At the Supreme Court **HCJ 4597/14**
Sitting as the High Court of Justice Scheduled for: June 30, 2014

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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
Tel: 02-6466715; Fax: 02-6467011

The Respondent

Respondent's Response

1. According to the decision of the Honorable Justice Solberg the respondent hereby respectfully submits his response to this petition.

2. This petition concerns the decision of the respondent by virtue of his authority pursuant to Regulation 119 of the Defence Regulations (Emergency), 1945 (hereinafter: the **Defence Regulations** and **Regulation 119),** to order, for deterrence purposes, the seizure and demolition of a part of a structure located in Kafr Idhna, namely, the apartment in which the terrorist, Ziad Hassan Khalil 'Awwad (hereinafter: the **terrorist** and the **apartment**), who carried out on April 14, 2014 a shooting attack at vehicles which drove on Route 35, near Tarqumia checkpoint, was living. As a result of the shooting the late Police Commander Baruch Mizrahi was killed and his wife and another child who was in another vehicle, were injured.

3. The respondent will argue that this petition should be denied, in the absence of cause for intervention by the honorable court. The respondent will argue that against the backdrop of the deteriorating security condition, which reached its peak in the kidnapping of the three Israeli teens about two and-a-half weeks ago, the demolition of the apartment in which the terrorist was living is essential for the purpose of deterring other terrorists from carrying out additional severe terror attacks. As will be clarified below, the vast majority of the general arguments raised by the petitioners is not new, and has already been discussed and rejected in many judgments which were given by this honorable court. Under these circumstances, the respondent will argue that there is neither cause nor justification to discuss these arguments once again within the framework of this petition.

   As specified below.

4. In view of the deteriorating security condition, including the extremely severe terror attack being the subject matter of this petition and the kidnapping of the three teens who were on their way home from their school about two and-a-half weeks ago; in view of the fact that it is extremely important to deter other potential terrorists; and in view of the fact that the respondent is of the opinion that the exercise of the authority pursuant to regulation 119 against the apartment of the terrorist, would indeed significantly contribute to the deterrence of other terrorists – the respondent will request this honorable court to make a decision in this petition as soon as possible.

The main facts relevant to the matter

The deteriorating security condition in the Area

5. Over the last two years, the security stability in the Judea and Samaria area (hereinafter: the **Area**) has been deteriorating. This is evidenced by an increase in the general number of terror attacks (including the number of severe attacks), in the number of spontaneous terror attacks and in the number of the injured Israelis.

6. This tendency is well reflected in the data concerning terror which accumulated from the beginning of 2013 until mid June 2014. Thus, in 2013, 1,414 terror attacks were registered in the Area, and in 2014, until this date, over 500 terror attacks were registered. In addition, during this period, an irregular increase in the number of Israeli casualties was also registered as a result of terror attacks launched from the Area (six Israeli casualties during this period, as compared to zero Israeli casualties in 2012).

7. Furthermore, from the beginning of 2014 - and especially during the last three months - there has been a sharp increase in the number of severe terror attacks, in which Israeli citizens were killed or in which firearms were used, as well as in attempts to carry out severe terror attacks. It should be emphasized that this concerns dozens of consecutive terror attacks which indicate of a serious deterioration, such as the following events:

   a. **March 2014**: The activity of a military Hamas wanted terrorist from the Jenin refugee camp, who was directed by Hamas headquarters in the Gaza Strip to promote a host of terror attacks, including by shooting attacks, against Israeli targets in the Area, was thwarted. The wanted terrorist was killed in a military operation, during exchange of fire with IDF forces in Jenin.

   b. **April 2014**: A shooting attack at an Israeli vehicle in Tarqumia checkpoint, which was carried out by the terrorist, whose matter is discussed in this petition. In this terror attack an Israeli citizen was killed and two others were injured.

c. **April 2014**: Six activists of a military group from the areas of Jenin and Bethlehem were arrested. In this case, the intention of the group, directed by an "international Jihad" activist in the Gaza Strip, to promote a shooting attack against IDF forces in the Jenin area, was prevented.

d. **May 2014:** the intention of a suicide bomber to explode an explosive belt composed of improvised bombs, which was carried on his body, in Tapuach junction, was frustrated. The members of the cell from Nablus, which were behind the attempted terror attack, were arrested by IDF forces shortly thereafter.

e. **May 2014:** a shooting attack was carried out in Ramat Shlomo neighborhood in Jerusalem, in which a Palestinian terrorist shot at a group of Israeli citizens. The event ended without injuries.

f. **June 2014**: A shooting attack was carried out by Palestinian terrorist using small-arms, at an IDF position in Betunia. The military force shot at the terrorist who fled the scene. The event ended without injuries

g. **June 2014**: A shooting attack was carried out from a passing Palestinian vehicle, using small-arms, at an IDF position near the tunnels road/Bethlehem bypass. The event ended without injuries and the attacking vehicle fled the scene.

h. **June 2014**: The kidnapping attack of June 12, 2014, in which three teens who were on their way home from their schools in the Gush Etzion area, were kidnapped. This terror attack was carried out by a military Hamas cell from Hebron.

8. It should be emphasized, that from the beginning of 2014, about 96 intended and attempted terror attacks were thwarted, in a variety of severe methods (kidnapping, bombs and shooting) in different regions in the Area.

9. In addition, during the last four quarters, a sharp increase in the level of alerts against kidnapping attacks, is marked, as follows:

   a. In the third quarter of 2013 – 7 kidnapping alerts;
   b. In the fourth quarter of 2013 – 8 kidnapping alerts;
   c. In the first quarter of 2014 – 12 kidnapping alerts;
   d. From the beginning of April 2014 – 15 kidnapping alerts.

10. The terror activity is mostly lead by local and "decentralized" groups, and by terrorists who answer the profile of a "single terrorist". The latter were conspicuous lately in view of the instability in the Area, and contrary to the past, they do not come from the margins of society but rather have a normative profile.

11. In view of the above, kidnapping for negotiation and release of prisoners remains the most favorable method of terror attacks by all groups on scene. Thus, lately, a significant increase was marked in the number of kidnapping routes directed by different terror activists, including from within Israeli prison (Hamas, Islamic Jihad and Tanzim activists). Until now, most of the routes were thwarted before they have operationally ripened.

The terrorist and his family

12. The terrorist, born in 1971, is married to petitioner 2 (hereinafter: **petitioner 2**) and they have seven children, including his son _____'Awwad, who assisted him to carry out the terror attack on Route 35, and against whom a very serious indictment was also filed, as will be specified below.

13. The terrorist is a senior Hamas activist who was arrested in 2000 and was later convicted of various offenses, including involvement in the snatching of a gun from a security guard in Beit Govrin and the intentional causation of death of three Palestinians who were suspected by him of collaboration. For these offenses the terrorist was sentenced for a long incarceration period, and was expected to be released from prison in 2026. However, on November 18, 2011, the terrorist was released from prison as part of the prisoner exchange transaction for the release of the kidnapped soldier, Gilad Shalit. His early release was subject to the condition that he would refrain from any future terror activity.

