

Translated from the original Hebrew by Adalah

**Israel Defense Forces
Region of Judea and Samaria [West Bank]
Legal Advisor's Office
PO Box 5, Beit El 90631
Phone: 02-99770711
Fax: 076-539-9689
Email: yoayosh@idf.il
Reference: 010661-3-22523
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**Attorney Jawad Boulus
Attorney Adi Mansour
Attorney Rabea Eghbariah
Attorney Hassan Jabareen
Attorney Alon Safir
Attorney Michael Sfard**

Subject: **Response to an objection to the declaration of your clients as unlawful associations in the area of Judea and Samaria [West Bank]**

Your Objection dated 3 February 2022

1. Regarding your objection requesting the cancellation of the Military Commander in Judea and Samaria's [West Bank] decision dated 3 November 2021, whereby he declared the organizations "Al-Haq"; "Addameer – Prisoner Support and Human Rights Association"; "Defence for Children International – Palestine"; "The Union of Palestinian Women's Committees" and "Bisan Center for Research and Development" (hereinafter: the "associations" or "organizations") as unlawful associations.
2. We would like to inform you that the claims detailed in your objection were presented to the Military Commander in Judea and Samaria, who decided, after an additional review of the confidential intelligence information and hearing the security officials' position, to reject your request and to maintain the declarations of your clients as unlawful associations in the area. The reasons for this decision will be detailed below.

The main points of the objection:

3. In your objection, you have extensively reviewed your clients' activities, and the public criticism that arose after your clients were declared as unlawful associations. Subsequently, you listed a number of legal arguments against the declarations. The following are the main points:

- a. First, the declarations are contrary to the principle of legality and the rule of law, since they are based on regulations that allow the Military Commander to declare an unlawful association only if the Minister of Defense declared it as such, and such a declaration was not given.
 - b. Secondly, the declarations are contrary to the rules of justice [and] the right to present a defense and to a fair hearing; the declarations are based on evidence that is not disclosed, and that do not allow the organizations a meaningful opportunity to respond to and challenge the allegations against them; and [the declarations were decided] without giving the right to a preliminary hearing. Furthermore, you claim that since the Military Commander issued the declarations on unlawful associations, the [legal] process of the objection is tainted by an institutional conflict of interest.
 - c. Thirdly, the declarations are disproportionate, as they completely bar the organizations' activities.
4. Below we will respond to the legal claims detailed in your letter.

The declaration on the organizations as unlawful associations.

5. From the classified intelligence material presented to the Military Commander prior to his declaration of the organizations as unlawful associations, which is cross-checked, extensive and reliable intelligence, it is clear that the organizations are de-facto arms of the "Popular Front for the Liberation of Palestine", which is an unlawful association. Therefore, and in light of the security officials' position in relation to the great risk posed by the organizations to security and public order, the Military Commander in Judea and Samaria declared the organizations as unlawful associations on 3 November 2021.
6. As we know, the terrorist organizations in general and the terrorist organizations operating in the region in particular, often use the civilian cover of "NGOs", which appear like innocent associations, in order to expand the terrorist organizations' prohibited activities. Thus, under the cover of those associations, which carry out legitimate humanitarian operations for the benefit of the civilian population, the terrorist organizations operate, both for the purpose of promoting their organizational and military activities, including through the transfer of funds and assistance to the various terrorist infrastructures, and for the purpose of "training the hearts" and expanding the conceptual-ideological infrastructure for recruiting terrorist operatives into the organization.

7. The Supreme Court stated on this [matter] more than once:

"The terrorist organizations do not grow out of nowhere, and they do not feed from the air. The terrorist organizations, and Hamas among them, as an organizational framework that unites people and harnesses them to promote a common goal, need significant budgets and a social support basis for their ongoing activity. Therefore, they need to rely, on the one hand, on a "military" wing the role of which is to carry out terrorist actions and, on the other hand, on a "civil" wing, the role of which is to provide the organization the fuel for its military activity-money and activists.

