At the Supreme Court Sitting as the High Court of Justice

HCJ 8567/15
HCJ 8782/15

Before:	**Honorable Deputy President E. Rubinstein** **Honorable Justice Z. Zylbertal** **Honorable Justice D. Barak-Erez**
The Petitioners in HCJ 8567/15:	**1. _____ Halabi** **2. HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
The Petitioners in HCJ 8782/15:	**1. _____ Sharakeh** **2. HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
	v.
The Respondent:	**Commander of IDF Forces in the West Bank**
	Petition for *Order Nisi* and Interim Order
Session Date:	Tevet 9, 5776 (December 21, 2015)
Representing the Petitioners in HCJ 8567/15:	Adv. Labib Habib Adv. 'Alaa Mahjaneh
Representing the Petitioners in HCJ 8782/15:	
Representing the Respondents:	Adv. Avinoam Segal Elad; Adv. Ynatan Nadav

Judgment

Deputy President E. Rubinstein:

1. The two petitions herein concern a demolition order which was issued against a two story house located in Surda village in the Judea and Samaria Area (hereinafter: the **house**), which served as the residence of Muhannad Shafiq Muhammad Halabi (hereinafter: **Muhannad**) who stabbed to death Rabbi Nehemia Lavi and the soldier Aharon Bennett may they rest in peace and also wounded Aharon's wife and their infant son on October 3, 2015 in the old city of Jerusalem; The repeated stabbings ended only after Israel Border Police forces shot and killed Muhannad. Thereafter, on October 15, 2015 the respondent gave notice of his intention to use the power vested in him under Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: **Regulation 119** or the **Regulation**), and issue an order for the forfeiture and demolition of the house; After the denial of the objection which was submitted in the matter, a forfeiture and demolition order was issued against the house on December 6, 2015 (hereinafter: the **order**). The petition in HCJ 8567/15 was filed on December 13, 2015; An interim injunction staying the demolition was issued on that very same day; On December 20, 2015, an additional petition was filed in the same matter in HCJ 8782/15; The hearing in both petitions was held on December 21, 2015 and therefore:

Parties' arguments

2. The petitioner in HCJ 8567/15 (hereinafter: **Shafiq**) is the father of Muhannad. He has been residing in the house with his wife and their children for about sixteen years (the petition will be hereinafter referred to as: the **family's petition**); Petitioner 2 is an association which handles cases of this kind. The petitioners request that the respondent refrains from the forfeiture and demolition of the structure; alternatively, they request that the least injurious sanction be used, such as the sealing of the room in which Muhannad lived and which is located on the second floor of the house; Alternatively, even if a decision is made to demolish the house, the petitioners request that the forfeiture order be revoked; and also, alternatively, that if a decision is made to carry out the demolition, that the latter be executed in a moderate manner without causing damage to the neighbors. The petitioners request further that the demolition plan be transferred to them for its review by an expert to the extent that the demolition of the house is approved.

   The petition revolves around several issues the main points of which are as follows. *First*, it was argued that Regulation 119 ran contrary to international law and therefore the respondent exceeded his authority while having issued the order there-under. *Second*, it was argued that the procedure by which the order was issued was flawed in view of the fact that the respondent had actually deprived the respondent of his right to be heard in that he had failed to divulge the investigation materials underlying the suspicion that the attack was carried out by Muhannad. *Third*, it was argued that the order was disproportionate in view of the fact that a less injurious alternative may suffice – the sealing of Muhannad's room which as aforesaid, was located on the second floor of the house, in a manner which would avoid unnecessary harm to the entire family. It was also argued that the fact that full ownership in the house has not yet been transferred to Shafiq – who purchased it years ago – also supported the conclusion that its complete demolition was disproportionate. *Fourth*, it was argued that it was not proved that demolition of the house in particular and of houses in general realizes the declared objective of the Regulation – deterrence from execution of future terror attacks. *Fifth*, it was argued that there was a concern that manner by which the demolition would be carried out would be disproportionate in view of past cases in which the respondent chose to demolish structures by detonation, which caused material damage to neighboring buildings. *Sixth*, it was argued on the issue of forfeiture that even if the demolition was approved there was no need to forfeit in view of the fact

that it would constitute a *de-facto* forfeiture of land after the house had been demolished, contrary to international law.