14. Nevertheless, within a short period of time the terrorist resumed severe terror activity, including, the encouragement, by virtue of his position as Imam, of the carrying out of suicide attacks against Israeli targets.

15. On April 14, 2014, in a pre-planned shooting attack, the late Police Commander Baruch Mizrahi, who drove his car on Route 35, was shot and killed. In this attack the wife of the late Police Commander Baruch Mizrahi, and another child who was in a different car, were injured. It should be noted, that the lives of five family members of the late Police Commander Baruch Mizrahi who drove with him in the car, were miraculously saved. In addition, the terrorist shot also at another car which drove on the route but fortunately, only one passenger was injured. In general, this attack could have ended, God forbid, with many more injured persons.

16. On May 7, 2014 the terrorist and his son were arrested for having allegedly committed the shooting attack on April 14, 2014.

17. On June 22, 2014, a severe indictment was filed with the Judea military court against the terrorist for the carrying out of the terror attack. In the indictment, the terrorist is accused, on nine different counts, of the commitment of the offense of an intentional causation of death; of seven offenses of an attempt to commit an intentional causation of death; and of an offense of carrying, holding and manufacturing arms. In summary, we hereby note, that the severe indictment recounts the preparations made for the carrying out of the terror attack, including, the prior actions taken by the terrorist to attain ammunition, prior scouting of the scene, preparation of a silencer, shooting practices with a silencer in the **warehouse of their house**, preparation of an escape plan, etc. The indictment further describes how, on the day of the attack, the terrorist stood on the side of Route 35 leading to Hebron, and waited for vehicles which were on their way to Kiryat Arba, and around 17:45 started shooting, using an automatic gun, at the vehicle of the late Police Commander Mizrahi, who was in the car with his wife and four children, and at another vehicle which was driving ahead of them. Thereafter, the terrorist fled the scene, boasted about the attack before his son and told him, after it became known that the victim was a police officer, that the terror attack "was successful beyond expectation, and the person who was killed is a senior Israeli police officer".

    A copy of the indictment against the terrorist is attached and marked **R/1**.

18. As specified above, the son of the terrorist was also arrested on May 7, 2014 and on June 23, 2014 a severe indictment was also filed against him with the Judea military court. In the indictment, the son is accused, on ten different counts, of the offense of aiding and abetting an intentional

causation of death; of seven offenses of aiding and abetting an attempt to commit an intentional causation of death; of carrying, holding and manufacturing arms; and of membership and activity in an unauthorized association.

A copy of the indictment against the son is attached and marked **R/2**.

19. According to the son's statements, which were taken within the framework of the investigation of the terror attack, petitioner 2, the terrorist's wife, was also aware of the fact that the terrorist held a gun in his possession and was using it, including the fact that he was practicing it before the terror attack and of its location after the attack (see the son's statement taken by the police dated May 26, 2014, page 2, lines 45-55; and also page 6, lines 184-191; the son's statement taken by the police dated June 9, 2014 page 3, lines 90 onwards).

Photocopies of the son's statements taken by the police of May 26, 2014 and June 9, 2014 are attached and marked **R/3**.

The house of the terrorist's family

20. The house in which the terrorist lived is located in Kafr Idhna in the Hebron area. The house consists of a ground floor, which is, in fact, a space that has no walls on some of its sides and is used as a warehouse, an entrance hall and a staircase leading to an additional floor which consists of two apartments: an eastern apartment, in which the family of petitioner 1, the terrorist's brother, lives, and a western apartment in which the terrorist's family lives. It should be noted that the terrorist and his son were also living in this apartment until their arrest, and that currently, the terrorist's wife and five of their children live therein (an additional daughter of the terrorist is married and does not live at home).

21. According to the petition, the structure is owned by petitioner 1, the terrorist's brother, and according to the petitioners he rented it out to the terrorist and his family; **however, it should be emphasized, that the terrorist and his family have been living in the apartment which is designated for demolition for a number of years until the terrorist's arrest; and that according to the son's statements, the terrorist made preparations, and among other things, practiced the use of his gun with a silencer, in the house's warehouse.**

22. As specified below, the order on which this petition focuses, is directed against the apartment of the terrorist's family which is located on the second floor, and there is no intention to damage the other parts of the structure (the first floor, the staircase and the apartment of petitioner 1, the terrorist's brother).

The order being the subject matter of the petition

23. In view of the severity of the attack, which is evidenced by its results, and by the fact that it was carried out by a terrorist who was convicted of the intentional causation of death of three people, and who was released within the framework of a political transaction on the condition that he would not resume terror activity, and shortly thereafter committed another murder of an Israeli; and in view of the recent deterioration in the security condition, which reached its peak in the kidnapping of three Israeli teens on June 12, 2014, when they were on their way home from the educational institutions in which they studied, and in view of the essential need to deter the residents of the Area from the execution of additional terror attacks, the respondent decided to exercise his authority under regulation 119 against the apartment in which the terrorist was living and to order the demolition thereof.

24. On June 16, 2014, petitioner 3 applied to the Attorney General and requested to refrain from using various measures against the residents of the Area after the kidnapping event, including the use of the house demolition measure. In a response letter dated June 24, 2014, the senior assistant to the Attorney General stated that "the issue was and is being examined by us".

Photocopies of the request letter dated June 16, 2014 and the response letter dated June 24, 2014 were attached to the petition as **exhibits P/1 and P/2,** respectively.

25. On June 23, 2014 the respondent gave notice of his intention – subject to a hearing – to seize and demolish a two story structure in Kafr Idhna in which the terrorist resided. The notice also indicated that the terrorist's family could submit an appeal against the issuance of the seizure and demolition order to the respondent, before a final decision was made by him in this matter.

A photocopy of the notice given on June 23, 2014 was attached to the petition as **exhibit P/3**.

26. On June 25, 2014 the terrorist's family submitted an appeal to the respondent against the intention to exercise the authority under regulation 119 with respect to the structure.

A photocopy of the appeal dated June 25, 2014 was attached to the petition as **exhibit P/4**.

27. On June 27, 2014, after respondent's representatives visited the scene on June 25, 2014, to examine some of the arguments which were raised in the appeal, a detailed response letter to the appeal was delivered to petitioners' counsel, which stated, *inter alia*, that "the military commander decided, after he has examined the arguments specified in your above referenced letter, which were presented to him, to accept **your appeal in part**, and limit the scope of damage to the structure in which the terrorist lived, so that **only that part of the structure in which the terrorist and his nuclear family lived** would be seized and demolished, provided that he is satisfied that the demolition would not cause damage to the other part of the structure, in which the family of the terrorist's brother lives." [emphases appear in the original – the undersigned](paragraph 3 of the response letter).

