

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**

Judea and Samaria Area
Office of the Legal Advisor
POB 5, Beit El 90631
Tel: 02-9977071/711
Fax: 02-9977326
768494 – 363/00
29 Sivan 5774
27 June 2014

To:
Adv. Sigi Ben-Ari
HaMoked: Center for the Defence of the Individual
(by fax: 02-6276317)

Re: Objection against the intent to seize and demolish the home of the terrorist ‘Awwad, ID No. _____.

Yours: 82477, dated June 23 2014
83308, dated June 25, 2014
Ours: 768365 – 363/00 dated June 23, 2014

1. We hereby acknowledge receipt of your letter in reference dated June 25, 2014, submitted on behalf of the family of the terrorist ___ ‘Awwad, ID No. _____, via his brother, in which you stated your objection to the intent to seize and demolish a structure used by the above named terrorist (hereinafter: “**the terrorist**”) as a residence.
2. After the objection was brought to the attention of the IDF Commander in the Judea and Samaria Area, I hereby inform you of his decision in the matter at hand.
3. We begin by noting that, having examined the arguments listed in your letter in reference, which were brought to his attention, the military commander has decided to **accept your objection in part** and to reduce the damage to the residential structure wherein the terrorist resided such that **only the section of the building occupied by the terrorist and his nuclear family** would be damaged, provided that the commander is satisfied that the demolition will not damage the other section of the structure, occupied by the family of the terrorist’s brother.

4. We hereby present the position of the military commander in reference to the arguments listed in your letter.

Background and foundation of the decision

5. The intent to seize and demolish the structure occupied by the terrorist materialized as part of counter-terrorism policy, and, as you note in paragraph 9 of your letter, pursuant to the powers of the IDF Commander in the Judea and Samaria Area, including under Regulation 119 of the Emergency Regulations 1945 (hereinafter: “**the Regulations**”).
6. The evidence in the possession of the military commander clearly indicates that the terrorist was arrested in 2000 and convicted of various crimes, including the murder of three Palestinians he suspected of collaborating, using a weapon he stole from a guard. The terrorist was sentenced to a lengthy prison term for said crimes, and was expected to be released in 2026. However, he was released on November 18, 2011, as part of the deal struck for the release of kidnapped soldier Gilad Shalit, with an undertaking to refrain from any future terrorist activity.
7. However, shortly thereafter, the terrorist resumed his engagement in heinous terrorist activity, which included calls, in his role as an Imam, to perpetrate suicide attacks against Israeli targets. This activity **culminated in the execution of a carefully planned shooting attack on Israeli civilians traveling in seven cars on Route 35, on April 14, 2014.**

The shooting attack (during which the terrorist fired no less than 45 bullets) resulted in the death of Commander Baruch Mizrahi, RIP, and the injury of his wife and another child who was traveling in another car.

8. Moreover, the serious indictment served against the terrorist on June 22, 2014, attached hereto, indicates that his son ____ (also indicted with a number of serious offenses, most notably assisting the terrorist in perpetrating the above mentioned attack), aided the terrorist with planning and preparation in the months preceding the attack.
9. The fact that these serious acts were committed by the terrorist is supported by well substantiated evidence, in light of which indictments were served against the terrorist and his son, at the Judea Military Court (Court cases 4936/14, 4935/14), attributing said actions to the terrorist.
10. Beyond requirement, we note that the testimony of the terrorist’s son indicates that the terrorist’s wife was aware of the fact that the terrorist was in possession of a weapon and that he had used it just several days before the terrorist attack, as well as subsequently.

11. In the grievous circumstances described above, measures pursuant to Regulation 119 of the Regulations, as described below, correspond to the Regulations' purpose of deterring other terrorists from committing such attacks, and comply with case law on this matter.

