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Andre Rosenthal, Advocate

August 24, 2015

Reference: 81/5

To
Commander of IDF Forces in the West Bank
By electronic mail: Pniot-tzibur@mail.idf.il

Dear Sir,

Re: Appeal against the intention to seize and demolish the structure in which Alasalmon resided

1. I represent all tenants of the building located on waypoint 207059/601609, with the exception of the family of _____ Alasalmon, on behalf of HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (HaMoked). The following are the details of my clients:
 - A. _____ Sidr, ID No. _____, 40 years old, married and a father of five, taxi driver, lives with his family on the ground floor. A copy of a power of attorney is attached.
 - B. _____ Tamimi, ID No. _____, 67 years old, married, interpreter into the Hebrew language, lives with his wife in an apartment on the ground floor. His wife suffers from high blood pressure and diabetes. A copy of a power of attorney is attached.
 - C. _____ Al-Atrash, ID No. _____, 42 years old, married and a father of six, works in an auto paint and body work garage, lives with his family on the first floor. A copy of a power of attorney is attached.
 - D. _____ Tamimi, ID No. _____, 32 years old, married and a father of three, teacher in the Polytechnic Institute in Hebron, lives with his family members in an apartment on the first floor. A copy of a power of attorney is attached.
 - E. _____ A-Qanibi, ID No. _____, 40 years old, married and a father of three, bank clerk in Hebron, lives with his family members in an apartment on the second floor. A copy of a power of attorney is attached.
 - F. _____ Taha, ID No. _____, 41 years old, married and a father of nine, an electrician, lives with his family members in an apartment on the second floor. A copy of a power of attorney is attached.
 - G. _____ Al-Atrash, ID No. _____, 46 years old, married and a father of six, works in an auto paint and body work garage, lives on the third floor. A copy of a power of attorney is attached.
 - H. _____ Taha, ID No. _____, widow, mother of three, lives with her children on the fourth floor. A copy of a power of attorney is attached.

2. On November 10, 2014, _____ Alasalmon committed, as alleged by the authorities, a terror attack. Consequently the tenants of the building turned to HaMoked and requested its assistance. The tenants of the building were concerned that the military might take revenge by demolishing the building. HaMoked turned immediately to Mr. Taysir Jabarin, a civil engineer, license number 36465, who graduated the Teknion in 1986, and requested him to inspect the building. On November 15, 2014, Mr. Jabarin visited the building and prepared an opinion. A copy of the opinion is attached as an integral part of this appeal.
3. The structure at hand is a five story building located in Hebron, Dahiyat al Zaytun, Dora Road, Tahrir junction. Each floor consists of two adjacent apartments which share a common wall. The building was constructed in a conventional manner with concrete and building blocks. The exterior walls of the structure have a stone veneer. The structure has two stairways which separate its east side from its west side.
 - A. The building's basement was built about 30 years ago. It is divided into two adjacent apartments which share a common wall.
 - B. The ground floor and the three upper floors were constructed in different stages over the last twenty years.
 - C. The construction has apparently been carried out without a proper engineering supervision and with materials which do not carry a standards association stamp. The engineer on our behalf states in his opinion - "In a visual inspection cracks and sinking were indeed detected in several elements in the apartment which indicates that the quality of the construction is lower than average."
4. The engineer's opinion refers to the possibility of the demolition or sealing of one isolated apartment on the third floor, the floor on which Maher Alasalmon resided. According to the opinion, the demolition or sealing of the single apartment may cause a chain reaction in the ceilings of the structure including their collapse and the collapse of the entire building. The opinion also includes advice on how the collapse of the entire building may be avoided. In order to prevent the collapse of the entire building "a preliminary permanent supporting concrete or steel construction for all floors of the building" is required. (see: paragraph 4.1.2 of the opinion).
5. On August 19, 2015, "notice regarding an intention to seize and demolish the structure in which Maher Hamadi Rushdi Alasalmon lived" was given. The caption indicates that the entire building is about to be demolished. The notice itself states as follows –

"... hereby notifies that he intends to seize and demolish the residential apartment constituting part of a structure in Hebron..."

It is not clear whether the notice refers to the entire five story building, or "only" to the apartment on the third floor.

We argue that the execution of said intention would excessively injure the tenants of the building who had no connection to Maher Hamadi Rushdi Alasalmon other than being tenants in the same building.

There is no argument concerning conspiracy, support, assistance or knowledge of the tenants of the building prior to the execution of the attack on November 10, 2014.

Therefore, a demolition or sealing of the apartment in which Alasalmon lived prior to the attack does not satisfy the test of proportionality in view of the damages which are expected to be caused to the apartments of my clients – their private property.

6. There is no dispute that according to the rulings of the Supreme Court, the power to seize and demolish the entire building, and even more than that, exists.

Nevertheless, throughout the years the applicability of Regulation 119 of the Defence (Emergency) Regulations, 1945, was narrowed down by the Supreme Court, based on the last part of section 11 of the Law and Administration Ordinance which stipulates that the law which was in effect in Palestine on Iyar 5, 5708 will remain in force "subject to such changes which may arise from the establishment of the state and its authorities."

In H CJ 680/88 **Schnitzer v. Chief Military Censor**, IsrSC 42 (4) 617, in page 625 the Honorable Justice Barak (as then titled) held that –

"In the beginning this court was of the opinion that said changes were only technical in nature (H CJ 5/48 **Leon et al., v. Acting District Commissioner of Tel Aviv**, IsrSC 1, 58, page 69). As time went by, it was held that the "changes" were not merely "technical" but also material in nature (H CJ 222/68, Motion 15/69 **National Circles Registered Association et al. v. Minister of Police**, IsrSC 24(2) 141)."

