

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

-1-

Judea and Samaria Area
Legal Advisor's Office
P.O.Box 5, Beit El 90631
Tel: 02-9977071/711
Fax: 02-9977326
363/00 - Temporary
Heshvan 6 5775
October 19 2015

To
Advocate Labib Habib

By fax: 02-6263212

Dear Colleague,

Re: Objection against the intention of the Military Commander to take measures for the seizure and demolition of the residential apartments in which lived _____ Haj Hamed, ID No. _____

Reference: your letter dated October 17, 2015

1. Your letter to the Military Commander of IDF Forces in the Judea and Samaria Area regarding the intention to take measures for the seizure and demolition of the residential apartments in which lived the perpetrator _____ Haj Hamed, ID No. _____, in Rujeib, was brought to the attention of the military commander, was examined by him and the following is his decision in the above referenced matter.
2. Firstly, we would like to apologize for the mistake which occurred in the Arabic translation of the notice which was delivered to your clients. As was noted in the Hebrew version, the military commander intends to take measures for the seizure and demolition of the apartments in which the perpetrator lived, **which are located on the first and second floors (above the ground floor) of the structure.**

Arguments pertaining to international law

3. The arguments pertaining to international law according to which the demolition constitutes, among other things, collective punishment, have been discussed many times in the past, and were raised in the last two years in a host of judgments on this issue and as known, were recently rejected by the Supreme Court¹ and according to prevailing case law.

¹ See recently in H CJ 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defence** and H CJ 5839/15 **Sieder et al., v. Military Commander of IDF Forces in the Judea and Samaria Area**, reported in the Judicial Authority Website on October 15, 2015.

Proportionality in the exercise of power

4. In the objection a demand was raised that the apartments would not be demolished and that a less injurious measure be taken.
5. In this context we wish to note that the decision to take the sanction of demolition according to Regulation 119 against the residential apartments in which the perpetrator lived, either alone or together with his nuclear family, is based on the intention of the military commander to attain a clear deterring purpose, which the military commander believes would not be achieved by the taking of any other sanction.

Exercise of power, deterrence and security needs

6. The objection argued that the demolition of the homes of perpetrators was not proved to be effective and in this regard the conclusions of the Shani committee were mentioned.
7. Arguments in this regard were considered and rejected by the Supreme Court, *inter alia*, in recent petitions.
8. Accordingly, for instance, in **Abu Dheim**, the Honorable Justice (as then titled) Naor, referred to the heightened need to deter additional terrorists in order to stop the rising wave of terror, in connection with a decision to take measures according to Regulation 119 in the matter of a terrorist (resident of East Jerusalem) who committed the murderous terror attack in Mercaz Harav Yeshiva, as follows:

Our position is that there is no room to intervene in the respondent's change of policy. The new-old policy relies upon the aforesaid opinion of the General Security Service, and it is shared by the IDF Chief of Staff and the Minister of Defence. Indeed an authority can change a policy and surely it may change it with change in circumstances. With respect to terrorists residents of East Jerusalem the respondent demonstrated with concrete data, the highlights of which we mentioned above, that there indeed exists a change of circumstances. As was ruled in the past in this court case law, this court is not inclined to intervene in the security forces' evaluation concerning the effectiveness of using the measure of demolishing houses or sealing them as a factor that deter others. The same is also when a few years ago there was a change of policy following the recommendations of the think tank headed by Major General Shani. As we mentioned above, the case law ruled more than once, that a scientific study that can prove how many terror attacks have been prevented and how many lives have been saved as a result of taking the aforesaid measure could never be conducted. For this matter nothing has changed. Indeed, the reality has changed and also the severity of the events has changed. The conclusions to be drawn from that are a clear matter for the security forces to evaluate.²

9. This rule has been reiterated numerous times by this honorable court, and see paragraph 24 in '**Awawdeh** (HCJ 4597/14

² HCJ 9353/08 **Hisham Abu Dheim v. GOC Home Front Command**, paragraph 11 of the judgment of the Honorable Justice (as then titled) Naor (reported in Nevo, January 5, 2009).

