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<u>HF</u>	<u>38</u>	<u>-</u>
Shvat	26	5775
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**Advocate Labib Habib**

**Re: Response to Objection to Removal Order from Jerusalem in the matter of \_\_\_\_\_ Abu Ghnam, ID No. \_\_\_\_\_**

Reference: your letter dated December 11, 2014

1. On November 30, 2014, the GOC Home Front Command (the "**GOC Home Front Command**") signed an order which prohibited your client, Mr. \_\_\_\_\_ Abu Ghnam, ID No. \_\_\_\_\_ to enter Jerusalem for a period of five months (hereinafter: the "**order**").
2. On December 11, 2014, you submitted to the GOC Home Front Command an objection against the order. Following the objection, on December 22, 2014, you presented your arguments against the order before Lieutenant Colonel Udi Sagi, who was appointed for that purpose by the GOC Home Front Command. In the hearing, you reiterated the arguments which were raised in the objection letter, and made additional arguments, in the presence of your client. The objection and your oral arguments were presented to the GOC Home Front Command, and the following is his decision.
3. I will already state at this point that after he has reviewed all of your arguments, **the GOC Home Front Command decided to limit the order such that as of February 22, 2015, your client will not be allowed to enter the municipal area of Jerusalem, other than through the route marked on the map attached hereto, and solely for the purpose of arriving to his home and staying therein, and for the purpose of leaving Jerusalem city limits, based on the reasons specified below.**

**Background and basis for the decision**

4. The decision to issue the order in the matter of your client was made by virtue of the power vested with the GOC Home Front Command pursuant to sections 6, 108 and

109 of the Defence (Emergency) Regulations, 1945 (hereinafter: the "**Regulations**"), after the GOC Home Front Command concluded that it was required for the purpose of securing state security and public safety and for the purpose of maintaining public order.

5. Before his decision was made, the GOC Home Front Command examined the information which was obtained in the matter of your client and found that firm administrative evidence existed, which pointed at the risk posed by him. The GOC Home Front Command found that under the circumstances of the matter, the need to prevent the risk posed by your client and the violation of his rights were well balanced by the issue of the order.
6. Naturally, in view of the fact that said information is confidential, it may not be transferred for your perusal. However, you received a paraphrase which describes the contents of the confidential information which cannot be disclosed at this point.
7. It should be added that following the issue of the order and following the hearing which was held in his matter, your client was detained by the security forces, having violated the order and having been located in his home in Jerusalem. Not only that the violation of the order constitutes a criminal offense, but it also indicates that your client is willing to breach the law, and strengthens the conclusion regarding the danger posed by him. Needless to point out that the removal of your client by a GOC order, does not prevent the initiation of criminal proceedings including interrogation and the pressing of charges, to the extent it is so decided by the competent authorities.

#### **The Right to be heard**

8. As to the argument according to which the right of your client to be heard was jeopardized by the retrospective hearing and the non-disclosure of the information on which the order was based, it should be noted that the information which was gathered in the matter of your client points at the danger posed by him and the urgency in his removal from Jerusalem. In view of the above, a hearing could not be held for your client before the GOC Home Front Command signed the order. The violation of the order by your client after it was issued, only strengthens, in retrospect, this conclusion.
9. As was held more than once by case law, despite the fact that the main road is to hold a hearing before a decision is made, under circumstances in which there is an urgent need to make a decision, the main road may be veered from as aforesaid, and the objection against the decision may be heard in retrospect.<sup>1</sup>
10. Moreover, as you know and as was indicated above, the information underlying the order is confidential and may not be disclosed. It should be noted that in our opinion, the paraphrase which was given to you provides a description of the cause for the issue of the order and may be responded to, as indeed was actually done.

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<sup>1</sup> See for instance H CJ 4348/10 Neria Ofan v. GOC Home Front Command (from the legal database "Nevo"); H CJ Qawasmeh v. Minister of Defense; H CJ 5973/92 Association for Civil Rights in Israel v. Minister of Defense.

11. In this context it should be added that the courts approved<sup>2</sup> more than once orders which were issued based on such confidential information.
12. Furthermore, before the decision of the GOC Home Front Command in the objection was made, several attempts were made to summon your client to give testimony regarding the suspicions which were raised against him. However, your client chose not to show up and give testimony to refute the suspicions based on which the order in his matter was issued. Under these circumstances, it seems that your client has no one to blame but himself.

**The Regulations under which the order was issued – are in full force and effect**

13. In your objection you challenged the Regulations under which the order was issued and argued that they were dated, draconian and could not be used in view of the fact that they were improper, discriminatory and contrary to the basic laws and international law.
14. It is the opinion of the GOC Home Front Command that your argument has no merit. The above referenced Regulations are valid primary legislation in full force and effect in the state of Israel throughout the years of its existence, and their use by administrative authorities was approved more than once by the Supreme Court.<sup>3</sup>

**The proportionality of the order**

15. In your objection you argued, in the alternative that in view of the fact that the vast majority of the alleged activity of your client took place near the Al Aqsa Mosque, his removal from the old city of Jerusalem should have been sufficient, and that therefore, his removal from the metropolitan of Jerusalem was unreasonable and disproportionate.
16. The GOC Home Front Command examined the above and came to the conclusion that the scope of the removal of your client, both geographically and time-wise – was necessary in view of the nature of the information in his matter and the danger posed by him. The GOC Home Front Command is convinced that the limitation of the order to the area of the old city only will not achieve the security purpose for which the order was issued in the first place.

**Indemnification for damage caused by the order**

17. In your objection you argued that to extent the order remains in force, your client should be indemnified for his damages according to the Fourth Geneva Convention and the fairness obligation.

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<sup>2</sup> HCJ 4348/10 as noted above.

<sup>3</sup> The Regulations are primary Mandatory legislation, which became, upon the establishment of the state of Israel, part of Israeli jurisprudence, according to section 11 of the Law and Administration Ordinance 5708-1948. On this issue see for instance: HCJ 10467/03 Sharbati v. GOC Home Front Command (2003); HCJ 4211/04 Vaanunu v. GOC Home Front Command (2004); HCJ 6893/05 MK Levy v. Government of Israel (2005).

18. We have examined the above argument and came to the conclusion that the applicability of the Fourth Geneva Convention to the matter of your client and the scope of the duty imposed there-under on security agencies to bear the costs of your client arising from his removal, need not be decided by the GOC Home Front Command, in view of the fact that you have not satisfied the initial burden to show that security agencies are obligated to bear the costs of your client as aforesaid, and you have also failed to show the scope of such costs. The position of the GOC Home Front Command concerning the alleged obligation will be examined, to the extent a detailed application is submitted on this issue.
19. In any event, this issue has no bearing on the mere removal, which, as aforesaid, was made with authority and as required by law.

**The violation of the rights of your client – is proportionate and required under the circumstances**

20. As to the argument according to which the order significantly impinges on your client and violates his right to maintain proper family and social life, and to provide for his family in a dignified manner, as you have even demonstrated during the hearing which was held in your client's matter, I would like to point out that the GOC Home Front Command is not oblivious of the violation of your client's daily routine and rights. Nonetheless, the GOC Home Front Command was convinced that said violation was necessary in view of the danger posed by your client to state security and public order.
21. However, having balanced the danger posed by your client against the humanitarian reason associated with the medical condition of your client's son and the passage of time from the date on which the order was issued, the GOC Home Front Command decided to limit the order such that as of February 22, 2015, **your client will be prohibited from entering the municipal area of Jerusalem, other than through the route marked on the attached map, solely for the purpose of reaching his home and staying therein and for the purpose of leaving Jerusalem.**

**Conclusion**

22. In view of the above, following the examination of your objection, the GOC Home Front Command decided to limit the scope of the order, such that **as of February 22, 2015, your client will be prohibited from entering the municipal area of Jerusalem, other than through the route marked on the attached map, solely for the purpose of reaching his home and staying therein and for the purpose of leaving Jerusalem.** As pointed out, said decision was made in view of the complex medical condition of your client, despite the fact that all legal arguments which were raised were rejected.
23. It is the place to reiterate and emphasize that should the GOC Home Front Command be of the opinion, based on information which will be brought to his attention, that said relaxation is used by your client for the purpose of impinging upon state security,

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public safety or public order, there will be no alternative but to revoke it, forthwith.  
The above will also apply should your client violate the order.

**Sincerely,**

Efrat Pariante, Major  
Legal advisor Home Front Command  
Legislation and Legal Advice Department

Attached:  
Amending GOC Order and map

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