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At the Supreme Court Sitting as the High Court of Justice

HCJ 4597/14

Before: **Honorable Deputy President M. Naor
Honorable Justice Y. Danziger
Honorable Justice U. Shoham**

The Petitioners: **1. Muhammad Hassan Khalil 'Awawdeh
2. Hanan Ahmed Salah 'Awwad
3. HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4. Physicians for Human Rights – Israel
5. Public Committee against Torture in Israel**

v.

The Respondent: **Military Commander of the West Bank Area**

Requesting to join: **1. Hadas Mizrahi
2. Almagor – Terror Victims Association**

Petition for *Order Nisi*

Session date: 2 Tamuz 5774 (June 30, 2014)

Representing the Petitioners: Adv. Abir Joubran-Dakwar; Adv. Sigi Ben-Ari

Representing the Respondent: Adv. Aner Helman; Adv. Omri Epstein

Representing the parties requesting to join: Adv. Naftali Wertzberger

Judgment

Deputy President M. Naor

This petition concerns the decision of the respondent by virtue of his authority pursuant to regulation 119 of the Defence Regulations (Emergency), 1945 (hereinafter: **regulation 119**), to order the seizure and

demolition of a part of a structure located in Kafr Idhna in Judea and Samaria, in which Ziad Hassan Khalil 'Awwad, who is accused of carrying out a shooting attack which caused the death of the late Police Commander Baruch Mizrahi and the injury of his wife and another child, lived.

Background

1. On April 14, 2014, on Passover eve, the late Police Commander Baruch Mizrahi was shot, in a pre-planned shooting attack, as he drove his car on Route 35 (Tarqumia-Hebron), with his wife and children. As a result of the shooting, Police Commander Mizrahi, who was severely wounded, was killed. His wife who was with him in the car – was wounded. A child who was in another vehicle was also wounded.
2. The above terror attack was carried out in the Judea and Samaria area. According to respondent's response to the petition, security stability has been continuously deteriorating in this area over the last two years. This is evidenced by an increase in the number of terror attacks and in the number of injured Israelis. According to the data presented by the respondent in his response, in 2013, 1,414 terror attacks were registered in the Judea and Samaria area, and in 2014, until this date, over 500 terror attacks were registered. According to the respondent, during this period, an irregular increase in the number of Israeli casualties was also registered as a result of terror attacks launched from the Judea and Samaria area (six Israeli casualties during this period, as compared to zero Israeli casualties in 2012). The respondent pointed out in his response, that from the beginning of 2014, and especially during the last three months, there was a sharp increase in the number of severe terror attacks (including the terror attack being the subject matter of this petition), in which Israeli citizens were killed or in which firearms were used, as well as in attempts to carry out severe terror attacks. Thus, for instance, in March 2014, the activity of a Hamas wanted terrorist, who was directed by Hamas headquarters to promote a host of terror attacks against Israeli targets in the Judea and Samaria area, was thwarted; in April 2014, the intention of a number of terrorists to promote a shooting attack against IDF forces in Jenin was prevented; in 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; in the same month, a shooting attack was carried out in Ramat Shlomo neighborhood in Jerusalem, in which a Palestinian terrorist shot at a group of Israeli citizens. In addition, in June 2014, two shooting attacks were carried out at IDF positions in Judea and Samaria. The respondent emphasized further in his response, that from the beginning of 2014, about 96 intended and attempted terror attacks were thwarted, and in addition, there was a sharp increase in the level of alerts against kidnapping attacks. The deteriorating security condition reached its peak in the above shooting attack and the kidnapping of three teens who were on their way home from their school in the Kfar Etzion area. Last night, after the hearing before us, and after this judgment was written, we were regretfully informed that the three kidnapped teens were murdered. Our hearts are with their families.
3. On May 7, 2014, Ziad Hassan Khalil 'Awwad (hereinafter: '**Awwad**) and his son were arrested for having allegedly committed the shooting attack, in which the late Police Commander Baruch Mizrahi was murdered. 'Awwad is a Hamas activist, who was convicted in 2000 for having committed various offenses, including 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 'Awwad was sentenced for a long incarceration period, and was expected to be released from prison only in 2026. However, on November 18, 2011, 'Awwad 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.