In addition, the response letter described the factual background of the decision, including a response to the various arguments, factual and legal, which were raised in the appeal, and it was emphasized that "the intention to demolish the terrorist's house will be limited only to that part of the structure in which the terrorist and his nuclear family members lived, while refraining from causing any damage to that part of the structure in which the brother and his family members live. Obviously, measures will be taken to refrain from causing damage to buildings adjacent to the terrorist's house as a result of the demolition". (paragraph 17 of the response letter).

Accordingly, after the respondent decided to accept the appeal in part, he signed, by virtue of his authority under regulation 119, a seizure and demolition order for the "**west half of a two story structure in Kafr Idhna, in which the terrorist was living until his arrest** (…)" (hereinafter: the **seizure and demolition order**). The seizure and demolition order specified the grounds for its issuance, as follows:

> This order is issued in view of the fact that the tenant of the house, Ziad Hassan Khalil 'Awwad, carried out, on April 14, 2014, a shooting attack against Israeli citizens who drove on Route 35, as a result of which the late Police Commander Baruch Mizrahi was killed and additional citizens were injured, for the purpose of deterring others from the execution of additional terror attacks.

Photocopies of the response letter to the appeal and the seizure and demolition order which was issued by the respondent, being the subject matter of this petition, were attached to the petition as **exhibit P/5**.

28. In addition to the statements made in the response letter to the appeal, the legal advisor for the Judea and Samaria area informed petitioners' counsel, by phone, that if the commander of IDF Forces in the Area was not satisfied that the demolition of the west part of the structure would not cause damage to the east side of the structure – the west part of the structure would not be demolished, and in such an event, the possibility to seal the west side would be considered.

Following the conversation, petitioners' legal counsel wrote a letter to the legal advisor for the Judea and Samaria area, and requested to receive the above clarification in writing.

In a response letter dated June 29, 2014, petitioners' counsel was informed that "The commander of IDF Forces in the Area was presented with an engineering plan, which indicates, that the west part of the structure in which the family of the terrorist lives and with respect of which the demolition order was issued, can be demolished without causing damage to the other part of the structure, in which the family of the terrorist's brother lives."

Photocopies of the letter of petitioners' counsel dated June 27, 2014 and the response letter dated June 29, 2014 are attached and marked **R/4**.

29. On June 29, 2014 this petition was filed, along with a request for an interim order which would direct the respondent to refrain from causing irreversible damage to petitioner 1's house, until a decision was made in the petition.

30. We wish to point out that after additional deliberations, respondent's decision is that only the apartment of the terrorist's family will be demolished and that other parts of the structure will not be destroyed, including the warehouses located on the ground floor as well as the warehouse located below the terrorist's apartment.

The Legal Argument

31. The respondent will argue that the petition should be denied, as specified below.

The exercise of the authority to demolish - general

32. The authority to order the seizure and sealing or demolition of a structure pursuant to regulation 119 of the Defense Regulations, is vested with the military commander of the Judea and Samaria Area from the entry of IDF Forces into this area in June 1967, which regulation constitutes part of the local law.

Regulation 119 of the Defense Regulations provides, in its binding English version, as follows:

> A Military Commander may by order direct the forfeiture to the government… of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed… any offence against these regulations involving violence or intimidation or any military court offence."…

And the regulation in its Hebrew version:

[Hebrew Version]

33. Regulation 119 authorizes the respondent, as aforesaid, to seize and demolish the entire structure in which the terrorist lives with his family members. However, according to case law rendered by this honorable court, whenever the respondent decides to exercise the authority pursuant to regulation 119, he must exercise his said authority reasonably and proportionately, taking into consideration an array of concerns which were specified by the court in its judgments.

According to case law, the purpose of exercising the authority pursuant to regulation 119 is solely to deter and not to punish. Hence, the authority pursuant to regulation 119 is not exercised as a punishment for the carrying out of a terror attack in the past, but is rather exercised only if the military commander reached the conclusion, that the exercise of the authority is required to deter terrorists from carrying out additional terror attacks in the future – and for this purpose only. The underlying premise is that a terrorist who knows that his family members may be injured if he carries out his plan – may consequently refrain from carrying out the terror attack which was planned by him. The deterrence is also directed at the family members of the terrorist, who are aware of his plans, and is intended to cause them to take action to prevent the terror attack in view of the concern that their home would be damaged should they fail to do so.

34. According to case law, the harm inflicted on additional people who live in the house of the terrorist with respect of which a decision was made to exercise the authority under regulation 119, does not constitute a collective punishment, but is rather an impingement ancillary to the deterring purpose of the exercise of said authority.

It was so held, for instance, in HCJ 798/89 **Shukri v. Minister of Defence,** TakSC 90(1) 75 (1990) as follows:

> The authority conferred upon the Military Commander pursuant to regulation 119 is not an authority for collective punishment. The exercise thereof is not designed to punish the Petitioner's family. The authority is administrative, and its exercise is designed to deter, thus maintaining public order…
>
> We are aware of the fact that the demolition of the building damages the dwelling of the petitioner and his mother. True, this is not the purpose of the demolition, but it is its outcome. This bitter outcome is designed to deter potential perpetrators of terror attacks, who must understand that through their actions they themselves cause harm not only to public safety and order, and not only to the lives of innocent people, but also to the wellbeing of their own loved-ones.

And see also the words of the Honorable Justice (as then titled) Mazza, in the majority opinion in a judgment given by an extended panel of five justices in HCJ 6026/94 **Nazal v. Commander of IDF Forces in Judea and Samaria Area**, IsrSC 48(5) 338 (1994) (hereinafter: **Nazal**), as follows:

> We should therefore reiterate what has been said more than once: the purpose of using the measures conferred upon the authority of the military commander according to regulation 119 (1), in pertinent part, is to deter potential terrorists from the execution of murderous acts, as an

> essential measure to maintain security… the exercise of said sanction indeed has a severe punitive implication, which injures not only the terrorist but also others, mainly his family members who live with him, but it is neither its purpose nor designation.

35. The security forces, in general, and the respondent, in particular, are aware of the severe implications of the exercise of the sanctions under regulation 119, and particularly when an irreversible measure is taken, such as demolition. The military commander is directed to exercise his authority to order house demolitions only in such severe cases in which the "regular" punitive and deterring measures, by their nature, cannot sufficiently and properly deter terrorists physically and mentally.

36. The exercise of the sanction of house demolition is a derivative of the circumstances of time and place. In as much as terrorism changes from time to time, the respondent is obligated to act accordingly and to the extent required, change the measures taken to encounter the danger and annihilate it in the course of Israel's fight against the hostile and murderous terror activity.