7. In H CJ 2722/92 **Alamarin v. Commander of ID Forces in the Gaza Strip**, IsrSC 46(3) 693, page 705 the Honorable Justice Cheshin (as then titled) reiterates the above and holds that:

Legislation that originated during the British Mandate — including the Defence (Emergency) Regulations — was given one construction during the Mandate period and another construction after the State was founded, for the values of the State of Israel — a Jewish, free and democratic State — are utterly different from the fundamental values that the mandatory power imposed in Israel. (between the letters B and C).

Although similarities may be drawn between the period during which Great Britain exerted control over Israel- Palestine and the period during which the IDF has exerted control over the West Bank since 1967 – namely, the continued use of the Defence (Emergency) Regulations, 1945 – we believe that the principles and limitations which were established by the Supreme Court in connection with the exercise of the authority under Regulation 119 within the green line borders permeated the other side and penetrated the West Bank. The need to have a proportionate policy was firstly declared precisely in connection with the demolition of a house in the West Bank.

8. The seizure and demolition of the entire building does not satisfy the proportionality test. The seizure and demolition of an apartment on the third floor in a five story building, or the sealing thereof, do not satisfy the proportionality test in view of the clear and present danger of the collapse of the entire building, as was pointed out in the opinion.

In H CJ 5510/92 **Hamada Muhammad Halil Turkeman v. The Minister of Defence, Mr. Itzhak Rabin**, IsrSC 48(1) 217, in page 220 the Supreme Court held with respect

to a seizure and demolition of an entire house – rather than a five story building – as follows:

It appears to me that demolishing the entire house would constitute a measure that is “disproportionate” – hence also unreasonable – between the murderous behavior of Muhammad Turkeman and the suffering that will be inflicted on the elder brother’s family. Under these circumstances, it appears that the reasonable route was that which provided for partial demolition only. As we have seen, this route is impossible. Under these circumstances, the less drastic measure – which is also very severe – of partial sealing, should be employed. Two rooms will be sealed, in a manner which will enable the elder brother and his family to continue to live in the house.

9. In HCJ **Alamarin** cited above, in addition to the doubts raised by the Honorable Justice Cheshin with respect to the authority to demolish an entire building, the Honorable Justice Bach specifies several criteria which should be considered before the authority under Regulation 119 is exercised. In said open list, the Honorable Justice Bach specified the following (page 700 of the judgment):

b. To what extent can it be concluded that the other tenants, or some of them, were aware of the activity of the suspect or the suspects, or that they had reason to suspect the commission of this activity? ... ignorance or uncertainty on this issue... do not in and of themselves prevent the sanction from being imposed, but the factual circumstances in this regard may affect the scope of the commander’s decision.

c. Can the residential unit of the suspect be separated in practice from the other parts of the building? Does it, in fact, already constitute a separate unit?

d. Is it possible to destroy the residential unit of the suspect without harming the other parts of the building or adjoining buildings? If it is not possible, perhaps the possibility to seal the relevant unit only should be considered.

e. What is the severity of the result arising from the contemplated demolition of the building for persons who have not been shown to have had any direct or indirect involvement in the terrorist activity. What is the number of such persons and how closely are they related to the tenant who is the suspect?

For clarification purposes, the **Alamarin** case concerned a two story building; the murder suspect lived, prior to his arrest, in one of the rooms of the building.

10. A. Maher Alasalmon lived on the third floor, in a separate apartment, together with his family. Neither one of the tenants of the building had any connection with the execution of the terror attack. No argument in that regard has been made.
- B. The apartment of Maher Alasalmon is a completely separate residential unit.
- C. According to the opinion of the engineer, the demolition and/or sealing of the apartment of Maher Alasalmon will cause the entire building to collapse.

- D. If the entire building or the apartment on the third floor are either demolished or sealed, the tenants of the building, totaling fifty (50) individuals will be injured for no fault of their own. Their only "fault" is that they are Palestinians who own apartments in a building one of the tenants of which committed a terror attack.
11. The implementation of Regulation 119 in connection with an event which occurred in November 2014, is a mere act of revenge and any argument concerning the need to deter others is not true.

It is a punitive act, as is clearly indicated by the location of the Regulation under the caption – Miscellaneous Penal Provisions.

A seizure and demolition of the entire building or any part thereof does not satisfy the proportionality test. The implementation of Regulation 119 will cause the entire building to collapse, even if the power is exercised against an apartment on the third floor in a five story building.

The implementation of Regulation 119 will cause severe damage to the private property of the tenants of the entire building.

The implementation of Regulation 119 in this case is prohibited being an act of collective punishment.

The implementation of Regulation 119 in this case is cruel and causes unnecessary suffering to innocent people. Such an act will only add to the general deterioration within Israel and in the Occupied Palestinian Territories (OPT) and will lead to another round of mutual violence. Apparently, this is the objective embedded in the exercise of power under Regulation 119 at this time in the case at hand.

12. Therefore, we request that this appeal be accepted and the intention to exercise power under Regulation 119 of the Defence (Emergency) Regulations, 1945 against the building located in waypoint 207059/601609, in Hebron, Dahiyat al Zaytun, Dora Road, Tahrir junction.

Very truly yours,

Andre Rosenthal, Advocate

Attached: Powers of Attorney, Engineer's Opinion

CC: HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger.