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August 25 2015

**To**  
**Advocate Michal Pomeranz (by fax: 03-686-8596)**

Dear Colleague,

**Re: Your appeal concerning the family home of Alasalmon in Hebron**

Your letter dated August 24, 2015

1. I hereby confirm receipt of your above referenced letter dated August 24, 2015, concerning an appeal on behalf of the family of the perpetrator, Maher Alasalmon (ID No. \_\_\_\_\_), through your client \_\_\_\_\_ Alasalmon (ID No. \_\_\_\_\_) against the intention to seize and demolish the residential unit in which the perpetrator lived.
2. After the appeal was brought to the attention of the commander of IDF Forces in the Judea and Samaria Area, I hereby bring to your attention his decision in the above referenced matter.
3. It should already be noted at this point that after the military commander reviewed the arguments specified in your above referenced letter, he decided to deny your appeal. However, for the purpose of preventing damage to the other residential units of the building it was decided that **the demolition of the residential unit in which the perpetrator lived would be executed manually, by the demolition of non structural elements only, by mechanical means.**
4. The following is the position of the military commander concerning the arguments specified in your letter.

**The background and basis for the decision**

5. The intention to seize and demolish the residential unit in which the perpetrator lived was established in the context of the counter terrorism policy and by virtue of the powers vested in the commander of IDF Forces in the Judea and Samaria Area, including under Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: the **Regulations**).

6. The administrative evidentiary material in the possession of the military commander indicates that the perpetrator is a military activist of the Palestinian Islamic Jihad organization who was convicted by the Judea military court for a ramming and stabbing terror attack in Alon Shvut junction on November 10, 2014, who serves two cumulative life sentences for the execution thereof. The perpetrator was also involved in the past in hostile terror activity on behalf of the Palestinian Islamic Jihad organization, and after having admitted to it, he served an incarceration sentence between 2000-2005.
7. Under these severe circumstances, taking action by virtue of Regulation 119 of the Regulations, as specified below, reconciles with the purpose of the Regulation to deter additional perpetrators from the execution of similar terror attacks, and with the case law concerning this issue.
8. Recently, the Supreme Court held once again that the commander of IDF Forces in the Judea and Samaria Area is vested with the authority to order that a building be demolished pursuant to Regulation 119. As stated in paragraph 16 of the judgment of the Honorable Deputy President M. Naor dated **July 1, 2014** in H CJ 4597/14 **Muhammad 'Awawdeh v. The Military Commander of the West Bank Area** (not yet reported, hereinafter: **HCJ 'Awawdeh**):

**House demolition is carried out by the security forces, as described above, pursuant to regulation 119.** The authority granted by the language of the regulation to demolish houses is very broad in scope. However, in its interpretation of the regulation, this court limited the implementation and application thereof and held that **the military commander must exercise reasonable discretion while using his authority thereunder and act proportionately** (see, for instance, H CJ 361/82 **Tamari v. Commander of the Judea and Samaria Area...**; H CJ 2722/92 **Alamarin v. Commander of IDF Forces in the Gaza Strip...**; H CJ 6026/94 **Nazal v. Commander of IDF Forces in the Judea and Samaria Area...**; H CJ 1730/96 **Salem v. Commander of IDF Forces in the Judea and Samaria Area...**

(emphases were added – N.M.)

9. The purpose of the exercise of said authority is to deter others from the execution of terror attacks, so that potential perpetrators will know that their actions will affect not only the victims and themselves, but also their family members. See on this issue paragraph 19 in H CJ 'Awawdeh:

**Case law held that the purpose of house demolition was not to punish but rather to deter** (see H CJ 6996/02 **Za'arub v. Commander of IDF Forces in the Gaza Strip**, IsrSC 56(6) 407, 409-410 (2002); **Abbasi**, page 59; **Sa'ada'** page 294; **Sharbati**, page 814; **Mughrabi**, paragraph 12 of the judgment of Justice H. Melcer).

(emphases were added – N.M.)

10. Relevant to this matter are also the words of the Honorable Justice A. Barak (as then titled) in H CJ 798/89 **Shukri v. Minister of Defense**, Takdin 90(1), 75 and in H CJ 3363/03 **Zeinab Baqer v. Commander of IDF Forces**, TakSC 2003(3), 185.

