

Gov't must show cause for private prisons

New petitions are dangerous challenge to authority, state argues

• By DAN IZENBERG

Despite strenuous attempts by the state to persuade it not to, a panel of seven High Court justices on Sunday granted a show-cause order to petitioners protesting the establishment of a private prison. The court also decided to increase the number of justices hearing the case to nine.

The petitioners, the Ramat Gan College of Law and retired prison warden Shlomo Tweezer, charged that a law passed by the Knesset in 2004 permitting the establishment of a private prison violated two constitutional laws, the Basic Law: Government and the Basic Law: Human Dignity and Freedom.

Hall "C," the largest of the five Supreme Court courtrooms, was packed with members of the Mahanot Ha'olim youth group and Ramat Gan college students who came to support the petitioners.

Until Sunday morning, only one court hearing had been held on the petition. At the end of that hearing, the court asked the state to provide a more detailed response to the petitioners' claim that the law violated the human rights of the prisoners. However, it did not issue a show-cause order, which is the next stage in a

High Court procedure after the preliminary hearing. By issuing a show-cause order, the court declares that the petition is serious enough to warrant a more detailed response by the state including a sworn affidavit by an appropriate state representative. When the second hearing opened on Sunday morning, the presiding justice, Supreme Court President Aharon Barak, asked the two sides if they were prepared to argue the case as if the court had already issued the show-cause order.

The state's representative, attorney Yochi Gnessin, refused. She charged that the petitioners had presented new arguments and extended the scope of their petition in a response they submitted to the court a few days ago and that the state had not had the chance to respond to these allegedly new arguments in the context of the preliminary hearing. Gnessin also charged that in arguing that the Basic Law: Government obliged the government not to allow a private organization to implement its responsibility for incarcerating prisoners, the petitioners were also challenging the government's right to delegate other executive responsibilities such as the ones it has handed over to

municipalities, government companies and other organizations. Thus, the "degree of danger" involved in the petition was much greater than the state had been able to explain to the court so far.

Finally, Gnessin argued that the fact that the court was being asked to reject a law not necessarily because it violated individual human rights but because it allegedly violated another constitutional law, that is, the Basic Law: Government, could have far-reaching consequences on the relations between the legislature and the judiciary. Not only must these consequences be explained to the court, but the Knesset should also be called in as a respondent to the petition.

The court recessed for close to an hour and then issued a decision granting the show-cause order but giving the state 30 days to present a more extensive response including the arguments Gnessin raised during the hearing. The court also gave the state seven days to respond to the petitioners' request for an interim injunction. It ruled that the winners of the tender for the private prison should respond to the petition and that the state should notify the Knesset Speaker of the court's proceedings.

WHO ELSE HAS PRIVATE PRISONS?

If the High Court approves legislation to allow private prisons, Israel will join the ranks of the United States, England, Scotland and Australia.

The US allowed the establishment of private prisons in the early 1980s with the company Corrections Corporation of America at the helm. The company now has 63 facilities in 19 states.

Countries and states often turn to private prisons because the federal or state prisons do not have enough beds. Research has not shown whether either prison system has a better effect on the prisoners, nor whether private prisons save more money than prisons run by the government.

• Adinah Greene