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HCJ 1014/16

**At the Supreme Court
Sitting as the High Court of Justice**

In the matter of:

1. _____ **Skafi, ID No.** _____
2. _____ **Skafi, ID No.** _____
3. _____ **Skafi, ID No.** _____
4. _____ **Skafi, ID No.** _____
5. _____ **Skafi, ID No.** _____
6. _____ **Skafi, ID No.** _____
7. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger (RA)**

Represented by counsel, Adv. L. Tsemel and/or Adv. A. Khaleq and/or Adv. Hava Matras-Irron and/or Adv. Sigi Ben Ari and/or Adv. D. Shenhar and/or Adv. Noa Diamond and/or Adv. Benjamin Agsteribbe and/or Adv. Bilal Sbihat
Of HaMoked: Center for the Defence of the Individual,
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The Petitioners

v.

Military Commander of the West Bank Area
Represented by the State Attorney's Office
Ministry of Justice Jerusalem

The Respondent

Petition

A petition is hereby filed which is directed at the respondent ordering him to appear and show cause, why he should not refrain from the forfeiture and demolition of the apartment located on the third floor in _____ street, Hebron which serves as the residence of petitioners 1-6 and which served as the residence of the late _____ Skafi, ID _____ before he was killed, and direct him by an absolute order to refrain from doing so.

And at least, the honorable court is requested to order the respondent to retract the misleading wording of the order issued by him and to precisely describe the scope of the forfeiture and retract the statement according to which "no structure shall be erected on the plot being the subject matter of this order."

As an Interim Remedy

The honorable court is requested to order the respondent or anyone on his behalf:

To refrain from causing any damage to the apartment being the subject matter of the petition until all remedies in this petition shall have been exhausted. The actual short date which was given to the petitioners for the purpose of filing their petition and receiving an interim remedy was until February 7, 2016.

The grounds for the petition are as follows:

1. **The forfeiture and sealing order:** The subject matter of this petition is an additional forfeiture and sealing order which was issued on February 1, 2016, by Major General Roni Numa, the Military Commander of IDF Forces in the Area, which stated as follows:

This order is issued due to the fact that the resident of the apartment, _____ **Skafi ID** _____, committed on November 4, 2015, a ramming attack in which he severely injured the Border Guard Police officer, the late Binyamin Yaakovitch who passed away as a result of his injury a few days later.

No structure shall be erected on the plot being the subject matter of this order.

The order stated further that the commander decided, by virtue of the power vested in him as the Commander of IDF Forces in the Area,

"And according to Regulation 119 of the Defence (Emergency) Regulations 1945, and by virtue of the powers vested in me pursuant to any law and security legislation, and due to the fact that exigent military needs so require, I hereby order that the structure described below be forfeited and demolished:

The residential unit located on the third floor of a dwelling in Hebron which served as the residence of the perpetrator _____ Skafi ID _____, in view of the fact that exigent military needs so require."

Attached as Exhibit "A"

2. The above order was put together ostensibly after the petitioners were given insufficient opportunity to object to the intention to take injurious measures against their home. On January 1, 2016, after midnight, the inhabitants of the apartment were given an inappropriate notice in Arabic which stated that there was an intention to take injurious measures against the apartment and that an objection thereto could be submitted until January 3, 2016. Following a request an extension was granted.

The objection was submitted on January 5, 2016.

Attached is the objection, Exhibit "B"

In the objection details were given regarding all inhabitants of the three story building and its apartments; an engineering opinion was requested regarding the "demolition" method; it was argued that collective punishment was inappropriate; **and a request was made to receive the investigation material which proved that the acts attributed to the late Ibrahim Skafi were committed intentionally and that the occurrence was not a mere traffic accident.**

The late Ibrahim Skafi was shot to death on scene. He was not interrogated, his version was not heard and his intentions were not proved.

3. A month later, on February 2, 2016, the respondent sent his response to the objection together with a "forfeiture and demolition order" which had been signed a day earlier, Exhibit "A".
4. In his response to the objection which was drafted and signed by Major Sandra Beit-On Ofinkero, the respondent reviewed several issues which were raised therein, and ignored others with which he did not feel comfortable.

