

Imprisonment of Illegal Combatants, 5761-2000

Purpose

1. The objective of this law is to regulate the imprisonment of combatants who are not entitled to prisoner-of-war status, in a manner consistent with the provisions of international humanitarian law.

Definitions

2. In this Law:

"Chief of Staff" - the Commander of the General Staff of the Israel Defense Force;

"illegal combatant" - a person who takes part in hostile activity against Israel, directly or indirectly, or belongs to a force engaged in hostile activity against the State of Israel, but who does not meet the conditions granting the status of prisoner of war under international humanitarian law, in particular article 4 of the Third Geneva Convention of 12 August 1949 Relative to the Treatment of Prisoners of War.

"prisoner" - a person who is held pursuant to an order issued by the Chief of Staff pursuant to this Law;

Imprisonment of an illegal combatant

3. (A) If the Chief of Staff has a basis to assume that a person being held by state authorities was an illegal combatant, and that his release is liable to harm state security, he may issue an order under his signature directing imprisonment of that person at a location he shall determine (hereafter in this Law – "imprisonment order").

(B) An imprisonment order may be issued in the absence of the person being held by the state authorities.

(C) An imprisonment order shall be made known to the prisoner at the earliest possible time, and he shall be given the opportunity to state his arguments regarding the order before an officer holding the rank of Lt. Colonel appointed by the Chief of Staff for this purpose; the prisoner's arguments shall be noted by the officer and brought before the Chief of Staff. If, after studying the arguments of the prisoner, the Chief of Staff finds that the conditions set forth in subsection (A) are not met, he shall cancel the imprisonment order.

Cancellation of the imprisonment order

4. If the Chief of Staff is of the opinion, at any time following issuance of the imprisonment order, that the conditions set forth in section 3(A) are not met, or that special reasons exist justifying the release of the prisoner, he shall order the cancellation of the imprisonment order.

Judicial review

5. (A) Within twenty-one days from the day the imprisonment order is issued, the prisoner shall be brought before the president of a District Court; where the District Court judge finds that the conditions set forth in section 3(A) are not met, he shall cancel the imprisonment order.

- (B) Where the prisoner is not brought before the District Court judge and a hearing is not conducted before the judge within twenty-one days from the day that the imprisonment order was issued, the prisoner shall be released, unless another basis for his detention exists pursuant to any law.
- (C) Once every six months from the day the order was issued pursuant to section 3(A), the prisoner shall be brought before the District Court judge. Where the District Court judge finds that release of the prisoner is no longer liable to harm state security, he shall cancel the imprisonment order.
- (D) The decision of the District Court judge pursuant to this section may be appealed within thirty days to the Supreme Court, which shall hear the appeal by a single judge; the Supreme Court shall have all the powers granted to a District Court judge pursuant to this Law.
- (E) In proceedings pursuant to this Law, deviation from the laws of evidence is allowed, the reasons for which shall be recorded. The court may admit evidence, also in the absence of the prisoner or his attorney, or without disclosing it, if, after examining the evidence or hearing arguments, also in the absence of the prisoner or his attorney, it is convinced that disclosing the evidence may harm state security or public safety. This provision does not prejudice any right not to provide evidence pursuant to chapter C of the Evidence Ordinance (New Version), 5731-1971.
- (F) Hearings pursuant to this Law shall be conducted *in camera* unless the court instructs otherwise in this matter.

Right of the prisoner to meet with an attorney

- 6. (A) The prisoner may meet with an attorney at the earliest possible time in which such a meeting can be held without harming state security needs or operational needs of the Israel Defense Force, and in any event no later than seven days prior to his being brought before the president of a District Court in accordance with section 4(A).
- (B) The Minister of Justice may by order limit the right of representation in proceedings under this Law to persons approved to serve as defense counsel in military courts with an unrestricted approval as stated in section 318(C) of the Military Justice Law, 5715-1955.

Presumption

- 7. For the purpose of this Law, a person shall be considered to belong to a force engaged in hostile activity against the State of Israel, or took part in hostile activity of such a force, directly or indirectly, as a person whose release is liable to harm state security as long as the hostile activity of that force against Israel has not yet ended, unless proven otherwise.

Determination regarding hostile activity

- 8. The determination of the Minister of Defense, in a certificate signed by him, that a certain force is engaged in hostile activity against Israel, or that hostile activity of that force against Israel has ended or has not yet ended between Israel and the force combating Israel, shall serve as proof in any judicial proceeding, unless proven otherwise.

Criminal proceedings

9. (A) Criminal proceedings pursuant to any law may be taken against an illegal combatant.
- (B) The Chief of Staff may direct by order, pursuant to section 3, the imprisonment of an illegal combatant also where criminal action has been taken against him pursuant to any law.

Prison Conditions

10. (A) The prisoner shall be held in proper conditions, which will not harm his health or dignity.
- (B) The prisoner's prison conditions shall be set forth in regulations enacted by the Minister of Defense.

Delegation of authority

11. The Chief of Staff may delegate his powers pursuant to this Law to an officer holding the rank of Major-General whom he shall designate.

Transitional provisions

12. (A) This Law shall also apply to an illegal combatant who is held by state authorities on the date of its commencement.
- (B) As long as no regulations have been enacted pursuant to section 10(B), the Emergency Power Regulations (Detentions) (Conditions of Administrative Detention), 5751-1981, shall apply to the prison conditions of a prisoner.

Implementation and regulations

13. (A) The Minister of Defense is charged with implementation of this Law.
- (B) The Minister of Justice may enact regulations regarding procedures in proceedings pursuant to this Law.