

## **Military Appeals Court**

Case 1469/17

Case 1506/17

Judge: Lt. Colonel Ronen Atzmon

**Military Prosecution** (Legal Officer Vitel Hausman)  
**Appellant**

**V**

**A.M.A.G.** (minor) (Advocates Nery Ramati and Awda Zbeidi)  
**Respondent**

**And in the case of:**

**M.S.M.A.** (minor) (Advocate Awda Zbeidi)  
**Appellant**

**V**

**Military Prosecution** (Legal Officer Vitel Hausman)  
**Respondent**

**Appeals as to the decisions of the Military Youth Court Of Judea**  
(Case no. 3055/17 on 21.02.17 and Case no. 3151/17 on 27.2.17)

**Date of appeal:** 17 February 2017

### **Decision**

The respondent A.M.A.G. (hereby referred to as Respondent A.) was indicted. The charges ascribe to him several offences of stone throwing and pipe bomb throwing towards the IDF post in Rachel's Tomb, during the months of January and February 2017. The appellant M.S.M.A. (hereby referred to as Appellant M.) was indicted as part of the same case, and 7 offences of stone throwing towards the IDF post in Rachel's tomb were ascribed to him, during October 2016 and February 2017. One should note that both of them have not yet turned 15.

The prosecution sought to hold these minors on remand until the end of proceedings against them. The court of first instance (Judge Lt. Colonel Azriel Levy) ruled that Respondent A. be released from detention while another judge of first instance (judge Lt. Colonel Shlomo Katz) ruled that Appellant M. be detained. Both parties have filed appeals against the decisions. The hearings of these appeals have taken place before this court. The defence attorneys have put forward similar claims in the case of the two minors, and have also agreed that there should be a joint decision in their cases.

Throughout the appeal, while hearing the arguments of both parties, I have reviewed a great part of the evidence material, as well as video footage from the interrogations of the minors and other persons involved. I have explained to both parties my impressions of the police's conduct and the evidentiary foundation in these cases. In view of my comments, both parties asked for the opportunity to communicate with one another. After a while, Attorney Ramati notified me that he had reached a plea bargain, as part of which the minors would remain in custody until the end of proceedings, and in fact there would be no need to decide the appeals. Sometime later I was informed that the cases of both minors had been closed via plea bargains.

Although I could have ended my decision with this, I believe it appropriate to draw the attention of those in charge of police and military prosecution investigations to shortcomings in the conduct of the police in this investigation, shortcomings which have been revealed during the hearing of the appeals.

One shortcoming concerns the decision to arrest and interrogate Respondent A. in accordance with military law of the Area (West Bank). No one has disputed the fact that Respondent A. is an Israeli citizen, and that he had been interrogated in a police station within the borders of Israel, but was brought before a military court in the area. Indeed, formally one has the authority to do so, but one should consider equality before the law, fairness and the semblance of justice. As noted by the defence attorney, if this had been the case of a Jewish citizen of Israel, the latter would have probably been interrogated and tried in accordance with Israeli civilian laws even if they had committed an offence in the area and been detained in a police station in the Area (West Bank). The decision to interrogate an Israeli citizen within the boundaries of Jerusalem, but do so in accordance with the military law of the Area (West Bank), due to the minor being an Arab, instills a sense of discomfort.

Another shortcoming is that the police did not act in accordance with Police procedures as to the interrogation of minors. To the best of my understanding, according to the procedures, the interrogation should have been conducted by a youth interrogator, but in reality a youth interrogator was present in only one of 9 interrogation sessions; the police should have summoned the minors' parents and should have allowed them to be present in the interrogation; an attorney should have been contacted, at the choosing of the detainee or the family; the Police

should have conducted the interrogation only during day-time hours; and a caution should have been given to the minors in accordance with the wording of Israeli law.

According to the Defence attorney's claims, when the interrogated minors asked to consult a lawyer, the interrogators chose to contact an unknown lawyer whom no one had asked for. In contrast, when a lawyer contacted by the family arrived at the police station, around 30 minutes after the beginning of the interrogation, she was not permitted to meet with the minors.

According to the Youth Law and Police regulations, minors should not be handcuffed unless this is necessary, and this may only be done for the shortest possible time. In this interrogation, as seen in the video footage, the minors were handcuffed for many hours, with no apparent justification. Furthermore, at some point the interrogator can be heard saying to the minor that if he does not cooperate, he will handcuff him again. That is, the handcuffs were in this case a means of pressure in the interrogation rather than a means of maintaining the interrogator's security.

One should also note that at some point in the interrogation of Appellant M., the interrogator threw a piece of clothing in the minor's face, while the latter was sitting handcuffed in front of him, and later voiced threats and verbal abuse, which violate the dignity of the interrogated minor but also that of the interrogator and the reputation of the Israeli Police.