4. On June 22, 2014, an indictment was filed against 'Awwad with the Judea Military Court for the execution of the terror attack. According to the respondent in the hearing before us, the indictment was filed after evidence were gathered against 'Awwad, including DNA samples on the cartridge of the weapon which was used to carry out the terror attack. In addition, statements of 'Awwad's son were submitted (R/3). In his statements, 'Awwad's son described, among other things, how he searched with his father for suitable locations for the execution of the terror attack; where the weapon which was used to carry out the terror attack was hidden; what were his father's motives to carry out the terror attack. 'Awwad's son also told his interrogators that his mother heard him practicing the use of the gun with a silencer in the house's warehouse. In addition, the son said that 'Awwad told him that his mother also knew where he hid the weapon. 'Awwad was indicted for having taken actions in preparation for the execution of the attack such as the attainment of ammunition, prior scouting of the scene, preparation of a silencer, shooting practices in the house's warehouse, preparation of an escape plan, etc. According to the indictment, 'Awwad shared his plans with his son and even scouted the scene with him prior to the attack. The indictment further specifies that 'Awwad stood on the side of Route 35 leading to Hebron, 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, 'Awwad fled the scene, boasted about the attack before his son and warned him not to implicate him of the shooting attack in the interrogation. A separate indictment was filed against 'Awwad's son, in which he was accused, *inter alia*, of aiding and abetting the execution of the shooting attack.

The order being the subject matter of the petition

5. Against the backdrop of the deteriorating security condition in the Judea and Samaria area, and in view of the severity of the attack, the need to deter others, and the identity of the terrorist – a person who was convicted of the assassination of three people, and who was released within the framework of a political transaction on the condition that he would not resume terror activity – the respondent decided to exercise his authority under regulation 119 against the structure in which 'Awwad was living and ordered to demolish it. At this point it should be reminded, that in 2005, when there was a decline in terror attacks, a think tank headed by Major General Udi Shani recommended to reduce the use of house demolitions under regulation 119 while retaining the option to use this measure in extreme cases (hereinafter: the **recommendations of the Shani committee**). Following the recommendations of the Shani committee, the IDF Chief of Staff decided to suspend the exercise of the authority under regulation 119, but determined that this decision may be re-visited in extreme cases. This policy which was adopted by the IDF Chief of Staff was ratified by the Minister of Defence. 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, against the houses of the terrorist who carried out the attack at Merkaz Harav and the terrorists who performed the two running over attacks in Jerusalem. The petitions which were filed against these decisions – were denied (HCJ 9353/08 **Abu Dheim v. GOC Home Front Command** (January 5, 2009)(hereinafter: **Abu Dheim**); HCJ 124/09 **Dwayat v. Minister of Defence** (March 18, 2009)(hereinafter: **Dwayat**); HCJ 5696/09 **Mughrabi v. GOC Home Front Command** (February 15, 2012 (hereinafter: **Mughrabi**)). According to respondent's response, against the backdrop of the recent escalation in the Judea and Samaria area, the decision being the subject matter of the petition before us, was similarly made.
6. On June 23, 2014 the respondent notified the 'Awwad family of his intention to exercise his authority by virtue of regulation 119, subject to a hearing, and order the seizure and demolition of the structure in Kafr Idhna. This structure is owned by 'Awwad's brother, Muhammad 'Awawdeh,

petitioner 1. This is a two story structure which consists of about 500 square meters. Four warehouses are located on the ground floor and the upper floor consists of two apartments. Petitioner 1 and his family, his wife and five of their children, live in the eastern apartment. 'Awwad and his wife Hanan, petitioner 2, and five of their children live in the western apartment.

7. On June 25, 2014, respondent's decision was appealed. The appeal argued, *inter alia*, that the house which was about to be demolished was in the ownership of petitioner 1, and that the demolition thereof, in its entirety, would leave petitioner 1 and his family without a roof over their heads, despite the fact that neither one of them was involved with terror activity in general, and with the execution of the shooting attack, in particular.
8. On June 27, 2014, after respondent's representatives visited the scene, the respondent decided to accept the appeal in part, so that only that part of the structure in which 'Awwad and his nuclear family lived would be seized and demolished, provided that the respondent was satisfied that the demolition would not cause damage to the other part of the structure, in which petitioner 1's family lived.
9. According to the decision in the appeal, the respondent signed, by virtue of his authority under regulation 119, a seizure and demolition order of the "west half of a two story structure in Kafr Idhna, in which the terrorist was living until his arrest...". Thereafter, the legal advisor for the Judea and Samaria area informed petitioners' counsel, by phone, that if the respondent was not satisfied that the demolition of the west part of the structure would not cause damage to the east side of the structure – this part would not be demolished. In such an event, he said, the possibility to seal the west side of the structure, would be considered. Thereafter, on June 29, 2014, petitioners' counsel was informed in writing, that the respondent was presented with an engineering plan according to which the west side of the structure could be demolished without causing damage to the other side of the structure (R/4).

