At the Supreme Court **HCJ 8091/14**
Sitting as the High Court of Justice Scheduled for December 3, 2014

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founded by Dr. Lotte Salzberger

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The Petitioners

v.

1. **Minister of Defense**
2. **Military Commander of the West Bank**

represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-6466589; Fax: 02-6467011

The Respondents

Preliminary Response on behalf of the Respondent

1. In accordance with the decision of Honorable Justice Hayut dated November 26, 2014, the Respondents hereby respectfully submits their response to this petition:

2. The petition herein concerns Petitioners' request that the Honorable Court issue a declarative order whereby "**use of Regulation 119 of the Defense (Emergency) Regulations 1945, by way of confiscating and demolishing or sealing the homes of individuals suspected, accused or convicted of involvement in hostile activities against the State of Israel and/or its citizens is unlawful ,** in that it breaches international humanitarian law, international human rights law and Israeli administrative and constitutional law". [emphasis in original, the undersigned]

The Petitioners argued that the Honorable Court should revisit the issue of the lawfulness of the house demolition policy and that it should do so in the context of the captioned public petition.

3. The Respondents will argue that the petition should be dismissed *in limine* for several alternative and cumulative reasons: since there is no room to raise arguments on issues of principle in a theoretical public petition which is not based on a set of concrete factual circumstances; sine there is no cause to revisit the legal issue of principle given the Honorable Court's jurisprudence over the years in individual petitions directed against use of the power granted under Regulation 119; since arguments similar to those made in the petition herein were made by Petitioners 1, 4 and 7 in the petition in HCJ 4597/14, dismissed several months ago after it was ruled: "**In fact, all arguments raised in this petition have already been discussed and decided by this court in previous judgments**."

All as detailed below.

Dismissal of the petition *in limine* as it is public, theoretic and academic, and not based on a set of concrete circumstances

4. As a rule, according to case law, the Honorable Court does not review petitions that raise purely theoretical questions or raise legal arguments that are not based on the facts of a single, concrete case. Such petitions are to be dismissed *in limine*.

On this issue, we refer to the remarks made in the judgment issued by the Honorable Court in HCJ 2655/06 **Adv. Laor Noam v. Attorney General** TakSC 2006(1) 4211 (2006), as follows:

> It is a rule that this court does not address petitions which raise theoretical questions, as "judicial experience deters the court from setting a rule which is seemingly floating in the air. The court needs an infrastructure of facts in a given case upon which to build a rule" (HCJ 6055/95, Tsemah v. Minister of Defense, IsrSC 53(5), 241, 250. Compare also: HCJ 2406/05 City of Beer Sheva v. National Labor Court, unpublished; HCJ 1853/02 Nawi David, Adv. v. Minister of Energy and National Infrastructures, unpublished; HCJ 10026/04, Poalim IBI – Underwriting and Issuing LTD v. General Director of the Antitrust Authority, unpublished; HCJ 73/85 Kach Parliamentary Group v. Shlomo Hillel – Speaker of the Knesset, IsrSC 39(3), 141, 146).
>
> This rule does not apply where the court's refusal to review questions of this sort may thwart any future review of these questions or where, practically, the court cannot rule other than when the question is presented as a general question which is not bound with the concrete facts of a specific case (the aforesaid HCJ 6055/95, p. 250; the aforesaid 2406/05). However, the petition before me is not among these exceptions and therefore does not justify our addressing it at the present time…"

See on this issue also the judgment given by an extended panel of seven justices, authored by Honorable Justice (Ret.) Ayala Procaccia in the petition in HCJ 1181/03 **Bar Ilan University v. National Labor Court** (published on the website of the Judicial Authority, August 24, 2011) as follows:

