

Contrary to the commitment

Imad Saftawi is now being tried for crimes he is accused of committing before the Oslo agreements, despite a law passed by the Knesset that grants immunity from prosecution for such offenses. Is a message being sent to the Palestinian leadership?

The trial of Imad Saftawi for offenses he is accused of having committed before the period of the Oslo Accords is apparently being held out of alien considerations, the aim of which is to send a message to the senior leadership in the Palestinian Authority that it is possible to try them contrary to the interim agreement that the Knesset approved in 1996.

This agreement grants Palestinians who were allowed to enter the territories immunity from being tried for offenses they were suspected of having committed before September 13, 1993. Without declaring officially that the agreement has been canceled, the sending of this message and the spreading of hints of this kind are impermissible acts that are contrary to the principle of the rule of law.

This is the major argument that is being raised by the defense in Saftawi's trial that is now underway at the military court in Gaza. He has been under arrest in Israel for about 20 months. The decision in this case will be handed down in about two weeks. The story of this affair is based on documents submitted by the office of the chief military prosecution, the state and his defense team.

Saftawi, a resident of Gaza, 38, was arrested in December, 2000, upon his return from abroad. For 44 days he was prevented from meeting with a lawyer. During his investigation, and not for the first time, Saftawi made a statement about his activities prior to the time of his arrest, including his activity in the Islamic Jihad movement (Ha'aretz, February 26, 2002). About two months after his arrest, the IDF commander in Gaza issued an administrative detention order for six months for "current ties to hostile terror activities, inter alia with elements in the Islamic Jihad organization." The order noted that "his release would endanger security in the area and public security."

When the judicial oversight process was conducted in the matter of his administrative detention at the military court at Meggido Prison, his lawyer, Tamar Peleg of the **Moked Center for the Defense of the Individual**, asked the Shin Bet security services representative whether the authorities intended to bring Saftawi to trial for offenses he was suspected of having committed before September, 1993.

"The matter was examined and it was decided that no charges would be pressed on the basis of the old material," the Shin Bet representative replied. "The moment we saw that we did not have the possibility of trying him we decided on administrative detention."

The military prosecutor, Captain Nitzan Sultani, reinforced the statement by the Shin Bet representative by declaring in court that the decision not to bring Saftawi to trial for offenses of which he was suspected in the past had been taken "at the highest level."

Although he had not returned in the framework of the Oslo agreement and it is not clear whether the immunity provision in the interim agreement is applicable to him, "once the man returned to the territory with the agreement of the state of Israel, bringing him to trial for old activities - when there is no admissible evidence of new hostile terrorist activity - could give rise to arguments as to the commitment Israel took upon itself upon his return to the territory concerning legal action in the future. Therefore he is seen as, or he may be seen, as someone who is entitled to that same amnesty," Sultani said.

In response to a question by the court, the military prosecutor added after consulting with his superiors, that "at present there is no possibility of bringing him to trial for offenses he committed during 1986 and the years prior to it, under existing circumstances, at this time, as long as the agreement is valid."

On his part, Saftawi testified that he had not been afraid to return to the region, as he had returned legally and had taken into account the commitment that the state of Israel had taken upon itself in the agreements it had signed with the Palestinians. In his written summation, the military prosecutor repeated his declaration that after all the considerations had been weighed, "it was decided by the prosecution authorities at the office of the military prosecution, the Judge Advocate General, that at this time Saftawi should not be tried for offenses he committed prior to his return to the region."

Military Court Judge Major Adrian Agassi approved Saftawi's administrative detention but cut the detention order by two months, taking into account the period of detention during the time of his interrogation. However, he did not confine himself to the legal question that was up for decision: the approval or cancellation of the administrative detention order. At his own

initiative he discussed the policy pursued by the Judge Advocate General's Office (the military prosecution) and those in charge of it who honored the interim agreement.

In strong language, Agassi disagreed with them that "the final word had been said" on the issue of not bringing Saftawi to trial for offenses he was suspected of having committed before the Oslo agreements were signed. Agassi referred primarily to an indictment that had been filed against Saftawi in December, 1986, for membership in the Islamic Jihad, weapons training, the possession of a firearm and a hand grenade and being a member of a group that had murdered an Israeli citizen. The judge at the Military Court of Appeals supported the position of the Military Court judge.

In May, 1987, Saftawi pleaded guilty in the Military Court to some of the charges against him, but not to the charge of participating in the murder of an Israeli citizen. A few days later he escaped from prison and from the region. While he was staying in Sudan, Algeria and Syria, Saftawi continued to be active in Islamic Jihad. In 1990, when he was in Syria, he married and fathered three sons.

