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Israel Defence Force

**At the Military Court Judea
Before the Honorable Judge: Major Amir Dahan**

**File No.: 4737/13
4335/13**

In the matter of:

**Dr. _____ Sarawi ID No. _____
_____ Hur ID No. _____**
(represented by Adv. Tal Steiner et. al.)

The appellant

v.

Military Commander of the Judea and Samara Area
(represented by Adv. Major Oren Liber)

The respondent

Decision

Discussion of the causes to accept the appeal outright:

After I have reviewed the appeal and heard the parties, I have come to the conclusion that appellants' arguments concerning:

- Lack of lawful cause for the confiscation of the funds
- Lack of hearing
- Lack of notice of the right to appeal in the confiscation form.

Do not justify the acceptance of the appeal outright without an appropriate factual infrastructure.

With respect to the right to be heard it should be shortly noted that according to the documents before me, a notice of the right to be heard was given in a letter of respondent's representative dated March 20, 2013, which right has also been exercised.

With respect to the lack of notice of the right to appeal pursuant to regulation 147A – appellant's representative is correct. It would have been appropriate, although there is no statutory obligation to do so, had notice of the right to appeal according to the regulations been given upon the issuance of the confiscation order.

However – the fact that such notice was not given does not constitute sufficient cause to accept the appeal outright without holding a hearing in the matter on its merits.

With respect to a lawful cause I did not find that the confiscation of the funds was made, *prima facie*, without authority. It is possible that by the end of the proceeding, after the evidence shall have been heard, it would be found that the confiscation was made without cause. However, since the respondent argued that the confiscated funds belonged to an unauthorized association, a cause for confiscation exists *prima facie*, and the appeal is designed to exercise judicial review over said administrative action.

Subject Matter Jurisdiction – New Legislation

After this decision was written, and prior to its publication, the **Order on Security Provisions (amendment No. 36) Judea and Samaria) (Number 1732), 5774-2013** was issued.

According to this order, a copy of which is attached to the decision, and pursuant to section 1(10) of the **Order Regarding Interpretation (Judea and Samaria)(Number 130) 5727-1967**, said legislation may revoke the court's subject matter jurisdiction to hear the case, although it has already been instituted.

Subject matter jurisdiction is a matter that must be brought up by the court, at its own initiative, if it becomes aware of same, and this is what I do.

Therefore, and before affidavits of primary testimony are submitted, the parties will submit their positions concerning the subject matter jurisdiction of the court to hear the case at hand.

Order for Summations

The positions will be submitted by way of written summations.

Respondent's summations will be submitted within seven days with a copy directly to appellants' representative.

Appellants' summations will be submitted within seven days with a copy directly to respondent's representative.

Each document will be submitted to the court's secretariat with an electronic copy to the relevant e-mail address.

After the subject matter jurisdiction issue is resolved, and if the court finds that it has jurisdiction to hear the appeal, order concerning primary testimony affidavits will be given.

A decision on the subject matter jurisdiction issue is scheduled for January 29, 2014.

The court's secretariat will forward a copy of this decision to the parties.

Given today, January 6, 2014, in chambers, and in the absence of the parties.

(signed)

Judge