30. It is a rule of this Court, that it does not address petitions of a theoretical nature (…);… A theoretical petition is defined as a petition that does not concern the resolution of an actual dispute at the time it is reviewed. It is not based on a specific set of facts and is not related to a request for a concrete remedy, but rather raises a legal question of a general nature, without close ties to the circumstances of a specific case (HCJ 6055/95, Tsemah v. Minister of Defense, IsrSC 53(5), 241, 249 (1999) (hereinafter: Tsemah)). Generally, a ruling on a theoretical petition is inconsistent with the typical judicial role of deciding and resolving real disputes; it may trespass on the jurisdiction of other branches of government; it lacks a concrete outline of a matter to be ruled upon and there is concern, which is inherent to the adversarial system, that a theoretical argument would fail to exhaust all aspects of the matter; this concern is joined by a concern that the court would be improperly burdened with ruling on matters that do not require resolution, considering the heavy burden the court bears, compelling it to rule on matters that have practical relevance.

31. Despite the aforesaid reasons, special considerations may justify this Court's addressing an issue although a ruling therein is not required for a concrete matter. The exceptions to the rule denying review of a theoretical petition are interpreted narrowly and the mere fact that the matter involves an important legal issue is not sufficient grounds for same (…); Eliad Shraga and Roi Shahar, Administrative Law: Threshold Causes, 241 (Vol. 2, 2008)). One of the exceptions to the rule is a situation wherein an important question is raised which practically cannot be ruled upon other than when presented as a general question which is not related to a specific case (…). When the nature of a matter is such that, usually due to time constraints, it cannot be ruled upon prior to becoming theoretical, the court would tend to address it despite the fact that it is not connected to a concrete dispute that requires resolution. Another exception relates to a situation wherein the parties have already invested many resources into a legal proceeding that began with a concrete dispute, but new circumstances that developed shortly before a judgment is issued make the ruling moot. In this case, the court has discretion as to whether to rule on the matter despite the fact that the dispute has already been resolved. This exception occurs when the ruling is of particular, substantive importance and where many resources have been invested in the legal proceeding leading up to the ruling. The Court has a great deal of latitude with respect to reviewing threshold arguments regarding theoretical petitions and its role is to strike a balance between the opposing values at play in this regard. [emphasis added, the undersigned].

5. The Respondents will argue that there is no room to allow the Petitioners to file a purely theoretical public petition **seeking a sweeping declarative order** with respect to using the power granted under Regulation 119, which is not based on a concrete case and does not apply the arguments raised therein to that case.

6. The Respondents will argue that when the Honorable Court examines arguments that draw on international law, founding the ruling that is to be issued on a set of concrete relevant facts is of particular importance and there is no room to make general theoretical rulings that are disconnected from concrete facts on matters of this type.

We wish to refer on this issue to the ruling of the Honorable Court, issued by an extended panel of nine justices, authored by Honorable Supreme Court President Barak which refereed, *inter alia*, to the advisory opinion of the International Court of Justice regarding the security fence (HCJ 7957/04 **Mara'abe v. The Prime Minister of Israel**, (published on the website of the Judicial Authority, September 15, 2005), as follows:

> The main difference between the two judgments stems primarily from the difference in the factual basis upon which each court made its decision. Once again, the simple truth is proven: the facts lie at the foundation of the law, and the law arises from the facts (*ex facto jus oritur*). (Ibid., para. 61).

7. The Respondents will argue that not only does the petition at bar fail to raise any exception that would justify deviation from the general rule whereby the Honorable Court does not hear public, theoretical, academic petitions; it seems the opposite can be argued, as it is doubtful whether some of the general arguments made in the petition herein are relevant to some of the cases in which the power under Regulation 119 has been used, including in recent months.

