

## **Supreme Court Does not Accept Petition Demanding Criminal Indictment of Police Officers Who Shot and Killed Mahmoud Sadi**

By Ran Shapira<sup>1</sup>

On Monday, 8 December 2003, 17 year-old Mahmoud Sadi, a Palestinian citizen of Israel, left his home in Led (Lod) in his family's car. He picked up two friends and drove to Ramle. When they reached the intersection of Ben Zvi Street and HaHistadrut Street, in the center of Ramle, the traffic light was red. Mr. Sadi stopped at the light, and suddenly two cars came to a halt alongside him – a gray Opel to his left and a white Toyota to his rear. One of the cars was an unmarked rental car, and in the other car there were members of the border patrol (Magav) Tsabar unit. The police officers sitting inside the cars were dressed in civilian clothes.

The police officers were tracking a “drug station” in the Rakevet neighborhood of Ramle. Before Sadi reached the intersection, they received an alert from Tomer Faraj, a police officer deployed at a lookout, who had heard a number of shots being fired in the vicinity. Although Faraj did not see the shooting, he nevertheless stated over the police radio that he suspected the shooting to have been perpetrated by two “bney miu'teem” (literally “minority members”: a euphemism for Arabs) traveling in a white Mazda. The car Sadi was driving was also a Mazda, but silver-gray in color.

After coming to a standstill at the traffic light, Sadi's car was surrounded on all sides – the police officers' cars were to his left and behind him, a taxi was parked in front of him, and the sidewalk was to his right. Therefore, had he attempted to flee, his chances of success would have been slight.

However, Sadi made no attempt to escape and did not threaten the police officers in any way. Despite this, they came out of their cars and fired 15 shots in the direction of Mr. Sadi and his car. One of these shots, fired from behind Sadi by police officer Yogev Kogon, struck him fatally in the head. Another bullet, fired from in front of Mr. Sadi, seriously wounded him in the left side of his chest. Mahmoud Sadi died as a result of the bullet to his head, but none of the police officers involved in the incident were indicted.

Mahmoud Sadi was a student at the vocational school Amal Heisagim, and worked in the mornings in an auto mechanics store as an apprentice. He enjoyed playing soccer in his spare time. He was not involved in drug-taking and even instructed groups of children in an anti-drugs program initiated by the Municipality of Led. Despite this, at the press conference held on the evening he was killed the Commander of the Ramle police force at the time, Chief Superintendent Igal Hadad, described him as a criminal. Other police officials told a reporter who covered the incident from Israeli daily newspaper *Ma'ariv* that Mahmoud Sadi was “one of the top drug dealers in Lod.”

In the reports submitted after the incident, only one of the police officers said that they had seen that Sadi was armed. All of them got out of their cars and closely surrounded his vehicle. Just one of the police officers, Efi Tshuva, who shot Sadi in the chest, however, noted that Sadi had been holding a pistol. Tshuva even said in a statement which he submitted following the incident that before he fired he had shouted “pistol.” However, according to the statements of his colleagues standing close to him, they have not heard this shout. Even Kogon, the policeman who fired the fatal shot to Sadi's head, said that he had not seen a pistol in his hand and had not heard any of the police officers shouting “pistol.” Bullet cartridges were found after the incident – not at the intersection where Sadi was killed, but at the area where the lookout officer, Faraj, had reported shots being fired that evening.

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The police officers shot at Mahmoud Sadi despite the fact that there was only a very weak resemblance between the car he was driving and the car from which shots were apparently fired. According to Faraj, who did not see the shots but only heard them, they should have been searching for a white Mazda containing two "bney miu'teem." No one saw the white Mazda when the shots were allegedly fired from it. Mr. Sadi was driving a gray Mazda with two friends as passengers. They were all "bney miu'teem"; that is, there were three "bney miu'teem" in the car, not two. When asked by the Ministry of Justice's Police Investigation Unit ("Mahash") whether the car he reported was the same one he saw following the incident, Faraj responded "No". According to the statements of police officers involved in the shooting and killing of Mr. Sadi, the streets were well lit and visibility at the scene was clear. Despite all this, however, the police officers fired lethal shots at the car.

In their explanations concerning the shooting, the police officers claimed, among other things, that after they stopped next to Sadi's car he had tried to flee, driving backward and forward quickly, ramming into their cars and even trying to run them over. However, Mr. Sadi's friends, Mr. Habib Awad and Mr. Amr Abu Suleiman, said in the detailed testimony they provided on the same night that seconds after the car stopped at the traffic light, plain-clothed police officers holding pistols had surrounded them and then immediately opened fire. The description of Sadi's attempts to flee is also inconsistent with the claim that he threatened the police officers with a pistol: it demands extraordinary skill to aim a pistol at someone while also quickly maneuvering a car, driving forward and backward.

After the incident, a pistol was found in the car which Mr. Sadi had been driving. In tests conducted by the police themselves, however, neither the fingerprints of Mr. Sadi nor either of his friends were found on the pistol. Furthermore, the autopsy report conducted on the body of Mr. Sadi does not note any gun residue on his hands or fingers. The first police officer to approach the Mazda following the shooting, Avi Ben Tulila, did not mention in the report he filed that he saw any pistol near Sadi. Of the police officers involved, only Efi Tshuva mentioned seeing Mr. Sadi holding a pistol in his report.