After the signing of the Oslo agreement, Saftawi was among the opponents to the position taken by his organization, which rejected the agreement. In October of that year, his father was murdered. In an interview published in the London-based Arabic daily *Al-Hayat* in May, 1994, Saftawi expressed support for the agreement with Israel. At the end of that year, following the disagreement between him and the Islamic Jihad leadership, he quit the organization.

In April, 1996, in coordination with the Palestinian Authority and with the agreement of the Israeli authorities, Saftawi returned to Gaza to participate in the meeting of the Palestinian National Council to approve the change that was necessary in the Palestinian Charter as a result of the agreement with Israel. At the Rafah crossing point, after he had been questioned at length by a Shin Bet representative about his activities abroad, his entry to Gaza was permitted and he was issued a new identity card with an ID number different from the one he had in the past as well as a *laissez passer* for his trips abroad.

Eventually his wife and his children joined him in Gaza. In 1998 a daughter was born to the couple. In Gaza, Saftawi worked in the Palestinian Authority's general intelligence service. He traveled abroad several times and returned to Gaza, always with the approval of the PA and the Israeli authorities.

As time passed it seemed as though the family had turned over a new leaf in their life. This was mistaken. In December, 2000, Saftawi was arrested. While he was under arrest, his wife gave birth to another daughter. In October, 2001, contrary to its previous declarations, the military prosecution reopened the criminal proceedings against Saftawi from 1987 and added to them a new indictment for trading in war materiel and holding a position in the Islamic Jihad during the years he was abroad, 1988-1994. The military prosecution based the reasoning for the change in its position on the opinions of a Military Court judge and a Military Court of Appeals judge in the context of the worsening of relations between Israel and the PA during the current intifada, and after consultation with the Judge Advocate General and the Attorney General.

In the new indictment, it was noted that Saftawi had terminated his membership in the Islamic Jihad at the end of 1994. There was no mention of offenses he was suspected of having committed during the period between his return to Gaza in 1996 and his arrest in December, 2000, which was connected to suspicions of "current ties to hostile terror activities, inter alia with elements in the Islamic Jihad organization," as mentioned in the administrative detention order that had been issued against him after his last arrest and interrogation.

In October, 2001, the administrative detention order against Saftawi was withdrawn and he was arrested until the completion of proceedings for two indictments against him. The Moked and Saftawi's lawyers who asked the military prosecution to cancel the two indictments against him were refused on the grounds that Saftawi "has no immunity by law and there is no legal justification for revoking the indictments." The Attorney General, to whom the defense applied, "found no cause to address the issue further," in the language of the state's reply to the High Court of Justice.

In January of this year, through lawyers Peleg and Hisham Abu Shehadeh, Saftawi and the **Moked Center for the Defense of the Individual** petitioned the High Court of Justice against the Judge Advocate General, the commander of the IDF in Gaza, the Military Court and the Attorney General and asked the court to order the withdrawal of the two indictments against Saftawi. In their petition to the High Court of Justice the two lawyers reiterated the right to immunity to trial by virtue of the Oslo agreements and the provision included in the interim agreement that was approved by the Knesset.

In its reply to the High Court of Justice, the state - through head of the division for security affairs at the Attorney General's Office, lawyer Shai Nitzan - reiterated the main points in the arguments of the military judges. In the provision on immunity in the agreement between the Palestinians and the state, it was argued, it is stated that it would apply to "a Palestinian from abroad," whereas Saftawi, who was born in Gaza, who carries a Gaza ID card, had spent only a few years abroad and therefore "it is very doubtful that it is possible to define him as 'a

Palestinian from abroad."

The state also argued that under the agreement "there is no prohibition on the continuation of a case for which he was brought to trial prior to the signing of the agreement." Alternatively, it argued that "even if the provision of the agreement did apply to Saftawi, this was nevertheless not sufficient to afford him immunity to trial according to the law that applies in the area, as the agreement is not tantamount to 'law' that applies in the area, and a resident of the area cannot rely on it in an Israeli court as an obligatory source."

In their decision of July of this year Supreme Court Justices Shlomo Levin, Eliyahu Mazza and Yaacov Turkel ruled that they had taken into advisement the position of the state, whereby the Military Court is authorized to deliberate on the arguments advanced by Saftawi and the Moked. In light of the statement by the state and the justices' comments, Saftawi and the Moked withdrew their petition. In principle, at a later stage, they could again have recourse to the Supreme Court if they decide to appeal the decision by the military court system.

With the resumption of the trial at the Military Court in Gaza, lawyer Abu Shehadeh reiterated in his written arguments the main points of the arguments that had been brought before the High Court of Justice. Abu Shehadeh requested that the two new indictments against Saftawi be withdrawn and that he be released from detention. During the deliberation at the court each side repeated its arguments. The Military Court is slated to hand down its decision on the Saftawi case in the near future.

By Joseph-Algazy