As a matter of fact, these things are more complicated. Part of the "civil" activity is designed to collect money and resources that are designed to be directly translated into military-type activity. Nonetheless, often the "civil" activity of terrorist organizations is designed to win hearts, that is, [to promote] education and welfare activities in order to secure support for the terrorist organizations and to [portray] its activists as good and as doing good, [with the goal of] building an infrastructure for the future activities of the organization. Because of this link between these [activities and objectives], a "civil" activity cannot be evaluated only with regard to the actions it includes, which could in fact, if standing alone, be desired or positive. **(HCJ 1784/14 Ashraf Asoor v. State of Israel)**

Also:

"Terrorist activity is made possible not only by organizing and training for operational activity, but, no less, also through organizational activity that strives to fulfill the operational purpose by obtaining funding that will inject oxygen into the organization's activity. It is not possible to truly isolate the civilian function of the terrorist organization's activity and the military function, and the distinction and separation of them is fundamentally wrong" **(HCJ 1169/09 Legal Forum for the Land of Israel v. Prime Minister)**

And in another instance:

"It is true that financial assistance for a high school graduation party or the distribution of gifts to needy families, or helping a released prisoner may, in themselves, be "innocent" acts in other contexts. However, in the context before us, these actions are related to the leadership of a body which, aside from its civilian activities, has a military-terrorist aspect designed to achieve the purpose of terrorist warfare aimed at harming the souls of the citizens of the State of Israel. On the face of things, the organization's civilian activity is intended to assist the military activity and serve as a base and infrastructure for it. We have not been proven otherwise. Therefore, it is not possible to isolate the civilian function from

the military function in the organization's activity, and distinguishing and separating them is artificial and erroneous. The civilian function feeds the military purpose, and the military purpose provides the reason and purpose for the civilian financial activity and the flow of funding required for the organization's activities, including for acts of helping those in need, and for holding social activities among the youth of the organization to encourage their involvement and belonging to the organization." (**HCJ 6652/05 Abidat v. State of Israel**)

8. These words, which refer to the general "*modus operandi* [mode of operating]" of the terrorist organizations in the region, are also concretely true in relation to the organizations we are dealing with. They are, as mentioned, branches of the violent and murderous terrorist organization the Popular Front for the Liberation of Palestine [PFLP], and they wrap themselves in the guise of "civilian" activity in order to hide their identity as an integral part of the PFLP organization.
9. In any case, it is understood that the organizations' public activity, as extensively detailed in your objection, does not reflect the full picture regarding their nature and the fact that they are arms of the PLFP terrorist organization. In any case, it does not undermine the actual security need to stop their activities, which benefits of the terrorist organization. Against this background, the Military Commander decided, as stated above, to declare the organizations as unlawful associations.

The designation by the Defense Minister

10. As mentioned, in your objection you claimed that the declarations do not meet the conditions of Regulation 84(1)(b) of the Defense [Emergency] Regulations, due to the fact that the [Military Commander's] declaration is not based on a prior declaration by the Defense Minister.
11. Without responding to the claim itself, we would like to clarify that there was probably a mistake on your part regarding the said claim. The quote detailed in your objection is taken from the provisions of law as they existed in Israel before the enactment of the Counter-Terrorism Law, 5776-2016, and not to the provisions of law applicable in the region.
12. The provisions of the law applicable in the region, that is, the Defense (Emergency) Regulations, 1945 taken together with the provisions of Declaration No. 2 Regarding the Law and Administration, require only the declaration of the Military Commander in the West Bank. There is no requirement for the involvement of the Defense Minister in the process or a requirement for a prior declaration on his behalf.

Declaration based on intelligence information

13. It is further argued in detail in your objection that basing the announcements on secret evidence, infringes on your clients' ability to deal with what is attributed to them.
14. This claim must be rejected. As is well known, there is an accepted and long-standing practice, both in the law applicable in the region, in Israeli law, in the relevant rules of international law, and in other legal methods, which allows for administrative decisions to be made with a preventive purpose, such as the decision reached by the Military Commander, based on administrative undisclosed evidence, including intelligence information. This practice is a necessary evil, which is undertaken for the sake of maintaining public order and the security of the region.
15. This concept, according to which the administrative authority is authorized to base its decision also on confidential evidence, is well-founded in numerous Supreme Court rulings. The Supreme Court has recognized time and time again, the possibility of the administrative authorities, including the Military Commander, to base its decisions on classified information,¹ including in relation to measures with not lesser severity than the aforementioned declaration, based on secret evidence. [These decisions include those] such as an administrative detention, demolition of terrorists' houses, restriction and supervision orders and more. Furthermore, a review of the Supreme Court rulings you have cited in your objection, indicates that in the overwhelming majority of the aforementioned rulings, the Supreme Court allowed the reliance on confidential intelligence evidence in order to take the required administrative steps.
16. Moreover, your clients may petition the Supreme Court against the military commander's decision, and within the framework of this procedure, the court is authorized to review the decision and all information, the disclosed and undisclosed.