The collective punishment issue: was rejected by him on the grounds that in the current security situation this regulation should be used and relied on H CJ 7040/15 **Fadel Mustafa Hamed et al., v. Commander of IDF Forces.**

With respect to the engineering opinion: reference was made to the same judgment in which it was held that "there is no reason to intervene in respondents' refusal to provide the engineering opinions for petitioners' review..."

The demolition method of the specific apartment: paragraph 7 of the response states that: "**The demolition method which was chosen involves the use of polyurethane foam. Accordingly, the internal partitions of the apartment will be demolished manually and the entire space of the apartment will be filled with polyurethane foam which will render the apartment unusable.** Hence, no damage or harm is expected to be caused to the neighboring apartments.

The demand to receive the investigation materials: paragraph 8 of the response states that "due to the classification of the materials in the possession of the security forces they cannot be transferred to you" and reference is made to a video clip which was taped by security cameras and which documented the traffic accident.

5. The respondent wished to emphasize that "**the realization of this order will not commence before Sunday, February 7, 2016, at 09:00**".

Attached as Exhibit "C"

6. **A very embarrassing incident**: before respondent's response was received, on February 1, 2016, IDF Forces arrived to the apartment being the subject matter of this petition, at 01:30 after midnight. They drilled holes in the walls of the apartment with no prior notice and acted in the apartment as if it was their own.

A complaint letter in that regard was sent to the respondent on February 2, 2016.

Attached as Exhibit "D"

A parenthetic response to the complaint was included in the above response, paragraph 14, without the necessary and required apology.

The Legal Argument

7. Respondent's order for the seizure and sealing of the apartment in which the suspect lived is based on Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: "**Regulation 119**"). The petitioners will argue that Regulation 119, in and of itself, runs contrary to the norms by which the military commander is bound, and that he should not use it. In addition, his decision is contrary to and deviates from the rules established by this honorable court and therefore it should be revoked.
8. In a situation of belligerent occupation, the military commander must act according to the rules of international humanitarian law and the rules of occupation which constitute an integral part thereof. The respondent acts a trustee of the occupied territories and is not the sovereign thereof. His powers in the occupied territory are imbibed from international law, which constitutes the normative basis for the exercise of his powers (HCJ 2150/07 **Abu Safiyeh v. Minister of Defense** (not reported December 29, 2009).
9. **When a different situation is created**, such as the situation which was created following the signature of the Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip (signed in Washington, September 28, 1995) (hereinafter: the "**Interim Agreement**") the demand that the military commander act according to the rules of international humanitarian law is reinforced. The natural force of this demand is coupled by **a declared and agreed declaratory force**.

Article XIX of the Interim Agreement entitled **Human Rights and the Rule of Law** states:

Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.

And **Article XI – of Annex I: Protocol Concerning Redeployment and Security Arrangements**, explicitly states and declares once again as follows:

Rules of Conduct in Mutual Security Matters

Human Rights and the Rule of Law

Subject to the provisions of this Agreement, the Palestinian Police and the Israeli military forces shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms of human rights and the rule of law, and shall be guided by the need to protect the public, respect human dignity and avoid harassment.

Therefore, the implementation of acceptable international norms of human rights and the rule of law and their enforcement in the place in which the house being the subject matter of this petition is located should be examined on **both levels** mentioned above.

10. Regulation 119 from the era of the British Mandate runs contrary to two main provisions of the Fourth Geneva Covenant relative to the Protection of Civilian Persons in Time of War, which constitutes to date the basis for the laws of occupation under international law. It runs contrary to

Article 33 which **prohibits the use of collective punishment** and **reprisals** against protected persons and their property, and Article 53 of said covenant which prohibits the **destruction of houses** and property of protected persons by the occupying power.