3. The petitioner in HCJ 8782/15 (hereinafter: **Hassan**) is the chair of the board of directors of the "Palestinian Workers Union" (hereinafter: the union; the petition will be hereinafter referred to as: the **union's petition**); Petitioner 2 is the same association which petitions in the family's petition. The remedies requested in this petition are similar to those requested in HCJ 8567/15, but for different reasons; It was argued that in view of the fact the family members who resided in the house were not the owners of the house which was rather owned by Hassan, as the chair of the union (in the hearing it was explained that for formal reasons the house had been registered under his name but that his petition was filed on behalf of the union), and in view of the fact that the agreement for the sale of the house to Shafiq which was signed in 1999 was canceled several years ago due to Shafiq's failure to make the purchase payments, the respondent was not authorized to take measures according to the Regulation; given the fact that such measures would cause damage to the property of Hassan and the union which had nothing to do with Muhannad as a result of whose actions, as aforesaid, the order was issued. A Land Registration extract was attached to the petition which allegedly shows that the house was owned by Hassan. To the petition were also attached warning letters which were allegedly sent to Shafiq due to his failure to pay the entire consideration for the house, according to which the agreement was revoked and possession in the house should be returned to the union.

4. The response of the state was submitted on December 20, 2015; Due to time constraints it refers only to the family's petition, but in its content response is also given to the union's petition. It was argued that the issue pertaining to the power of the military commander to use Regulation 119 for the issue of forfeiture and demolition orders had been considered by this court many times and even recently, and that it had been held that it was within his power; Hence, there was no need to re-visit this issue at this time. It was thereafter argued that according to the holdings of this court, the security authorities did not routinely issue orders of this kind but for in severe terror attacks in a bid to deter potential perpetrators, being aware of the severity of the sanction of house demolition by virtue of Regulation 119. In the case at bar, it was so argued, in view of the dramatic increase in terror attacks which occurred recently and in view of the severity of the specific action, it was decided that such an extraordinary measure should be used. It was thereafter argued on the issue of efficiency that this court has only recently accepted the argument of the state in previous proceedings that the measure indeed had a deterring effect, according to security opinion which had been presented, and therefore there was no room for intervention on this issue too at this time. With respect to the possibility to take a less injurious measure, such as the sealing of Muhannad's room, it was argued that it would not yield the same deterring effect which would be obtained by the demolition of the house and therefore it should therefore be rejected. With respect to the demolition method and its ramifications on neighboring houses it was argued that the demolition outline was prepared by a licensed engineer considering the characteristics of the house and adjacent houses.. Based on the above a controlled detonation outline was established, namely, placement of measured amounts of explosives in specific locations in the house aimed at achieving a controlled detonation; It was further argued that according to the judgments of this court, the state was not obligated to transfer said engineering opinion to the inhabitants of the house or to any other party. On the issue of the forfeiture which was added to the demolition, it was argued that according to the language of Regulation 119, the demolition of the house could be carried out only after its forfeiture and forfeiture, and hence the need to forfeit.

Deliberation

5. In the hearing before us, which was held on December 21, 2015, petitioners' counsel in the family's petition requested again that the respondent be ordered by the court to refrain from demolishing the house in view of the fact that the family did not know and did not encourage Muhannad to carry out the attack and no argument to that effect was made. Hence, the punishment chosen was not

proportionate. It was thereafter argued that to the extent a decision was made to take measures by virtue of Regulation 119, a more proportionate measure than the demolition of the entire house should be taken, such as the sealing of Muhannad's room, as aforesaid. Petitioners' counsel in the union's petition emphasized that no measures under Regulation 119 should be taken in the case at bar in view of the fact that the house was owned by the union rather than by the family, and therefore the respondent had no power to take such action. In response to the panel's question as to whether the union had ever evicted a person from his home due to his failure to pay the entire purchase amount, it was stated that such proceedings were initiated but in fact no one has been evicted as of yet. With respect to the specific house being the subject matter of the case at bar, it was argued the union intended to immediately initiate eviction proceedings against the family, to the extent the house was not demolished. In addition, during the hearing an expert opinion was submitted which consisted of an assessment of the damage which was caused to different apartments and structures in a previous case as a result of the demolition of an apartment pursuant to the Regulation.

