prisoner privately, and prisoners may themselves request an interview with the visitor and present their complaints, including grievances pertaining to use of force. Prison officials are obligated to provide the visitor with any information or document at his/ her request.

Attorney General's Guideline (No. 4.1201. (1.5.75), updated – 1.9.2002) broadened the scope of the above to also include detention facilities and detention cells in police stations.

Additional monitoring is conducted by visits of the ICRC personnel.

Complaints by Prisoners

Judicial Review: Detainees at IPS facilities are entitled to file petitions against governmental authorities or officials "in any matter related to his imprisonment or detention" directly to the District Court in the region where the prison is located (Section 62A of the *Prisons Ordinance*). In practice, such petitions are often heard at the prison itself by a single District Court judge who comes periodically to the prison for that purpose. The volume of such complaints has grown dramatically following the institution of hearings at the prison. It is estimated that approximately 10,000 petitions are filed and adjudicated annually, on matters small and large, several were accepted.

Decisions of the District Court may be appealed by leave to the Supreme Court. In addition, the Supreme Court, sitting as High Court of Justice, retains residual jurisdiction over such petitions in appropriate circumstances (*Prisons Ordinance*, Sections. 62A-62D).

Complaint procedures: Detainees held in Police detention facility and in IPS facilities may avail themselves of several, parallel complaint procedures regarding their conditions of detention, their treatment at the detention facility and regarding the staff and wardens', including claims of wrongful use of force. In addition to those disciplinary and criminal procedures against law enforcement officials (The Warden's Investigation Unit (WIU) or The Police Internal Investigations Department) detainees may file complaints regarding the conditions of their detention as follows:

IPS. Persons in the custody of the IPS may file a complaint to the director of the prison at which they are held in respect of the conditions of detention. Such a complaint may be filed in writing or, at specified times, orally. Upon submission of any such complaint, the director of the prison must investigate the matter and give an answer to the detainee within seven days, or, in urgent cases, within three days. Should the detainee not receive a response within that period, or should the response be unsatisfactory -- or should the complaint involve the director of the prison himself -- then the detainee may apply to the Prisons Commissioner, and the prison director is

bound to deliver such complaints to the Commissioner. The Commissioner must respond to such complaints within 14 days, or within six days in urgent cases. The deadlines for response to complaints may be extended if the matter in question requires an in-depth investigation, either by law or as a practical matter. The complainant must be notified of the reason for the delayed response in such cases. *See generally* Prisons Regulations, 1978, reg. 24A.

Police Detention Facilities. Under current law and practice, detainees in Police detention facilities may file petitions with regard to any matter related to their detention to the District Court where the detention facility is located. In practice, most detainees in Police detention facilities must be brought before a judge periodically in any case to determine whether to release them or to extend the detention during the criminal investigation, and during these detention hearings complaints regarding conditions of detention are commonly raised and adjudicated. *See* Police Standing Order no. 12.03.01, *Yalkut Pirsumim* 4230, 5754 (14th July 1994), p. 4228.

Publicity: A folder outlining the rights of detainees and minimum conditions of detention in IPS facilities is available in the library of every prison facility. Under the statute dealing with arrest and detention, a description of detainees' principal rights and duties must be posted in a prominent place at each detention facility (*Criminal Procedure (Enforcement Powers - Detention) Law 5756- 1996, Section 9(d)*).

Register

No person shall be admitted to prison unless he/she or his/her escort, if he/she were escorted, presents an imprisonment order or detention order. Nevertheless, it is allowed to admit to prison a child of a female prisoner along with his/her mother if he/she is nursing him/her and he/she is less than two years old, without such orders.

The prison director must verify that the order is signed by the relevant authority, made according to the law and that the prisoner is the person mentioned in that order.

The prison director is responsible for registering all the prisoner personal details. The prisoners register must be preformed in an organized and accurate form and should include the imprisonment/detention period and the date of the end of the

imprisonment. The prisoner's personal medical file will be transferred to the prison clinic. The prisoner's personal social file will be transferred to the head of the prison's social department.

When admitted to prison, a physical search on the prisoner's body is to be performed by a warden, and forbidden objects must be taken to prison's custody.

The prisoner will be examined by a doctor as soon as possible after admission. Until the examination takes place, the prisoner will be held separately from other prisoners. The prison doctor must write down the prisoners' medical condition and other notes relevant to the prisoner imprisonment period.