11. Such collective punishment is also contrary to regulation 50 of the regulations annexed to the Convention respecting the Laws and Customs of War on Land (Hague Convention 1907) which prohibits the imposition of collective penalties and regulation 43 of the Hague convention which prohibits impingement and destruction of property.
12. The respondent is bound to and obligated to act according to the international legal rules of human rights, and particularly according to the UN Covenants on Civil and Political Rights, and on Social and Economic Rights. A ruling to that effect was also made by the International Court of Justice in its opinion regarding the separation wall. These norms also guided the honorable court in the examination of the acts of the military commander (HCJ **Albassione v. Prime Minister** TakSC 2008(1); HCJ 7957/04 **Mar'aba v. Prime Minister of Israel** TakSC 2005(3) 3333 paragraph 24; HCJ3239/02 **Marab v. Military Commander of IDF Forces** TakSC 2003(1) 937; HCJ 3278/02 **HaMoked: Center for the Defence of the Individual v. Military Commander of IDF Forces in the West Bank**, IsrSC 57(1) 385).
13. The use of Regulation 119 is also contrary to Article 17 of the International Covenant on Civil and Political Rights which enshrines a person's right not to be subjected to arbitrary or unlawful interference with his home, to Article 12 which protects a person's right to freely choose his residence, to Article 26 which protects the right to equality before the law, and to Article 7 which protects the right not to be subjected to cruel, inhuman or degrading treatment or punishment. The UN human rights committee which examined the implementation of the covenants by the states members of the UN, also stated in its opinion of 2003 that the use of the Regulation ran contrary to the covenant.
14. The Regulation is also contrary to different Articles of the Covenant on Social and Economic Rights, such as Article 11 (which protects the right to proper housing and living conditions) Article 10 (which protects the family unit) Articles 12-13 and Article 17 of the Universal Declaration on Human Rights. There is also a concern that the use of Regulation 119 of the Defence Regulations may even amount to war crime according to the definitions of Article 8(2)(IV) of the Rome Statute on the Establishment of an International Criminal Court.

Prohibition against collective punishment and violation of fundamental rights

15. Regulation 119, by its nature, was designated to injure the public. The prohibition against collective punishment is expressed in international customary law, such as Regulation 50 of the Hague convention, which states that no general penalty shall be inflicted upon the population on account of acts of individuals for which the public cannot be held responsible. Article 33 of the Fourth Geneva Convention categorically stipulates that a protected person will not be punished for an act which he has not committed. Collective punishment and the like, and any act of terror or harassment – is prohibited. Reprisals against protected persons and their property – are prohibited.
16. This approach is also expressed in the judgments of the honorable court:

"My colleague Justice Cheshin has already stressed in connection with Regulation 119 of the Defence (Emergency) Regulations 1945, that the basic rule is "The soul that sins it shall die... one should not be punished unless he was warned and one should strike the sinner himself alone" (HCJ

On this issue see Prof. Mordechai Kremnitzer, article dated February 24, 2009, Israel Democracy Institute "The legitimacy of the demolition of terrorists' homes – judicial commentary following the judgment in the matter of Hisham Abu Dheim v. GOC Home Front Command."

The military commander no longer has the power to exercise this sanction in Area A – where the apartment is locate

17. According to the Interim Agreement and its annexes, petitioners' home is located in Area A. Israel transferred its security powers with respect to said area to the Palestinian Council. As stated in Article XIII of the Interim Agreement under the caption "Security" in section 1: "The Council will, upon completion of the redeployment of Israeli military forces in each district, as set out in Appendix 1 to Annex I, assume the powers and responsibilities for internal security and public order in Area A in that district."

As opposed to Area B, for instance, in which the Palestinian Police assumes responsibility solely for the public order of the Palestinians.

18. Article XV **Prevention of Hostile Acts** states:

"1. Both sides shall take all measures necessary in order to prevent acts of terrorism, crime and hostilities directed against each other, against individuals falling under the other's authority and against their property and shall take legal measures against the offenders.

2. Specific provisions for the implementation of this Article are set out in Annex I."

19. Chapter 3 of the Interim Agreement which is concerned with "**Legal Affairs**" provides in section 2 thereof as follows:

"The authority of the Council encompasses all matters that fall within its territorial, functional and personal jurisdiction."