Hence the petition before us, which was filed on June 29, 2014. The oral arguments were heard by us on June 30, 2014.

The petition and the response thereto

10. Petitioner 1, 'Awwad's brother and the owner of the structure, lives, as specified above, together with his family in the eastern apartment of the structure. Petitioner 2 is 'Awwad's wife, who lives, as specified above, together with 'Awwad and their children in the western apartment of the structure. Petitioners 3-5 are public petitioners.
11. According to the petitioners, the demolition of the apartments is a collective punishment, which is prohibited by international law. It was also argued that the demolition of the structure did not satisfy the proportionality tests, in view of the fact that it was not effective for the purpose of deterring others from committing acts of terror. At this point, the petitioners referred to the recommendations of the Shani Committee, which, according to them, recommended the cessation of demolition of terrorists' houses, as it concluded that such activity did not constitute an efficient tool for the prevention of terror attacks. The petitioners also noted that the Minister of the Defence at that time adopted the recommendations of the committee, despite the fact that at that time the performance of terror attacks continued. The petitioners noted that they were aware of the fact that this court approved the demolition of parts of houses of East Jerusalem residents who carried out terror attacks in the city, during the period which followed the adoption of the recommendations of the Shani committee. However, according to them, in said cases the State retracted its change of policy due to the fact that the terror attacks which were the subject matter of said petitions were

extremely severe, and in view of a change of circumstances which occurred as a result of a wave of terror attacks during the years 2008-2009, in which East Jerusalem residents were involved. The petitioners argue that the respondent did not explain why, specifically at this present point of time, he decided to renew house demolitions, and what was the difference between the terror attack being the subject matter of this petition and other terror attacks which were carried out by residents of the territories as of the change of respondent's policy in 2005. Respondent's deviation from his policy at this time stems from extraneous considerations, related to the kidnapping of the three teens. It was further argued that the demolition decision was disproportionate because the respondent did not make sure that indeed, only the west part of the structure could be demolished, without causing damage to its other part. In this context, the petitioners noted that they wanted to submit an engineering opinion on their behalf, concerning the possibility of a partial demolition of the structure. The petitioners also protested against respondent's intention to destroy warehouses which were located below the apartment of 'Awwad and his family, although they were not rented by him. Finally, the petitioners argued that 'Awwad has not yet been convicted of the offenses attributed to him, and that it was therefore advisable to wait until his trial ended, and only if convicted – the demolition of the structure should be reconsidered.

12. The respondent argued, in response, that the exercise of his authority by virtue of regulation 119 was required in this case, as it would assist to deter other terrorists from carrying out acts of terror. According to the respondent, the security forces and the respondent himself are aware of the severity of the implementation of an irreversible sanction such as a demolition of a residential home. However, in periods in which terror attacks become a daily routine, there is no alternative, according to him, but to use this sanction. In this context, the respondent pointed at a significant escalation in the Judea and Samaria area that was described above in detail, which justified, according to him, the demolition in the case at bar. The respondent continued to argue that there was no other efficient means to achieve the purpose, and that sealing the apartment, instead of its demolition, would not sufficiently achieve the deterring purpose. According to the respondent, the fact that 'Awwad lived in the structure for a long period of time, and made preparations for the shooting attack therein, was sufficient for the demolition of the house. The respondent clarified in his response that an examination conducted by him indicated that the part in which 'Awwad lived with his family could be destroyed, without causing damage to the other part of the structure. The respondent also clarified that after further deliberation, he decided that only the apartment of the 'Awwad family would be destroyed, and that other parts of the structure would not be destroyed, including the warehouses located on the ground floor.
13. During the oral hearing we allowed the petitioners to submit a professional opinion on their behalf. The opinion was prepared by Mr. Basul Wissam, a qualified engineer, engaged in the management of a civil engineering and structural engineering office (hereinafter: the **engineering opinion**). According to this opinion, the demolition of the west part of the structure requires the execution of structural strengthening works in the other part of the structure prior to the demolition, so that the ceiling of the structure would not be damaged. It was also noted that the sealing of the west part of the structure beyond a certain load, would cause the ceiling of the structure to collapse.
14. In the oral hearing we enabled the legal counsel to the widow of Police Commander Mizeahi, Mrs. Hadas Mizrahi and Almagor – Terror Victims Association, to comment about the pending issue, following their request to join the petition as parties. Their legal counsel sided with respondent's decision to issue an order for the demolition of the west side of the structure. Mrs. Mizrahi touchingly described the effects of 'Awwad's deeds on her and her children.