In the beginning, we have described the extreme circumstances currently prevailing in the Judea and Samaria area, circumstances which lead to the conclusion that was adopted by the political echelon, that a change of policy was required. I am of the opinion, that the data presented, all as specified above, constitutes a change of circumstances. There is no room to intervene with respondent's decision who has concluded that at this time actual deterrence was required, and that the demolition of the terrorist's house would result in such deterrence. [...] Furthermore, as was noted in our case law more than once, it is impossible to conduct a scientific research which would prove how many terror attacks were prevented and how many human lives were saved as a result of taking the measure of house demolition (see, for instance: HCJ 2006/97 **Janimat v. GOC Central Command**, IsrSC 51(2) 651, 655 (1997)). The conclusions arising from the severity of the recent events in Judea and Samaria are a clear matter for the respondent to attend to...

The argument regarding discriminatory exercise of power

10. In response to the arguments regarding discrimination, we would like to make reference to paragraph 30 of the judgment of the Supreme Court in HCJ 5290/14 **Qawasmeh v. The Military Commander of the Judea and Samaria Area**³ (hereinafter: **Qawasmeh**), where it was held, *inter alia*, as follows:

In view of the fact that regulation 119 has a deterring rather than a punitive purpose, the mere execution of hideous terror acts by Jews, such as the abduction and murder of the youth Mohammed Abu Khdeir, cannot justify, in and of itself, the application of the regulation against Jews, and there is nothing in respondent's decision alone, not to exercise the regulation against the suspects of this murder, which can point at the existence of selective enforcement.

11. The above statement which was established by case law are also relevant to the case at hand, and under these circumstances, the military commander decided to reject the above argument.

The argument regarding the exercise of power before the terrorist has been convicted

12. The fact that judgment against the terrorist has not yet been given, has no weight in the case at hand. According to case law on this issue⁴, the mere existence of administrative evidence justifies the exercise of the power according to Regulation 119 of the Defence Regulations and there is no need to wait until an indictment is filed or until the terrorist is convicted.

³ Reported in the Judicial Authority Website on August 11, 2014.

⁴ See **Qawasmeh** in paragraph 27 of the judgment; HCJ 4597/14 '**Awawdeh v. The Military Commander in the Judea and Samaria Area**, dated July 1, 2014, reported in the Judicial Authority Website.

13. For the sake of good order it should be noted that the evidentiary infrastructure which exists in the case of the terrorist at hand leaves no doubt whatsoever as to his involvement in the terror attack described above.

The argument concerning the demolition method used against the residential unit

14. In the context of the objection information was sought with respect to demolition method which would be used against the apartments.
15. In this regard it should be noted that the apartments' demolition plan was prepared by professionals on behalf of the military commander, who are qualified engineers, following an exact mapping of the apartments, taking into consideration their engineering traits and location. The professional method which was examined and selected by the professionals for the execution of the decision of the military commander is the method, which in the opinion of the engineering professional would enable to carry out the decision of the military commander taking into consideration the need to avoid, to the maximum extent possible, damage to neighboring structures or parts of the structure which are not designated for demolition, namely, the lower and upper floors of the structure.
16. With respect to the demand that the engineering plan which was prepared be transferred, we would like to note that this issue was discussed in H CJ 5290/14 **Qawasmeh v. The Military Commander of the Judea and Samaria Area**⁵ where it was held by the Supreme Court that it did not find reason to direct the military commander to transfer for petitioners' review the engineering opinion or to intervene with the demolition method.⁶
17. For these reasons and based on the above ruling, the military commander rejected your above demand.

Conclusion

18. In view of all of the above, having examined your arguments, the military commander decided to reject the objection in its entirety.
19. Therefore, the attached seizure and demolition order is hereby delivered which pertains to the residential apartments in which the terrorist lived, which are located on the first and second floors (above the ground floor) of the structure.

⁵ Reported in the Judicial Authority Website on August 11, 2014.

⁶ Paragraph 31 of the judgment.

20. It should be emphasized that the enforcement of this order will not commence before the elapse of 48 hours from its delivery.

Very truly yours,

(Signed)

Sandra Beit-On Ofinkero, Major
Head of Division Infrastructure and Seam Zone
On behalf of the Legal Advisor