Section 2c of said chapter stipulates that:

"The territorial and functional jurisdiction of the Council will apply to all persons, except for Israelis, unless otherwise provided in this Agreement."

Section 3 of this chapter states that:

"The Council has, within its authority, legislative, executive and judicial powers and responsibilities, as provided for in this Agreement."

And Section 4 completes the picture and draws a clear division:

"A. **Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis.**

B. To this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, **in accordance with international law.** This provision shall not derogate from Israel's applicable legislation over Israelis in personam."

20. According to Annex I **Article V, Security Arrangements in the West Bank, District Coordination Offices (DCO) will be established for the different districts**, and a DCO was also established for the northern part of the West Bank.

Section 2 **Area A** states as follows: **A. The Council will, upon completion of the redeployment of Israeli military forces in each district, as set out in Appendix 1 to this Annex, assume the powers and responsibilities for internal security and public order in Area A in that district.**"

21. The respondent may veer from the above rules only in a temporary situation of "engagement" and only for a very short period of time. **Article IX** which discusses **Rules of Conduct in Mutual Security Matters** specifies special situations referred to as "engagement steps". In these situations immediate military action may be taken if necessary, and it must cease as soon as possible, and the handling of such situation should be transferred as soon as possible to the Palestinian side. And it is so stated:

3. A. For the purpose of this Article, "engagement" shall mean an **immediate response to an act or an incident constituting a danger to life or property that is aimed at preventing or terminating such an act or incident, or at apprehending its perpetrators.**

B. Within the territory under the security responsibility of the Council, in places where Israeli authorities exercise their security functions in accordance with this Annex and in their immediate vicinities, the Israeli authorities may carry out engagement steps in cases where an act or incident requires such action. In such cases, the Israeli authorities will take any measures necessary to bring to an end such an act or incident with a view to transferring, **at the earliest opportunity, the continued handling of the incident falling within the Palestinian responsibility to the Palestinian Police.** The Palestinian Police will immediately be notified, through the relevant DCO, of such engagement steps.

22. Section C continues to state that the use of firearms in responding to such acts or incidents shall be prohibited "except as a last resort after all attempts at controlling the act or the incident, such as warning the perpetrator or shooting in the air, have failed, or are ineffective or without any promise of achieving the intended result in the circumstances. Use of firearms should be aimed at deterring or apprehending, and not at killing, the perpetrator" and "**The use of firearms shall cease once the danger is past**", and in any event "D. Any activity involving the use of firearms other than for immediate operational purposes shall be subject to prior notification to the relevant DCO."

23. No one can argue that the imposition of the sanction according to Regulation 119 falls within the definition of "engagement steps". It is not an immediate pursuit after the perpetrators of an engagement incident, which also must cease immediately and the handling thereof transferred to the Palestinian Council.
24. This should be revoked and cancelled immediately, so that his effort should not be in vein.

The deceased and his motives

25. Even if all humanitarian reasons are denied, the honorable court will not be able to approve the injurious measure taken against the apartment unless it has been convinced beyond reasonable doubt that the suspicions which were raised against petitioners' son were indeed substantiated and credible, and that the incident in which he was involved was indeed a "terror attack" which stemmed from fanatic nationalistic motives that cannot be eradicated other than by cruel and unlawful punishment.

We witness once again an abrupt and immediate killing of a suspect who was shot in the head when he no longer posed any danger. We did not hear that anyone was interrogated as a suspect following the killing of the deceased as if his execution was legitimate without any examination when he posed no threat; we did not hear that the authorities were trying to find out why he was shot to death and who gave the order; we did not read any report about an examination of the shooting, its manner and whether it was made in accordance with the current open fire regulations; we did not hear that examinations were made by a traffic examiner of the vehicle's speed and stopping attempts; nor has a medical examination of the deceased's body been executed in an attempt to find out whether he had a stroke while he was driving; also, the plausible possibility that the person who was driving the videotaped car could not at all see that soldiers were standing after the turn and therefore could not have established any intent to kill them when he came across them, has neither been examined nor ruled out; we did not receive a report of a traffic examiner regarding the mechanical condition of the car at the time of the accident; and so on and so forth.