Arik Bar-on, an eyewitness to the incident who submitted a statement to Mahash also maintained that he had not seen any weapon in the car which Mr. Sadi had been driving. Nor did he notice any provocation on the part of Mr. Sadi:

- Q: Did someone inside the vehicle aim a weapon?  
A: The truth is, I didn't see this.  
Q: Did you see a weapon in the vehicle?  
A: I didn't see any.  
*(From the statement by Arik Bar-On, 22 January 2004)*

Mahash began to investigate the incident immediately after its occurrence. After approximately two months, however, Mahash decided to close the case for "lack of guilt." Adalah submitted an appeal against closing the case on 20 April 2004, but the State Attorney's Office rejected this appeal on 22 September 2004, claiming that the evidence failed to indicate that the police officers had committed any crime. In the arguments for rejecting the appeal, the State Attorney's Office preferred the testimony of the single police officer, Efi Tshuva, who had reported seeing a pistol in the hands of Mr. Sadi, to the testimonies of his colleagues, which all contradicted Tshuva's account.

Following the rejection of the appeal, Adalah submitted a petition to the Supreme Court of Israel on 30 December 2004, demanding that the Court order the Attorney General (AG) to file criminal indictments against the two police officers who shot and killed Mahmoud Sadi – Efi Tshuva and Yogev Kogon. Adalah Attorney Marwan Dalal filed the petition to the Supreme Court, in addition to the initial complaint to Mahash and the appeal to the State Attorney's Office. Adalah argued in the petition the police officers' use of deadly force against Mr. Sadi

constitutes manslaughter, causing death by negligence, and causing harm with aggravating intent. As Adalah emphasized, neither of the police officers who fired shots had been indicted, despite the existence of significant discrepancies between the testimonies they provided to Mahash and the reports they wrote about the incident. Adalah emphasized in the petition that the closing of the file against the police, despite all of the facts, legitimizes the dangerous use of force by the police against citizens in general, and demonstrates an almost total disregard for the right to life of Palestinian citizens of the state.

Mahash also decided to close the investigation against the police officers responsible for the killing of 13 Arabs (12 citizens of Israel and one resident of the Occupied Palestinian Territories) in October 2000. Despite the fact that in some cases the identity of the police officer who opened fire is known, and despite the fact that police officers fired live rounds against demonstrators who posed no danger to them nor any threat to their lives, none of them has been indicted, and on 18 September 2005, Mahash announced its decision to close their files. It seems that the penetrating words written by the Or Commission (which investigated the events of October 2000) regarding the tendency of Israeli police to respond with potentially lethal force without justification have not been internalized.

The Or Commission's report states that:

In this context, there is also a need to make it clear to police officers and their commanders in the field the serious significance of using measures that are liable to have a lethal consequence. In many cases, these measures were used in the October events without any objective justification of the police officers being subject to serious danger. In many cases, one can detect a tendency, which the police should act vigorously to eliminate, to respond with potentially lethal force to provocations that are not of a threatening nature. The police should act to instill the requirement to employ measures that are not lethal ...

*Or Commission Report, page 776*

The police officers in Ramle immediately employed the most lethal measures at their disposal – the firing of live bullets. Even if they had felt threatened, they did not even consider the use of other measures, such as shouting out a warning, firing at the car's tires, et cetera.

The behavior of these officers demonstrates, as during the events of October 2000, that the police regard Arab citizens, "bney miu'teem," as people who lack rights against whom it is possible to use lethal force without being held accountable. When the law enforcement authorities and officials demonstrate contempt for the basic rights of citizens of the state, including first and foremost the right to life, it is not surprising that ordinary citizens, and particularly those who live at the margins of society, take upon themselves the right to act in a violent manner against Arabs. The terrifying attack carried out by Eden Natan Zada in Shafar'am in early August, in which four Arab bus passengers were killed, did not occur in a vacuum, but rather against the background of an atmosphere which encourages attacks on Arabs, or least regards such attacks with indifference.

It is disturbing indeed to realize that the Supreme Court – considered as the last stronghold of human rights and equality before the law – also contributes to this atmosphere. On 5 September 2005, the Supreme Court, led by Supreme Court President Aharon Barak, compelled the deceased young man's mother, Mrs. Labiba Sadi, and Adalah to withdraw the petition requesting the Court to instruct the AG to indict the two police officers who shot Mahmoud Sadi.

At the beginning of the hearing, and even before the petitioners had had the chance to make a single argument, Justice Barak demanded that they withdraw the petition. The petitioners were only allotted a few minutes to present their arguments. It was clear that the Justices of the Supreme Court were not willing to hear their arguments with an open mind. Barak cited the

state's response to the petition, according to which the bullet cartridges found away from the killing scene matched the pistol found inside the car. The petitioners noted that the first policeman to approach Sadi after he was killed did not say that he saw any pistol on or near him, and that in all of the tests no connection had been found between Sadi and the pistol. They also noted that, with the exception of Tshuva, none of the police officers had reported seeing a pistol during the operation, including Yogev Kogon, who was responsible for the fatal shot.

The Supreme Court did not allow the petitioners to present their full arguments, and did not fulfill its role of reviewing the operations of the executive branch. The Justices did not attribute any weight to the solid facts detailed in the petition, which clearly indicate that Mahmoud Sadi was killed by police officers in blatant violation of the laws that binds them. From this perspective, the Justices joined the peculiar pattern of disregarding the facts related to this case and of encouraging an attitude which engenders a discriminatory approach toward Arab citizens of Israel, purely on the basis of their national and ethnic identity.

H.C. 12000/04, *Labiba Sadi and Adalah v. The Attorney General* (petition withdrawn).