

The Hunger Strike Defeated the Secret Evidence – The Case of Khader Adnan

By Rima Ayoub-Assaf¹

With a hunger strike lasting 66 days, Khader Adnan, a Palestinian baker from the village of Arabeh in the West Bank successfully undermined the seemingly incontestable system of administrative detention in Israel and revealed the injustice of secret evidence. Administrative detention, a form of punishment in which a person can be detained on the basis of secret evidence and held in prison without charge, is based on three sources of law: Military Order No. 1591 Regarding Administrative Detention - 2007² that applies in the West Bank; the Emergency Powers (Detention) Law - 1979³ that applies in Israel; and the Internment of Unlawful Combatants Law - 2002.⁴ Most administrative detentions are imposed in accordance with Order No. 1591, which authorizes any military commander to incarcerate Palestinians from the Occupied Palestinian Territory (OPT) for a period of six months, which can then be extended for additional periods of time by the military courts.

In many countries, administrative detention is only used in exceptional and extreme circumstances. In these cases, while the state admits that it lacks sufficient evidence to substantiate a charge against the individual, it nonetheless denies that individual rights guaranteed in criminal proceedings and holds these individuals in prison for fear that some danger might materialize in the future.⁵ Contrary to the approach of employing administrative decision as an extraordinary measure, Israel has made extensive use of this method of punishment and has detained thousands of Palestinians without submitting criminal indictments against them or bringing them to trial. Currently, 310 Palestinians are held in administrative detention by Israel, and some have spent years in prison without being able to defend themselves against any charge.

Israeli courts at all levels have been unwilling to offer an effective remedy to administrative detainees. When appeals have reached the Israeli Supreme Court, they are almost summarily rejected. In doing so, the Supreme Court determines that the State's security would be threatened if the detainee was placed on criminal trial and the administrative detention was not

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² The Order Regarding Administrative Detentions (Emergency Regulations) [Consolidated Version] (Judea and Samaria) (No. 1591), 2007.

³ Emergency Powers (Detentions) Law, 1979.

⁴ Internment of Unlawful Combatants, 2002.

⁵ Appeal of Administrative Detention 1/82 **Kawasme v. Minister of Defense**, PD 36(1) 666.

carried out.⁶ These decisions, of course, are always based on “secret evidence,” which the Court has determined would cause severe and irreparable harm to the work and sources of the Israeli security forces’ if it were to be revealed.

On 8 January 2012, almost a month after his arrest, an administrative detention order was issued against Khader Adnan for a period of four months. The Military Court approved the order on 7 February 2012, and on 13 February 2012, the Military Court of Appeals rejected the appeal against the order. Khader Adnan began a hunger strike toward the end of the investigation period in protest against the humiliating treatment by the Shin Bet investigators against him, and continued with his hunger strike for the next 66 days.

On 21 February 2012, an appeal was submitted to the Supreme Court against the Military Appeals Court’s decision to approve his detention. Immediately before the hearing, Khader Adnan's attorney and the State Prosecutor’s Office issued a joint announcement stating that so long as no new and significant material was added to Adnan’s case, the administrative detention would not be extended beyond 17 April 2012. In these circumstances, the Supreme Court did not hear the case or need to issue a decision, and Khader Adnan ended his hunger strike.

The welcome outcome was not then the result of a court ruling. Rather, the long hunger strike, which posed a real threat to Khader Adnan’s life, ended only thanks to his power of survival, the campaigns led by local and international human rights organizations, and the demonstrations and solidarity hunger strikes held in various cities in Israel, Palestine and around the world. The hunger strike inspired responses from the highest levels in the international community, with EU High Representative Catherine Ashton, [stating](#) that she was “following with great concern reports about the deteriorating health condition of Khader Adnan, a Palestinian held in administrative detention in Israel” and reiterating “the EU’s longstanding concern about the extensive use by Israel of administrative detention without formal charge.”

Without the growing protests or attention by the international community, it is very doubtful that the State Prosecutor’s Office would have made such a statement in Khader Adnan’s case. Given that the courts regularly approve administrative detentions based on secret evidence, there is no reason to believe that the Supreme Court would have intervened and cancelled Khader Adnan's administrative detention order even if it had had the opportunity to deliberate the petition fully.

⁶ See, e.g.: Appeal of Administrative Detention 4130/09 **John Doe v. State of Israel** (yet to be published, issued on 26 May 2009).

And so, despite the ultimately positive result in Khader Adnan's case, it remains that the fate of about 310 administrative detainees is determined by a shady and inaccessible domain – the kingdom of secret evidence – with only the Shin Bet (General Security Services, Shabak) holding the keys.

The secret evidence "tool" is also extensively used against the 4,300 prisoners and detainees categorized as “security prisoners” by Israel. Though security prisoners regularly submit petitions to improve the conditions of their imprisonment or to defend against the violation of their rights, the courts systematically reject their petitions on the basis of secret evidence. Consequently, year after year, these prisoners are precluded from meeting with their [families](#); they are refused visits from relatives who are not members of their immediate family, and family members from Gaza cannot visit at all; they cannot conduct telephone conversations with their families; and they cannot have [conjugal visits](#) with their wives.⁷ Their hands and feet are bound during visits and when receiving medical treatment in hospitals, the television channels they are allowed to watch are restricted, as are the newspapers and books they are allowed to read, and [so on and so forth](#). All of this is based on secret evidence, with no real possibility of refuting or defending against it in court.

However, while petitioning the court may not be the most effective path, we now see (for a change) that a new path exists: The personal struggle of one man, together with broad local and international solidarity, overcame the kingdom of secret evidence.

The agreement achieved in Khader Adnan's case still upholds the period of administrative detention stipulated in the original order issued against him (four months, including the days of his detention from the period of the criminal investigation), but it secures his release. We hope that on the agreed date, which happens to be Palestinian Prisoner's Day, 17 April 2012, Adnan Khader will indeed be released and that the Shin Bet will not “reveal” any new “secret evidence” at that time.

⁷ The Nazareth District Court recently issued a clear new ruling on this matter in Administrative Petition (District-Nazareth) 54950-11/11 **Walid Dakka v. Israel Prison Service** (yet to be published, issued on 15 February 2012).