

State of Israel
Ministry of Justice
State Prosecutor's Office

25 Shvat 5768
4 February 2008
Our file: 1763/07/14

Attorney Michael Sfar
31 Rothschild Blvd.
Tel Aviv 66883

Dear Sir,

**Re: The Appeal by Your Clients Salwa and Bassam Aramin against the Decision
to Close Case 1/07**

Ref: Your letter dated 24 September 2007

I am to inform you that the Deputy State Prosecutor for Criminal Matters, Mr. Yehoshua Lamberger, has examined your request and the existing evidential infrastructure in the case, including that collected in the framework of the supplementary investigation undertaken in the case, and has not seen fit to change the decision to close the case. The following are the grounds for the decision.

A thorough and detailed review of the material in the investigation file showed that there is insufficient evidence for the purpose of the criminal prosecution of the complainers.

Firstly, it should be noted that on the basis of the existing material in the file as detailed below there is not an adequate evidential infrastructure showing that the deceased was injured by a rubber bullet fired at her by any of the complainers.

Dr. Cohen, a physician at Hadassah Hospital who performed surgery on the deceased during her stay in the hospital, stated in his testimony that during the operation on the deceased's head he did not notice any foreign body, including a metallic or other body, bullets, or fragments of bullets in the deceased's head, and that there was no exit wound in the deceased's head. Dr. Cohen added that the CT examination undertaken on the deceased did not show any evidence of a metallic body in the deceased's skull.

Dr. Cohen noted that it is difficult to determine unequivocally the cause of the injury to the deceased; however, **on the basis of his impression and experience, the trauma to the deceased's head was not caused by injury from a bullet**. Dr. Cohen added that the injury to the deceased's head is consonant with injury caused as the result of falling or hitting the head on the angle of a stair or sidewalk. He states that the injury is **not** consonant with falling on a "point," and he believes that it is possible that the deceased fell backwards or received a direct blow from a sharp object.

In the detailed statement of appeal you submitted, you made no reference whatsoever to Dr. Cohen's testimony.

We should add to this that in accordance with the findings of the post mortem performed on the deceased at the Pathological Institute, the death of the deceased was caused by severe damage to the brain following blunt trauma, almost certainly from a direct blow to the head. It is further noted that the trauma was caused by a rigid and blunt object, and that **it is not possible to rule out the mechanism of injury by a rubber bullet shot at short range or another similar rigid and blunt object such as a stone.**

The expert on your behalf who was present during the post mortem on the deceased also determined in his opinion that the two objects that could have caused the death of the deceased are a rubber bullet or a stone thrown at her head. He, too, states that **“it is impossible to state with certainty which of these possibilities caused the fracture, but it is more reasonable that a rubber bullet is involved.”** Naturally, however, the position of the expert on your behalf that it is “more reasonable” that the injury was caused by a rubber bullet is insufficient to substantiate a sufficient evidential framework on the question of the cause of the injury to the deceased at the high level of certainty required in a proceeding of this type. In any case, it is not possible to determine that a causal relationship exists between the actions of the complainers during the incident and the injury to the deceased.

It should already be stated at this stage that the findings of the pathological opinion, according to which it is possible that the deceased was hit by a stone, are consonant with the complainers’ version as detailed below, according to which while they were leaving the village, further down the road on which the deceased was standing, demonstrators who came down from the vicinity of the adjacent cemetery, junction, and alleyway threw a “rain” of stones toward them, as they put it. Naturally the above cannot determine that this was indeed the situation; however, this evidence is sufficient to create real doubt regarding the liability of the complainers for the death of the deceased.

To this we shall add the following comments.

According to the complainers’ version, on the date of the incident they were present in the village of Anata in the framework of their function of guarding the execution of works on the separation barrier and of preventing the throwing of stones toward the laborers engaged in building the barrier. It emerges from the complainers’ testimonies that on entering the village the commander of the team, Complainee 1, addressed the principal of the boys’ school and asked him to supervise the students so that they would not throw stones at them. This version of the complainers is also supported by the testimony of the principal of the school attended by the deceased, which showed that she herself was asked by the principal of the boys’ school to guard the children due to the presence of the army on the scene.

