

Incarceration of Unlawful Combatants Law, 5762-2002

Object

1. This Law is intended to regulate the incarceration of unlawful combatants not entitled to prisoner-of-war status, in a manner conforming with the obligations of the State of Israel under the provisions of international humanitarian law.

Definitions

2. In this Law -

"the Chief of General Staff" means the Chief of the General Staff of the Israel Defense Forces;

"unlawful combatant" means a person who has participated either directly or indirectly in hostile acts against the State of Israel or is a member of a force perpetrating hostile acts against the State of Israel, where the conditions prescribed in Article 4 of the Third Geneva Convention of 12th August 1949 with respect to prisoners-of-war and granting prisoner-of-war status in international humanitarian law, do not apply to him;

"prisoner" means a person incarcerated by virtue of an order issued by the Chief of General Staff pursuant to the provisions of this Law.

Incarceration of unlawful combatant

3.
 - (a) Where the Chief of General Staff has reasonable cause to believe that a person being held by the State authorities is an unlawful combatant and that his release will harm State security, he may issue an order under his hand, directing that such person be incarcerated at a place to be determined (hereinafter referred to as "an incarceration order"); an incarceration order shall include the grounds for incarceration, without prejudicing State security requirements.
 - (b) An incarceration order may be granted in the absence of the person held by the State authorities.
 - (c) An incarceration order shall be brought to the attention of the prisoner at the earliest possible date and he shall be given the opportunity to put his submissions in respect of the order before an officer of at least the rank of lieutenant-colonel to be appointed by the Chief of General Staff; the submissions of the prisoner shall be recorded by the officer and shall be brought before the Chief of General Staff; where the Chief of General Staff finds, after reviewing the submissions of the prisoner, that the conditions prescribed in subsection (a) have not been fulfilled, he shall quash the incarceration order.

Quashing an incarceration order

4. Where the Chief of General Staff is of the opinion, at any time after the grant of the incarceration order, that the conditions prescribed in section 3(a) have not been fulfilled, or there are special grounds justifying the release of the prisoner, he shall order the quashing of the incarceration order.

Judicial review

5. (a) A prisoner shall be brought before a judge of the District Court no later than fourteen days after the date of granting the incarceration order; where the judge of the District Court finds that the conditions prescribed in section 3(a) have not been fulfilled he shall quash the incarceration order.
 - (b) Where the prisoner is not brought before the District Court and where a hearing has not commenced before it within fourteen days of the date of granting the incarceration order, the prisoner shall be released, unless there exists another ground for his detention under the provisions of any law.
 - (c) Once every six months from the date of issue of an order under section 3(a) the prisoner shall be brought before a judge of the District Court; where the Court finds that his release will not harm State security or that there are special grounds justifying his release, it shall quash the incarceration order.
 - (d) A decision of the District Court under this section is subject to appeal within thirty days to the Supreme Court, a single judge of which shall hear the appeal; the Supreme Court shall have all the powers vested in the District Court under this Law.
 - (e) It shall be permissible to depart from the laws of evidence in proceedings under this Law, for reasons to be recorded; the court may admit evidence, even in the absence of the prisoner or his legal representative, or not disclose such evidence to the aforesaid if, after having reviewed the evidence or heard the submissions, even in the absence of the prisoner or his legal representative, it is convinced that disclosure of the evidence to the prisoner or his legal representative is likely to harm State security or public security; this provision shall not derogate from any right not to give evidence under Chapter Three of the Evidence Ordinance [New Version], 5731-1971¹.
 - (f) The hearing in proceedings under this Law shall be conducted *in camera*, unless the court has provided otherwise in this matter.

Right of prisoner to meet with lawyer

6. (a) The prisoner may meet with a lawyer at the earliest possible date on which such a meeting may be held without harming State security requirements,

¹*Dinei Medinat Yisrael (Nusach Chadash)* No. 18, p. 421; Laws of the State of Israel (New Version), vol. II, p. 198.

but no later than seven days prior to his being brought before a judge of the District Court, in accordance with the provisions of section 5(a).

- (b) The Minister of Justice may, by order, confine the right of representation in the proceedings under this Law to a person authorized to act as defence counsel in the military courts under an unrestricted authorization, pursuant to the provisions of section 318(c) of the Military Justice Law, 5715-1955².

Presumption

- 7. For the purposes of this Law, a person who is a member of a force perpetrating hostile acts against the State of Israel or who has participated in hostile acts of such a force, either directly or indirectly, shall be deemed to be a person whose release would harm State security as long as the hostile acts of such force against the State of Israel have not yet ceased, unless proved otherwise.

Determination regarding hostile acts

- 8. A determination of the Minister of Defense, by a certificate under his hand, that a particular force is perpetrating hostile acts against the State of Israel or that hostile acts of such force against the State of Israel have ceased or have not yet ceased, shall serve as proof in any legal proceedings, unless proved otherwise.

Criminal proceedings

- 9. (a) Criminal proceedings may be initiated against an unlawful combatant under the provisions of any law.
- (b) The Chief of General Staff may make an order for the detention of an unlawful combatant under section 3, even if criminal proceedings have been initiated against him under the provisions of any law.

Conditions of incarceration

- 10. (a) A prisoner shall be held under proper conditions which shall not impair his health or dignity.
- (b) The conditions for incarceration of prisoners shall be prescribed by the Minister of Defense by regulations.

Vesting of powers

- 11. The Chief of General Staff may delegate his powers under this Law to any officer of the rank of major-general, as he shall determine.

Transitional provisions

²*Sefer Ha-Chukkim* of 5715, p. 171; Laws of the State of Israel, vol. IX, p. 184.

12. (a) The provisions of this Law shall also apply to an unlawful combatant held by the State authorities on the day of its commencement.
 - (b) As long as regulations are not enacted pursuant to section 10(b), the Emergency Powers (Detention) (Conditions of Internment under Administrative Detention) Regulations, 5741-1981⁴ shall apply to the incarceration of prisoners.

Implementation and Regulations

13. (a) The Minister of Defense is charged with the implementation of this Law.
 - (b) The Minister of Justice may enact rules of court for proceedings pursuant to this Law.

⁴*Kovetz Hatakanot* of 5741, p. 948.