



February 19, 2013

Overview of ACRI's contacts with the judicial system regarding Prisoner X

For the first time, the Supreme Court has permitted the publication of all of the legal proceedings undertaken by the Association for Civil Rights in Israel two years ago over its demand to narrow the gag order in the case of the detention of Prisoner X.

In response to ACRI's request, the Supreme Court and the Central District Court have permitted the full publication of the details of all of the proceedings conducted by ACRI in late 2010 and early 2011 against the sweeping gag order in the case of Prisoner X.

Below, in chronological order, is an overview of ACRI's actions in the affair:

On 13 May, 2010, the Ynet website published an article about Prisoner X, who according to the report was being held in solitary confinement in a cell at the Ayalon Prison. Shortly after the story broke, the article was removed from the website. Following this revelation, Dan Yakir, ACRI's Chief Legal Counsel, [wrote to the Attorney General](#) and expressed concern about the article's claim that a detainee was being held in isolation from the outside world in violation of his fundamental rights. He further noted that undisclosed detentions and secret trials contradict the basic tenets of a democratic country and damages the right of the public to know. The appeal to the Attorney General was made six months prior to the detainee's death.

Attorney Raz Nizri, who was then a senior assistant to the Attorney General (now the Deputy Attorney General), [responded](#) on July 13, 2010, explaining that a gag order had been applied to the affair by the Central District Court on March 4, 2010. It was evident from his letter that the media were not informed of the gag order at the time, but only two-and-a-half months later when Ynet published the story. A clarifying decision was issued over a month later, under which the gag order applied to the conditions of the detention, including details of the cell where the prisoner was being detained. The letter further clarified that the Attorney General and other relevant supervisory bodies were ensuring that all individual rights were being upheld according to the provisions of the law.

The gag order was particularly broad: it included a prohibition against publishing the fact that a gag order had been issued, and even prohibited publishing information on the affair based on information gained from foreign sources.

On December 15, 2010, Prisoner X was found dead in his cell. ACRI learned of his death a few days later which increased the level of concern as to the circumstances of his arrest and conditions of his incarceration. Accordingly, a few days later on December 22, 2010, ACRI [filed a motion](#) with the Central District Court to lift or narrow the gag order. In the request, Attorney Dan Yakir pointed out the severity of the constitutional price and damage to the right of the public to know the details of detentions, when the public doesn't even know that these detentions exist. The principle of proportionality requires that where there is a necessity to prevent the release of specific details in relation to an arrest, it will be done without requiring a complete blackout.

It was further noted that medical studies have proven that detention in solitary confinement, even if not for prolonged periods, can cause irreversible psychological damage. All suicides of detainees held by the Israel Prison Service, and especially in light of the circumstances of the case before us where the prisoner was held in complete solitary confinement, require an investigation to examine whether the prison staff was negligent in their care or whether there is suspicion of foul play. There is a substantial public interest that the public be allowed to follow the investigation that will be launched, and that frameworks focusing on accountability – such as the Knesset Interior Committee and the media – can examine what occurred. It is important in this context to allow a serious public discussion to take place around the implications of the widespread secrecy involved in such cases involving detainees' rights and their mental health.

Three days later, a [response](#) was filed by the Central District Attorney's office, in which they refused to confirm any facts, including the death of the detainee, and argued against allowing the publication of any information whatsoever regarding the affair. In a [further response](#), ACRI listed all of the reports that had appeared already on the internet about the detainee's death.

A hearing was set to take place before the President of the Central District Court in early January 2011, and shortly before the hearing was set to take place, an additional request was filed to remove the gag order by the daily newspapers Haaretz and Yedioth Ahronot.

The hearing took place on January 3, 2011, at the Central District Court in Petah Tikva. It was set for 4pm; after all other proceedings had ended. Representatives of the state's security services provided information about the affair before the court *ex parte*.