Discussion and decision

15. In fact, all arguments raised in this petition have already been discussed and decided by this court in previous judgments.
16. House demolition is carried out by the security forces, as described above, pursuant to regulation 119. The authority granted by the language of the regulation to demolish houses is very broad in scope. However, in its interpretation of the regulation, this court limited the implementation and application thereof and held that the military commander must exercise reasonable discretion while using his authority thereunder and act proportionately (see, for instance, HCJ 361/82 **Tamari v. Commander of the Judea and Samaria Area**, IsrSC 36(3) 439, 443 (1982); HCJ 2722/92 **Alamarin v. Commander of IDF Forces in the Gaza Strip**, IsrSC 46(3) 693' 699 (1992) (hereinafter: **Alamarin**); HCJ 6026/94 **Nazal v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 48(5) 338, 345 (1994) (hereinafter: **Nazal**); HCJ 1730/96 **Salem v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 50(1) 353, 358, 363 (1996) (hereinafter: **Salem**)).
17. This ruling was reinforced by the enactment of the **Basic Law: Human Dignity and Liberty**. This court held that although the 'validity of law' clause applied to the regulation, it should be interpreted in the spirit of the Basic Laws (see: FHH CJ 2161/96 **Sharif v. GOC Home Front Command**, IsrSC 50(4) 485, 488 (1996); HCJ 10467/03 **Sharbati v. GOC Home Front Command**, IsrSC 58(1) 810, 814 (2003) (hereinafter: **Sharbati**), **Abu Dheim**, paragraph 5 of my judgment; **Mughrabi**, paragraph 12 of the judgment of Justice H. Melcer). There is no dispute that the exercise of the authority granted by regulation 119 violates human rights. It violates the right to own property and the right to human dignity. Therefore, as held, the exercise of the authority must be proportionate (see: HCJ 8084/02 **Abbasi v. GOC Home Front Command**, IsrSC 57(2) 55, 59-61 (2003) (hereinafter: **Abbasi**); HCJ 6288/03 **Sa'ada v. GOC Home Front Command**, IsrSC 58(2) 289, 291-292 (2003) (hereinafter: **Sa'ada**). (See and compare: Aharon Barak, **International Humanitarian Law and the Israeli Supreme Court**, 47 Isr. L. Rev. 181, 188 (2014)).
18. In this context, the court listed in its judgments a number of considerations which the military commander should take into account with respect to house demolitions:
 - a. The severity of the acts that are attributed to the suspect who lived in that structure and the existence of reliable evidence of the performance thereof by that suspect should be taken into account.
 - b. The scope of involvement of the other residents of the house, in most cases the family members of the terrorist, in his acts of terror, may be taken into account. Lack of evidence pertaining to awareness and involvement on the part of the relatives does not prevent, in and of itself, the exercise of the authority, but said factor may affect, as aforesaid, the scope of respondent's order.
 - c. A relevant consideration is whether the residence of the suspect terrorist can be deemed as a residential unit which is separate from the remaining parts of the structure.
 - d. It should be examined whether the suspect's residential unit can be demolished without jeopardizing the remaining parts of the structure or neighboring structures; if it turns out that the same is not possible, then, only the sealing of the relevant unit should be considered.

