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Not classified

**Israeli**

**Defence**

**Forces**

At the Military Court

MA 4337/13

\_\_\_\_\_ **Sarawi**  
**ID No.** \_\_\_\_\_

represented by counsel, Adv. Tal Steiner

**The Appellant**

v.

**Military Commander of the Judea and Samaria Area**

**The Respondent**

## **Respondent's Summations concerning Subject Matter Jurisdiction**

According to the decision of the honorable judge Major Amir Dahan which was sent to us on January 8, 2013, the respondent hereby respectfully submits its summations concerning the subject matter jurisdiction of the honorable court.

### **Lack of Jurisdiction**

1. The respondent will argue, that the purpose of the Order regarding Security Provisions (Amendment No. 36)(Judea and Samaria)(No. 1732), pursuant to which section 61A entitled "Exclusive Jurisdiction" was added to Sign D to Chapter C of the Order regarding Security Provisions [Consolidated Version] (Judea and Samaria)(No. 1651), 5770-2009, which concerns seizure and forfeiture, is to unequivocally clarify, that the jurisdiction to exercise judicial review over seizure and confiscation proceedings pursuant to the Defence (Emergency) Regulations, 1945, and over confiscations ordered by the military commander by virtue of his administrative authority, did not vest with the military courts in Judea and Samaria.

2. As stated by the military court in its decision, the amendment applied to property which was seized, forfeited or confiscated as of the effective date, as defined in the Order regarding Interpretation [Consolidated Version] (Judea and Samaria)(No. 1729), 5774-2013, **and therefore it also applies to the case at hand.**
3. Furthermore, the respondent will reiterate its basic argument (which was also raised in the hearing dated September 12, 2013), according to which under the legal arrangement which existed before the amendment, the military court had no jurisdiction to hear an appeal on the decision of the military court to confiscate property pursuant to regulations 84 and 120 of the Defence (Emergency) Regulations 1945. The Defence Regulations do not grant jurisdiction to adjudicate confiscations made there-under. Neither does Regulation 147A grant Jurisdiction to adjudicate appeals on confiscations and the jurisdiction to adjudicate such appeals is vested with the High Court of Justice (and this is also the situation within Israel – see MA (Nazareth) 3301/02 **Raed Bader v. State of Israel** which held, that the court had no jurisdiction to hear an appeal on a confiscation order).

On this issue it may be said, that the amendment only spells out, clarifies and reiterates the above principle.

**And once again – to the crux of the matter**

4. For the avoidance of any doubt the respondent wishes to point out again, that the confiscation order was issued on April 14, 2013 by virtue of the authority vested with the commander of IDF Forces in the Judea and Samaria Area pursuant to regulations 84 and 120 of the Defence (Emergency) Regulations, 1945, and his other authorities under any law and security legislation. The above order was issued in view of administrative evidence which clearly indicate that **the funds which were confiscated belong to an unauthorized association.** The confiscation of the funds in the case at hand was made with authority, after discretion was exercised, and was justified, reasonable, proportionate and properly substantiated based on the intelligence information concerning appellant's matter.

( signed )  
Oren                      Liber,                      Major  
Representative of the Military Commander

Copy: Advocate Tal Steiner (via Fax: 02-6276317)  
Dare: January 14, 2014