The remarks of Honorable Justice A. Barak (as was his title then) in HCJ 798/89 **Shukri v. Defense Minister**, TakSC 90(1), 75, are relevant to the matter at hand:

The power vested in the military commander under Regulation 119 is not a power to use collective punishment. Use thereof is not designed to penalize members of the Petitioner's family. This power is administrative and its use is designed to deter, thereby upholding public order... We are aware that the demolition of the building damage the dwelling of the Petitioner and his mother. True, this is not the purpose of the demolition, but it is its outcome. **This bitter outcome is designed to deter potential perpetrators of terrorist attacks, who must understand that through their actions they themselves cause harm not only to public safety and order, and not only to the lives of innocents, but also to the wellbeing of their own loved-ones**" [emphasis added, A.N.]

12. In light of all the above, demolishing the home of the terrorist in reference is consistent with the provisions of Regulation 119 of the Regulations and with the rationale underlying it.

Response to arguments made in the objection

13. With respect to the remaining arguments presented in the objection, after careful examination, the IDF Commander in the Area, has found that they cannot alter his intent to demolish the residential unit occupied by the terrorist and his nuclear family.

Proportionality of the decision

14. In the objection you claimed that there was no rational connection between the demolition and the deterrence it is required to produce.
15. In this context, security officials believe that the demolition of the structure could establish effective deterrence with respect to potential terrorists in the Area. This position is supported by comprehensive information, some of which is classified. The competent security officials maintain that the current security escalation, which culminated in the abduction of the three youths in recent

days, coupled with the current evaluation regarding the efficacy of deterrence in the cases at hand, reach the threshold required for the exercise of the powers granted under Regulation 119 in this matter.

16. With respect to the additional tests of proportionality, the demolition of the structure was weighed against the severity of the terrorist's actions, the scope of the phenomenon and the need to deter against it, as detailed above. Additionally, the impact of the demolition on the building occupants was examined with a view to reducing harm to a minimum and refraining from demolishing the section of the structure occupied by the family of the terrorist's brother.

Additionally, with respect to the terrorist's nuclear family – as stated, his son who resided in the structure prior to his arrest, stands accused of aiding in the commission of the terrorist attack and many other offenses. Also, there is evidence that the terrorist's wife allegedly knew about the possession and use of weapons just a few days before the attack.

17. As stated, given the information provided in the objection that the terrorist's brother lives with his family in part of the structure, and after a visit to the site by his representatives, the IDF Commander in the Area has decided to accept the objection in part, in the sense that the intent to demolish the terrorist's home would be confined to the section of the building occupied by the terrorist and members of his nuclear family, and that any damage to the section of the structure occupied by the brother and his family would be avoided. Clearly, precautions will be taken to avoid any damage that might be caused to structures located near the terrorist's home as a result of the demolition.
18. To conclude this point, subject to the acceptance of the objection in part, as stated, the IDF Commander in the Area is unable to accept your claim that the demolition of the terrorist's home is disproportionate.

Conviction as a condition for exercising the power

19. With respect to your claim that any measures under Regulation 119 should be suspended pending completion of criminal proceedings against the terrorist: In light of the explicit position stated in case law that the exercise of powers under Regulation 119 of the Regulations is not subject to the terrorist's conviction of the offense (see, e.g., HCJ 10467/03 **Adnan Sharabati v. GOC Home Front Command**, IsrSC 58(1), 810), we are unable to accept the arguments listed in your letter.

Ownership of the structure

20. The military commander has considered the claim that the structure is owned by the terrorist's brother and the terrorist and his family live there as lessees. In this context, we note, that the terrorist's proprietary status as owner or lessee is irrelevant to the question of the military commander's powers. According to the common interpretation of the powers granted in Regulation 119 of the Regulations, "residency ties" to the effect that a terrorist resided in a structure are sufficient to activate the power to demolish said structure.

On this issue, see Paragraph 6 of the opinion of Honorable Justice E. Mazza in H CJ 6026/94 **Abd al-Rahim Nazal v. IDF Commander**, IsrSC 48(5) 338:

On the issue of the Respondent's power pursuant to Regulation 119(1), we must be satisfied that the terrorist was a "resident" or an "inhabitant" of the home which is the subject of the seizure and demolition order. The rule is that the question of whether a person's absence from his permanent home severs his residency ties thereto must be decided by the nature of the absence and the factual circumstances of the specific case (see, **Hamri**, H CJ 361/82 above, p. 442, E-F). Should the absence be of a temporary nature, residency ties to the permanent home will continue to exist, even if during the relevant incident, the person in question had an alternative residence. (Emphasis added, A.N.)