It is important to know!! : following the killing of the deceased neither his family members nor his close friends have been interrogated. To the best knowledge of his family members no one has been arrested, no one has been summoned for an interrogation, no attempt has been made to examine "the routes of his terrorist intentions" and no attempt has been made to find out whether he had accomplices or who had any knowledge of his plans.

Are Border Guard soldiers always stationed at the point in which they were hit by the car? When did they arrive to that location? How long have they been there? What were they doing there? How could it be foreseen that they would be in that place at that time? And many more questions to which no answer was given.

As far as his family knows, the deceased rented the car in order to go to certain destination for a specific personal significant and important reason. He did not have and could not have developed any motive which would stop him from getting to his destination.

The whereabouts of the rented car are unknown. Had the rental company been interviewed, had the car been returned to it? The method of payment, etc. Had other devices been found in the rented car which could indicate of a protracted danger posed by the deceased, beyond the ramming itself?

Was he known to the security agencies? If so, how? Was he known as an activist or was he recruited? If so, did he develop another motive?

According to the information which was obtained at the office of the undersigned, the deceased's record was completely clean, he used to receive entry permits into Israel for family reasons from time to time and his conduct was impeccable. He obtained his driver's license two years ago and was not an experienced driver.

26. The petitioners requested to receive the material which substantiated the suspicion that the deceased had indeed intended to carry out an attack, and respondent's evasive response states only "**trust us**" as if one can trust 'privileged information'.
27. The honorable court is requested to consider this issue including all of its ramifications: **will a detering collective punishment be approved when the public itself **knows nothing about the circumstances of the event, the motives of the person who committed it and his ties?** Deterrence, which underlies – as argued by the respondent – the severe measure of demolition and sealing, is the motivating force. How would deterrence be achieved where everything is privileged? It is utterly impossible.**

The honorable court is requested to determine that if the material is not publicly disclosed, and if the petitioners are not given the opportunity to challenge and refute it, **the order will not be affirmed!**

Should additional deterrence be approved after the deceased had been killed

28. The honorable court should seriously consider the issue which is repeatedly brought to it, much more than is required, namely: **whether after an immediate killing of suspected perpetrator deterrence by way of taking an injurious measure against his home is still required?** If we are concerned with deterrence, is there a stronger deterrence than the immediate elimination and killing of a suspected perpetrator? And if such deterrence – which has already become the end result of each and every event which is described as an attack – is not sufficiently deterring, maybe "deterrence" as an automatic reaction should be discarded of, and other solutions should be sought for the prevention of 'lone-wolf attacks'?
29. The honorable court is requested to determine that when a person suspected in committing an attack was **executed and killed** without trial and without inquiry, additional deterring measure will not be allowed, **so as to prevent us from reaching said slippery slope of cruel and vindictive impingements taken against growing circles of those who had any ties with the perpetrator, commencing with measures taken against houses, continuing with personal impingement of his family members and who knows where this would end.**

The family and the consequences of the measures taken against the apartment

30. This petition is filed by six petitioners: two parents and four siblings, all of whom reside in a 100 meter apartment. The father of the family, petitioner No. 1 is a known mentally ill patient. He is unemployed and has received treatment continuously for the last fourteen years. The deceased worked as a hairdresser and was the main breadwinner of his family.
31. Now the father is condemned to be thrown elsewhere as a result of which his mental condition, which is already difficult, would deteriorate, his health would weaken, and the entire family with him.