Money, clothes and other personal objects that the prisoner brought with him/her but is not allowed to keep will be passed to the custody of the prison director. The prison director is responsible for registering all such objects, which will be returned to the prisoner upon his/her release.

Separation of Categories

In the IPS incarceration facilities', separation is maintained between male and female detainees (excluding rehabilitation facilities, in which it has been recommended that joint stay of women and men would contribute to the treatment), between convicted prisoners and defendants or detainees who have not been convicted, between minors and adults, between persons detained in the context of civil proceedings and other detainees, between administrative detainees and other detainees, and, to the extent possible, between first-time and recidivist offenders. Additionally, all detention facilities must maintain a separation between detainees and convicted prisoners, and, to the extent possible, between first-time indicted persons and those who have been previously indicted, as well as between first-time detainees and recidivists.

In practice, prisoners or detainees of different religions may be separated from one another, to a greater or lesser extent, if necessary to maintain order within the prison.

Security-related suspects, defendants and convicts are held separately from the rest of the population at the facility, both for their own protection as well as to maintain order

among the detainee population as a whole. To the extent possible, prisoners who are undergoing drug rehabilitation are separated from the general prison population.

The confinement of mentally-ill persons in psychiatric hospitals is discussed below. Convicted prisoners who are found to suffer from mental illness are held at the mental health facility at Ayalon Prison, which is staffed by Health Ministry employees while remaining under the overall administrative responsibility of the IPS. Police detention lock-ups do not have separate wings or facilities for mentally-ill detainees. Rather, to the extent that the concern is raised at any stage of the criminal process that a person detained for any reason may suffer from a mental illness, then the Court or the District Psychiatrist may order that the detainee be transferred to a mental hospital and held there for observation under conditions of detention, in order to determine whether the detainee needs treatment for a mental illness, or whether he/ she is fit to stand trial, accordingly.

Accommodation

Every prison cell includes: immovable or movable bed; mattress; blankets and bed sheets; closet; table or a book shelf and a chair; a curtain in the entrance to the cell toilets, unless security conditions prevent that; and a curtain on the windows in the rehabilitation section and the outdoors work section.

Under the law and regulations, each cell in a detention facility must have adequate lighting and a window affording adequate ventilation from the outdoors, or, if there is no such window, reasonable alternate ventilation must be installed. Each cell must have a sink and toilet, and the toilet must be physically separate from the living area of the cell to enable privacy, as must showers, if located in the cell. Any cells lacking a toilet or sink may be used only for very restricted purposes and for a limited time period, mainly to prevent attempts to destroy or conceal evidence in a criminal investigation, particularly in narcotics cases.

All cells built after the enactment of the implementing regulations (May 1997) must have a table, seats, and shelves for the detainees' personal use, must have no more than four beds, must afford an average area of not less than 4.5 sq.m. for each detainee, sufficient electric capacity to accommodate heating and cooling appliances,

television, and other appliances that detainees are entitled to use. Showers must be separated from the toilet. To the extent possible, all refurbishments of existing detention facilities should observe the above criteria as well (Regulation no. 3).

Court Ruling: On February 12, 2007, the Supreme Court declared that the State must provide a bed to every prisoner held in an Israeli prison. The Court ordered full implementation of this obligation by July 1 of that year. In its decision, the Court stated that the right to sleep on a bed is a minimum standard of living and dignity, based on the right to dignity enshrined in the *Basic Law: Human Dignity and Liberty*.

During the proceedings, the State did not object to the petitioners' claim that a prisoner's right to sleep on a bed is an integral part of her/his basic right to dignity, but requested that the Court recognize possible limitations which might prevent full implementation of the principle of affording a "bed to every prisoner," especially in unforeseen times of emergency. The Court stated: "when on the one side of the balance equation rests the right of a person to minimum standards of living when held in prison, a contradictory value with a special significance is necessary in order to justify damage to this fundamental right". (HCJ 4634/04 *Physicians for Human Rights et.al. v. The Minister of Public Security, et.al.*).

In its decision, the Court also related to Article 7 of the ICCPR, stating that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and to Article 10(1) stating that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". The Court pointed out that the UN Human Rights Committee determined, considering Article 10(1) of the ICCPR, that the dignity of persons deprived of their liberty should be ensured "subject to the restrictions that are unavoidable in a closed environment".