See also, H CJ 2630/90 **Feisal Mahmoud v. IDF Commander**, TakSC 91(1) 210:

It appears that according to Petitioner No. 7, the house in which he resides belongs to the uncle of the detainee, who resides in Jordan. Power of attorney over matters relating to the house was given to his mother. **It follows that the matter herein concerns a "family" home, rather than a home owned by a stranger, and that all parties concerned have sufficient ties to the home, which may provide the basis for issuing a demolition order.** (Emphasis added, A.N.).

See also, HCJ 2418/97 **Ahmad Naji Abu Fara v. Major General Uzi Dayan**, IsrSC 51(1) 226:

The fact that the order may interfere with the proprietary rights of the Petitioner, who was not involved in terrorist attacks is insufficient, as it is a “family” home.

See also HCJ 2722/92 **Muhammad al-Amarin v. IDF Commander**, IsrSC 46(3), 693:

This clearly indicates that the commander’s power extends to those parts of a home or an apartment that are owned or occupied by members of the suspect’s family, or by others, whom it has not been proven took part in the suspect’s criminal conduct, encouraged it, or were aware of it.

See also, HCJ 893/04 **Tayeb Faraj v. IDF Commander**, TakSC 2004(1), 2123, p. 2126; HCJ 798/89 **Mahmoud Shukri v. Defense Minister**, TakSC 90(1), 75, p. 76, wherein Honorable Justice A. Barak sanctioned the demolition of **a structure occupied by the mother and brother of a terrorist** who had committed a number of murders in 1989.

21. In the matter at hand, the terrorist lived with his wife and children in the part of the building that is slated for seizure and demolition for several years prior to his arrest. As such, even if we were to accept your claim that the terrorist was leasing that part of the building from his brother, his ties to the building remain.

Additional arguments

22. The remaining arguments made in the objection were general and had been reviewed and rejected by the Supreme Court on more than one occasion. We have, therefore, found it unnecessary to respond to them at length.

Conclusion

23. In light of all the above, and after reviewing your objections, the IDF Commander in the Judea and Samaria Area has decided to accept the objection in part, and decided to seize and demolish only the section of the structure occupied by the terrorist in reference and his nuclear family, as detailed in the drawing attached to the seizure and demolition order, provided that he is satisfied that the demolition would not damage the other section of the structure, occupied by the family of the terrorist’s brother.

Unclassified

- 7 -

24. Seizure and Demolition Order, attached.
25. You are hereby granted leave until Monday, June 30, 2014, at 12:00 Noon, prior to the execution of said seizure and demolition order.

Respectfully and sincerely,

Adi Noy, Major
Head of Seam and Infrastructure Field
Criminal and Security Department
Office of the Legal Advisor
for the
Judea and Samaria Area
Per/ IDF Commander in the Area

Enclosed: Demolition Order

Unclassified

Israel Defense Forces

Seizure and Demolition Order

Pursuant to my power as IDF Commander in the Area, and subject to Regulation 119 of the Emergency Regulations (1945), and other powers vested in me under any law and security legislation, the IDF Judea and Samaria Area Commander, and since urgent military needs so require, I hereby order the seizure of the land where the section of the structure described below is located and the demolition of parts of the first and second stories of said structure:

The western half of a two-story structure wherein the terrorist ____ 'Awwad, ID No. ____ resided prior to his arrest, as marked on the aerial photo attached to this order.

This order is issued as the occupant of this home, ____ 'Awwad, perpetrated a shooting terrorist attack on April, 14, 2014, against Israel civilians traveling on Road No. 35, resulting in the death of Commander Baruch Mizrahi, RIP, and the injury of additional civilians, for the purpose of deterring against the commission of further terrorist attacks.

Any construction on the plot which is the subject of this order is prohibited.

29 Sivan 5774

27 June 2014

[signed]

Nitzan Alon, Maj. Gen.
IDF Commander
in the
Judea and Samaria Area