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

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

19. Case law held that the purpose of house demolition was not to punish but rather to deter (see HCJ 6996/02 **Za'arub v. Commander of IDF Forces in the Gaza Strip**, IsrSC 56(6) 407, 409-410 (2002); **Abbasi**, page 59; Sa'ada' page 294; **Sharbati**, page 814; **Mughrabi**, paragraph 12 of the judgment of Justice H. Melcer). Although it is understandable that the parties requesting to join wish to punish the terrorists, respondent's considerations in exercising his authority under regulation 119 are different.
20. It should be further noted that the effectiveness of the deterrence embedded in house demolitions is subject to the evaluation of the security agencies (see: HCJ 7473/02 **Bachar v. Commander of IDF Forces in the West Bank**, IsrSC 56(6) 488, 490 (2002) (hereinafter: **Bachar**); **Sa'ada**, pages 292-293; **Sharbati**, page 814; **Abu Dheim**, paragraph 8 of my judgment; **Mughrabi**, paragraph 13 of the judgment of Justice H. Melcer). Against this backdrop, it was held in the above mentioned **Abu Dheim** case, that the security agencies may change the policy concerning the exercise of the discretion due to a change of circumstances:

Our position is that there is no room to intervene in respondent's change of policy [...] Indeed the authority can change a policy and surely it may change it with a change of circumstances [...] **Indeed, the reality changed and the severity of the events changed too. The conclusions arising there-from are a clear matter for the security forces to evaluate** (**Abu Dheim**, paragraph 11 of my judgment)(emphasis added).

21. In view of the deterring purpose underlying regulation 119, the fact that the terrorist is expected to be punished in a criminal proceeding does not prevent the exercise of the authority (see: **Abbasi**, page 60; **Sharbati**, page 815). In addition, it was held that the exercise of the authority was not conditioned on the conviction of the terrorist under criminal law, and that for that purpose one could sufficiently rely on administrative evidence which was presented to the respondent and satisfied him that the offence was committed by an occupant of the house which was designated for demolition (see: **Nazal**, page 343).
22. The court's position regarding this issue may be summarized by the words of Justice Turkel in **Sa'ada**, which were quoted time and again:

The idea that the terrorists' family members, that as far known did not help him nor were aware of his actions are to bear his sin, is morally burdensome... However, the prospect that the demolition or sealing of a house shall prevent future bloodshed compels us to harden the heart and have mercy on the living, who may be victims of terrorists' heinous acts, more than it is appropriate to spare the people dwelling in the house. There is no other way (**Sa'ada**, page 294. See also **Abu Dheim**, paragraphs 6-7 of my judgment).

From the general principles to the case at bar

23. In the hearing before us it was indicated, that since 2005 the authority under regulation 119 has not been exercised in Judea and Samaria. As specified above, the authority was exercised in 2008-2009 in East Jerusalem. In the case at bar, the respondent intends to exercise the authority again in Judea and Samaria. In our judgment in **Abu Dheim** it was noted that according to the directive of the Attorney General, the exercise of the authority under regulation 119 was subject to compliance with the customary administrative procedure. In this case the respondent satisfied this requirement: the petitioners in our case were given warning of the intention to carry out the demolition, and as described above, a hearing was held and an appeal was submitted. Following the appeal the scope of the demolition order was limited to that part of the structure in which 'Awwad, his wife and children were living. As undertaken by the respondent, the petitioners were given enough time to apply to the court. In the oral hearing, respondent's counsel, Adv. Aner Helman, clarified that in the event that the petition was denied, the demolition would not be carried out before the elapse of at least twelve hours from the rendering of our judgment.
24. In general, the authority may change its policy, even if the policy was implemented for almost a decade, and particularly, it may do so due to a change of circumstances. As mentioned in **Abu Dheim**, when the decision to suspend the exercise of the authority under regulation 119 was made, the State clarified that it would be possible to exercise said authority in the future under appropriate circumstances (see also: **Dwayat; Mughrabi**). Accordingly, as described above, in 2008-2009 it has exercised this authority in East Jerusalem, when the intensification of terror acts in the area justified the use of this measure. In the beginning, we have described the extreme circumstances currently prevailing in the Judea and Samaria area, circumstances which lead to the conclusion that was adopted by the political echelon, that a change of policy was required. I am of the opinion, that the data presented, all as specified above, constitutes a change of circumstances. There is no room to intervene with respondent's decision who has concluded that at this time actual deterrence was required, and that the demolition of the terrorist's house would result in such deterrence. As held by us in our case law "the court is not inclined to intervene with the security agencies' evaluation concerning the effectiveness of using the measure of demolishing houses or sealing them as a means to deter others" (**Abu Dheim**, paragraph 11). Furthermore, as was noted in our case law more than once, it is impossible to conduct a scientific research which would **prove** how many terror attacks were prevented and how many human lives were saved as a result of taking the measure of house demolition (see, for instance: H CJ 2006/97 **Janimat v. GOC Central Command**, IsrSC 51(2) 651, 655 (1997)). The conclusions arising from the severity of the recent events in Judea and Samaria are a clear matter for the respondent to attend to. Petitioners' argument, that respondent's decision was tainted by extraneous considerations as a result of the kidnapping of the three teens, and did not derive from considerations of deterrence, is hereby rejected. The kidnapping of the teens constitutes part of the escalation in terror activity in the Judea and Samaria area, which underlies respondent's conclusion that a change of circumstances has occurred which justifies the intensification of the deterrence, by the demolition of 'Awwad's home. As aforesaid, the indictment against 'Awwad was filed recently, on June 22, 2014. As is recalled, the hearing before us was held before it became known that the kidnapped teens were murdered.
25. The petitioners argued that it was advisable to wait for the conclusion of 'Awwad's trial, and only if convicted – the demolition of his house should be considered. However, as specified above, it has already been held in our case law, that the authority pursuant to regulation 119, may be exercised based on administrative evidence attesting to the fact that a terrorist was living in the house the demolition of which was sought (see: **Nazal**, page 343; **Sharbati**, page 815). I described above the