Personal Hygiene

The new regulations require that every cell be painted at least twice a year, disinfected and fumigated at least once annually or according to the instructions of physician of the detention facility. The detention facility must provide detainees in every cell with adequate materials to clean the cell, which they are obliged to do (Regulation no. 4).

Each detainee shall be given a bed, mattress and clean blankets, and a reasonable quantity of personal hygiene materials, such as soap and toilet paper. Detainees are entitled to shower once a day on hot days, except if they are suspected of attempting to destroy or conceal evidence held on or inside their body, in which case, they may be prevented from showering for no more than three days (Regulations No. 6-7). Persons whose detention has been extended by a judge for a period exceeding 24 hours, and who are unable to have someone bring them a change of clothes, sheets, a towel and basic means of personal hygiene, shall be given all of these by the detention facility.

Clothing and Bedding

Convicted prisoners must wear prison uniforms, which will be given to them at admission and will be renewed from time to time.

A prisoner, who is required to stand before a court as an appellant or respondent, or as a petitioner or a respondent in the Supreme Court, must wear prison uniform. If the prisoner is required to stand before a court for other reasons, he/she may wear his/her personal clothes.

Food

All detention facilities are obligated to provide detainees with three regular meals a day, of a type and quantity that will maintain the detainee's health. Detainees with special dietary requirements based on reasons of health may receive such food with the approval of the physician at the facility (Regulation no. 8). Moreover, prisoners are allowed to purchase food from the prison's canteen or to receive food and products from visitors (subject to security inspection).

Exercise and Sport

All detainees are entitled to a daily walk outdoors during daylight hours, if the conditions at the detention facility so allow; no person may be detained for more than seven days at a facility which cannot provide the opportunity for a daily constitutional outdoors, and must be transferred thereafter to a facility that can. However, the person responsible for investigation of a particular detainee who has not yet been indicted

may, by a reasoned written decision, order the commander of a detention facility to restrict or deny the right to outdoor exercise if necessary to protect the integrity of the investigation. Detainees whose right to exercise have been restricted are still entitled to outdoor exercise, not necessarily during daylight hours, for one hour at least every seven days for a period of up to one month. A senior investigation official, having a rank of Chief Superintendent or higher, may extend the period of restriction on exercise for additional 15-day periods if necessary to protect the criminal investigation (Regulation no. 9).

In addition, the Commander of a detention facility may restrict the right to outdoor exercise of a particular detainee to protect his/her own safety, in which case the detainee will be allowed outdoor exercise of at least one hour every five days (*id.*).

Medical Services

Detainees are also guaranteed medical treatment as required to maintain their health, and to suitable health supervision as ordered by a physician (*Criminal Procedure (Enforcement Powers - Arrest) Law*, Section 9(b)(1)).

The medical treatment in prison balances between the need to protect the health condition and the well being of the prisoners, with the obligation to respect the prisoners' right to privacy and physical integrity.

The prison doctor attends and is responsible for the prisoners' health in general, under the supervision of the Commissioner. Every matter concerning the prison or the prisoners' treatment that the doctor thinks he/she should consider for medical reasons, he/she can report it to the Commissioner and notify the prison director.

The physician of a central prison should visit the prison every day. Physician of any other prison should visit at least once a week and every time he/she is called to visit or to provide treatment to a specific prisoner. The physician should examine every prisoner at admission and at the end of imprisonment, and document the prisoner's health condition and other details concerning it. In addition, no labor can be imposed on a prisoner and his/her food can not be limited unless the physician so approved.

Every prison operates internal medical personnel and a general practitioner, dentist, nurses and medical assistances. Each clinic includes medical equipment for routine and for emergency.

Every prisoner is allowed to be examined by a doctor according to the dates and arrangements set in advance by the prison medical department.

Medical treatment might be provided within the prison facility or in a civil hospital according to the decision of the prison service physician.

Every prisoner has the right to be examined by a private doctor on his behalf and at his expense.

Every prisoner has a personal medical file that includes his/her: complaints, medical examination findings, medical diagnosis and given treatments. Each prisoner has the right to refer the medical information concerning him/her held by the prison authority.

Pregnant prisoners go through all the necessary examination before and after birth, and receive food additive and immunization as required.

Treatment and supervision are provided to prisoners suspected to be suicidal.

