

Translation Disclaimer: The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Hebrew language. In the event of any discrepancies between the English translation and the Hebrew original, the Hebrew original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Hebrew original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

In the Supreme Court
sitting as the High Court of Justice

HCJ 6807/94

In the matter of: **Abbas**

both represented by Attorney Andre
Rosenthal (Lic. No. 11864)
33 Jaffa Street, Jerusalem
Tel. 250458 Fax. 259626

The Petitioners

v.

- 1. State of Israel**
- 2. Commander of IDF Forces in the Gaza Strip**

represented by the State Attorney's
Office

The Respondent

Affidavit Response on behalf of Respondents

I, the undersigned, Major General Meir Dagan, hereby declare:

I am assistant head of the operations division of the IDF General Staff, and am aware of the subject with which the petition deals from my handling of the matter. I make this affidavit in the name of and on behalf of the Respondents, in response to the Order Nisi issue by the

Honorable Court, in which they were directed to show cause “why they do not allow the body of the petitioner’s brother to be buried in the Gaza Strip.”

The facts set forth below in my affidavit are part of the evidence that can be revealed at this stage of the hearing. A full description of the facts and of all the evidential material forming the basis of the decision that is the subject of the petition will be presented only to the Honorable Court during the hearing on the petition, together with a certificate of privilege signed by the prime minister and minister of defense. The Respondents’ position and response to the petition, including the facts set forth below in my affidavit, are made with his knowledge and are acceptable to him.

1. ____ Abbas was a murderous terrorist who, together with another terrorist, later found to be an Egyptian national, killed on 9 October 1994 in Nahlat Shiv’a, in Jerusalem, a soldier and a resident of the eastern part of the city. During the murderous attack, the two terrorists were killed. The petitioner – the brother of this terrorist – now seeks to have the body buried in Gaza, the city in which the terrorist lived and from which he left to commit the despicable attack on behalf of the military arm of Hamas.
2. The petition relates to the decision not to hand over the body of the terrorist ____ Abbas over to his family, and that it will be buried in a place ordered by the military commander. The decision shall remain in effect until the persons in charge receive sufficient information on the place of burial of a missing soldier ____ Sa’dun, and until his body is located and returned to his family for proper burial.

This decision was made by the prime minister and minister of defense, upon the recommendation of the relevant military authorities, with the agreement of the outgoing Chief of Staff and of the incoming Chief of Staff and with his knowledge.

It goes without saying that, among the relevant considerations, serious consideration was given to the dignity of the deceased and his family, and after the requisite balance of considerations was made, in light of all the interests and values involved in the matter that is the subject of our hearing and resulting therefrom.

3. A detailed description of the reasons for the decision will be presented to the Honorable Court in secret. At this stage, we only wish to mention that the substantive reasons come within the legislative purpose of Section 133(3) of the Emergency Defense Regulations, 1945, pursuant to which authority is given “to order that the body of any person be buried in the place that the military commander shall order.”

4. I will add that just prior to submitting this affidavit, and after giving his opinion on the contentions set forth in the petition regarding the general background, the Chief of Staff ordered – pursuant to his authority as military commander – that the considerations underlying the decision had not changed and, therefore, the decision is to remain in effect until such time as the Honorable Court makes its decision on the petition, and that the terrorist’s body is to remain in the meantime at the forensic medicine institute at Abu Kabir.

5. In this, the disclosed part of our response, my affidavit will set forth the background and reasons for the decision, which are as follows:

6. On 16 April 1989, two terrorists who lived in the Gaza Strip, members of a Hamas cell, disguised themselves as religious Jews and were driving in a car. When they reached the Hodaya junction, they picked up First Sergeant Sasportas and shot him to death with a pistol while the car was in motion. The soldier’s body was found several months later following an extensive search by security forces that was made after the soldier ____ Sa’dun had been abducted and murdered.

Members of the same cell continued to act in this murderous and despicable manner. On 3 May 1989, the soldier ____ Sa’dun was murdered while being driven in a car. The place where the murderers buried the soldier’s body is not known to this day.

7. To date, the security forces have not ceased their extensive efforts to disclose the place where Sa’dun is buried.

8. In May 1989, the Hamas cell that had committed the abduction and murder described above was identified. Following intensive activity, security forces captured ____ Shartaha, who was prosecuted and sentenced to four life sentences.

Though responsible for planning the directives given to members of the cell and for receiving reports on their activity, this terrorist was not present at the time of ____ Sa’dun’s murder, and did not have reliable information on the place where the soldier’s body was buried.

9. Regarding the assessment of the competent authorities, this information was learned from two members of the cell, ____ Mabhuh and ____ Nasser. According to this assessment, they committed the abduction, killed the soldier, and buried his body in an unknown place.

These two fled from the area and have not been captured. Another member of the cell – Abu Hutza – who aided them after the murder, also fled, was listed as a wanted person, and has not yet been captured.

10. I wish to emphasize that the State of Israel reached an unequivocal decision to act continuously every way possible and unstintingly until it succeeds in locating ___ Sa'dun's body, and until the body is returned to his family and is properly buried.
11. As part of these efforts and as part of the actions taken, Israel is holding the bodies of murderous terrorists who were members of the military arm of Hamas, and lived in the Gaza Strip: the terrorist brother of the petitioner and another terrorist, ___ Jadallah, who took part in the abduction and murder of the soldier ___ Waksman.
12. As stated, the decision to which the petition relates was made pursuant to lawful authority and was based on substantive reasons. The decision was taken after the most senior defense officials weighed and examined all its aspects.

Extensive details on the reasons underlying the decision will be presented as part of the confidential information provided to the Honorable Court.

I hereby declare that this is my name, this is my signature, and the facts set forth above are the truth.

[signed]
Meir Dagan, Maj. Gen.

CERTIFICATION

I, the undersigned, Sharon Efron, Attorney, hereby confirm that on 2 January 1995, Maj. Gen. Meir Dagan, whom I know personally, appeared before me and after I warned him that he must tell the truth and that if he does not do so, he is subject to punishment set by law, signed his affidavit before me.

[signed]
Sharon Efron, Attorney