administrative evidence against 'Awwad, including the detailed statements of his son and the indictment which was filed against him. Against this backdrop, I am of the opinion that there is no room to intervene with respondent's decision to issue an order for the demolition of 'Awwad's home, which relied on said administrative evidence. Even the petitioners did not expressly dispute this.

26. The petitioners argued that the entire structure was owned by petitioner 1, that 'Awwad rented his apartment from him, and that therefore, the demolition thereof was inappropriate. This argument is hereby rejected. It has already been held in our case law that a connection between the terrorist and the structure designated for demolition was sufficient (see: **Nazal**, pages 343-344), a connection which undoubtedly existed in our case.
27. With respect to the proportionality of the demolition: the respondent clarified that he intended to demolish only the west part of the structure, in which only 'Awwad and his nuclear family were living, and that he intended to refrain from demolishing the warehouses located on the ground floor of the structure. Under these circumstances, I am of the opinion that there is no room to determine that the demolition is not proportionate. In this proceeding "engineering" claims were also raised, and in the hearing itself, an engineering opinion was submitted to us, as aforesaid, on petitioners' behalf. According to this opinion, prior to the demolition of the west part of the structure, its other part should be strengthened. The respondent, on his part, said that following examinations which were conducted by him, there was no engineering preclusion for the partial demolition of the structure. The respondent should examine this opinion, and an additional opinion which the petitioners intend to provide him forthwith, with an open mind and heart. However, as we have noted in the past, the respondent may rely on the expert opinion which was submitted on his behalf.
28. As a side note, and maybe not as a side note, it should be pointed out that the case before us does not concern an innocent family which was forced, against its will, to pay for its "ancestors' sins". The son of 'Awwad and petitioner 2, is heavily involved in his father's act, although he was not the one who fired the gun and although he was not present at the time of the terror attack. Petitioner 2, as indicated by the son's statements, knew of the concealment of the weapon and of 'Awwad's training. These facts weaken the moral strength of petitioner 2's arguments, and they also carry weight according to the case law specified by us above (see, for instance: **Salem**, page 359; **Bachar**, page 491).
29. In view of all of the above, I have concluded that there was no cause for the issue of an *order nisi* and that the petition should be denied. We have noted, as specified above, that the respondent would not carry out the order prior to the elapse of twelve hours from the publication of this judgment. In addition, he should consider the engineering opinion which was submitted in the course of the hearing of the petition and an additional opinion which, according to petitioners' statement, would be delivered to him after the hearing of the petition, to the extent it is delivered.
30. The petition is denied without an order for costs.

Given today, 3 Tamuz 5774 (July 1, 2014).

Deputy President

Justice

Justice