The complainers stated that during the time they were in the village they were attacked several times by the throwing of stones and bottles toward them. They reported that in the initial stage they did not respond to the stone-throwing. The complainers stated that the stone-throwing toward them took place in different places along the route of their journey, by large groups of youths aged 16-23, divided into groups of six or seven youths in each group. The complainers stated that one of

the groups comprised some 20 youths; another group comprised some seventy persons. It emerges from the complainers' testimonies that the youths threw toward them from all sides a "flood" of stones and glass bottles filled with a substance of unknown identity to the complainers. Some of the complainers stated that one of the youths threw stones at them by means of a wire with which he turned the stone.

The commander of the team stated that during the incident one of the stones struck his ankle. He reported that at a certain stage he was concerned that the demonstrators would block the place where he and his men were present and, as he put it, might lynch them, and that he felt that they faced mortal danger. The commander of the team added that, in the circumstances in which he and the members of his team were attacked by stones, and after seeing that at the time no works were taking place by the barrier, he forwarded a request to receive authorization to leave the scene.

According to the complainers, after the stone-throwing intensified, and in response to the massive throwing of stones toward them, the commander of the team, Complainee 1, and one of the combat soldiers, Complainee 2, made graduated use of means for the dispersal of demonstrations, on the instruction of the commander of the team. In accordance with their testimony, in the first stage stun grenades were thrown toward the stone-throwers and gas was used. According to the complainers, after these means proved ineffective and the stone-throwing toward them continued, they shot rubber bullets toward the demonstrators.

Complainees 1 and 2 added that during the course of the incident, one of the rioters, a youth aged approximately 20 whom they stated had incited the demonstrators to throw stones at them and who had also thrown stones at them himself, was hit and injured by a rubber bullet. The complainers stated that they did not see any other person injured by them during the incident and that during the incident one of the residents approached them and noted that the glass in his vehicle had been shattered.

The complainers totally denied shooting toward the school or while the school was in the line of fire, the latter in the stage when shooting took place toward the vicinity of the cemetery (or at any other stage during the incident). The complainers further stated that during the incident they did not see any schoolgirls, children, girls, or women. They state that at no stage did they hit a girl and that the first they heard of the injury to the deceased was only after they had left the village. During the re-enactments undertaken with the complainers, the complainers indicated the point where they were standing during the stage in which they fired toward the square adjacent to the cemetery. The re-enactment showed, prima facie, that from this place **it was impossible to see the place in which the girl was injured as indicated by eyewitnesses who also took place in the re-enactment.** In any case the possibility that the deceased was injured by rubber bullets fired by the complainers is slight.

The complainers' version is supported by the task report written on the day of the incident, which stated that during the course of a demonstration in which stones were thrown toward them, means for the dispersal of disorders were used and one injury to a [male] resident of the village was identified. The operations log of the incident, recorded on the day of the incident at 10:03, also noted the use of means for the dispersal of disorders in view of the stone-throwing, and the claim of a resident of the village regarding the shattering of the glass in his vehicle. The task report and the

operations log do not mention that during the course of the incidents a girl was also injured.