8. Thus, merely as an example, as for the arguments regarding the prohibition on collective punishment and harming the innocent, see remarks made a few months ago in para. 28 of the judgment of Honorable Vice President Naor in HCJ 497/14 **'Awawadeh v. Military Commander of the West Bank Area** (published on the website of the Judicial Authority, July 1, 2014), with respect to that concrete case:

> As a side note, and perhaps not as a side note, it should be pointed out that the case before us does not concern an innocent family which was forced, against its will, to pay for the "sins of the father". The son of 'Awwad and petitioner 2, is heavily involved in his father's act, although he was not the one who fired the gun and although he was not present at the time of the terror attack. Petitioner 2, as indicated by the son's statements, knew of the concealment of the weapon and of 'Awwad's training. These facts weaken the moral strength of Petitioner 2's arguments, and this also carries weight according to the case law specified by us above.

Similar statements with respect to arguments regarding the prohibition on collective punishment and harming innocents were also made in HCJ 7473/02 **Eid v. IDF Commander in the West Bank**, IsrSC 56(6) 488 (2002), Honorable Justice (as was his title then) Mazza noted in that case:

> Counsel for the Petitioners' main grievance is that it is not proportionate to target the houses of the Petitioners, despite the fact that they took part in planning and executing the murderous terrorist attack. We accept, that the Petitioners did not, and in any even there is no proof that they did - take part in preparing the explosives, or even encouraged the murderous to execute their plan. However, we hardly consider the Petitioners to be innocent. A review of exhibit R/6, statements Petitioner 3, the brother of suicide bomber Hilbiya, made during his interrogation suffices in order to see that the family of this terrorist was aware of the shift in their relative's mindset and if they had not shut their eyes and covered their ears, they should have realized where he was headed and prevented him from executing his plans. Their home was even used as a meeting place between the two murdering terrorists. The matter is no different with respect to the terrorist Bahar. He lived with his family, a young bachelor, still supported by his parents, and under the circumstances, the parents should be presumed to have known

> about the actions and mindset of a relative who was determined to end his life in a suicide terror attack murdering innocent civilians.

Honorable Justices Cheshin and Dorner further ruled in their joint opinion in the above HCJ 7473/02 that:

> According to the evidence brought before us, the petitioners' families were aware of what the suicide terrorists might do. We therefore do not accept their claims that they were innocent and knew nothing, as they claim, of the terrorist's heinous plots. For this reason, we concur with the opinion of our colleague, Justice Mazza.

9. Similarly, there is no room to review this theoretical petition which is disconnected from any facts and seeks a sweeping, general declarative remedy on the issue of the authority under Regulation 119, also for the simple reason that it completely ignores the relevant fact that the State of Israel and the Judea and Samaria Area have two distinct legal systems.

Suffice it to recall that the Defense Regulations have the status of primary legislation in the State of Israel (HCJ 5211/04 **Vaanunu v. GOC Home Front Command** (published on the website of the Judicial Authority, July 26, 2004)), and that the Honorable Court has ruled that Regulation 119 can be used inside Israel, even after the enactment of Basic Law: Human Dignity and Liberty, subject to the proportionality requirement (see, for example, decision of Honorable President Barak in FHHCJ 2161/96 **Sharif v. GOC Home Front Command**, IsrSC 50(4) 485 (1996); HCJ 9353/08 **Abu Dheim v. GOC Home Front Command** (published on the website of the Judicial Authority, January 5, 2009).

As is known, according to the law in Israel, specific primary legislation trumps the general principles of international law. Hence, the theoretic, general review sought by the Petitioners with respect to the power granted in Regulation 119 certainly cannot be a single review for the Judea and Samaria Area and the State of Israel jointly.

In this context, we also note that the petition ignores another fact, that is, that all five of the individual petitions currently pending before the Honorable Court concern use of the powers granted by Regulation 119 in accordance with Israeli domestic law.