6. Counsel to the state emphasized that in view of the severity of the attack in which two persons were killed and two additional persons were wounded, the sealing of Muhannad's room and the adjacent bathroom would not suffice in the case at bar. With respect to the ownership issue it was argued that the power under Regulation 119 did not depend on the question of whether the perpetrator's family which resided in the house was its registered owner or not, and that in past cases it was decided to apply it also to cases in which the house was rented by the family which resided therein. Counsel to the state distinguished the case at bar from HCJ 7040/15 **Fadel Hamed v. Military Commander of the West Bank Area** (November 15, 2015; hereinafter: **Hamed**), I which it was held that an order to demolish the building should not be issued given the fact that the perpetrator and his family resided therein as lessees; In that case a short term lease – of one year - was concerned whereas in the case at bar the family has been residing in the house for about 16 years and no eviction proceedings were initiated.

Decision

7. After we have reviewed the pleadings and heard the arguments of the parties we found no reason to accept the petitions, subject to the following comments. The general power of the military commander to issue orders for the demolition or sealing of a house by virtue of Regulation 119 was affirmed by a host of judgments of this court, and there is no need to discuss it here again (HCJ 434/79 **Sahweil v. Commander of Judea and Samaria Area**, IsrSC 34(1) 464 (1979); HCJ 897/86 **Jaber v. GOC Central Command**, IsrSC 41(2) 522 (1987); HCJ 358/88 **Association for Civil Rights in Israel v. GOC Central Command**, IsrSC 43(2) 529 (1989); HCJ 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defense**, paragraphs 20-24 (December 31, 2014)(hereinafter: **HaMoked**); **Hamed**, paragraphs 25-26; HCJ 8150/15 **Daud Abu Jamal v. GOC Home Front Command**, paragraph 6 of the judgment of Justice **Amit** (December 22, 2015)(hereinafter: **Abu Jamal**). At the same time, relevant to this case are also the words written in **HaMoked** (paragraph 16): "It cannot be denied that this petition raises, by its nature, difficult questions; As I noted in the courtroom, it may be easier to take petitioners' side than to take respondents' side, and nobody can deny that moral dilemmas arise in certain occasions".

It should be emphasized, as we stress time and time again that said power which is exercised in emergency conditions such as we currently experience, and which is obviously the fruit of these conditions and these conditions only, is vested with the respondent for the purpose of creating effective deterrence and not for punitive purposes, although there is no dispute that in fact damage is occasionally caused to persons who are not involved in terror activity (HCJ 698/85 **Dejalas v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 40(2) 42, 44 (1986) (hereinafter: **Dejalas**); HCJ 4772/91 **Hizran et al., v. Commander of IDF Forces**, IsrSC 46(2) 150 (1992); HCJ 8084/02 **Abassi v. GOC Home Front Command,** IsrSC 57(2) 55, 60