The method of demolition-sealing

32. In the objection the respondent was requested to provide technical specifications of the demolition method and to enable petitioners' counsel to provide a professional opinion which would examine the proposed demolition method. This is not necessary anymore in view of respondent's statement that he intended to seal the third floor apartment by the injection of polyurethane foam, after the demolition of the interior partitions. The interior partitions should not be demolished! The invasion of the security forces into the apartment a day before the order was issued and the fact that holes were drilled in the walls indicate that the intention was – apparently – to put explosives in the interior walls and destroy them in a spectacular manner which they adopted, in contrast to the final undertaking that the walls would be demolished manually. It is anyway unnecessary to demolish the interior walls since in fact we are concerned with "sealing".
33. It seems that this method is required in view of the irreversible damages which were caused to other apartments as a result of demolitions and detonations which were allegedly controlled but did not prove themselves as such. If the order is approved the petitioners do not object to the injection of polyurethane foam into the apartment. This method is less cruel and offensive than other methods which were used in the past. It also enables the fulfillment of the **last part of Regulation 119, namely, respondent's retraction of the order in the future.**
34. The respondent used the term "demolition" whereas in fact he talks about "**sealing**". And rightly so. It must be made sure that any act taken by the respondent by virtue of the Defence Emergency Regulations, in view of its nature and purpose, is reversible.

What does this mean? Each and every demolition according to the first part of Regulation 119 of the Defence (Emergency) Regulations 1945 must ensure that the last part of said Regulation may be fulfilled. The mandatory Regulation 119 of the Defence Regulations did not only enable forfeiture and demolition, as repeatedly quoted by the respondent. **It enabled remission and reinstatement.**

The Regulation in pertinent part provides for remission:

And when any house, structure or land is forfeited as aforesaid, the Military Commander may forfeit the house or the structure or anything in the house, structure, land or on them. **Where any house, structure or land has been forfeited by order of a Military Commander as above, the Minister of Defense (the High Commissioner) 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 in the persons who would have been entitled to the same if the order of forfeiture had not been made and all charges on the house, structure or land shall revive for the benefit of the persons who would have been entitled thereto if the order or forfeiture had not been made.**

The military commander, the same military commander who is empowered to forfeit and demolish is also empowered to remit the forfeiture and demolition! The demolition method must ensure that a real and viable remission is possible.

32. And if the order is approved it must be determined that it is a **sealing order** according to its proposed method. And as stated in the order itself, as drafted, the **forfeiture order** refers only to **the forfeiture of the residential unit on the third floor** and nothing beyond that. Therefore that part of the order (Exhibit "A") which states that construction on the entire plot is prohibited, is not lawful.

The effectiveness of the sanction and its reasonableness

33. It is very well known that the respondent **ceased** to exercise the sanction of collective punishment through house demolition following an opinion which was issued by a military committee, the Shani committee, that examined the history of demolitions and concluded that said sanction did not have any real benefit and could even possibly have an adverse effect of broadening terror activity.

It has already been held in a general petition against house demolition, HCJ 8091/14 by the Honorable Justice Rubinstein, in paragraph 27 of his judgment as follows:

I am of the opinion that the principle of proportionality does not reconcile with the presumption that choosing the drastic option of house demolition or even the sealing thereof always achieves the longed-for objective of deterrence, unless data are brought to substantiate said presumption in a manner which can be examined... in my opinion, the use of a tool the ramifications of which on a person's property are so grave, justifies a constant examination of the question whether it bears the expected fruit; This is so especially in view of the fact that even IDF agencies raised arguments in that regard, and see for instance the presentation of Maj. Gen. Shani, which, on the one hand, stated that there was a consensus among the intelligence agencies of its effectiveness, while on the other, proclaimed, under the caption "Main Conclusions" that "the demolition tool within the context of the deterring element is 'worn out'" (slide No. 20). Therefore, I am of the opinion that State agencies should examine from time to time the tool and the gains brought about by the use thereof, including the conduct of a follow-up and research on the issue, and to bring to this court in the future, if so required, and to the extent possible, data which point at the effectiveness of house demolition for deterrence purposes, to such an extent which justifies the damage caused to individuals who are neither suspects nor accused"

We have not received any data according to which such an examination has indeed been conducted recently and that there is justification for the renewed use of this inappropriate sanction.