10. Thus, there is no justification or cause for allowing a theoretical debate of the Petitioners' arguments without an individual case, given the specific circumstances in which a decision was made to use the power granted in Regulation 119. It appears that the comments made in HCJ 1759/94 Sreuzberg v. Minister of Defence, IsrSC 55(1) 625 are relevant:

> Indeed, this Court has greatly expanded standing in public petitions recently. In such a petition, which raises a matter of special import to the general public, standing is given to any person if such person does not have a personal stake in the matter but rather an interest in safeguarding the rule of law. This applies to constitutional matters, matters that have a real impact on the rule of law and matters alleging government corruption. Given the substance of the matter, the petition herein may be considered a public petition.
>
> However, even in a public petition there are limits to standing. The court may, *inter alia*, deny standing to a person who meddles in a quarrel not his own; when the petition challenges an administrative act which infringes upon the right or

interest of a specific person and that person refrains from petitioning the court, the court may deny standing to another person. (see Z. Segal, Standing in the High Court of Justice [3], pp. 251-253.

One of the possible reasons for denying standing to a person who meddles in the quarrel of another relates to the facts. There is sometimes concern that facts presented to the court by an individual who has no personal involvement in the matter may not present a full, or reliable picture. If the facts are erroneous, there is real danger that the ruling issued by the court will also be erroneous. Hence, the court is punctilious and particular with regards to the facts. [emphasis added, the undersigned]

11. Given that currently five individual petitions regarding use of the power under Regulation 119 are pending before the Court, it cannot be but postulated that the Petitioners deliberately preferred to make their legal arguments in this theoretical "academic" petition, in order not to "stain" their legal arguments with the serious, heinous acts that form the basis for each of the recent individual decisions to use the power granted under Regulation 119 which are challenged in the pending petitions.

The Respondents will argue that such an action cannot be accepted and that the petition should be dismissed for this reason alone.

Rejection of the petition *in limine* as there is no cause to revisit the issue of principle underlying the petition at the present time

12. The Respondents will further argue that the Petitioners failed to show any definitive cause for the Honorable Court to revisit the argument that use of the powers granted under Regulation 119 of the Defense Regulations breaches international law – **arguments that, as known, have never been accepted by the Honorable Court**, certainly not when these same arguments themselves have been made in individual petitions filed against the use of the power granted under Regulation 119, including petitions filed in recent months.

13. This Honorable Court has ruled in numerous judgments that use of the power under Regulation 119 for reasons clearly related to security, for the purpose of deterrence is legitimate and consistent with both international law and domestic law. Various arguments made in many petitions against this measure, mostly concerning the argument that the measure constitutes collective punishment and that it contradicts international law and domestic law, have been rejected by this Honorable Court, and the Supreme Court has affirmed the lawfulness of said measure (see, by way of example only, HCJ 897/86 **Jaber v. GOC Central Command**, IsrSC 41(2) 522 (1987); HCJ 2977/91 **Salem v. IDF Commander in the West Bank**, IsrSC 46(5) 467 (1992); HCJ **Nazal v. IDF Commander in the Judea and Samaria Area**, IsrSC 48(5) 338 (1994); FHHCJ 2161/96 **Sharif v. GOC Home Front Command**, IsrSC 50(4) 485 (1996); HCJ 6996/02 **Z'urub v. IDF Commander in the Gaza Strip**, TakSC 2002(3) 614 (2002)).

The Petitioners themselves refer to jurisprudence through the years where, on the one hand, no impediment was found to exercising the power granted under Regulation 119, and on the other, the court defined limits of proportionality for such use, and stipulated various criteria for it.

14. As stated, arguments similar to those raised by the Petitioners have been rejected time and time again by this Honorable Court, and the Respondents will argue that, as ruled in judgments issued in

the past, there is no cause or justification for the Honorable Court to address these arguments once more in the context of the petition at bar.