Discipline

It is legitimate to take reasonable measures, including use of force, against a prisoner if there is a reason to believe that he/she is planning to escape or cause damage to body or property, in order to prevent the escape or the damage and in order to introduce order in prison.

The use of force is allowed only if there is no other alternative instrument. An instrument of restraint is not to be used as punishment.

The available instruments of restraint are: combined shackling, a shackling sleeve, bed shackling. The act of shackling includes: front hands shackling, legs shackling, hands shackling from behind, hands and legs shackling.

Only officers are authorized to order the use of those instruments, excluding combined shackling. In cases where it is necessary to enforce immediate measures and

there is no available officer on scene, a warden is authorized to enforce front hand shackling.

The use of instruments of restraint is to be brought to the knowledge of the prison director or his deputy immediately.

Contact with the Outside World

Use of Telephone. Every detainee who has been indicted has the right to use the telephone once a day. Detainees who have not yet been formally charged cannot use the telephone unless the official in charge of the criminal investigation decides that such use will not impair a criminal investigation in progress (Regulation no. 10); however, un-indicted detainees may file a written request to the director of the facility to have a telephone message to his/her attorney, except in the extreme cases in which the detainee's exercise of the right to meet with counsel has been delayed (Regulation no. 10).

Visitation Rights

A detainee who has been formally charged may receive visitors, in addition to legal counsel, once a week for thirty minutes, unless extended by the commander of the detention facility. Those who have not yet been indicted may not receive visitors unless the official in charge of the criminal investigation confirms that doing so will not impair the progress of the investigation, in which case he/she may place conditions on the manner of visitation to ensure the integrity of the investigation (Regulation no. 12).

Administrative detainees are entitled to receive visits from immediate family members every two weeks; more frequent visits, as well as visits by persons other than immediate family and legal counsel, may be granted at the discretion of the director of the prison. The total number of visitors in any particular visit is limited to three persons in addition to the detainee's spouse and children, unless the prison director permits otherwise. Visitation rights of administrative detainees may be restricted only for reasons of state security. If such visitation rights are withheld for more than two months, the detainee may appeal to the Minister of Defense. All

restrictions on the visitation rights of administrative detainees must be reviewed at least once every two months, if not earlier at the request of the detainee (*Emergency Powers (Detention) (Conditions of Confinement in Administrative Detention) Regulations 5741-1981, Regulation no. 11*). As with all decisions affecting the detainee, restrictions on visitation rights may be appealed before the District Court, and thereafter to the Supreme Court if necessary.

Correspondence

Indicted detainees may send and receive letters through the prison administration only, and may receive stationary on request. In cases of financial need, the detainee may be exempt from paying postal charges (Regulation no. 13).

The prison director, or a person empowered by him/her, is authorized to open and examine every letter addressed to a prisoner or sent by a prisoner and also not to deliver that letter or part of it to its destination, for reasons of state security, public security, prison discipline, or impairing legal proceedings or police investigation. A letter or any other postal item that was opened as mentioned above must be marked with the initials of the examiner. If the examiner decides to prevent delivery of a letter to its destination, he/she must write down the reasons for his/her decision and order to keep the letter in a designated archive. The mentioned decision must be brought to the prisoner's attention, unless the prison Commissioner approved not to do so.

The authority mentioned above does not apply on judicial documents designated to court or documents exchanged between a lawyer and his/her client (the prisoner) regarding the prisoner's representation delivered by or to the prisoner during the meeting with his/her lawyer.

The above authority does not apply also on correspondence between a prisoner and a Knesset Member. In such a case, the authority to open the letter is subordinate to the Knesset review.

Detainees who have not yet been indicted may send letters if the official in charge of the criminal investigation confirms that doing so will not impair the investigation; if correspondence is allowed, the official in charge of the investigation may impose

conditions intended to ensure the integrity of the investigation, including review and censorship of the detainee's letters.

Administrative detainees: have the right to receive mail, and may normally send four letters and four postcards per month, not including correspondence with legal counsel or with official authorities (Regulation no. 14 of the *Emergency Powers (Detention) (Conditions of Confinement in Administrative Detention) Regulations 5741-1981*), or more with the permission of the prison director. The right of administrative detainees to send and receive mail may be restricted by the prison director if he/she is convinced that doing so is necessary for reasons of state security; in such circumstances, the prison director does not have to notify the detainee that a letter written by or to him/her has not been forwarded, except in the case of letters to or from family members (*Id.*).