(2003)(hereinafter: **Abassi**); HCJ 5290/14 **Qawasmeh v. Military Commander of the West Bank Area**, paragraph 23 (2014); HCJ 4597/14 **'Awawdeh v. Military Commander of the West Bank Area**, paragraph 19 (2014); **HaMoked**, paragraph 17). Indeed this court have already stressed in the past the **continuing need** to examine the question of whether house demolition or sealing by virtue of the Regulation actually realizes said objective (**HaMoked** , paragraph 27 of my opinion and paragraph 6 of the opinion of Justice **Hayut**; HCJFH 360/15 **HaMoked: Center for the Defence of the Individual v. Minister of Defense** (November 12, 2015); **Abu Jamal**, paragraph 6 of the judgment of Justice **Amit**); and accordingly, in the petitions which have been heard by us just recently the state presented to us data which convinced the court that *prima facie* said measure does indeed deter potential perpetrators (**Hamed**, paragraph 29; HCJ 674/15 **Abu Hashiyeh v. Military Commander of the West Bank Area**, paragraph 19 (December 1, 2015)(hereinafter: **Abu Hashiyeh**)). Hence, it is not necessary to examine this question once again in the cases at bar, but we shall reiterate here too that this issue should be continuously and meticulously examined by the security agencies.

Therefore, the discussion at bar should focus on the specific circumstances of the case and on the question of whether the respondent exceeded the scope of discretion vested in him in such matters in his decision to issue an order for the demolition of house being the subject matter hereof by virtue of the Regulation.

8. *First*, it should be noted with respect to the evidentiary material and with respect to the family's arguments concerning the sufficiency of the evidence which indicates that Muhannad committed the acts attributed to him and that they were denied access to said material – that the state representative noted that the security clips from the scene of the incident prove beyond doubt that Muhannad committed the acts attributed to him. It was noted that the security clips are on the web and are available for all to see; Petitioners' counsels did not object and hence, based on the presumption of administrative regularity which the respondent has available to him (**Qawasmeh**, paragraph 20), it seems that the evidentiary issue is not truly at the center of our case. It is a horrendous murder of innocent people and infliction of injury on others, a woman and her baby, which was committed by Muhannad and the petitioners are also aware of same.

9. *Second*, with respect to the union's argument regarding the ownership of the asset: for the purpose of taking measures by virtue of Regulation 119 it is not necessary to show that the perpetrator who resided in the asset together with his family had ownership rights in the asset when he executed the attack. This procedure is not the appropriate place for having rights in land clarified, nor is this question relevant in the examination of the power and discretion of the respondent by virtue of Regulation 119. The language of the Regulation indicates that for the purpose of taking measures there-under it must be shown that the perpetrator is an "inhabitant" of the house, namely, that a connection of residence exists between the perpetrator and the house (**Hamed**, paragraph 45), and the power was also exercised in cases in which, for instance, the perpetrator and his family lived as lessees in a building against which measures were taken by virtue of the Regulation (HCJ 542/89 **Aljamal v. Commander of IDF Forces in Judea and Samaria** (1989); HCJ 869/90 **Lafruk v. Commander of Judea and Samaria – Beit El** (1990); HCJ 3567/90 **Sbar v. Minister of Defense** (December 31, 1990)(hereinafter: **Sbar**)).

Indeed, power and proportionality are separate and distinct issues and indeed, in Hamed, under circumstances in which the family lived in the structure under a short term lease according to a oe year agreement, it was held that the demolition of the house was not proportionate in view of its violation of the proprietary rights of the owners, and especially in view of the fact that it is doubtful whether the destruction of the property of a unrelated third party would advance the realization of the purpose of deterrence; and therefore, it was decided in that case to order the state to seal the house instead of demolishing it. However, the case at bar is different from the circumstances of **Hamed**:

Muhannad's family has been living in the asset for about sixteen years and in its oral and written arguments the long term connection of the family to the house was emphasized. In addition, even if we accept the argument that the purchase agreement had been breached and the union could have formally and legally transfer the house to its possession, no real evidence was presented to us which indicated that the union had indeed acted in a bid to assume possession of the asset – and as alleged, the agreement between the parties was breached many years ago, so that had the union sincerely wanted to, it could have acted in this manner a long time before the occurrences at bar. In addition, as noted by the chair of the union in the hearing, in response to a question, in fact until now the union has never taken measures to evict this person or another from his home due to belated purchase payments, and according to the argument is has started to do it now; hence, it is *prima facie* evident that the union's desire to assume possession of the asset actually arose only when respondent's intention to demolish the house was announced. Therefore, it seems that the above argument raised by the petitioners cannot sufficiently indicate that the demolition of the house by virtue of Regulation 119 and for deterrence purposes is not proportionate under the circumstances.

