

Petition 2775/11 - Khaled el-Arej vs. the Head of the Central Command, the commander of the IDF forces in the region

The Supreme Court in session as the High Court of Justice

Heard by:

The Honorable Deputy President M. Naor

Judge N Hendel

Judge Y. Amit

Petition 2775/11

Petitioners:

1. Att. Khaled el-Arej
2. Att. Mahmoud Rashid el-Khalabi
3. Att. Ehab el-Jalid
4. Att. Tawhid Sha'ban

Respondents:

1. The Head of the Central Command, the commander of the IDF forces in the region
2. The Military Prosecution in the Judea and Samaria area

Petition for order nisi

Date of hearing	17.10.12
-----------------	----------

Representing the petitioners	Att. Smadar Ben Natan
------------------------------	-----------------------

Representing the respondents	Att. Aner Hellman
------------------------------	-------------------

Decision

Deputy President M. Naor:

1. The question raised in this petition is whether there exists a duty to translate into Arabic various documents which regard the criminal procedures taking place in military courts in the Judea and Samaria area: interrogation material, indictments, court hearing protocols and court decisions. The petition was submitted by attorneys representing suspects in the military court, and it was argued in the petition that the law in those parts mandates the translation of the aforementioned documents into Arabic, in order to ensure a fair legal procedure, and [it was also argued] that this duty should be anchored in the security legislation. It should be stated right now that during the procedure, the petitioners have ceded, for the time being, their claim that *interrogation material* has to be translated into Arabic. For the time being, they have also ceded their claim regarding the translation of *court hearing protocols*. On these matters, they will turn to the court of first instance, if necessary. The following will therefore focus on *indictments and court decisions*. It should also be stated, that according to article 116(a) of the Security Provisions Order [consolidated version] (Judea and Samaria) (number 1651), 2009 (hereby: the order), the procedure which takes place at military courts is simultaneously translated into Arabic by an interpreter:

116.(a) If it is clear to the military court that the defendant does not understand Hebrew, the military court will appoint an interpreter, who will translate to the defendant all that is said during the discussion, as well as the court's decision, unless the defendant voluntarily waives the translation in part or entirely; the parties have the right to object to a translator and ask for his replacement.

(b) A piece of evidence submitted to the military court not in Hebrew, or in another language in which the court and the parties are fluent, will be translated by a translator and a testimony given will be recorded in the protocol while being translated into Hebrew, unless the court instructs otherwise; the scribing of the translation in the protocol will serve as prima facie evidence of what was translated.

2. Therefore, the petition focused on the translation of various *documents*, which do not fall under the aforementioned article. In the preliminary response they submitted, the respondents stated their intention to take action towards the translation of the indictments to Arabic, and this was restated by the

respondents' representative during the hearing which took place on 17.10.2012. At the end of the hearing, we issued the following decision:

1. The state will respond within 45 days as to whether there is a willingness to anchor the agreement expressed in the writings of the court of first instance, according to which indictments submitted to the military courts in Judea and Samaria starting 2.4.2013 will be translated into Arabic.
2. Regarding all the other arguments raised, this hearing is over, and following the reception of the aforementioned state's position, this court will decide as to whether to issue a ruling or an order nisi.
3. Following the hearing of the petition, the respondents stated that they had indeed introduced mandatory translation of indictments in article 116(a1) of the Security Provisions Order (amendment no. 24 from 28.11.2012), which states:
 - (A1)(1) If the defendant attends the trial, the indictment that was submitted against him will be translated into the Arabic language, unless the defendant or his representative forgoes this.
 - (2) The defendant will have to answer the charges only after he is given a translation of the indictment, unless he or his representatives waive this.
 - (3) In spite of the preceding articles no. 1 and 2, the original version of the indictment which was submitted according to article 100 of this order will be the binding version in all legal procedures taking place by this order or by any other law.
 - (4) A decision or ruling by this court will not be annulled simply due to a failure to translate the indictment or due to a translation error.

In view of the addition of said article, the respondents once again asked for the petition to be rejected.

4. In my decision from 19.12.2012, I asked the petitioners to address the respondent's statement, and following its submission I asked the respondents to address the petitioners' statement. In their statements, the petitioners welcome the anchoring of mandatory translation of indictments into Arabic in an order. However, they argue that the arrangements made by article 116 (a1)

(a), according to which the defendant can waive the translation of the indictment into Arabic, is inappropriate. Regarding the translation of court decision into Arabic, the petitioners have added various arguments which were not included in the original petition, and these obligate, in their opinion, the translation of court decisions into Arabic.

5. The respondents argue that the petitioners' arguments with regards to waiving the translation of indictments exceed the requested order nisi - and [I believe] their argument is legally correct. When the petition was submitted the appellants faced no order, so in any case they could not challenge its content. The petitioners' arguments therefore belong in a separate petition. The petitioners must address their arguments to the qualified authorities first, and if they are not satisfied after they exhaust their legal procedures - they are free to submit a new petition.

6. As for the arguments in regards to the translation of court decisions into Arabic: mandatory translation of military court decisions in the matter of a specific defendant is grounded in the aforementioned article 116(a), which states that "If it is clear to the military court that the defendant does not understand Hebrew, the military court will appoint an interpreter, who will translate to the defendant all that is said during the discussion, as well as *the court's decision*". As stated, translation will be simultaneous and provided by an interpreter present at the hearings. If this is not done, it is possible to turn to the court of first instance, and ask for a translation of the written decision. One can learn from a reading of the petition that the fairness of the *concrete* legal procedure in the matter of every defendant is at its core, and most of the arguments focus on the demand to translate indictments, hearing protocols and the summary of the evidence in the case of *specific* defendants. The argument as to the existence of a general obligation to translate court decisions by the military courts, in order to use them as a *precedent* to assist in the defense of *other* defendants was mentioned as an incidental matter (see articles 3 and 19 of the petition). But this was argued without any factual grounds or legal arguments which could clarify the aforementioned necessity of translation. The petitioners have also mentioned this argument orally in court, adding legal arguments in this matter in their statement from 6.1.2013. This addition of arguments was out of place, and I accept the respondents' position stating that it extends the scope of the legal issues [raised in the petition]. In any case, I believe that the question of the necessity of translating court decisions for use as precedents has not been elaborated in full in front of this court, and we do not possess the corpus of factual data and legal arguments which are required for deciding on the matter. Thus, for example, it has not been clarified whether the petitioners intend to have all court decisions made by the military courts

translated, or would the translation of certain court decisions (precedential decisions in particular) satisfy them.

7. Under these circumstances, I believe that this petition has been exhausted with the Security Provisions Order's establishment of an obligation to translate indictments. The petitioners' arguments as to the arrangements in this order exceed the scope of the original petition, as previously mentioned, and their arguments on the matter of translating court decisions for their use as precedents have not been made sufficiently clear in this procedure. The petitioners arguments are reserved, and we do not decide on these arguments. If the need arises in the future - the court's doors are open to the petitioner.
8. This concludes the hearing of this petition. No ruling will be given as to [procedural] expenses.

The Deputy President

Judge N. Hendel:

I agree.

Judge Y. Amit:

I agree.

Decision according to Deputy President Naor's ruling