At the Military Court
Judea (Ofer)

4735/13

4737/13

In the matter of: **Dr. _____ Sarawi, ID No. _____**
_____ Hur, ID No. _____

both represented by counsel, Adv. Tal Steiner et al.

Of HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Appellants

v.

Military Commander of the West Bank Area

represented by counsel, Major Oren Liber et al.
West Bank legal advisor's office
Tel.: 02-9977071 Fax: 02-9977326

The Respondent

Updating Notice

According to the decision of the honorable court in a hearing dated September 12, 2013, the appellants hereby respectfully submit an updating notice on their behalf.

The appellants wish to notify that they cannot exhaust their right to be heard by the respondent, and they request the court to continue to adjudicate their matter, and order that their monies, which were confiscated, be returned to them, all as specified below.

For the sake of convenience, this notice is submitted jointly in both files.

The material which was transferred in appellants' matter and the inability to have a hearing in view thereof

1. In the matter of appellant 1, the respondent transferred an extremely laconic paraphrase, which states as follows: "Monies of the Hamas organization were seized in the possession of the above referenced person, who assisted to transfer them to the Area". In addition, the respondent transferred appellant's notice in her interrogation at Allenby Bridge. Nothing can be learnt from this document either: according to the notice, the policeman who interrogated appellant 1, advised her

that she was suspected of having transferred terror money; whereas appellant 1 reiterated her claim, that the money was saved by her from her salary as a physician and was meant to assist her impoverished family in the West Bank.

A copy of respondent's letter dated September 9, 2013 is attached as Exhibit 11.

A copy of appellant 1's notice at Allenby Bridge is attached as Exhibit 12.

2. In the matter of appellant 2, an almost identical paraphrase was transferred, according to which "Monies which belong to the Hamas organization, which is a terror organization, were seized in the possession of the above referenced person". Here too, the respondent attached the notice of appellant 2 in his interrogation at Allenby Bridge, in which he reiterated his claims that the money was the product of his work, which was taken by him to Jordan, and that he has never been involved in any security activity.

A copy of respondent's letter dated October 8, 2013 is attached as Exhibit 13.

A copy of appellant 2's notice at Allenby Bridge is attached as Exhibit 14.

3. It is clear that the above paraphrases, which were transferred to the appellants and which are drafted very laconically, do not shed light on the nature of the suspicions attributed to the appellants, and the quality of the evidence supporting them. Appellants' notices which were given to the policemen, add nothing which can assist the appellants. Under these circumstances, the appellants still face a blank curtain of "privileged information", and have no reasonable ability to defend their matter, since no material fact has been given to them. The court in **Ghabis** commented on such a situation, as was also quoted in the appeal:

> In these cases an effort should be made to prepare a paraphrase of the material**, with as many details as possible, with an attempt not to provide only laconic statements.** In the confrontation between the individual and the authority the balance of power is never even, and the above applies even more forcefully in cases in which the material concerning the applicant is unknown to him. An effort should be made to limit this restriction to the required minimum.
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> (AAA 1038/08 **State of Israel v. Hassin Ghabis**, reported in Nevo, Judgment dated August 11, 2009, emphasis added, T.S.).

4. Under these circumstances the appellants cannot exhaust their right to be heard by the respondent, and they request the court to continue to hear the appeal, and in its review of respondent's decision – to take into account the fact that appellants' right to be heard and to make their arguments before the respondent was not exercised, even following the transfer of the laconic "paraphrases", which provide no information.

Additional preliminary arguments

5. The appellants wish to reiterate some of their preliminary arguments, which they feel, were not resolved in the hearing which was held before the court on September 12, 2013.

6. The appellants reiterate their argument that **the confiscation order was deficiently drafted**, in view of the fact that the military commander has failed to notify by virtue of which regulation of

the Defence [Emergency] Regulations the monies were confiscated - regulation 84 or maybe regulation 120. Even in the hearing which was held before the court, the respondent did not deign to clarify this issue.

7. The appellants are of the opinion that this is a material decision, since, if the confiscation was made pursuant to regulation 84 – the respondent must prove that appellants' money either originated from or was meant to reach an unauthorized association – an allegation which is denied by the appellants, and which has not been properly proved by the respondent; on the other hand, if the confiscation was made pursuant to regulation 120 – the respondent has completely failed to specify which offence was committed by the appellants that justified the confiscation of their money, as required by regulation 120.

8. In the hearing dated September 12, 2013 respondent's legal counsel argued that the wording of the Order was previously approved by the court – but did not present any references to support this argument, and the undersigned was unable to locate judgments in which such a decision was made.

9. The appellants also wish to reiterate the argument, that even if it is proved that the monies indeed originated in the property of an unauthorized association, the appellants know nothing about it, and that their receipt of the money severs the connection between the origin of the monies and their present purpose, according to the rule established by this honorable court in Sole Judge Case (Judea and Samaria) 2169/12 **Hassin v. The Military Commander**.

10. In a hearing dated September 12, 2013 respondent's counsel argued that the rule which was established by the court was repealed in the appeal which was filed in **Hassin**. However, the undersigned was unable to locate the judgment in said appeal, neither in the legal database nor in the website of the Military Advocate General. If respondent's counsel wishes to make this argument, he must present the relevant judgment and show where said ruling, of the court of first instance, has been repealed.

11. Finally, the appellants wish to make note of the severe damage which would be caused to them as a result of the irrevocable confiscation of their monies, money which was saved by hard work and is required for the livelihood of appellant 1's family and for the settlement of appellant 2 abroad.

In view of all of the above, the court is requested to continue to hear these appeals, and order that appellants' monies be returned to them.

October 10, 2013

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Tal Steiner, Advocate
Counsel to the appellants

[File No. 77209, 78312]