In the same judgment, paragraph 6 of the judgment of Justice Hayut:

6. And finally, I wish to note that I attach great importance to the comment of my colleague, Justice Rubinstein concerning the need to conduct in the future from time to time and to the extent possible follow-up and research concerning the house demolition measure and the effectiveness thereof (paragraph 28 of his opinion). In this context it is needless to point out that also in the past this issue was examined by the Shani committee which was mentioned by my colleague, which engaged in "rethinking the issue of house demolition" and reached at that time

(2005) the conclusion, which was adopted by the security agencies, that the demolition of terrorists' homes for deterrence purposes as a method in the Judea and Samaria Area should be stopped and should be used only in extreme cases (slide 30 of the Shani committee presentation, Exhibit 1 to the petition).

The Honorable Justice was of the opinion that extreme situations indeed occurred in the terror attack in Merkaz Harav Yeshiva, in the abduction of the three youths and their murder, and in the murder of the worshipers in the synagogue. Nevertheless she held:

However, these extreme cases should not make us forget the need, as my colleague pointed out, to re-examine from time to time and raise doubts and questions concerning the constitutional validity of the house demolition measure according to the limitation clause tests... in the praise of doubts, which also those who are right should always have..."

34. Precisely the rapidly changing circumstances in the security condition of the state, as well as the new data which were thrown into the arena of the conflict, require renewed professional thinking. The data which were presented to the Shani committee are not the same as the current data in the arena; the political map of the Arab world which existed at that time is not the same as it is currently mapped; the political balance of power in Israel when the Shani committee operated is not the same as the current political balance following the last elections; the status of religion and mutual religious extremism at that time are not similar to their current status and influence in the arena; neither is the attitude of the external world to the acts of Israel in the past similar to the current boycott threats and bans.

Before house demolition is once again used as a matter of routine as it was used in the past with no success, the military should present an updated **professional** evaluation which has not been conducted for many years concerning the benefit or the damage arising from the exercise of this sanction.

The respondent, who is trying to support his decisions by different quotes from judgments on this issue should respect the proposal made by the Honorable Justice Rubinstein in the above general petition:

I am of the opinion that State agencies should examine from time to time the tool and the gains brought about by the use thereof, including the conduct of a follow-up and research on the issue, and to bring to this court in the future, if so required, and to the extent possible, data which point at the effectiveness of house demolition for deterrence purposes, to such an extent which justifies the damage caused to individuals who are neither suspects nor accused.

The above was said before individuals, mostly young, risked their lives and went off to execute attacks in the Occupied Palestinian Territories and in Israel, knowing with an almost absolute certainty that they would be killed and their relatives would be harmed. **It seems that the measures which were meant to deter achieve the opposite results and just motivate these young people.** As these measures proved to be ineffective, political solutions should be sought.

This is the time.

Discrimination in the enforcement of punishment and deterrence

35. It has already been stated in the objection that in addition to the scathing criticism against the lack of justification and immorality embedded in the above sanction, one cannot ignore the fact that a not less shocking murder of an abducted Palestinian youth, Mohammed Abu Khdeir, was committed a while ago and three Israeli citizens currently stand trial for said deed, after they admitted and re-enacted it. They were caught alive and most of them are residents of settlements.

It is already known at this time that at least one resident of settlements was caught and stands trial for the arson and murder of the Dawabsheh family in Duma village.

His home, like the homes of the murderers of Abu Khdeir was not injured.

The fact that this vindictive and inappropriate sanction was not imposed on Israeli citizens is satisfying. However, if such a cruel step is not taken against Israeli citizens (some of whom live in the Adam settlement and others in Area C in which there is ostensibly no preclusion for exercising the sanction by Israel against its own citizens), it should most certainly be avoided when residents of an occupied territory are concerned, such as the petitioners, who are protected by international law as well as by the Interim Agreement.

The question of whether the mere discrimination gives incentive and propels additional attacks should not be left under advisement.

Attached is an affidavit to support the above facts.

In view of all of the above, the honorable court is hereby requested to issue an interim order, an *order nisi* and to make the order absolute as requested, and obligate the respondent to pay the costs of this petition including legal fees.

(Signed)

L. Tsemel, Advocate
HaMoked Center for the Defence of the Individual
Counsels to the petitioners

February 4, 2016