A Detailed Review on Laws Related to House Demolitions in Israel

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ABSTRACT

The nature of "house demolitions" used by the State of Israel in the West Bank and East Jerusalem is discussed in this article. In our opinion, and contrary to the view of the Supreme Court of Israel, such demolition orders are a penal punishment. We argue that this measure violates the fundamental principles of criminal liability as a criminal sanction. Even if this conclusion is not accepted, it is argued that the homelessness of innocent people is illegal. Although it assumes that it is not an unlawful collective measure, it violates the fundamental principle of personal responsibility. The general conclusion of the article is that the examination of the nature of the sanctions should go beyond its labels. The labelling of penal or civil sanctions may not always be true, and labels are sometimes used deliberately or misused to avoid the requirements arising from the real essence of a sanction.

Keywords: House Demolition, Review, Israel.

INTRODUCTION

"House Demolishment" is a measure used in West Bank and East Jerusalem by Israel when it is involved (or suspected of being involved) in a terrorist act by one of the residents in the house. Israel

Houses have been demolished since their military occupation of the West Bank and Gaza ([1], pp. 871, 884). In times of escalation, the military often used this measure 1. House demolitions are made pursuant to Article 119 of the Defense Emergency Regulation ([2], article 119)(2) which, in response to terrorism committed by Arab and Jewish organisations, is included in a British Emergency Legislation of 1937 3. ([3], pp. 359, 361).

A military commander determines whether any house in Israel or in the Occupied Territories should be demolished or sealed. Article 119 gives the commanders a broad discretion to decide: They may decide to demolish a house before they are convicted, on the sole grounds that one of the house's residents has committed a crime ([1], p. 889) 4. This applies even if a relatively minor crime occurs ([1], p. 886; [4], p. 1, 17) 5, such as bullying or aiding after the offence was committed; ([2], art. 64). They may issue an order when the suspect is killed (such as a suicide bomber) ([1], p. 886), and when the family or extended family of the suspect resides inside the same house. The measure may also be used if the residents of the house were completely unaware of the actions of the offender ([1], p. 889; [5], p. 313). Moreover, since Article 119 does not refer to the question of property, the commander may decide to demolish the house even if the suspects and their families are only tenants and their owners are not linked to the offence ([4], p. 17). In addition to any other judicial sanctions that may be imposed upon suspects after their conviction, the demolition sanction can be enacted.

Before 1979 demolitions were executed without the involvement of the Israeli Supremes Court immediately after the decision of the Military Commander, as the residents had no time to make petitions

against decision 6. Since 1979, house residents have been given prior notice and can appeal the court's decision ([4], pp. 28-32; [6]). The Supreme Court therefore took much more part in these measures. It is authorised to review, cancel or modify an order of demolition. However, the majority of requests for demolition orders are in practise rejected and the Supreme Court seldom cancels demolition orders ([7], pp. 251, 265).

POLICY

In 2005, it was decided to freeze policy, following the recommendations of the high-ranking Israeli Defense Force (Hereinafter: IDF) Officers, the Shani Committee. The committee doubted the legality, morality and efficiency of the policy. Following on from the Shani Committee report, the Defense Minister decided to stop the use of the demolition measures until there had been a dramatic change in circumstances allowing them to restore them. In 2008, the Israel Security Agency (ISA) considered this a drastic change in the circumstances following terrorist attacks by people not connected with a special terrorist organisation. The Court approved the ISA decision and re-established the demolitions ([8], pp. 363, 375-76).

We do not know the exact number of homes that were demolished, but it is reasonable to assume that the demolitions were more than one thousand ([9], pp. 477–80).

The measure of housing demolition has a devastating impact on the lives of these houses' residents. It also represents memories, history, identity and links to land, personal belongings, status, family and tradition. Their whole lives change overnight; family members are dormant, homeless, humiliated, living in tents without an option to go back to their former lives. The demolition result is particularly devastating in cases in which the family cannot afford alternative housing ([3], p. 373).

The measure of demolition raises several problems. The nature of this measure and whether an administrative preventive measure or a punitive measure are discussed in this article. If punitive, the measures have to meet national and international conditions of punishment. These conditions include: personal liability, punishment by the judiciary after a fair trial and considering it to be a legitimate measure rather than an inhumane and cruel one.

We believe that demolition orders are a criminal penalty. It violates the fundamental principles of criminal liability as a criminal penalty. Even if this conclusion is not accepted, it is argued that it is collective action to make innocent people homeless. Although this measure is not seen as a collective measure, it violates the fundamental principle of personal responsibility ([3], p. 361).

CONCLUSION

A possible argument against this conclusion is that the sanctions should therefore be considered administrative and not criminal as an administrative body. This places the cart in front of the horse. The fact that an administrative body issues a demolition does not make it administrative ([5], p. 323; [21], pp. 115, 130). The nature of the sanction should determine which body is permitted and not the other way round. Defining a measure as punitive means that only a judicial body can issue it ([5], p. 323).

The reasoning of the Supreme Court, that house demolitions are measures of dissuasion and not

punishment, is, according to this analysis, to be rejected[22–25] 13.

The justification for dissuasion and prevention does not exclude the punitive nature of the measure. One of the main purposes of punishment is 'general dissuasion.' In addition, the overall main objective of criminal prohibitions is to deter the public from committing crime ([5], pp. 322–23). As stated, a sanction that causes intentional suffering, damage or any other type of exacerbation should be regarded as a punitive measure in response to a wrongful action.

All these characteristics are met by the demolition measure. The suffering caused by the occupants of the demolished house is not merely a by-product of the sanction nor is it similar to the suffering caused by imprisonment to a prisoner's relatives[26].

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