10. *Third*, with respect to the argument that it would suffice to take a less injurious measure *in lieu* of the demolition of the house, such as the sealing of Muhanad's room and adjacent bathroom: as a general rule, the professional discretion to evaluate the deterring effect embedded in the specific measure taken by virtue of the Regulation is vested in the respondent (**Qawasmeh**, paragraph 26; '**Awawdeh**, paragraph 24). In the case at bar, the respondent emphasized that in view of the double killing committed by Muhannad and the additional injuries caused by him, a partial demolition or sealing would not suffice for the purpose of achieving the objective of deterrence; we found no reason to intervene in these security considerations which, by their nature, are vested in the respondent, and under the circumstances of this severe case it cannot be said that they are unreasonable to the extent which justifies intervention. For the same reasons it cannot be said that choosing the measure of complete demolition in the case at bar *in lieu* of partial demolition or sealing is not proportionate; as was held in ample authority of this court, proportionality is measured, *inter alia*, relative to the severity of the actions, and in this case these are undoubtedly extremely serious (see **Hamed**, paragraphs 23-24; HCJ 10467/03 **Sharbati v. GOC Home Front Command,** IsrSC 58(1) 810, 814 (2003); and also see and compare HCJ 8024/14 **Hajazi v. GOC Home Front Command** (June 15, 2015), in which the state agreed to retract its intention to issue an order for the demolition of a perpetrator's home, after *order nisi* had been issued, and to seal the house, *inter alia*, due to the fact that the acts attributed to the perpetrator were not on the upper level of severity, since luckily enough the incident did not result in the loss of human life; and I specifically thought that there was no reason to issue an order for the demolition of the entire building in **Abu Hashiyeh**, a petition which was eventually accepted by a majority opinion on the grounds of lawfulness on the one hand and of a delayed decision on the other). Therefore, it cannot be said that the decision of the military commander in the case at bar to choose complete demolition *in lieu* of partial demolition or sealing exceeds the scope of discretion vested in him in such matters. With respect to the argument that the family members were not aware of Muhannad's activity and did not contribute to it, there is no dispute that this is a consideration which should be taken into account in the context of the proportionality tests and in the examination of another alternative *in lieu* of demolition (HCJ 1730/96 **Salem v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 50(1) 353' 359 (1996); **Qawasmeh**, paragraph 22); however this is not a stand-alone consideration, and in the case at bar, in view of the entire considerations and particularly in view of the extreme severity of Muhannad's acts, said consideration should not be given in this case preferred status.

11. *Fourth*, with respect to the damage which may be caused to the surrounding area as a result of the demolition, high ranking officials are presumed to use their best efforts to prevent such damage by treating the demolition measures with extreme strictness, and caution and to at least reduce such damage to a minimum, according to the circumstances on scene. This case concerns a single family

home which prima facie substantially reduces the concern of damage to adjacent homes. In any event, as was held in **Hamed**, to the extent damage is caused to the adjacent houses, their owners will be compensated by the state accordingly (**Hamed**, paragraphs 56-59; see also HCJ 5839/15 **Sidr v. Commander of IDF Forces in the West Bank**, paragraph 9 (October 15, 2015)).