In this regard, it has already been held by this honorable court by the Honorable President Shamgar in HCJ 358/88 **The Association for Civil Rights in Israel v. GOC Central Command**, IsrSC 43(2) 529, 539 (1989), as follows:

> The prevention of acts of violence is a condition for maintaining public safety and order. There is no security without law enforcement, and law enforcement will not be successful and will not be effective if it does not also have a deterrent effect. The scope of the measures taken to enforce the law is, in any event, related to the seriousness of the offense, to the frequency of its commitment and to the nature of the offense committed. If, for example, there is a proliferation of murders of people because of their contacts with the military authorities, or if attacks are launched which are intended to bum people or property so as to sow terror and fear, a more rigorous and more frequent law enforcement is required. The above said is applicable to any area, and areas under military control are no exception in this regard; to the contrary, the maintenance of order and security and the enforcement thereof in practice are, according to public international law, among the central tasks of the military regime.

37. In view of the fact that the authority according to regulation 119 is exercised in response to terror activity, it is not surprising, that the scope of its exercise over the years was directly related to the scope of the terror attacks and their severity. Thus, during the years in which there was a decline in terror attacks, the authority according to the regulation was exercised more rarely, whereas in periods during which terror attacks became a "daily routine", the security forces had to use their authority under the regulation more frequently, in order to deter and cut off the roots of terror, so as to prevent them from spreading even further.

38. This is the place to note once again that the taking of measures according to regulation 119, is based, first and foremost, on a host of balances. A balance between the severity of the act of terror and the scope of the sanction; a balance between the expected injury which would be inflicted on the family of the terrorist and the need to deter potential future perpetrators of terror attacks; a balance between the basic right of every person to his property and the right and duty of the government to maintain public order and safety, and protect the wellbeing and security of the citizens and residents of Israel.

39. Thus, within the framework of this balancing work, weight is attributed to the severity of the acts, the circumstances of time and place; the residency connection between the terrorist and the house; the size of the house; the effect of the measure taken on other people; engineering concerns and such other considerations. Only after the weighing, examination and balancing of the entire array of considerations which are relevant to the circumstances of the matter, shall the military commander decide whether to use the measure of demolition/sealing of a structure, and to what extent (see, for instance, the judgment given by an extended panel in **Nazal**).

40. About nine years ago, when there was a decline in terror attacks, a think tank headed by Major General Udi Shani recommended, in a report entitled "Rethinking House Demolitions", to reduce the use of regulation 119 as a method, up to complete cessation, while retaining the option to use this measure in extreme cases. A presentation to that effect was made in a meeting held by the IDF Chief of Staff in February 2005. Upon the conclusion of said meeting, the IDF Chief of Staff decided to suspend, at that time, the exercise of the authority under regulation 119. However, it should be emphasized, that the IDF Chief of Staff also determined that this decision could be re-visited in extreme cases (as recommended by the think tank). This policy, which was adopted by the IDF Chief of Staff, was ratified by the Minister of Defence. In the same context it was also determined that should there be an extreme change of circumstances, the decision shall be reconsidered.

    And indeed, following a substantial increase in the involvement of East Jerusalem residents in terror activity in 2008-2009, the GOC Home Front Command issued three orders by virtue of his authority under regulation 119, which were directed against the houses of the terrorist who carried out the attack at Merkaz Harav and the terrorists who performed two ramming attacks in Jerusalem. As will be described in detail below, three petitions which were filed with the honorable court against these decisions – were denied.

    The presentation of the Shani Committee was attached as **exhibit P/14 to the petition**.

As to the arguments that the decision concerning the demolition of the terrorist's house is in contrary with the rules of international law

41. The petitioners argue in their petition that the demolition of the terrorist's apartment is in contrary with the rules of international law.

42. This honorable court held is a host of judgments that the exercise of the authority according to regulation 119, for the purpose of deterrence, was a completely legitimate action, which complied with both international law and local law. Various arguments which were raised in many petitions against this step, which focus mainly on the argument that this step constitutes a collective punishment and that it is in contrary with international law and local law, were rejected by this honorable court, and the Supreme Court confirmed the general lawfulness of said action (see, for instance only, HCJ 897/86 **Jaber v. GOC Home Front Command**, IsrSC 41(2) 522 (1987); HCJ 2977/91 **Salem v. Commander of IDF Forces in the West Bank**, IsrSC 46(5) 467 (1992); HCJ 6026/94 **Nazal v. Commander of IDF Forces 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 **Za'arub v. Commander of IDF Forces in the Gaza Strip**, Takdin 2002(3) 614 (2002)).

    We would like to point out, that the petitioners themselves do not dispute the fact that this honorable court has already determined that the exercise of the authority according to regulation 119 was legitimate (paragraph 32 of the petition).

43. As specified above, arguments similar to those raised by the petitioners, were rejected time and again by the honorable court, and the respondent will argue that, as has already been held in previous petitions in the past, there is no cause nor justification for the re-examination of these arguments by the court once again within the framework of this petition.

In this regard, see for instance, the judgment in HCJ 2006/97 **Abu Phara v. GOC Home Front Command**, IsrSC 51(2) 651 (1997), where it was held by the honorable court that there was no need to discuss again the general issues, in view of the fact that they have already been resolved in the past, as follows:

> **The petition raises additional arguments concerning the authority of the military commander to use regulation 119 of the Defence (Emergency) Regulations, 1945. These arguments have all been raised in the past. They were rejected by this court in many judgments. Indeed, regulation 119 of the Defence Regulations – a statute from the Mandatory era which is currently in effect in the Area – grants the military commander authority and discretion to take measures against a structure, which is occupied by a person who committed a serious offence against the Regulations. We did not find in petitioners' arguments anything which may justify a deviation from the ample authority in this matter**. We are aware of the fact that the demolition of the house will leave petitioner 1 and her children without a roof over their heads. This is not the purpose of the demolition order. It is not punitive. Its purpose is to deter. Nevertheless, it bears harsh consequences to the family members. The respondent is of the opinion that the taking of this measure is essential, to prevent additional attacks on the lives of innocent people. He maintains that the pressure exerted by the families may deter the terrorists. There is no absolute assurance that this measure is indeed effective. However, considering the few measures with which the State is left to defend itself against "human bombs", this measure should not be taken lightly. For these reasons I would deny the petition. (Honorable President Barak, pages 653-654).
>
> ….
>
> I join the opinion of my colleague the President. No scientific study which can prove how many terror attacks were prevented, and how many human lives were saved as a result of deterring acts of house sealing and demolition, has ever been conducted, nor can such study be conducted. However, as far as I am concerned, it is sufficient that one cannot refute the position according to which a certain deterring effect exists, to prevent me from interfering with the discretion of the military commander. (Honorable Justice Goldberg, page 655)(emphasis added – A.H.)

Also see the comments made in a similar matter, in the judgment in HCJ 6868/02 **a-din v. Commander of IDF Forces in the Judea and Samaria Area** (reported in the Judicial Authority Website, August 8, 2002)

> As to the general problem, it has been discussed in many judgments, and we do not think that it should be discussed again at this present time.