Furloughs

Detainees who have not yet been convicted and sentenced are not granted furloughs except by court order, or by special permission in extenuating circumstances. While the right of convicted and sentenced prisoners to furloughs is not provided for in primary legislation, furloughs are granted according to the provisions of Prisons Commission standing orders (Section 80C(a) of the *Prisons Ordinance*). Such prisoners are categorized, within 30 days of their incarceration, into one of three groups for the purpose of determining their rights to furloughs: those who may not be granted furloughs except by permission of the Minister of Public Security, either because their leaving the prison may pose a danger to public order and security, or due to an outstanding arrest warrant, or those who are detained by virtue of an extradition or deportation order; those who may be given furloughs according to conditions determined by the Israel Police; and those who may be granted furloughs with no such conditions. In general, prisoners have the right to furloughs after having completed one-quarter of their sentence, or three years, whichever is earlier. Prisoners who are sentenced to life imprisonment may be granted furloughs after seven years, even if their sentence is not commuted to a specific period by the President of the State. The length of the furlough is between 36 and 96 hours, and the frequency varies between once every three months and once a week (from Friday afternoon to

Sunday morning), depending on the type of offense which the prisoner committed, his/her behavior record in the prison, the type of rehabilitation program in which the prisoner is participating, and other considerations. The interval between furloughs may be shortened in order to enable the prisoner to observe religious holidays outside of prison, or for family or medical reasons.

In addition, furloughs may be granted even though the prisoner has not completed the minimum portion of his/her sentence noted above, or even if the interval between furloughs has not transpired, in special circumstances, such as births, marriages or deaths in the family, memorial services, vocational tests, preparation of a rehabilitation program, or medical reasons.

Persons imprisoned in the context of civil proceedings may be granted furloughs of 48 hours after having completed one-quarter of their term of imprisonment or three months, whichever is earlier, and additional furloughs of 48 hours once every three months thereafter. If the term of civil imprisonment is four months or less, then the prisoner may be granted a furlough after having completed half of his/her sentence.

Conjugal visits

Conjugal visits are allowed for criminal prisoners who are not eligible for furloughs. Single prisoners who have non-married spouses are accorded the same rights to conjugal visits as married prisoners. Recently, the IPS has broadened its conjugal visits policy, to enable such visitation during daytime hours, together with visits by the prisoner's children. A new facility dedicated to housing prisoners during their conjugal visits is being built at the Ayalon Prison, and the IPS has planned the construction of several more such facilities.

Right to Family and Parenthood

On June 13, 2006, the Supreme Court rejected a petition against the IPS which allowed the late Prime Minister Yitzhak Rabin's assassin, to take out from prison a sperm sample in order to allow artificial insemination of his spouse (H.C.J. 2245/06 *MP Netta Dovrin v. The Israel Prisons Service*). In its decision, the Court stated that the right to family and parenthood is one of the main elements of human existence

and is derived from the rights to dignity, privacy and autonomy of the individual's will. The Court asserted that prisoner's human rights are ensured during their imprisonment period, including their right to parenthood and procreation.

The Court based its decision on the principle of human dignity as in *Basic Law: Human Dignity and Liberty* (1992) and also on international law and several articles of the ICCPR: the right to marry and found a family (Article 23), the right to privacy and protection from arbitrary interference with family life (Article 17(1)), the right not to be subjected to cruel, inhuman or degrading treatment (Article 7) and the right of persons deprived of their liberty to be treated with respect to the inherent dignity of the human person (Article 10(1)). The Court also mentioned that the UN Human Rights Committee determined in General Comment no. 16 (1988), that in relation to Article 17(1), interference with family life can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant. In relation to Article 10(1), the Court cited General Comment no. 16, stating that persons deprived of their liberty are not to be subjected to any hardship or constraint other than that resulting from the deprivation of liberty.

Books and Education

In order to provide the prisoner the chance to make positive use of his/her time in prison, the prison facilitates his/her ability to purchase, on his/her expense, books that are compatible with the relevant conditions and restrictions of the prison authority.

Prisoners are also permitted to purchase games and to acquire personal journal subscription.

Every prison runs a library which is available to all prisoners according to the instructions of the prison director.

