

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

**At the Supreme Court
Sitting as the High Court
of Justice**

In the matter of:

1.	_____ Rizziq et al.,	HCJ 7079/15
2.	_____ Hamed et al.,	HCJ 7085/15
3.	_____ Kusa et al.,	HCJ 7087/15
4.	_____ 'Abed al Jani et al.,	HCJ 7180/15

Represented by counsel, Adv. Labib Habib et. al.,
New Beit Hanina, P.O.Box 21225, Jerusalem 97300
Tel/Fax: 02-6263212; Cellular: 052-4404477

The Petitioners

v.

Military Commander of IDF Forces in the West Bank

Represented by the State Attorney's Office

The Respondent

Reply to Respondent's Response

The following is petitioners' reply to the state's response, which joins the learned replies which were submitted by the other counsels to the petitioners in the other petitions.

Residence of the suspect Yihye Hamed

1. The State attached to its response RS/6 entitled "Summary of mapping of the apartment of the perpetrator ____ Haj Hamed Basacan Rujib in Nablus, October 6, 2015". This document was not furnished to the petitioners for their review, neither in the hearing which was held, nor upon the submission of the objection and on the filing of the petition, and therefore the petitioners object to its submission or to any reliance thereon. The respondent should have furnished it to the petitioners for their review in advance and enable them to refer to its content in the objection and at least in the petition. Having failed to do so, he breached the obligation to conduct a hearing and his duty to enable the petitioners to exercise their right to due process.
2. Alternatively, the petitioners will argue that the content of the summary may not be regarded as an admissible evidence, certainly not as the best and/or most credible and convincing evidence regarding the place of residence of the suspect, based on which the fate of the apartment of the suspect's parents is to be determined. The honorable court was not presented by the respondent with primary source

testimonies of the family members and no pictures or primary source evidence were presented regarding the apartment which ostensibly prove that the suspect did not reside in his apartment, despite the fact that they deigned to introduce a photograph of the entire building.

3. Its name indeed suits it. The attached document is a "summary" rather than the authentic material or the inquiry itself which was conducted on this matter. The respondent should have respectfully attached the best evidence in his possession, the admissible evidence, rather than a summary the nature and credibility of which are doubtful, as will be discussed in detail below.
4. The source of the inquiry is also unclear and the comment that "the family, [which] was interrogated by the Israel Security Agency (ISA) coordinator" was present in the apartment, does not tell us which family members were present? On which issue was the family interrogated: on its awareness of the son's actions or maybe on the conduct of the suspected son. How many people were interrogated? what were their versions? Only vague statements were made without any explanations! The fact of the matter is that eventually it became evident that the summary consists of severe inaccuracies as will be specified below.
5. However, a review of the document and a comparison drawn between the content thereof and the content of the state's response also raise questions and contradictions which nullify the evidentiary value of said summary, and obviously no finding may be based thereon. The following are the main points of the "summary" :

"The second floor belongs to the perpetrator's family where he resides with his parents.

The third floor belongs to the perpetrator himself and is in the final stages of construction (the apartment is yet to be furnished and its internal doors should be installed; **some of the furniture is already in the building and is covered with nylon**).

...

The ISA coordinator confirmed that the second floor was indeed the apartment of the perpetrator's parents with whom he lived, and that the third floor was the perpetrator's designated apartment which was in final stages of construction.

During the mapping the family was present in the apartment and was interrogated by the ISA coordinator"

On the other hand, the following comments were made in paragraph 16 of the state's response, concerning the perpetrator's apartment on the third floor, with an ostensible reference to the summary:

"The above mapping indicated that although the perpetrator Hamed lived with his parents in the apartment located on the first floor above the ground floor, the apartment located on the second floor was designated for the perpetrator's residence, **and its construction was terminated**, and the only thing yet to be done was to furnish it and install its internal doors. In this context it should be noted... that part of the furniture has already been put in this apartment including **sofas which were apparently used for sleeping on site**, and a table-tennis table and that the apartment was already **connected to the electricity grid**... (all above emphases were added) It was also noted that during the mapping a discussion was conducted with the family members who

also confirmed that the perpetrator Hamed lived in his parents' apartment **but already used to occasionally sleep in his new apartment** (emphasis appears in the original)."