The proportionality and reasonableness of the announcements

17. As for your claims regarding the proportionality and reasonableness of the declarations, it should be emphasized that before the Military Commander decided to declare the organizations as unlawful associations, the fact that they carry out "civilian" activities, which you extensively detailed about in your objection, along with the illegal activities, was carefully considered. However, after examining the existing intelligence information regarding the organizations, which indicates clearly and unequivocally that these organizations are used as arms of the PFLP terrorist organization, the Military Commander found that the security threat arising from their

¹ Request for Permission to Appeal 5237-05 **Ministry of the Interior v. Tobias Carlson**; Administrative Appeal 5417/13 **Angida Dejitano v. Minister of the Interior**; HCJ 7015/02 - **Ajuri et al. v. IDF Commander in the West Bank**; Request for Permission to Appeal 7710/18 **Minister of Internal Security N. Jaber Abu Jaber**; Request for Permission to Appeal 8709/19 **Itai Pollak v. Minister of Health**.

activity necessitates halting their activities and that outlawing them is necessary to maintain security and public order.

18. Moreover, it shall be clarified that in your objection you wrongly claimed that a declaration of unlawful association in the area is required to "show and unequivocally prove clearly that the main activity of the organization and/or its goals and vision are illegal...". We found no support for this interpretation of the law or in any legal source. This interpretation allows the terrorist organizations to receive "immunity" from declarations, if only they carry out, in addition to their terrorist activity, also civil activity as well on a significant scale, and clearly, that cannot be accepted.
19. Beyond what is required, we will clarify that in relation to the organizations we are dealing with, the intelligence information indicates **that the core of their establishment and activity is that they are part of the PFLP organization.**

Additional Claims

20. It is also claimed in your submission that there is a flaw in that the right to the hearing was given to the organizations only in retrospect. In this context, and without expanding on the matter, we would like to refer you to the rulings of the Supreme Court on two similar issues,² where it is clearly established that security considerations may prevail over the right to a hearing in advance and lead to an administrative decision being made without a hearing at all, or that the right to a hearing be granted retrospectively.
21. In our case, and in light of the security threat posed by your clients' activities, it was decided to allow your clients to submit a written objection against the declarations retrospectively, and within 14 days of their publication, as stated in the declarations, a deadline that was extended several times at your request.
22. You also claimed that the Military Commander is not authorized to examine the organizations' objections since he has an "institutional conflict of interest", being the entity that declared them as unlawful associations.
23. We found no merit in this claim. As is well known, the possibility to object before the party making the decision is done in a wide variety of administrative actions under the law applicable in the region and under the law applicable in the State of Israel. In contrast to the concept presented in your objection, the purpose underlying the

² H CJ 358/88 - **The Association for Civil Rights in Israel et al. v. The Central District Commander et al.**; H CJ 4112/69 **The Association for Civil Rights in Israel et al. v. The Central District Commander et al.**; H CJ 4348/10 **Neria Ofan v. GOC Home Front Command**

provision of the opportunity to object is not to serve as a quasi-judicial tribunal to examine the judgment and plausibility of the military commander's decision, but rather to hear the arguments of the objecting party [and] to enable the bringing of all the relevant information in order to make an informed decision. In the case where the right of hearing was granted retrospectively, [it was given] to reconsider the decision. Beyond that, as stated above, as an administrative authority, the Military Commander's decisions in this matter can be petitioned against to the Supreme Court.

24. In addition, we did not find merit in your clients' arguments regarding the rules of international law to raise or lower the authority to make the declaration, since even according to your approach, the Military Commander is authorized and even obligated to take care of and maintain security and public order, and regarding the manner in which this authority is exercised. It was clarified above that [the decision] was carried out in a reasonable and proportionate manner.

In conclusion

25. Against this background and after a careful review of the organizations' claims, a renewed review of the confidential intelligence information available in their case and after hearing the security officials' position, the Military Commander has decided to reject your objection, and to leave in place the declarations of your clients as unlawful associations in the area.

26. Therefore, your clients must immediately cease their activity, which is prohibited by law, [and] as we repeatedly mentioned to you, from the date of the declaration.

Regards,

Major Naaman Khatib

Head of the Terror Section.