12. *Fifth*, with respect to the need to forfeit the house in addition to its demolition: as noted by the state, the language of Regulation 119 requires that the house be forfeitd prior to its demolition. In addition, *prima facie*, the demolition is not necessarily revoked after the demolition, and once the house was forfeitd the land on which the house is built was forfeitd as well. In the case at bar, the specific order which was issued provides that "it is prohibited to build any structure on the land being the subject matter of this order"; Hence, we learn that the respondent intended to forfeit the land as well as the house and that the forfeiture will continue to be force even after the demolition of the structure. The reasons underlying respondent's power to issue orders for sealing and demolition of houses are also apply to respondent's authority to forfeit the land after the demolition; however, Regulation 119 also establishes the possibility of "remission":

> Where any house, structure or land has been forfeited by order of a Military Commander as above, the Minister of Defense may at any time by order remit the forfeiture in whole or in part and thereupon, to the extent of such remission, the ownership of the house, structure or land and all interests or easements in or over the house, structure or land, shall revert to the persons who would have been entitled to same if the order of forfeiture had not been made and all liens on the house, structure or land shall be revalidated for the benefit of the persons who would have been entitled thereto if the order of forfeiture had not been made.

In other words, the forfeiture is revocable, and after the elapse of a certain period the petitioners will be able to submit an appropriate request for its revocation (see for instance: **Hamed**, paragraph 48; HCJ 3740/90 **Mansur v. Commander of IDF Forces in the Judea and Samaria Area** (1991); HCJ 5696/09 **Mughrabi v. GOC Home Front Command**, paragraph 28(3) (2012)). Evidently, the principle of proportionality which defines the limits of respondent's discretion in the issue of the order, also defines the required forfeiture term, and it will be taken into consideration to the extent an appropriate request is submitted in due course by the petitioners.

13. Parenthetically, I would like to shortly refer to petitioners' arguments regarding the opinion of our colleague Justice **Mazuz** in several cases on a similar subject (the petitioners have mainly referred to HCJ 7220/15 **'Aliwa v. Commander of IDF Forces in the West Bank** (December 1, 2015) but since then another judgment was given in the matter of **Abu Jamal** on December 22, 2015, in which Justice **Mazuz** broadened his explanations): neither one of us likes the issue of house demolition, to say the least, and it has been repeatedly said in our judgments, including the spirit arising from current judgment and the policy requires constant review and constant supervision as to the gains of deterrence. Justice **Mazuz** also agrees, so it seems, that we are not engaged with the power but rather with the proportionality, and hence his position that harm caused to the property of innocent people is unacceptable (**Abu Jamal**, paragraph 8). We all wish to interpret the power in the spirit of the Basic Laws. Had we been living in another reality I and many of our colleagues like me, would have been very glad to join the conclusion reached by Justice **Mazuz** with all due respect. Justice **Vogelman** expressed it in his opinion in **Sidr**, when he noted that we were not a "court of Justices", and in view of the fact that this court has recently made its decision on this matter following a meticulous examination, its decision was binding on all of us (*Ibid*., paragraph 6; and also see on this issue the opinion of Justice **Hayut** in **HaMoked**, paragraph 1 and the opinion of Justice **Zylbertal** in **Abu Jamal**, paragraph 3). But we sit amongst our people in the current threatening everyday reality, and the security agencies – the GOC Central Command who decides and signs affidavits, as

well as other officers like him, the Attorney General and the State Attorney's Office, and our basic assumption is that the position is brought to us following deliberations with the Military Advocate and his team and the political level in an affidavit of the Cabinet Secretary - believe not only in the lawfulness of the measure but also in its specific necessity; we cannot assume that things are made only to appease public opinion following severe attacks. We found no clear reason to say that their positions and affidavits have no merit.

This is with respect to the security considerations. With respect to the balancing between security considerations and violation of the rights of the inhabitants who reside in the house – my opinion is that despite the intrinsic and agonizing difficulty – **if the life of one person, the future victim, is saved, and also – indeed – the life of the deterred perpetrator, following the deterrence achieved by the demolition** (see **Mesilat Yesharim**, Rabbi Moshe Haim Luzato, Italy-Holland-Eretz Yisrael the 18th Century, end of chapter 19), **and all the more so, if more than one is saved, since perpetrators are prepared to injure many people including the elderly and young infants – then the price of the unfortunate demolition, which is an act against property rather than against a person, will not be unjustified**. We are concerned with human lives, not less, and the sanctity of life should have top priority on the moral-ethical level; As was long ago stated by Justice Turkel:

> The prospect that a demolition or sealing of a house shall prevent future bloodshed compels us to harden the heart and have mercy on the living, who may be victims of terrorists' horror doings, more than it is appropriate to spare the inhabitants of the house. There is no other way." HCJ 6288/03 **Sa'ada v. GOC Home Front Command**, paragraph 3 (2003); see also paragraph 4 of the opinion of Justice **Sohlberg** in **HaMoked**).