See, on this issue, for example, the opinion of Honorable President Barak in HCJ 2006/97 **Abu Fara v. GOC Central Command**, IsrSC 51(2) 651 (1997), where the Honorable Court ruled that there was no need to revisit the issues of principle, as they had been decided some time before:

> The petition raises additional claims regarding the military commander's power to make use of Regulation 119 of the Defense (Emergency) Regulations 1945. These claims have all been raised in the past and rejected by this Court in a long string of judgments. Regulation 119 of the Defense Regulations – which dates from the Mandatory era and remains in force today – grants the military commander power and discretion to adopt measures regarding a building which is home to a person who has seriously violated the provisions of the regulations. We have found nothing in the claims of petitioners that would justify a deviation from the many precedents on this issue.
>
> We are aware that the demolition will leave Petitioner 1 and her children without a roof over their heads, but his is not the aim of the demolition. It is not a punitive measure. It aims, rather, to deter. It has a harsh outcome for the family, but Respondent believes that this measure is essential in order to prevent further attacks on innocent people. He maintains that pressure from the families might discourage terrorists.
>
> There is no absolute assurance that this measure is be effective. But considering the few measures left available to the state to defend against these "human bombs", we should not discount this one.
>
> For these reasons I would reject the petition.

(Hon. President Barak, pp. 653-654).

> I share the opinion of my colleague the President.
>
> A study that shows conclusively how many terrorist attacks have been prevented and how many lives have been saved as a result of the deterrent measures of sealing and demolishing houses has not been conducted, nor can it be conducted. However, as far as I am concerned, it is sufficient that the view that the there is a measure of deterrence cannot be dismissed, in order that I refrain from intervening in the discretion of the military commander.

(Hon. Justice Goldberg, p. 655, emphasis added, the undersigned)

See, on a similar issue, the remarks made in the judgment in HCJ 6868/02 **a-Din v. IDF Commander in the Judea and Samaria Area** (published on the website of the Judicial Authority, August 8, 2002), authored by President Barak and Justices Dorner and Procaccia) as follows:

> With respect to the issue of principle, it has been examined in numerous judgments and we do not think that there is room to revisit it at the present time."

These grounds alone are sufficient for dismissing the petition.

Dismissal of the petition *in limine* as similar arguments have been made in previous petitions by some of the petitioners – and rejected.

15. Moreover, we wish to refer the Court's attention to the fact that most of the arguments made in the current petition with respect to Regulation 119 in view of international law have been made in individual petitions submitted in recent months to the Honorable Court with respect to the use of powers under Regulation 119: HCJ 4597/14 (use of powers under Regulation 119 with respect to the home of the terrorist who murdered Police Commander Baruch Mizrahi) and in HCJ 5290/14 and 5295/14 (use of powers under Regulation 119 against the buildings where the kidnappers and murderers of the three Israeli youths, Gilad Shaar, Naftali Frankel and Eyal Yifrah, lived).

So, for instance, the main arguments raised in the petition at bar with respect to international law, were raised, albeit more briefly, in the petition in HCJ 4597/14, **to which Public Petitioners 1, 4 and 7 herein were also party**. These are arguments that have already been raised and rejected:

a. Use of the power granted under Regulation 119 contradicts the norms by which the military commander is bound (para. 19 of the petition in 4597/14).

b. The military commander must act in accordance with humanitarian law and the law of occupation and his overall powers in the occupied territory derive from international law which forms the sole normative basis for the exercise of said powers (para. 20 of the petition in 4597/14).

c. Regulation 119 contradicts two provisions in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War: Article 33 prohibiting collective punishment and reprisals against protected persons and their property and Article 53 prohibiting the occupying power to destroy homes and property (paras. 21 and 28 of the petition in 4597/14).

d. Regulation 119 contradicts Article 53 of the Hague Regulations concerning the Laws and Customs of War on Land (1907) which prohibits collective punishment and Article 46 (Article 43 is cited in error) of these Regulations which prohibits damage and destruction of property (paras. 22 and 27 of the petition in 4597/14).

e. Regulation 119 contravenes various provisions in the International Covenant on Civil and Political Rights (paras. 7, 12, 17 and 26), and the same was held by the UN Human Rights Committee charged with monitoring the implementation of the Covenant in its concluding observations on the State of Israel in 2003 ((paras. 23-24 of the petition in 4597/14).

f. Regulation 119 contradicts various provision in the International Covenant on Economic Social and Cultural Rights (paras. 10, 11, 12-13 and 17 of the petition in 4597/14).

g. Regulation 119 may amount to a war crime according to the definition stipulated in Article 8(2)(iv) of the Rome Statute of the International Criminal Court (para. 25 of the petition in 4597/14).

