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At the Supreme Court
Sitting as the High Court of Justice

HCI 2914/91

In the matter of:

_____ **Zarzara, ID No. _____,**
resident of the Dheisheh refugee camp

represented by counsel, Adv. Andre Rosenthal,
license No. 11804
whose address for service of process is
HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
2 Abu Obeida St., Jerusalem, 97200
Tel: 283555

The Petitioner

v.

Commander of IDF Forces in the West Bank

The Respondent

Petition

A petition is hereby filed which is directed at the respondent ordering him to appear and show cause why he should not remove the roof observation post located on the roof of petitioner's house for more than one year and a half, without any order.

As an Interim Remedy

The honorable court is hereby requested to grant an interim order directed at the respondent ordering him to refrain from manning the roof observation post until the proceedings in this petition are finalized.

The following are the particulars of the matter

1. The petitioner is 46 years old, a widow with five children.
2. The petitioner lives in a two story house, on the second floor, underneath the roof.
3. For about a year and a half an observation post is positioned on the roof of petitioner's house. At first the soldiers allowed the petitioner to hang her laundry on the roof, but for over a year now they do not let her into the roof at all.

4. For about a year the soldiers come and stay on the roof of petitioner's house on a daily basis.
5. While on the roof, the soldiers have carried out the following acts:
 - a. The soldiers broke the sun-heated water tank, they made holes in the water tank, they threw garbage into the house including mud and stones, they washed their hands and clothes in the tank.
 - b. The soldiers broke the water pipe which carried water on the roof of the house.
 - c. The soldiers destroyed a fence which was erected on the roof.
 - d. The soldiers act rudely, they swear and beat.
 - e. The soldiers urinate from the roof top, for all to see.
 - f. Due to the fact that the water pipe on the roof has been broken, water drips from the roof into the house.
6. From the date of their arrival to the roof of the house and until this present day, the petitioner has not received any written order from the respondent or any one on his behalf.
7. The petitioner complained before the administration in Bethlehem of the soldier's behavior. An officer called Kamal visited the place in the beginning of May 1991, and on the following day the soldiers acted in an even more brutal and noisy manner.
8. The petitioner's affidavit is attached hereto and marked by the letter **P'1**.
9. On May 14, 1991, petitioner's counsel submitted to the legal advisor in Beit-El an urgent request:
 - a. To receive a copy of the confiscation order.
 - b. A complaint concerning the soldiers' behavior.

A copy of said letter is attached hereto and marked by the letter **P'2**. Until the filing date of this petition no answer has been received to this request.

The legal aspect

10. As held by this Honorable Court, by the Honorable President Shamgar in HCJ 290/89 **Juha v. Military Commander of the Judea and Samaria Area** which concerned a temporary confiscation for the housing of soldiers, it was stated that:

"First, we are of the opinion that the duration of the confiscation should be set. We do not face a wartime period or other circumstances, which involve uncertainty as far as planning for a longer term is concerned. Under the circumstances at hand, the validity of the order may be set for a definite period of time... Second, the petitioner is automatically entitled to receive payment for the use of the land, and the rate of such payment will be appraised at the initiation of the respondent by an authorized real estate appraiser."

The respondent does not act in accordance with the instructions of this Honorable Court and has also failed to issue a confiscation order in the matter at hand.

In fact the respondent sets his own rules.

11. In view of this fact the Honorable Court should interfere with the occurrences which take place on the roof of petitioner's house and order that the observation post be removed forthwith.

Jerusalem, today June 14, 1991

(signed)

Andre Rosenthal, Advocate

Counsel to Petitioner

(Our file 2067, No. 1657)