In a [decision](#) dated January 9, 2011, Judge Gerstel rejected both requests. She determined that the court had the authority to prohibit publication not only of facts relating to the court proceedings, but also facts relating to the conditions of the detention of the accused and the location of his imprisonment. She also ruled that "I have no doubt that we are dealing with a sensitive affair in which every detail, the case's existence, the identity of the detainee, the conditions of his imprisonment, and the fact of his arrest - might harm the security of the state and its citizens." She also noted that sometimes the defendant's death can bring about a change in circumstances, but that is not the case in this affair.

Ten days later (January 20, 2011), ACRI [filed an appeal](#) to the Supreme Court. The appeal argued that leaving the gag order intact in these circumstances may give rise to concern that the purpose is to prevent open public discussion in Israel about the arrest of the accused, and allow authorities to interrogate him away from the watch of the media and the general public. The Central District Court did not provide any explanation as to why publication that the arrest took place (without divulging the identity of the detainee or the charges brought against him), his suicide, and details about the investigation into the circumstances of his death would cause any harm to state security.

The hearing for the appeal was set for early April 2011, but at ACRI's [request](#) it was brought forward to the end of February. In a hearing on February 23, 2011, the arguments of the parties were heard at length. Supreme Court President Beinisch together with Judges Naor and Arbel heard an ex parte comprehensive report on the affair from representatives of the state's security services. When ACRI's attorneys were asked to re-enter the courtroom, President Beinisch revealed to them that an investigation is underway, before a judge, to determine the cause of death and that a lawyer representing the family is taking part in the proceedings. In light of the security information provided to the judges, they recommended to ACRI to rescind the appeal. ACRI subsequently requested additional time to consider the suggestion.

Three weeks later, on March 13, 2011, ACRI [notified](#) the Supreme Court that ACRI welcomes, of course, the existence of an investigation into the cause of death to examine the particular circumstances of the deceased's death in his prison cell. Yet seeing as it is a proceeding that is taking place behind closed doors, that it involves the country's most powerful security agencies, and in light of past experience, ACRI is not satisfied. In light of the Court's comments at the hearing, however, ACRI agreed to withdraw the appeal while at the same time requesting that the Supreme Court rule on a number of fundamental legal issues that arose in the hearing. ACRI emphasized that, as opposed to the military censor's decision to prohibit all publication of the affair – which is a decision limited by time and circumstances – a court order is not limited by time and cannot be cancelled or narrowed without the interested party making a request to an appropriate court. Hence the importance that the Supreme Court marks the boundaries of the authority and discretion of the courts in this matter and as such publicize the court's decision.

In a short [decision](#) released on March 15, 2011, the Supreme Court ordered the withdrawal of the appeal together with a ruling that this case is not an appropriate framework for providing a judgment that can act as a guide regarding future gag orders.

On February 12, 2013, a [comprehensive investigative report](#) was broadcast by the Australian Broadcasting Corporation. Reports published about this "breaking news" on Israeli news websites were removed shortly after. The next morning, on February 13, 2013, the Central District Court accepted the State Attorney's request and permitted the publication of news of the affair that was based on foreign sources. Following this, ACRI again [wrote](#) to Shai Nitzan, the Deputy Attorney-General, and requested to publish details of the arrest and the death of the prisoner. In the late evening, the Central District Court responded to an additional application by the State Attorney, and [permitted](#) the publication of details of the investigation into the cause of

death and on the judge's findings from a month and half earlier regarding the prisoner's suicide. It was additionally permitted to publish the following information: "an appeal filed by ACRI before the Supreme Court against this gag order, was withdrawn by ACRI, on the recommendation of the Supreme Court."

Following the publication of this information, on February 14, 2013, ACRI requested from both the [Supreme Court](#) and the [Central District Court](#) to allow to make public all the steps it had taken before the courts to remove or reduce the scope of the gag orders. On February 18, 2013, the State Attorney informed both courts that it agrees with the request. The president of the Central District Court approved the agreement on the same day, and the Supreme Court gave its approval on February 19.