As to the argument that the entire structure is owned by petitioner 1's brother

44. The petitioners argue that the entire structure is owned by petitioner 1, and that the apartment in which the terrorist-brother lived was merely rented by him.

45. The respondent has considered the argument that the structure was owned by the terrorist's brother, and that the terrorist and his family were renting the apartment in which they lived. In this context it should be noted that the proprietary status of the terrorist as owner or tenant, does not derogate from the authority of the military commander according to regulation 119, since the acceptable interpretation of the authority conferred by regulation 119 is that it is sufficient to have a "residency connection" to the structure, evidenced by the fact that the terrorist resided therein, in order to formulate the authority to issue an order for the demolition of the structure. On this matter, see paragraph 6 of the judgment of the Honorable Justice (as then titled) Mazza in **Nazal**, as follows:

> For the establishment of respondent's authority according to regulation 119(1), we must be satisfied that the terrorist was a "resident" or "inhabitant" of the house with respect of which a seizure and demolition order was issued.

46. It should be emphasized that according to consistent case law, the fact that the terrorist was a tenant rather than the owner of the structure which is designated for demolition does not prevent the exercise of the authority against the structure. The underlying rationale in this matter was clarified in HCJ 542/89 **al-Jamal v. Commander of IDF Forces in Judea and Samaria** (reported in Nevo, July 31, 1989), as follows:

> The argument of his learned counsel is that there is no room to exercise the authority according to regulation 119, in view of the fact that the petitioner rented out the apartment to respondent 2, as a result of which the connection between him and the person who committed the security offences became remote to such an extent that it revokes the pertinent justification for the exercise of said regulation 119.
>
> There is no dispute that the exercise of said regulation is possible, according to the wording thereof, namely, in view of its language the fact that the person who committed the offences was only a tenant, does not prevent the exercise of the authority. The argument is directed, as aforesaid, at the pertinent justification underlying the use of said statutory provision.
>
> We have considered the arguments raised by petitioner's learned counsel. Our conclusion is that regulation 119 is used as a deterring punitive measure, and if it became evident that any sanction could be avoided by the terrorist's use of a rented apartment, the deterring effect expected of the use of said statutory provision would be obliterated.

And see also the words of the Honorable President Barak in paragraph 10 of his judgment in HCJ 2/97 **Abu Halaweh v. GOC Home Front Command** (reported in the Judicial Authority Website, August 11, 1997), as follows:

> The argument concerning the distinction between home owners and terrorists who were only tenants in rented apartments should also be

> rejected. Indeed, in view of the fact that regulation 119 is used for deterring purposes, there is no room for a distinction between a terrorist who owns his house and a terrorist who merely rents the house (see: HCJ 3560/90 **Al-Sabar v. Minister of Defence** (not reported)). This is especially so in view of the fact that the house of petitioner 4 was sealed and not demolished.

See also:

HCJ 1056/89 **Saradih v. Minister of the Defence** (reported in Nevo, March 27, 1990)

HCJ 2630/90 **Karachra v. Commander of IDF Forces in Judea and Samaria** (reported in Nevo, February 12, 1991).

<u>As to the argument that the respondent does not have available to him sufficient factual infrastructure</u>

47. The petitioners argue that the respondent does not have available to him sufficient factual infrastructure which enables him to carry out the demolition without damaging the other parts of the structure as well as adjacent structures. The respondent will argue that this argument should be rejected.

48. As specified above, the respondent decided to exercise his authority according to regulation 119 *vis-à-vis* the structure only as much as it pertains to the terrorist's apartment, and explicitly clarified in paragraph 17 of his response to the appeal, as follows:

> As aforesaid, in view of the information which was provided in the appeal, concerning the fact that the terrorist's brother was residing with his family in a part of the structure, the commander of IDF forces in the Area decided, after his representatives visited the scene, to accept the appeal in part, in the sense that the intention to demolish the terrorist's house would be limited only to that part of the structure in which the terrorist and his nuclear family lived, while refraining from causing any damage to that part of the structure in which the brother and his family members live. Obviously, measures will be taken to refrain from causing damage to buildings adjacent to the terrorist's house as a result of the demolition.

49. As explicitly noted by the respondent in paragraph 24 of his response to the appeal , the demolition of the apartment will be carried out:

> Provided that he is satisfied that the demolition does not cause damage to the other part of the structure, in which the family of the terrorist's brother lives.

50. With respect to this issue, we would like to update the honorable court that after he has examined petitioners' above arguments, the respondent reached the conclusion, based on the position of professional experts on his behalf, that the terrorist's apartment may be demolished without causing any significant damage to petitioners' adjacent apartment, to the warehouses located on the ground

floor of the structure (including below the terrorist's apartment), the common staircase leading to both apartments or to any of the adjacent structures.

As to the argument concerning the harm caused to family members

51. The petitioners argue that the family members who will be harmed from the demolition of the apartment are innocent.

52. According to case law, it is not required, for the purpose of formulating the authority under regulation 119, that the family members were aware of or assisted the terrorist with his intention to carry out the terror attack due to which it was decided to exercise the authority under said regulation.

It is hereby noted that arguments similar to petitioners' above argument have already been raised and rejected by this honorable court many times. On this issue, see, for instance, the judgment in HCJ 2418/97 **Abu Phara v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 51(1) 226 (1997), as follows:

> Indeed, it is true that there is no evidence which ties the petitioner and the family members of the terrorist with the acts attributed to him, but as was held more than once, the demolition of a structure is designed to deter rather than to punish and its purpose is "to deter potential perpetrators of terror attacks, who must understand that through their actions they themselves cause harm not only to public safety and order, and not only to the lives of innocent people, but also to the wellbeing of their own loved-ones".

And see also the court's words in its judgment in HCJ 6996/02 **Za'arub v. Commander of IDF Forces in the Gaza Strip**, IsrSC 56(6) 407 (2002), as follows:

> Furthermore, we are of the opinion that in view of the fact that the respondent took into consideration the engineering structure of the house and the fact that all of the inhabitants of the house were living together, but nevertheless concluded that in view of the circumstances of time and place, decisive importance should be given to deterring considerations, the respondent did not exceed the legitimate limits of his discretion, even if there is no evidence that the other inhabitants of the house were aware of the actions of the son.