11. The position of the security agencies which is supported by comprehensive information, most of which is privileged, is that the exercise of the authority under Regulation 119 of the Regulations can establish effective deterrence against potential perpetrators in the Area. The deterioration in the security situation during the last two years including the abduction and murder of the three youths, and the murder of additional civilians as well as the current evaluation concerning the effectiveness of the deterrence in the above cases, establish the required basis for the exercise of the authority embedded in Regulation 119 of the Regulations in the case at hand.
12. In view of all of the above, it is clear that the demolition of the residential unit in which the above referenced perpetrator lived reconciles with the provisions of Regulation 119 of the Regulations and with its underlying deterring rationale.
13. As held in the past and also recently, the decision whether to exercise the authority is vested with the security agencies, according to their professional evaluation concerning the effectiveness embedded in the demolition. See on this issue paragraph 20 in **HCI 'Awawdeh**:

It should be further noted that the effectiveness of the deterrence embedded in house demolitions is subject to the evaluation of the security agencies
14. On this issue see also paragraphs 3 and 8 in HJ 9353/08 **Hisham Abu Dheim v. GOC Home Front Command**, TakSC 2009(1), 85; and HJ 124/09 **Taysir Dwayat v. Minister of Defense**, TakSC 2009(1), 3751.

#### **The proportionality of the decision**

15. With respect to the additional proportionality tests, the demolition of the residential unit in which the perpetrator lived was examined against the backdrop of the severity of the perpetrator's actions, the scope of the phenomenon and the need to deter as aforesaid. In addition, the effect of the demolition on the inhabitants of the other residential units in the building was examined, with a reduction to a minimum of the injury, including, *inter alia*, by a manual demolition of non-structural elements only.
16. The execution of the demolition in the above described manner, according to the position of the professional officials in the central command, provides adequate solution for the concerns expressed in the engineer's opinion on your behalf.

#### **The ramifications of the perpetrator's conviction on the exercise of the authority**

17. In view of the special deterring purpose attached to the exercise of the authority under Regulation 119, the personal punishment imposed on the perpetrator in a criminal proceeding does not prevent the exercise of the authority. On this issue see **HCI 'Awawdeh**, paragraph 21, *Ibid.*:

**In view of the deterring purpose underlying regulation 119, the fact that the terrorist is expected to be punished in a criminal proceeding does not prevent the exercise of the authority** (see: **Abbasi**, page 60; **Sharbati**, page 815). In addition, it was held that the exercise of the authority was not conditioned on the conviction of the terrorist under criminal law, and that for that purpose one could sufficiently rely on administrative evidence which was presented to the respondent and satisfied him that the offence was

committed by an occupant of the house which was designated for demolition (see: **Nazal**, page 343).

(emphases were added – N.M.)

See also HCJ 10467/03 **Adnan Sharbati v. GOC Home Front Command**, IsrSC 58(1), 810.

**Arguments concerning the damage which will be caused to the building**

18. In the expert opinion which was attached to your appeal it was argued that the demolition of the residential unit in which the perpetrator lived could cause the entire building to collapse unless prior permanent supporting concrete or steel construction was provided for all floors of the building. The same argument was made with respect to the possible sealing of the above residential unit.
19. After the military commander considered the above and after his receipt of the opinion of the relevant professionals, the military commander decided that the demolition would be carried out manually, by the demolition of non structural elements only by mechanical means. As a result of the employment of this method additional damages to the surrounding environment and the other parts of the building are not expected. In addition, the demolition will be conducted in the presence of an engineer who will supervise the demolition.

**In Conclusion**

20. In view of all of the above, and after he has considered your arguments, the commander of IDF Forces in the Judea and Samaria Area decided to **deny your appeal**. However, to prevent damage to all other residential units in the building, it was decided, as described above, **to execute the demolition of the residential unit in which the perpetrator lived manually, with respect to non structural elements only by mechanical means**.

**Attached is a seizure and demolition order.**

For your attention, the execution of the above order will not commence before Sunday, August 30, 2015 – at 12:00.

Sincerely,

Nadav Minkovsky, Major  
Head of Security and Criminal Division  
On behalf of the Legal Advisor