And it should be remembered, the inhabitants of the house will not be physically injured God forbid. Until it is possible to take another route the authorities must make any effort to limit the harm by the mere decisions, by proportionality according to the circumstances and by compensating the neighbors to the extent their property is God forbid damaged. And finally, I suggest that the authorities in their deliberations also take into consideration the comments of Justice **Amit** in paragraph 7 of his judgment in **Abu Jamal**. Hence, ended but not completed.

14. For the above reasons, we found no reason to accept the above petitions, and it is so suggested that we hold. The interim order will expire within ten days from the date of this judgment.

Deputy President

Justice D. Barak-Erez:

1. In a number of recent judgments this court discussed and dismissed general arguments which were raised by the petitioners against the use of the power to issue demolition orders against houses of perpetrators following terror attacks in which human lives were lost (see for instance: HCJ 7040/15 **Hamed v. the Military Commander of the West Bank Area** (November 12, 2015 (hereinafter: **Hamed**)). At the same time, the President **M. Naor** dismissed a request for further hearing in this matter (see: HCJFH 360/15 **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger v. Minister of Defense** (November 12, 2015)). In some of these judgments it has even been clarified that their dismissal pertained to the current circumstances and the time in which they were made, while leaving an opening to re-visit the issues evoked by this matter according to accumulated experience (for instance, the effectiveness of said policy). It was also

held that the respondent should repeatedly examine the use of said measure from time to time (see for instance: HCJ 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defense**, paragraph 27 (December 31, 2014)). However, this matter cannot be already re-visited at this time, after this court has just recently affirmed the applicable rule. As noted by my colleague Justice **Z. Zylbertal** in HCJ 8150/15 **Abu Jamal v. GOC Home Front Command**, paragraphs 2-4 (December 22, 2015)(hereinafter: **Abu Jamal**) and as has already been previously noted by my colleague Justice **U. Vogelman** in HCJ 5839/15 **Sidr v. Commander of IDF Forces in the West Bank** (October 15, 2015)(hereinafter: **Sidr**), we have no alternative at this time but to respect the current judgments of this court, and to refrain from the practice of applying different law according to the panel of the Justices.

2. As aforesaid, it stands to reason that in view of the complex questions evoked by the use of the measure of house demolition, even following a murderous terror attack which was carried out by one of its inhabitants – from the aspect of international law as well as from the aspect of Israeli constitutional law – this court will continue to examine the compatibility of case law to the changing circumstances and the lessons learnt from the cases in which demolition orders were executed as aforesaid. Indeed, ostensibly, there is merit to the argument that the use of power which concerns house demolition raises a difficulty from the aspect of the proportionality requirement (compare with the position of Justice **Vogelman** in **Sidr** and the position of Justice **Zylbertal** in **Abu Jamal**)) – without derogating from the repugnance, condemnation and deep sorrow which arise as a result of the killings which lead to the hearing in this case and in other similar cases, and from the justified desire to deter in a bid to prevent similar additional doings. However, according to the principles of conduct which are binding on this court as an institution and despite the difficulty associated therewith, I join the recommendation of my colleague, the Deputy President **E. Rubinstein** to dismiss the petition at bar.

Justice

Justice Z. Zylbertal

I agree that the petitions should be dismissed as stated in the judgment of my colleague, Deputy President **E. Rubinstein**, and join the comments of my colleague, Justice **D. Barak-Erez**.

Justice

Decided as specified in the judgment of Deputy President **E. Rubinstein**.

Given today, 16 Tevet 5776 (December 28, 2015).

Deputy President Justice Justice