Every prison offers an educational scheme, prisoners are given the possibility to enrich their personal knowledge during leisure hours, and special attention is given to illiterate prisoners. Additionally, there are possibilities for prisoners to study through The Open University.

Religion

All detainees must be given the opportunity to observe the commandments of their religion, to the extent practicable. The participation of a particular detainee in group prayers may be restricted if the commander of the facility has reasonable grounds to believe that the detainee's presence will constitute a danger to the security or order of the detention facility, or to the detainee's own security (Regulation no. 14).

The prison authority encourages and assists to broaden the religious rehabilitation activities, and enable rehabilitation through Judaism. In every prison there's a rabbi who initiates religious activities for the prisoners, including: Judaism classes, seminars, religious events, personal and group conversations, religious library, etc. Participation at these activities is optional as every other didactic activity. Prisoners who maintained a religious life style before their imprisonment and prisoners who decided to lead religious life style during their imprisonment and studied at the Torah seminary may be moved to the observant section subject to certain criteria.

The right of every prisoner to pray is imparted and undeniable. In every prison section, excluding separation section and solitary section, operates a synagogue with all the necessary equipment needed to prayer. The prison authority allows prisoners from all different religions to keep their commandments, subjected to security and organizational restrictions existing in prison.

Retention of Prisoners' Property

At admission, prisoner's deposit must be delivered by the escort crew to the treasure's office. Holding personal equipment in prison is a benefit that can be deprived from prisoners. The prison director is authorized to order to deliver the prisoner's equipment to his/her family, or to give it back while the prisoner is at a furlough. While the prisoner is out of prison, his/her equipment is to be locked at the prison's logistics. At the end of imprisonment, the prisoner receives all his/her belongings (clothes, money, etc.). If some the prisoner's belongings left in prison, it is the prison director's responsibility to inform the prisoner to collect it.

Notification of Death, Illness, Transfer, etc

Article 93 of the *Prison's Ordinance* stipulates that in case of prisoner's death, the prison director must notify the prisoner's family, the Commissioner and the Police.

In such a case, the prison physician must document the following available details:

1. The date when the prisoner first complained on illness or seemed ill;
2. Whether the prisoner had worked on that day, and in what job.
3. The prisoner's daily meal on that day.
4. When the prisoner was admitted to the hospital.
5. When the prison physician or his/her assistance were first informed about the prisoner's illness.
6. The nature of the disease.
7. When the prison physician or his/her assistance last seen the prisoner before death.
8. The date of death, and if an autopsy had taken place - description of the deceased facade and any other special remark that the physician considers required.

Removal of prisoners

Article 11a of the *Prison's Ordinance* stipulates that a prisoner will not be shackled in public, except in cases where the warden has a reasonable ground to believe that the prisoner might try to escape, cause damage to other people or property, damage or conceal evidence, receive or deliver objects that might be used for committing an offence or undermine order in custody place. If the prisoner was convicted of serious crime, the default is to shackle him/her, unless the officer thinks there is no reason to believe that he/she might do one of the actions mentioned above. While a prisoner is in court, the judge may order to release the prisoner from handcuffs.

On March 13, 2007, The Ombudsman's Office of the Israeli Judiciary published an opinion concerning handcuffing of detainees in court hearings, following a complaint made by a journalist, accused of prohibited publication, who was handcuffed during his/her court hearing. The Ombudsman determined that as a general rule, a detainee is not to be handcuffed during court hearings apart from exceptional cases in which the police officer who accompanies the detainee requests the court's permission to keep him/her handcuffed. The Ombudsman also held that the judge has the authority to order to release detainees from handcuffs, even in exceptional cases, where the detainee is suspected of committing a severe crime or when there is a fear that he/she will escape or act violently. A judge's order to release the handcuffs will be adhered to immediately, using cautious measures as required in such cases.

In its opinion, the Ombudsman stated that the issue of handcuffing of detainees during court hearings is of great importance, since the handcuffing of a person harms his/her dignity severely. Therefore, the Court has to balance between the detainees' right to dignity on one hand, and ensuring security and public order on the other hand.

Minor Prisoners are not to be shackled if it is possible to achieve the purpose of the restriction in a less harmful way, and the restriction should last the shortest time possible for achieving that purpose.

Institutional personnel

On November 19th 2009, the Supreme Court held that Amendment 28 of *Prisons Ordinance* violates human rights disproportionately and is therefore unconstitutional.