It should be said that not all actions taken by the Police violated the military law in the Area (West Bank). I can also not say, at this stage, that the Police have taken "illicit measures" which should preclude the admissibility of the minors' statements and confessions. But the interrogation procedures set by the Police for themselves convey a professional, value-based perception which does not depend on the ethnic identity of those being interrogated. Consulting a lawyer, recognition of support and worry among the detainee's family, a respectful attitude towards the detainees and minimizing their suffering as far as possible, are basic legal and human requirements which should characterize every interrogation. The denial of rights to minor detainees who are residents of the Area (West Bank), without any apparent justification, while exceeding the procedures for interrogating minors, as set by the Police for themselves, is an inappropriate action and a violation of the fairness of the process (See also Case 2912/09 Military Prosecution vs. Nashmi Abu Rahme). Such action may detract from the weight of statements and undermine the evidentiary foundation.

But the main shortcoming which has been revealed to me in this case is the large gap between the wording of the Police statements, as written by the interrogators, and what can be seen from the video footage.

First, there were substantial parts of the interrogation which were not documented at all by video recording or by statement. According to the claims made by the Defence, which the Prosecution has not refuted, in this case, there were preliminary conversations between the interrogators and the detainees, which were not recorded by any means (in violation of procedure 300.05.064) Further, some of the video footage was not included in the interrogation CD which is part of the Prosecution case.

Secondly, there were substantial parts of the interrogation which were recorded by video but not by statement. As one can infer from the video clips which have been presented to me, the second interrogation of Appellant M. was not filmed at all, and the interrogators conducted a later "acceptance" of this interrogation on video, by reading the statement to M. He responded by shrugging, humming or nodding. One may not regard this as real visual documentation of the interrogation.

As stated previously, one can see in the interrogation footage that there are entire parts of the interrogation which are not documented at all in the written statements. At some stage in the interrogation of Respondent A., the interrogator got up from his chair, paced around in the room while conducting a dialogue with the minor, and what was said during several minutes was not documented in writing. In another part of the interrogation, the interrogator asked questions, the minor provided partial or incorrect responses in the opinion of the interrogator, and these were not written down.

At another stage in the interrogation, Respondent A. recounted details which seemed unreasonable (for example, that youths had been throwing stones at other youths rather than at the security forces) and also deliberated for a long time, found it difficult to recall names of other persons involved, mentioned a specific name, asked the interrogator if he was right and if he had to mention additional names, and the interrogator offered him other names. All that was written in the statements was that the interrogator asked a question, and the minor responded to it, a seemingly clear and non-ambiguous response.

This is not the first time that significant gaps between written statements and what actually occurred during a police interrogation has been revealed to us (see case 2450/16 Qader Takatke vs. The Military Prosecution, case 1237/17 Majdi Nufal vs. The Military Prosecution). Such gaps may have severe implications for the weight of police statements - during this interrogation and during other ones - and they may cast doubt as to the credibility and accuracy of other written reports by interrogators and police officers. If the written police statement documents just the "gist" of what a detainee says, as understood by the interrogator, then one cannot rely on it when examining subtle meanings which follow from the case (for example, of the interrogated detainee used a certain word or expression, which are meaningful to the proof of their guilt of innocence). If the police-registered statement does not document the difficulties of recollection, the

hesitations, the errors, the contradictions and the disorder which characterize the statements of the detainees, then the "proof-oriented" weight of such statements - in itself - is highly restricted. Thus for example, it would not be possible to infer from the wording of the statement, whether the detainee denied the allegation at first or admitted their guilt; whether they remembered well and were confident of themselves or not; whether there were contradictions or they were consistent; whether they spoke fluently or needed the assistance of the interrogator; whether they disclosed hidden details at their initiative or the interrogator put the words in their mouth. Furthermore, it would be difficult to assign full weight to police statements and interrogator memoranda, with respect to things which had not been documented in the video footage. This is all the more significant in investigations for security offences, which by law - and for reasons which are not always justified in my view - the Police are exempt from documenting by audio or visual recordings. For if the police interrogator does not exercise precision in the writing of the [detainee's] sayings, when that interrogator knows that the interrogation is being recorded and documented on video and it would be possible to examine the veracity of the notes, it is hard to assess to what extent that interrogator exercises precision in writing the sayings, when the interrogator knows that there is no independent record whatsoever and it would be impossible to verify his notes.

The Police need to clarify to all interrogators the importance ascribed to abiding by the regulations as to interrogations of minors, to uphold the rights of interrogated detainees as well as ensuring that trust in Police statements is not diminished, so that the work of the interrogators will not be done in vain.

Subject to these comments, the appeals are hereby dismissed.

Given today, 2 April 2017, in chambers. The secretariat of this court will pass a copy of this decision to the parties, to the Attorney of the Judea and Samaria Area, and to the Investigations Officer at the Samaria at the Sha"i Police

Note: By the Defense Attorney's request, the publication of this decision has been permitted, following the omission of the identifying details of the minors.