Similar arguments were made in HCJ 5290/14 and HCJ 5295/14.

Copies of the petitions in HCJ 4597/14, 5290/14 and 5295/14 (excluding enclosures) are attached hereto and marked **P/1a, b, c**.

16. In the response submitted to the three aforesaid petitions, the State argued that in view of the Court's consistent jurisprudence over the years, there was no room for it to revisit arguments that draw from international law once again.

As an example, a copy of the State's response in HCJ 4597/14 (excluding enclosures) is attached hereto and marked **P/2**

17. Indeed, the Honorable Court did not see fit to revisit the arguments made by the Petitioners drawing on international law in the judgments delivered in said petitions, ruling, in the opinion of Honorable Vice President Naor in HCJ 4597/14 that the all arguments on issues of principle have been reviewed and decided, as follows:.

> Discussion and decision
>
> In fact, all arguments raised in this petition have already been discussed and decided by this Court in previous judgments.
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> House demolitions are carried out by security forces, as described above, pursuant to Regulation 119. The language of the Regulation provides for house demolitions on a very broad scale. However, in its interpretation of the Regulation, this Court has limited the implementation and application thereof and held that the military commander must exercise reasonable discretion while using his authority thereunder and act proportionately (see, for instance, HCJ 361/82 **Hamri v. Commander of the Judea and Samaria Area**, IsrSC 36(3) 439, 443 (1982); HCJ 2722/92 **al-'Amarin v. Commander of IDF Forces in the Gaza Strip**, IsrSC 46(3) 693, 699 (1992) (hereinafter: **al-'Amarin**); HCJ 6026/94 **Nazal v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 48(5) 338, 345 (1994) (hereinafter: **Nazal**); HCJ 1730/96 **Salem v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 50(1) 353, 358, 363 (1996) (hereinafter: **Salem**)).
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> This ruling was reinforced following the enactment of Basic Law: Human Dignity and Liberty. This Court held that although the 'validity of law' clause applied to the regulation, it should be interpreted in the spirit of the Basic Laws (see: FHHCJ 2161/96 **Sharif v. GOC Home Front Command**, IsrSC 50(4) 485, 488 (1996); HCJ 10467/03 **Sharbati v. GOC Home Front Command**, IsrSC 58(1) 810, 814 (2003) (hereinafter: **Sharbati**), **Abu Dheim**, paragraph 5 of my opinion; **Mughrabi**, paragraph 12 of the opinion of Justice H. Melcer). There is no dispute that the exercise of the power granted by Regulation 119 violates human rights. It violates the right to property and the right to dignity. Therefore, as held, the exercise of the power must be proportionate (see: HCJ 8084/02 **Abbasi v. GOC Home Front Command**, IsrSC 57(2) 55, 5961 (2003) (hereinafter: **Abbasi**); HCJ 6288/03 **Sa'ada v. GOC Home Front Command**, IsrSC 58(2) 289, 291-292 (2003) (hereinafter: **Sa'ada**). (See and compare: Aharon Barak, **International Humanitarian Law and the Israeli Supreme Court**, 47 Isr. L. Rev. 181, 188 (2014)).
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> In this context, the Court listed in its judgments a number of considerations which the military commander should take into account with respect to house demolitions:

a. The severity of the acts attributed to the suspect who lived in the structure and the existence of proof that same suspect carried out said acts should be taken into account.