The complainers added that the stone-throwing toward them continued as they were leaving the village; then, too, they claim that they did not respond. According to the complainers, the stones thrown by the demonstrators hit a grocery store situated close to the gate of the school from which the girl came out and the car of a local resident parked close by, and these residents turned to the demonstrators and shouted at them, demanding that they stop throwing the stones. In more detail on this point, Complainee 2, Abisidris Yossi, stated in his testimony from 10 July 2007 that during the stage when they were leaving the village, as they passed close by the rear gate of the girls' school on their way toward the exit of the village, and after the jeep in which they were traveling broke down, a "rain" of stones, as he put it, was thrown at them. He stated that at this stage the demonstrators came down from the area of the alleyways around the cemetery and from the cemetery junction and began to throw stones toward them on such a massive scale that the owners of the shops adjacent to the rear gate of the school, as well as the owners of cars parked adjacent, began to shout at the demonstrators to desist. Complainee 1 stated in his testimony from 23 January 2007 that while they were attempting to leave the alleyway and the two schools were already behind them, the jeep's motor stalled twice. He stated that the demonstrators noticed the problem with the jeep and began to throw stones with greater intensity, and also moved closer to the soldiers.

In these circumstances, as stated, the possibility cannot be negated that the deceased, who, according to the existing material in the file, was standing on the road by which the complainers left the village, was hit by a stone thrown toward the jeep by the demonstrators as it left the village down the road. This possibility is consonant with the findings of the pathological opinions, including that of the expert on your behalf, and also with the complainers' claim that they were completely unaware of the injury to the child during the course of the incident.

It is true that the existing material in the file includes testimonies on your behalf that the witnesses did not see stone-throwing. However, the opening section of the opinion of the expert on your behalf notes that he received testimony according to which the shooting toward the deceased was undertaken **after a stone was thrown toward the jeep in which the complainers were traveling**. To this we would add that the description of the incident that emerges from these testimonies also differs totally from the description provided by the complainers on additional points.

In any case, the testimonies of the girls who were with the deceased during the course of the incident do not suggest that they saw that rubber bullets were fired toward them from the jeep in which the complainers were present. Attempts by the police, including during the course of the execution of the supplementary investigation, to summons for questioning another girl who was present with the deceased at the time of the incident failed.

Accordingly, it would seem that the testimonies brought on your behalf are insufficient to refute the complainers' version and, in any case, they are not in themselves sufficient to consolidate a sufficient evidential framework for the criminal prosecution of the complainers.

In accordance with the rules of engagement relating to the dispersal of a violent disorder creating danger to the physical integrity of a soldier or other person, when the commander in the field identified a violent disorder and saw a need to disperse this, he was required to take steps in accordance with the ranking that appears in the rules in consideration of the severity of the incident. When a previous means proves ineffective in halting the violent disorder, or is impractical in the circumstances of the incident, use of the next means may ensue. Insofar as these means prove ineffective in dispersing the disorder, the force is entitled to execute the firing of rubber bullets. In view of the above, there is a prima facie evidential infrastructure showing that during the course of the incident that is the subject of the appeal stones and bottles were thrown at the complainers from different points by dozens of persons, and that previous means for the dispersal of a violent disorder proved ineffective. In these circumstances it is impossible to negate the complainers' version that they felt a danger to their lives. Accordingly, it would seem that their firing of rubber bullets was lawful and in accordance with the rules of engagement.

In conclusion, it emerges from the totality of the material detailed above that there is not a sufficient evidential infrastructure showing that the complainers fired rubber bullets toward the place where the deceased was standing. Neither is there a sufficient evidential infrastructure showing that a rubber bullet fired during the incident by any of the complainers struck the deceased and led to her death.

As for the supposed contradictions, as you claim, in the complainers testimonies: By the nature of things, in the case of incidents of the type that is the subject of the appeal, different versions are found on some detail or other. We did not find that, insofar as such exist, these are sufficient in the circumstances of the matter to fill the evidential vacuum in the case.

In light of all the above, and after precise and thorough examination and review of the existing material in the case, the Deputy State Prosecutor is of the opinion that there is insufficient evidence for the criminal prosecution of the complainers, a procedure requiring "reasonable possibility of conviction" (HCJ 2534/97, *Piskei Din* 51(3) 1), and the appeal is rejected.

Sincerely,

Nechama Zussman
Senior Deputy A. (Acting) to
the State Prosecutor
Appeals Section

CC: Jerusalem District Prosecutor's Office, enc. your file and the police file.