And see also on this issue the judgment of the Honorable Justice (as then titled) Naor in HCJ 9353/08 **Abu Dheim v. GOC Home Front Command** (reported in the Judicial Authority Website, January 5, 2009), as follows:

> 6. The argument which also arose in the petition before us, according to which it is neither appropriate nor moral that the terrorists' family members, who did not help him and were not aware of his plans, shall bear his sin, was discussed in our case law. This argument was raised in the past and was rejected. Justice Turkel wrote in this matter in HCJ 6288/03 **Sa'ada v. GOC Home Front Command**, IsrSC 58(2) 289, 294 (2003)) (the **Sa'ada** Case):
>
> > "Despite the judicial rationales, the idea that the terrorists' family members, that as far known did not help him and

were not aware of his actions are to bear his sin, is morally burdensome. This burden is rooted in the Israel tradition's ancient principle according to which "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers; every man shall be put to death for his own sin." (*Deuteronomy*, 24, 16; and compare to Justice M. Heshin judgment in HCJ 2722/92 **Alamarin v. IDF Commander in the Gaza Strip**, IsrSC 46(3) 693, 705-706). Our Sages of Blessed Memory also protested against King David for violating that principle by not sparing the seven sons of Saul (*Samuel II*, 21, 1-14) and worked hard to settle the difficulty **(**Yevomos, 79, 1). But the prospect that a house's demolition or sealing 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 house's tenants. There is no other way."

7. Similarly, it was argued before us that the terrorist's family members were not related to the terror attack and that the father even opposed such acts. For this matter it is sufficient to refer to the ruling in HCJ 2418/97 **Abu-Pharah v. IDF Commander in Judea and Samaria Area**, IsrSC 51(1) 226 (1997) and to HCJ 6996/02 **Za'arub v. IDF Commander in the Gaza Strip**, [IsrSC] 56(6) 407 (2002) in which it was ruled that deterrence considerations sometimes oblige the deterrence of potential perpetrators who must understand that their actions might harm also the well-being of their loved ones, even when there is no evidence that the family members were aware of the terrorist's doings.

53. Beyond need, in this specific case it is difficult to follow petitioners' arguments as far as they pertain to the terrorist, his son and wife, since, as noted in paragraph 16 of the response to petitioners' appeal:

> In addition, with respect to the terrorist's nuclear family, his son, who was residing in the structure until his arrest, was indicted, as aforesaid, in aiding and abetting to carry out the terror attack and the commitment of many other offences. In addition, there is evidence which ostensibly indicate that the terrorist's wife was also aware of the holding and use of the gun a few days before the terror attack.

<u>As to the argument that the terrorist has not yet been convicted</u>

54. The petitioners argue that the terrorist has not yet been convicted.

55. According to case law, the exercise of the authority under regulation 119 is not conditioned on the conviction of a terrorist in the commitment of the offence. See on this issue HCJ 10467/03 **Sharbati v. GOC Home Front Command**, IsrSC 58(1), 810 (2003), as follows:

> Petitioner's counsel argued further that it was not appropriate to take an administrative measure of this kind, while Sharbati's trial was still pending and has not yet been concluded. In this regard too, the ruling is clear, namely, the language of regulation 119 does not condition the use

> of the measures made available by it to the military commander, on a person's conviction.

And see also the comments made on this issue in **Nazal**, as follows:

> Furthermore: the power to exercise said authority is not conditioned on the conviction of any person of having committed an offence; since, according to the language of the regulation, it is sufficient that the military commander is satisfied that the offence was committed by the inhabitants of any area, town, village, quarter or street, or any one of them, so that he may have the authority to seize any house, structure or land situated in the place in which the offender resided.

The measure chosen by the military commander is proportionate under the circumstances

56. The petitioners argue that the decision to demolish the house of the terrorist is not proportionate. The petitioners argue that it has not been proved that the demolition of terrorists' houses indeed deters other terrorists from carrying out their plans, and that there is no rational connection between the measure taken and the designated purpose. On this issue, the petitioners refer, *inter alia*, to the presentation which was prepared in the past by a think tank headed by Major General Udi Shani, following which the IDF Chief of Staff decided in 2005, to suspend, at that time, the exercise of the authority according to regulation 119. The petitioner argue further that the decision to resume the exercise of the authority according to regulation 119 is tainted by considerations of revenge or punishment of the Hamas organization due to the kidnapping of the three teens about two and-a-half weeks ago, and that there is no other explanation to the decision to deviate at this time from the recommendations of the Shani committee.

57. The respondent will argue that the argument according to which considerations of revenge and punishment were considered by him should be totally rejected. The respondent wishes to emphasize that in making the decision to exercise his authority according to regulation 119 with respect to the terrorist's apartment, he took into account the deterring consideration, namely, the need to deter additional terrorists from carrying out terror attacks, and the extreme severity of this attack, along the deteriorating security condition, which reached its peak in the kidnapping of the three teens on their way home from school, lead him to the decision to resume the exercise of the authority according to regulation 119.

58. The respondent will argue, that his decision to exercise the authority according to regulation 119 and demolish the apartment of the terrorist is absolutely proportionate, under the circumstance of this case, in view of the fact that the decision to demolish pertains only to the apartment in which the terrorist lived, rather than to the entire structure, and in view of the fact that together with him, also lived in said apartment his son who was indicted with him and the terrorist's wife, against whom there is evidence, as aforesaid, that she was aware of the fact that her husband had a gun in his possession and that he used it before the murderous attack.

59. The respondent will argue that this is an extreme case, in which, according to the decision of the IDF Chief of Staff from 2005 itself, the authority according to regulation 119 may be exercised. It should be reminded that the terrorist is a murderer who was released within the framework of the "transaction" for the release of the kidnapped soldier Gilad Shalit many years before the termination of his incarceration period. Although his release was subject to the condition that he would not resume terrorism, the terrorist reverted to his evil ways, and eventually even planned and carried out the shooting attack in which the late Police Commander Mizrahi was murdered and two other people were wounded.

The respondent will argue that the essential need to deter potential perpetrators of terror attacks by exercising the authority according to regulation 119 is as doubly as important in the case of the terrorist at hand, in view of the need to deter other dangerous terrorists who were released in transactions and political gestures from resuming terrorism.

60. Beyond that: the respondent will argue further that the deteriorating security condition in the Area, which reached its peak in the kidnapping of the three teens, constitutes a clear change of circumstances which justifies the current change of the general policy which was adopted in 2005, in the same exact manner that the deteriorating security condition in Jerusalem in 2008-2009 constituted a material change of circumstances, which caused the GOC Home Front Command at that time to exercise the authority according to regulation 119 against houses which were occupied by terrorists, residents of East Jerusalem (see: **Abu Dheim**; HCJ 124/09 **Dwayat v. Minister of the Defence** (reported in the Judicial Authority Website March 18, 2009, hereinafter: **Dwayat**); HCJ 5696/09 **Mughrabi v. GOC Home Front Command** (reported in the Judicial Authority Website, February 15, 2012)).

