

Adalah The Legal Center for Arab Minority Rights in Israel

عدالة المركز القانوني لحقوق الاقلية العربية في اسرائيل
עדאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



22 March 2007

Mr. Menachem Mazuz
Attorney General
Via fax

Re: Illegal Interference by the Shin Bet

Following the response of the Shin Bet (GSS) security services on 15 March 2007 to my client, Mr. Ala Hlehel, the Editor of the Fasl al-Maqal newspaper, regarding the Shin Bet's interference in the publication of political and legal documents by Arab organizations, we turn to you as follows:

1. On 13 March 2007, the media reported a special meeting with the Prime Minister in which the Director of the Shin Bet warned of "a dangerous radicalization of the Arabs in Israel." According to the reports, the Shin Bet's Director explained during this meeting that "the radicalization of the Arab citizens of Israel is a strategic danger for the existence of the state."
2. These reports received prominent coverage, particularly in the Hebrew press. For example, the main headline in the Maariv newspaper was: "Rise in Arab Citizens' Identification with Iran and Terror Groups: **Shin Bet Director – Dangerous Radicalization of Arabs in Israel.**"

A copy of the article from Maariv is attached.

3. The media reports indicated that the "warnings and alerts" raised by the Director of the Shin Bet in the aforementioned meeting came in the wake of political and legal documents composed by Arab organizations addressing, inter alia, the amendment of the constitutional structure of the State of Israel (hereinafter: the Arab Documents). The Arab Documents are: "The Future Vision", published by the Chairman of the High Follow-up Committee for the Arabs in Israel; "The Democratic Constitution", published by Adalah; the "Ten Points Document", published by Mossawa; and "The Haifa Covenant", which is due to be published by Mada al-Carmel.
4. Following these reports, Mr. Ala Hlehel, Editor of the Fasl al-Maqal journal published in Nazareth, wrote to the Media Division of the Prime Minister's Office and asked to receive answers regarding these reports, particularly in regard to the Shin Bet's involvement related to the publication of the Arab Documents.

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Mr. Hlehel's letter from 13 March 2007 is attached.

5. On 15 March 2007, Mr. Hlehel received the response of the Shin Bet in writing, via fax. This response not only failed to deny the reports explicitly, but it also sought to justify the content of the reports. The Shin Bet's response notes, inter alia, that:

Under this responsibility, the Shin Bet is required to thwart the subversive activity of entities seeking to harm the character of the State of Israel as a Jewish and democratic state, even if their activity is conducted through democratic means, and this is by virtue of the principle of a "self-defending democracy." There is nothing wrong with composing such documents, or others, which are seen as constitutional or formative, unless they reflect or encourage unacceptable phenomena of political subversion as stated.

The Shin Bet's response from 15 March 2007 is attached.

6. It goes without saying that the Arab Documents written by political groups and human rights organizations were not composed clandestinely. Not only are these documents open, with their public and declared objective to generate a change in the constitutional structure of the State of Israel, but they are part of the legitimate right of Arab citizens to exercise legal means to change their situation in the State of Israel.
7. This interference by the Shin Bet is contrary to the authorities vested in it through primary legislation. The General Security Services Law – 2002 explicitly enumerates the Shin Bet's authorities, with its principal authority being to protect the security of the state "from threats of terror, sabotage, subversion, espionage, and exposure of state secrets..."
8. In a case pertaining to the prohibition on torture, in which the Shin Bet argued that torture during interrogations is required in order to foil additional attacks, an expanded panel of the Supreme Court ruled that the Shin Bet does not have the authority to carry out this type of activity, since it is not grounded in primary legislation. This ruling shows that even in the case of investigating attacks, the Shin Bet is obligated to operate in accordance with law and cannot deviate from it or stand above the law. **This applies even more clearly in the case of legitimate and legal activity that falls within the rights of freedom of political expression and freedom of association. Therefore, the Shin Bet's interference in the matter at hand stands in complete contradiction to the principle of the rule of law.**
9. This illegal policy of the Shin Bet is akin to its policy and activity during the period of the military government. This activity continues to emerge periodically and in contravention to the law. Examples include the Shin Bet's attempt to block the participation of the Balad political party list in the 2003 Knesset elections, and its intervention in the appointment of school principals in the Arab educational system. Both of these illegal practices were ceased following the intervention of the Supreme Court.
10. The Shin Bet's illegal activity, which deviates from the language of the law, is also **contrary to the values of democracy**. The Supreme Court has noted with regard to the attempted disqualification of Arab candidates for the Knesset elections that:

Democracy allows change. A proponent of change in the structure of government or even a change in the constitution itself is permitted to participate in the democratic dialogue, as long as he adopts legal means to realize his objective, and this objective is consistent with the core characteristics of democracy.

Election Confirmation 11280/02, *The Central Elections Committee for the 16th Knesset v. MK Ahmed Tibi, et al.*, Piskei Din 57 (4)1, page 24

11. The Shin Bet's deviation from its authority in the case at hand is extremely serious because it not only violates the rule of law, but also **increases the racial incitement** against Arab citizens in Israel. The labeling of the political and legal activity of Arab citizens as a security matter continues to stir hatred against Arab citizens and entails an attempt to propagate intimidation among the Arab population with regard to legitimate activity by its members, as well as to instill a fear of Arab citizens in the Jewish population.
12. It is clear to all that the Shin Bet does not adopt a similar policy or interfere in the political activity of Jewish groups seeking to change the government through legal means. This policy is not merely a matter of double standards; it increases racism against the Arab population in Israel, which stands in complete contradiction to **international law** and Israeli law. The International Convention on the Elimination of All Forms of Racial Discrimination (1966), which was ratified by Israel, defines racial discrimination in its first article:

[A]ny distinction, exclusion, restriction or preference based on race ... national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
13. Moreover, it can be assumed that any governmental institution that deviates from its authority knows that the labeling of legal activity by a specific population differentiated by national origin as "subversive" will in itself generate discord or enmity towards this population. Therefore, it can be presumed that the Shin Bet possessed a **clear awareness of the consequences of its interference** in the case of the Arab Documents; that is, it would generate inflammatory publicity against the Arab population in Israel. This is indeed what happened. The aforementioned media reports led to racial incitement against the Arab population in Israel.
14. This awareness raises suspicion that **the crime of racial incitement according to Article 144 of the Penal Code** has been committed. This article defines racism as follows:

Persecution, humiliation, debasement, expression of hatred, hostility or violence, or causing discord toward a community or parts of the population, all due to color or affiliation to a race, or national or ethnic origin.

15. Therefore, the Shin Bet's interference in the matter at hand and the accompanying publicity establish a suspicion that a criminal violation according to Article 144 of the Penal Code has been committed.

16. The continuation of the Shin Bet's illegal policy towards the Arab population compels the Attorney General to issue clear, written directives to clarify the boundaries of the prohibited and the permissible as regards the Shin Bet's interference. These directives should adhere to the literal interpretation of the instructions of primary legislation, on the one hand, while also giving decisive weight to basic liberties, first and foremost of which are the freedom of association and freedom of expression, on the other. The absence of these clear directives will lead the Shin Bet to continue its unauthorized and illegal activity. This is especially urgent in light of past experience and the case at hand.

Based on the above, we request:

- A) The initiation of a criminal investigation on suspicion of a criminal violation of Article 144 of the Penal Code regarding the inflammatory reports published following and as a result of the meeting held at the Prime Minister's Office on the subject of the Arab Documents, including an investigation of the Shin Bet's involvement.
- B) The issuance of clear, written directives clarifying what is permissible and prohibited under the law, with the goal of preventing the Shin Bet's future interference in matters similar to the current case.

I would appreciate your prompt response.

Yours Sincerely,

Hassan Jabareen, Attorney