6. Hence, it seems that the two descriptions, the one which appears in the summary and the one which appears in the response are materially different, which makes the summary unreliable and devoid of any administrative or other evidential weight:
 - a. The summary states that the apartment is "**in the final stages of construction**" whereas the above response states that the construction **was terminated!**
 - b. The summary states that some furniture was there and was **covered with nylon**, whereas the summary [*sic*]states that **the furniture was used!**
 - c. The picture which arises from the summary indicates that the perpetrator's apartment was empty and still under construction and that the suspect has neither lived nor slept therein, whereas the response explicitly stated that the construction of the apartment terminated, that it was connected to the electricity grid and that the suspect slept in it both according to the "family" as well as according to the findings in the apartment! There was no reference in the response to the frequency in which the suspect slept in the apartment.
7. Therefore, the conclusion which arises from the above is that the attached summary is a summation of a vague and unknown source for the description of the suspect's housing, and such document should not be used as a basis for the determination of the fate of the home of an entire family, the apartment located on the second floor.
8. Secondly, respondent's response includes new facts which were not mentioned in the summary, and which even contradict its content and refute its conclusion, hence, another reason to completely disregard its content.
9. It is important to note that **the suspect was not married** when he was arrested, and his apartment on the third floor is a "bachelors' apartment" as far as its furnishing and maintenance are concerned. Therefore, the fact that the apartment was not perfectly furnished cannot refute the fact that the suspect lived in it. Furthermore. The fact that the suspect used to partly stay in the apartment of his family and parents located underneath him is only natural and understandable and does not negate the fact that he lived in his apartment located above their apartment.
10. The honorable court is requested to limit the demolition, to the extent it is approved and petitioners' objection to the mere demolition in the building is denied, solely to the apartment of the suspect himself on the third floor of a four story building, located above the family floor.

Examination of alternatives to the demolition

11. What actually arises from respondent's response is that the alternatives have not been examined and that the respondent chose the most severe option without having examined other options. In this regard it is important to emphasize that it is totally unclear what the respondent means when he explains his choice to demolish with "engineering, functional and operational" considerations which he specifies among his considerations, and this lack of details proves that these alternatives were not really considered.
12. In this regard it should be emphasized that the demolition of a floor located in a building which consists of several floors is very dangerous for the entire building. It puts at risk the other floors and their inhabitants, and it seems that the fact that it was chosen for "engineering" considerations

actually points at a severe and problematic flaw in the discretion which requires the immediate revocation of the order in its entirety.

The Compensation Issue

13. The fact that the respondent conditions the grant of compensation to apartments against which a demolition order was not issued, is yet another proof that the respondent is motivated by extraneous considerations, desire to take revenge and at least grave indifference towards the property and safety of the local inhabitants, where he wishes to sew the demolition orders.
14. The content of the conditions is even more revolting and it proves once again that as far as the respondent is concerned neither the tenants of the building nor their neighbors and the neighbors of the neighbors are innocent, and it would be appropriate for the arm of deterrence to reach them. Therefore, as far as he is concerned he does not have a real obligation not to injure them. Rather, there is at least a grave indifference for such injury, and should they be injured God forbid, he would be willing to compensate them subject to the following outrageous conditions:
 - a. "Ex gratia", since those who are injured have no rights and the injuring-respondent is obligated only to take deterring measures against the local inhabitants, and the 'letter of the law' requires deterrence and destruction. Building, rights, liberty, law enforcement, protecting the rights of the population, arrest and arraignment of those who burnt and killed the Dawabsheh family in Duma village and hundreds of cases in which Palestinians were injured in "price tag" actions, all of the above are not strictly required by the law, according to respondent's approach.
 - b. The damage caused by the action did not arise from disruptions and riots: this means that according to the respondent the entire population is regarded, and punished, as one piece. Instead of making a decision that whenever the circumstance on scene do not enable "safe demolition" the demolition shall not be carried out, the respondent turns the tables and decides that precisely then it would be carried and cause damage to the neighbors who will be deprived of compensation!
 - c. The owners of the building did not receive any compensation or indemnification: and emphasis is put on the word "any". Here too, the respondent treats the civilian population unfairly and in bad faith, as he draws no distinction between an insignificant and a significant compensation and any benefit or even help given to the family deprives them of the poor man's lamb: the right that their property be treated with respect and their dignity maintained and that if they are injured by respondent's show of force in the form of a detonation, they will be compensated.
 - d. The compensation is subject to section 5B of the Civil Wrongs Law: this classification as well, when a pre-planned action of the respondent is concerned, accompanied by engineers and experts, which involves a potential damage to the environment, this condition, although entrenched in legislation, is not appropriate, and substance should be given to respondent's undertaking and obligation not to cause damage to the environment. This is the minimum which is required.
15. Therefore, the honorable court is requested to condition the execution of any order which may be approved upon respondent's undertaking not to cause any damage to neighboring structures or buildings and to order him to compensate those who were injured for any damage to the extent caused, without any conditions.

Labib Habib, Advocate