61. We wish to note that similar arguments concerning the ostensible ineffectiveness of the exercise of the authority according to regulation 119, and concerning the possibility to use regulation 119 upon the occurrence of a change of circumstances after the decision of the IDF Chief of Staff from 2005, have already been discussed and rejected in paragraphs 8-11 of the **Abu Dheim** judgment, given by the Honorable Justice (as then titled) Naor, as follows:

> 8. Case law which preceded the change of policy in 2005, discussed more than once the question of the effectiveness of demolition or sealing of a house in which a terrorist resided. In that regard it was held that this was a matter for the security forces to evaluate, and that the court had no reason to doubt the security forces' evaluation that this measure was effective (see the above **Sa'ada**, pages 292-293). Case law cited, more than once, the words of Justice E. Goldberg in **Janimat**, according to which a scientific study which could prove how many terror attacks were prevented and how many lives were saved as a result of the deterrence created by house sealing and demolition, has never been conducted, nor could it be conducted, but the fact that the position according to which a certain deterring effect existed could not be refuted, was sufficient in order to refrain from interfering with the discretion of the military commander. (HCJ 2006/97 **Janimat v. GOC Central Command**, IsrSC 51(2) 651, 655 (1997), On the issue of regulation 119 as a deterring measure, see also: HCJ 798/89 **Shukri v. The Minister of Defence** (not yet published, January 10, 1990); HCJ 8262/03 **Abu Salim v. IDF Commander in the West Bank**, IsrSC 57(6) 569 (2003); HCJ 8575/03 **Azadin v. IDF. Commander in the West Bank**, , IsrSC 58(1) 210 (2003); the above **Nazal**, in paragraph 11; HCJ 10467/03 **Sharbati v. GOC Home Front Command**, , IsrSC 58(1) 810 (2003) etc.). During many years the court acknowledged that the use of the aforesaid regulation was intended to deter, to deter and not to punish or revenge. The court even abstained in the past from disputing the security forces' evaluation in the matter of the effectiveness of the deterrence.

9. And here we arrive at petitioners' principal argument: as aforesaid, the petitioners turn the attention to the fact that in 2005 the respondent's policy changed following discussions that took place in HCJ 7733/04 **Nasser v. IDF Commander in the West Bank** (not yet reported, June 20, 2005) ("**Nasser**"). According to the petitioners, the respondent changed his policy and decided to retract his intention to use regulation 119. Petitioners' counsel notes that within the framework of the hearing of the above mentioned petition, a session was held on December 13, 2004 before President Barak, Justice M. Cheshin and Justice Hayut. Upon its conclusion, the session was adjourned for 90 days. As indicated by the decision – the purpose of the adjournment was to enable the parties to consider an offer according to which one room on the second floor will be demolished or sealed. Following the hearing in the petition, a think tank headed by Major General Shani was set up. In the presentation prepared by the think tank which was received by petitioner's counsel within the framework of the former petition, it was stated that the act of demolition was no longer legitimate and that it was "lawfully marginal although it satisfies the tests of international law, the test of the international community, the test of democracy, the test of self image and the test of quantities". In conclusion the presentation indicated that "IDF, in a Jewish democratic state, cannot walk on the verge of legality, and all the more so on the verge of legitimacy!!!", The petitioners claim that following the aforesaid presentation the policy was changed: the Minister of Defence adopted the think tank's recommendations and ever since the use of Regulation 119 was halted although there were deadly terror attacks since then. The petitioners claim before us that the findings of the think tank are currently valid too, three years after the use of regulation 119 was suspended and that there is no justification to change the policy and resume the use of the aforesaid regulation. It seems that this claim, concerning the reinstatement of the former policy which was applied before 2005 is the only claim in the petition before us with respect of which there is no ruling in this court's case law.

10. Respondent's response argues in this regard that the presentation of the think tank headed by Major General Shani indicates that the think tank noted that the exercise of the authority was proved, in the opinion of all security forces, as an additional factor in the deterrence of terrorists. They also refer to the fact that in the ways of actions recommended by the think tank it was indeed recommended that, in general, there should be a reduction in house sealing or demolitions, up to cessation, while retaining the option to use it in extreme cases. In February 2005, after discussing the aforesaid presentation, the IDF Chief of Staff decided to suspend at that time the use of the aforesaid regulation, but also determined that there shall be room to review the decision in extreme cases as was recommended by the think tank. Following the IDF Chief of Staff's decision, the state gave notice of the decision to suspend the use of the authority pursuant to the aforesaid regulation, in various petitions

that were pending before this court, but it was well clarified that it was not an irreversible decision, and that there existed an option in appropriate circumstances to use the aforesaid regulation in the future. The state refers for this matter to some judgments that were given in petitions that were pending at that time. Thus, in **Nasser** which was explicitly mentioned by petitioners' counsel, it was explicitly stated that if a change of policy was decided upon (namely, resuming the use of the above authority), then the petitioner would be entitled to a hearing (and see also: HCJ 4969/04 **Adalah v. GOC of Southern Command** (not yet published, July 13, 2005); HCJ 295/04 **Sa'ad v. IDF Commander** (not yet published, April 7, 2005); HCJ 294/04 **Hajazi v. IDF Commander in the West Bank** (not yet published, May 4, 2005) in which similar notices were given). In view of the State's notices, the court refused to hear the above mentioned petitions which became theoretical. Thus, the option to change the policy again existed even when the various petitions were dismissed without prejudice. Furthermore, the respondent claims that *prima facie* it is clear that our matter concerns a severely extreme case, in which, even according to the policy set forth by the IDF Chief of Staff in the beginning of 2005 in accordance with the recommendation of the think tank, the exercise of the authority under regulation 119 could be considered. Therefore, claims the respondent, this is sufficient for rejecting petitioners' claim with respect to the change of policy. Nevertheless, the respondent clarifies that he intends to exercise his authority pursuant to regulation 119 also against houses which were occupied by other terrorists residents of East Jerusalem, and that in view of the change of circumstances which has occurred since the decision was made in 2005, there is no preclusion which prevents a change of policy that would enable the use of the aforesaid regulation. The respondent claims that the general principal is that policy can be changed upon change of circumstances (see for example: A.P.A. 1386/04 **The National Council for Planning and Building v. Neot Rosh Ha'ayin Association, Registered Association** (not yet published, May 20, 2008). The respondent notes that according to data produced by the Israel Security Agency (ISA), since 2007 there has been a wave of terror in which residents from East Jerusalem are involved. The wave of terror intensified in 2008. Unlike the past, a main characteristic of the current wave of terror, besides its scope, is that residents of East Jerusalem perform the terror attack themselves and do not serve, as in the past, as mere collaborators of terrorists residents of the Area. The security forces have gathered information on the intentions of residents of East Jerusalem to perform additional terror attacks, and some additional terror attacks planned to be performed by residents from East Jerusalem were thwarted. The respondent added to his response an overview prepared by the ISA concerning the involvement of residents of East Jerusalem in acts of terror. This review is updated as of September 22, 2008. This overview indicates that in 2008, 104 residents of East Jerusalem were arrested due to involvement in terror attacks,