The Knesset enacted the *Prisons Ordinance Amendment Law* (no. 28) 5764-2004, which provides that the State of Israel will establish, for the first time, a (single) prison that will be operated and managed by a private corporation rather than by the State. The constitutionality of this law was challenged by the petitioners, who argued that Amendment no. 28 disproportionately violated the rights of prison inmates as a result of the actual transfer of imprisonment powers to a private enterprise, and as a result of the concern that human rights in a private prison would be violated to a greater extent than in a State-run prison.

The Court held that the concern that human rights in a private prison will be violated more than in state-managed prisons addresses a future violation of human rights, and there is no certainty that this will occur; therefore, it is questionable whether it constitutes a sufficient basis for setting aside primary legislation of the Knesset. **However, the human rights of prison inmates are violated *ipso facto* by the transfer of powers to manage and operate a prison from the State to a private concessionaire that is a profit-making enterprise.** The denial of personal liberty is justified only if it is done in order to further or protect an essential public interest, and therefore the question whether the party denying the liberty is acting in order to further the public interest (whatever it may be) or is mainly motivated by a private interest is a critical question that lies at the very heart of the right to personal liberty. Therefore, Amendment no. 28 causes an additional independent violation of the constitutional right to personal liberty beyond the violation that arises from the imprisonment itself.

When the State transfers power to manage a prison, with the invasive powers that go with it, to a private profit-making corporation, it violates the human dignity of the inmates of that prison, since the public purposes that give imprisonment legitimacy are undermined and the inmates becomes a means for the private corporation to make profits (Justice Grunis reserved judgment on this issue).

The main public purpose underlying Amendment no. 28 is the economic purpose of saving the state money.

The 'additional' violation of constitutional rights deriving from giving imprisonment powers to a private profit-making corporation is disproportionately greater than the 'additional' public benefit that will allegedly be achieved by amendment 28.

The unconstitutionality of Amendment no. 28 requires it to be set aside in its entirety, because it is a comprehensive arrangement in its structure and content, in which the granting of the powers relating to using force against the inmates is an integral part. Were only the provisions concerning the granting of the invasive powers set aside, the remaining provisions would be unable to stand independently.

(H.C.J. 2605/05 *The Academic Center of Law and Business, Human Rights Division v. The Minister of Finance*).

Part II

A. Prisoners under sentence

Guiding principles

According to the law, the purpose of imprisonment is punishment rather than revenge or humiliation. Prison sentence denies the prisoner from his/her liberty but not from his/her dignity. The third principle states that the prisoner's fundamental rights retain, excluding the rights that had been explicitly denied from him/her or that their deprivation is mandatory from the nature of the imprisonment.

Treatment

The common approach in prisons and in the guiding legislation is a rehabilitation approach seeking to operate and develop rehabilitation programs for prisoners.

In order to enable the prison authority to treat every prisoner according to his/her unique circumstances, the Commissioner set several security levels to prisons and incarceration sections.

"In need of Protection" prisoners are prisoners whose safety is jeopardized by other prisoners. Those prisoners are held in separate sections, with higher security level.

"In need of Supervision" prisoners' includes vulnerable groups in need of supervision and intense treatment, even though they are not defined as mentally or physically ill with need of hospitalization. According to different supervision levels, those prisoners are accommodated in appropriate sections in the various prisons.

"High risk of escape" prisoners' are subject to special orders concerning movement within the prison facility, furloughs, and movement outside the prison facility.

The IPS operates an administration for treatment and rehabilitation of prisoners, which is responsible for managing the formation of the social work for prisoners; the formal and informal education of prisoners; medical services for prisoners and staff; religious activities for prisoners; rehabilitation for prisoners, including religious rehabilitation; treatment for drug addicted prisoners, including treatment, prevention and rehabilitation; and coordinating the mental health services for prisoners through the Ministry of Health.

The treatment and rehabilitation in the IPS focuses on specific issues:

1. Assisting prisoners to adapt and integrate to the prison environment, including distributing information materials and giving personal, collective, and community treatment with a supportive aspect.
2. Intervention in order to prevent imprisonment damages. In this respect, prisoners are accommodated in suitable prison sections, offered to be engaged in allayed activities, and an effort is made to locate prisoners with suicidal tendencies and intervene in times of crises.
3. Providing remedial tools: personal treatment, group therapy, community therapy, formal and informal education, and employment. Treatment includes: drug rehabilitation, domestic violence, sex offenders, parenting, relationships, acquiring working habits, changing patterns of criminal behavior and obtaining normative patterns.

