



8 November 2017

To

Col. Eyal Toledano

Legal Advisor for Judea and Samaria

**Re: Requisition and confiscation of movable structures without a hearing and without procedure according to regulations regarding the transfer of goods (transportation of movable structures)**

1. We appeal to you following the increasing use of requisition and confiscation orders applying to populated mobile structures used by Palestinians living in Area C in the West Bank. Extending the use of regulations regarding the transfer of goods (transportation of movable structures) leaves the residents without shelter and without any possibility to try and change the decree, given that the confiscation is carried out immediately and **without any hearing or proper proceedings**.

2. During a discussion at the Knesset Foreign Affairs and Defense Committee on 27 June 2017, the director of the Civil Administration supervision unit, Marco Ben Shabbat, said that there are 500 movable structures in the administration's warehouses that were confiscated from Palestinians. He stated that all it requires to dismantle and confiscate a movable structure is a formal statement by one of the supervision unit's employees. There is no other administrative or legal procedure needed. Mr. Ben Shabbat added that the use of confiscation orders is intended to hinder petitions to the High Court of Justice against orders issued for violating planning and building laws, given that the multitude of petitions create a burden on the legal advisory bodies.

3. The confiscation of movable structures began following the publication of a report by Talia Sasson that dealt with the problem of unauthorized Israeli outposts in the West Bank. The Sasson Report recommended the creation of an administrative tool for the purpose of immediate removal of caravans, clearly stating that "such measure warrants the granting of the right to a hearing and the right to objection for those suspected of committing the felony, and these should be granted prior to the requisition of the caravan and its removal" (see the Sasson Report p. 301). Following the recommendations of the report, the regulations were amended so to allow the administrative confiscation of movable structures: Regulations regarding the transfer of goods (Transporting Movable Structures) (Judea and Samaria), 1993. Initially, the regulations were amended such that a movable structure can be confiscated within 30 days from its erection. In November 2015 the regulations were amended again so that a structure could be confiscated within 60 days from its erection, in order to expand the possibility of confiscating mobile structures of Palestinian communities. Despite the assertion



in the Sasson Report that the right to a hearing and the right to objection must be granted, these rights were not included in the amendments.

4. The right to a hearing and objection is a threshold requirement intended to safeguard fairness of an administrative proceeding. This requirement is intended to protect the interest of the offended person and ensure a proper procedure. Therefore it maintains both the interests of the authorities and those of the person who is offended. The confiscation of a residential structure, let alone a populated structure, without providing a right to a hearing with the intention of preventing a proper legal procedure, is inappropriate, stands in contrary to the rules of good governance and constitutes a violation of human rights.

5. Not granting the right to a hearing when using the measure of confiscation directly contradicts the case law in Israel:

"The existence of fair hearing in a person's case is expressed, inter alia, in the fact that anyone who is expected to suffer serious damage to his life or his property will be given notice in advance and will be given an opportunity to raise his objections on this matter. This rule also applies when the law permits action on a site, such as the immediate confiscation of property ..."

(HCJ 358/88 The Association for Civil Rights in Israel v. Commander of the Central Command)

6. The primary route for enforcement of unpermitted construction is through planning and building procedures. The confiscation measure, which the Civil Administration uses as a proceeding "bypassing" a hearing and the involvement of the High Court of Justice, violates the most fundamental rights of the residents. It is unacceptable that in order to cope with the load of petitions the rights of the protected persons living in the West Bank will be completely annulled, including the right to a fair procedure, the right to a hearing, the right to shelter and the right to dignity.

7. Therefore, we appeal to you to instruct the Civil Administration supervisory unit to desist from confiscating structures without providing the option for a hearing and without allowing the offended resident to state his claims prior to the confiscating his house, as is customary in any administrative proceeding.

In addition, since no hearings were held prior to the confiscation of structures, we request that you instruct the supervisory unit to immediately return the equipment that was confiscated without proper procedure.

8. We request your prompt response, in order to stop the grave damage caused and to allow us to consider further action.

Sincerely,

Roni Pelli, Adv.