while during the entire period from 2001 until 2007, 374 people were arrested. It is, therefore, a steep increase in the number of terrorists from East Jerusalem. The overview mentions prominent terror attacks in 2008 including the car ramming terror attack in Tzahal Square in which 18 Israeli civilians were injured; the ramming attack in Mapu Street by tractor in which an Israeli civilian was severely wounded and 22 were lightly wounded; a shooting attack in the Old City in which one policeman was killed and another policeman was wounded; a ramming attack by tractor in Jaffa Street in which 3 Israelis were killed and 42 were wounded; a stubbing terror attack in the Old City, near Nablus Gate in which an Israeli civilian was wounded; a terror attack near Shuafat Refugee Camp in which a border policeman was killed and a policewoman was severely wounded, and obviously - the terror attack at Merkaz Harav Yeshiva that was carried out by petitioner's son. The ISA also indicates in its overview that in order to cope with the new threat, the use of deterring measures should be intensified, including demolitions of terrorists' houses and the imposition of harsher sanctions against the terrorists' families, the increase of Israeli security presence in East Jerusalem, exhaustion of judgment with criminal offenders who commit offenses of trading and possessing weapons and pressing charges against whomever intends to perform a terror attack. The respondent notified in his response that he intended to use regulation 119 (subject to a hearing) in two other cases of tractor terror attacks.

11. Our position is that there is no room to intervene with respondent's change of policy. The new-old policy relies upon the aforesaid opinion of the ISA, and it is shared by the IDF Chief of Staff and the Minister of Defence. Indeed, an authority can change its policy and it may certainly change it upon a change of circumstances. With respect to terrorists residents of East Jerusalem the respondent demonstrated with concrete data, the highlights of which we mentioned above, that there indeed was a change of circumstances. As was ruled by this court in the past, this court is not inclined to intervene with the security forces' evaluation concerning the effectiveness of the measure of house sealing or demolition as a factor which deters others. This was also the case when a few years ago there was a change of policy following the recommendations of the think tank headed by Major General Shani. As mentioned by us above, case law held more than once, that a scientific study that can prove how many terror attacks were prevented and how many lives were saved as a result of taking the aforesaid measure could never be conducted. In this regard nothing has changed. Indeed, the reality as well as the severity of the events changed. The conclusions to be drawn from that are a clear matter for the security forces to evaluate.

And see also on this issue, paragraph 5 of the judgment of the Honorable Justice Levy in **Dwayat**, as follows:

The initial burden to show that a governmental act is proportionate, should usually be imposed on the administrative authority. Having met it, the party contesting it may show that it has no merit (HCJ 366/03 **Commitment to Peace and Social Justice Society v. Minister of Finance**, paragraph 18 of my judgment (not yet reported, December 12, 2005); HCJ 6427/02 **Movement for Quality Government in Israel v. The Knesset** paragraph 21 of the judgment rendered by the President A. Barak, (not yet reported, May 11, 2006)). On the issue of demolition of terrorists' houses it has been held in the past and recently again, that the security forces had shown that the measures exercised were proportionate. The conclusion that the demolition had a deterring effect was more than substantiated (HCJ 6996/02 **Za'arub v. IDF Commander in the Gaza Strip**, IsrSC 56(6) 407, 410 (2002); HCJ 8262/03 **Abu Salim v. IDF Commander in the West Bank**, IsrSC 57(6) 569, 574 (2003); that it carried a special weight among the exercised measures (HCJ 10467/03 **Sharbati v. GOC Home Front Command**, IsrSC 58(1) 810, 814 (2003)); and that in view of its contribution to the most important value of all – saving human lives, it successfully passed the general benefit balance (HCJ 9353/08 **Abu Dheim v. GOC Home Front Command** (not yet reported, January 1, 2009)). And it was so written by Justice E. Rubinstein:

> Sealing or demolishing the terrorists' houses is not a matter of exhilaration, exhilarating punishment or exhilarating revenge, although the feelings of every descent man extremely rebel when someone takes an innocent fellowman's life out of blind animosity. If the demolition had derived only from bad feelings, worse than the inferno – it would not have been accepted in a proper law abiding state. But we are concerned and this is the emphasis, with the issue of the benefit in a forward-looking perspective [*ibid,* in the first paragraph of his judgment].

62. It should be noted that the petitioners argue very generally in paragraph 67 of the petition, that the two additional sub-tests of the proportionality test are not satisfied in the decision to demolish the terrorist's apartment, in view of the possibility to impose other sanctions such as a monetary fine, and that the injury caused to the family exceeds the benefit involved in the use of the demolition measure.

63. The respondent will request the honorable court to reject these general arguments of the petitioners.

The respondent is of the opinion that under the current circumstances there is no other measure which may achieve the essential deterring purpose in the same manner that the demolition of the terrorist's apartment would. On this issue it should be noted that the respondent reached the conclusion that the essential deterring purpose would not be sufficiently achieved by the mere sealing of the terrorist's apartment. We would like to reiterate that this case concerns a dangerous person who was released within the framework of a "transaction" for the release of a kidnapped Israeli soldier, and that it is imperative to deter other terrorists who were released in transactions and political gestures from resuming terrorism.

Furthermore, against the backdrop of the deteriorating security condition, the respondent reached the conclusion that under the specific circumstances of the matter the benefit of deterring additional terrorists, certainly dangerous terrorists who were released within the framework of transactions and political gestures, exceeds to a large extent the damage which would be caused to the family members.

As to the proportionality of respondent's demolition decision we would like to add that the respondent decided to demolish only the apartment which was occupied by the terrorist and his nuclear family rather than the entire structure; that the terrorist's son, who is accused of aiding and abetting his father, and petitioner 2 who was aware of the fact that her husband had a gun and that he was practicing it, also lived in the apartment; that respondent's decision was made only after the petitioners were given the right to fully present their arguments before him, which in fact resulted in the limitation of part designated for demolition.

Conclusion

64. The respondent will request the honorable court to reject the petition.

65. In view of the deteriorating security condition, including the extremely severe terror attack being the subject matter of this petition and the kidnapping of the three teens who were on their way home from school about two and-a-half weeks ago; in view of the utmost importance attributed to the deterrence of additional potential perpetrators of terror attacks; and in view of the fact that the respondent is of the opinion that the exercise of the authority according to regulation 119 will indeed significantly contribute to the deterrence of additional perpetrators of terror attacks – the respondent will request the honorable court to reject the petition without issuing an *order nisi*, and give a decision therein as soon as possible.

66. The facts specified in this response are supported by the affidavit of General Major Nitzan Alon, IDF GOC Central Command, and commander of IDF Forces in the Judea and Samaria area.

Today, 2 Tamuz 5774
June 30, 2014

(signed)

Aner Helman, Advocate
Deputy Director of HCJ Petition Department
In the State Attorney's Office

(signed)

Omri Epstein, Advocate
Deputy in the State Attorney's Office