There is an intensive activity of social workers in the prison administration. Social workers escort the prisoner from admission to the prison, and is involved in personal treatment activity as well as group therapy for groups with unique characteristics.

Rehabilitation program also define the rules for participation of certain prisoners in rehabilitation programs outside the prison. Prisoners approved for such programs are accommodated in a special "rehabilitation ward" and could participate in group rehabilitation framework with supervision of a warden or in private rehabilitation framework without escort.

Privileges

The wardens may grant all prisoners, a group of prisoners or a specific prisoner privileges beyond the rights given by law, such as, visitation rights, correspondence, furloughs, listening to broadcasts or watching television, which are conditional to good behavior of the prisoner or the kind of prison or the wing he/she is being held in or the status of the prison.

Work

Employment for prisoners is a basic element concerning holding prisoners in custody.

Prisoners who have completed part of their sentence with good behavior may be allowed to work for pay at an appropriate job outside the prison and near their home community under the supervision of the prison administration, or to begin a course of study, either with or without an escort. Such prisoners in a "work rehabilitation" program are separated from the rest of the prison population.

Prisoners may be employed also inside the prison facility. Women may be employed outside the prison facility only according to a recommendation of a physician and in a suitable job. Among other purposes, prisoner employment is aimed to acquire a profession to be useful after the imprisonment and to assist the prisoner financially, during his/her imprisonment and to enable rehabilitation after release (a prisoner is entitle to payment for his/her work and he/she is paid monthly to his/her bank account). A prisoner without physical determent who refuses to work might be prosecuted and/or deprived of some or all privileges.

Prisoners may be employed for maximum 45 hours a week and at least one weekly day off.

Social Relations and After-Care

The preparation of convicted prisoners for a successful, law-abiding life after imprisonment has always been one of the overarching policy priorities of the IPS, and of the criminal process in general. Provided that the individual prisoner is willing to participate in rehabilitation programs, the IPS encourages enrollment in a variety of programs designed to give the prisoner improved employment skills, and to ease the social transition to life in the outside world.

Toward the end of the imprisonment, social service starts to prepare the prisoner toward release. In this regard, the social worker meets the prisoner, community services and particularly the Prisoner Rehabilitation Authority. In this regard, the following actions are made:

- Evaluation of the prisoner's needs, estimation of his/her functioning, relationship with his/her family, and the financial resources and support available.
- To build a personal program regarding accommodation, family, income support, employment, and the continuation of treatment in the community.
- Prepare a social report to the Parole Board.
- Conduct a group workshop to prisoners that are about to be released.

The State of Israel operates a Prisoner Rehabilitation Authority which purpose is to take care of ex-prisoners and to integrate them back in society. The capacity of Authority is to:

- Establish prisoner rehabilitation policy and to create social awareness to the subject of prisoner rehabilitation.
- Prepare rehabilitation programs toward the end of imprisonment.
- Rehabilitate ex-prisoners in the community and hostels.
- Assist the prisoners' family during imprisonment and after their release.

- Develop unique projects for wife and children of prisoner.
- Execute rehabilitation programs with employment supervision and escort.

Develop rehabilitation programs adjusted to unique prison population, such as women, juvenile, sex criminals, domestic violence, minorities, etc.

B. Insane and Mentally Abnormal Prisoners

The prison administration runs, through the department of health, a psychiatric wing, in which a psychiatric treatment is provided for prisoners, unless the medical situation of the prisoner requires admission in a psychiatric hospital.

The psychiatric wing provides psychiatric treatment and employs treatment methods accepted in psychiatric institutions in Israel and the world, subject to rules of professional ethics and the professional instructions in psychiatric institutions under the Ministry of Health.

C. Civil Prisoners

As a rule, civil prisoners should be locked in separate designated wings. If for security reasons, or the prisoners' welfare or personal safety so requires, civil prisoner may be accommodated in a regular wing, provided he/she is suitable.

Civil prisoners who express the desire to work in order to return their debt may be engaged within the prisons' work program, as much as possible.

Generally, civil prisoners are entitled to privilege more than other prisoners. They are entitled to wear their own clothes even when brought to court, and are entitled to a week visit.