b. The scope of involvement of the other residents of the house, in most cases the terrorist's family members, in his acts of terrorism, may be taken into account. Lack of evidence regarding awareness and involvement on the part of the relatives does not preclude, in and of itself, the exercise of the power, but said factor may affect, as aforesaid, the scope of Respondent's order.

c. A relevant consideration is whether the residence of the suspect can be deemed a residential unit which is separate from the remaining parts of the structure.

d. It should be examined whether the suspect's residential unit can be demolished without damaging the remaining parts of the structure or neighboring structures; if it emerges that it is not possible, then, sealing the relevant unit only should be considered.

e. The respondent must take into account the number of persons who may be harmed by the demolition of the structure and who, presumably, committed no crime and were not even aware of the suspect's acts (**Salem**, p.359. See also **al-'Amarin**, page 700).

However, the court emphasized that the above criteria were not exhaustive, and that each case should be considered according to its own circumstances.

(first emphasis in citation added, the undersigned)

The judgment in HCJ 4597/14, is attached hereto for the Court's convenience, and marked **P/3**.

18. We reiterate that, as stated, Public Petitioners 1, 4 and 7 herein were named petitioners in the aforesaid 4597/14, in which the arguments drawing on international law made here were also made (albeit they are now made in greater detail). Petitioner 1 (HaMoked: Center for the Defence of the Individual) was one of the petitioners in each of the additional individual petitions submitted in recent months against the use of the powers under Regulation 119 (with the exception of the petition in HCJ 5290/14). We emphasize that all of these individual petitions were also filed by private petitioners whose homes had been made the object of Regulation 119.

Thus, only a few months ago, the Honorable Court once again ruled that that the arguments on issues of principle, raised again by Petitioners 1, 4 and 7 in the petition herein have already been reviewed and rejected, and the Court has just recently declined to revisit arguments drawing on international law with respect to the power granted under Regulation 119.

In the circumstances, it is clear that there is no room to grant the request made by the Petitioners herein to revisit the general issue of using the power granted under Regulation 119. This is certainly relevant considering the fact that Petitioners 1, 4 and 7 herein were also petitioners in HCJ 4597/14, such that the current petition is, in effect, an attempt to achieve better results on the part of these petitioners. All the more so when the petition at bar currently is "academic" and does not refer to a specific case and its circumstances.

To complete the picture – the scope of using the power over the last decade

19. To complete the picture we note that the power granted under Regulation 119 was ultimately used only in a few grievous cases over the last decade, since early 2005, as follows:

    a. The power was effectively exercised twice in 2008-2009 with respect to residential buildings in East Jerusalem following a surge of terrorist attacks in the Capital in those years (see, on this issue, HCJ 9353/08 **Abu Dheim v. GOC Home Front Command** (published on the website of the Judicial Authority, January 5, 2009), **HCJ 124/09 Awayat** [*sic*] **v. Minister of Defense** published on the website of the Judicial Authority, March 18, 2009). We note that the power granted under Regulation 119 was evoked against another building in East Jerusalem but was ultimately not actualized.

    b. The power granted under Regulation 119 was exercised with respect to four buildings in the Judea and Samaria Area in the summer of 2014 after a drastic change in the security situation in the Judea and Samaria Area since 2013 – the home of the murderer of Police Commander Baruch Mizrahi and the buildings where the three members of the cell that kidnapped and murdered the three youths resided.

    c. In view of the severe wave of terrorism washing over East Jerusalem in recent months, over the past few weeks, the GOC Home Front Command has issued orders under Regulation 119 with respect to six buildings where terrorists from East Jerusalem who committed serious terrorist attacks lived. One of these orders has already been effectuated, and petitions are pending before this Honorable Court with respect to five others.

Conclusion

20. The Respondents ask the Honorable Court to dismiss the petition *in limine* for the various grounds detailed above.

Today, 10 Kislev, 5775
December 2, 2014

[signed]
Aner Helman, Adv.
Deputy HCJ Department Manager
State Attorney's Office