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At the Supreme Court
Sitting as the High Court of Justice

HCJ 6329/02

Jaberi et al.

represented by counsel, Advocate Wolfson et al.
HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem

The Petitioners

v.

Commander of IDF Forces in Judea and Samaria

represented by the state attorney's office
Ministry of Justice, Jerusalem

The Respondent

**Urgent Request of the State Attorney's Office to cancel the Interim Order granted in the Petition
and in the alternative a Request to Schedule an Immediate Hearing in the Petition**

1. This petition was filed based on the petitioners' concern that the respondent has decided to demolish their houses which are located at Kafr Tal, Nablus District, due to the activities of their family members who are wanted by the IDF. In this petition the petitioners requested to direct the respondent to refrain from demolishing their houses, and alternatively they have requested to direct him to allow them to make their arguments against the intention to demolish their houses in advance – if and to the extent he decides to do so in the future.

The petitioners have also requested that an interim order be granted directing the respondent to refrain from demolishing the houses until the hearing of this petition is terminated.

2. The court ordered the state to submit its response to the petition and **granted the interim order as requested.**
3. In our preliminary response to the petition we notified that our examinations indicated that no decision was made to demolish the houses of the petitioners. Therefore we claimed that this

petition was premature and should therefore be summarily rejected. The aforesaid is also valid at this present time, although, obviously, it does not imply that no such decision will be made in the future.

With respect to petitioners' alternative request, that the respondent will undertake to give them an advance hearing if he decides in the future to demolish the house, we have clarified in our notice that in view of the fact that the houses of the petitioners were located in the A Area, and in view of the fact that in this area, combative-operational activity is carried out from time to time, depending on conditions of time and place, it is evident that the respondent can not give such a sweeping undertaking which does not depend on prevailing circumstances with respect to such future military activity – if a decision to carry out such activity is made in the future.

On this issue we added that any such activity – if and when it is carried out - would be carried out in accordance with the security circumstance which would be in effect at that time and in accordance with the relevant operational needs.

4. Following this notice the court requested that petitioners' counsel notifies the court of his position following the state's notice.
5. Petitioners' counsel has indeed submitted his response and notified that the petitioners adhered to the second remedy requested in the petition since they were of the opinion that the respondent should be obligated – if he decides to demolish their houses – to inform them of same in advance and give them the right to be heard.
6. Following this notice the honorable Justice Beinisch decided that the hearing of the petition would be transferred to a panel as soon as possible. The decision did not refer to the interim order which had been granted immediately after the filing of the petition, which consequently remained in force until this day.

This decision was received by the state attorney's office on August 4, 2002.

7. At the same time, on that day – August 4, 2002, ten petitions were filed with this honorable court which have all raised a demand identical to petitioners' demand hereof. All of the petitioners in said petitions were family members of terrorists who made very severe terror attacks, and they have all requested that the respondent be obligated to give them an advance notification – should he decide to demolish their houses – so that they would be able to appeal the decision before him and before the court, ahead of time.

The court granted interim orders in all of these petitions and at the same time decided that an immediate hearing in the petitions be held.

8. Towards the date of the hearing the state submitted its response in which it has clarified why an advance sweeping undertaking may not be made as requested in the above petitions.

The response is attached as Exhibit **R/1**.

9. On August 5, 2002 the hearing in these petitions was held and today, August 6, 2002 the petitions were rejected by a reasoned judgment which speaks for itself.

The judgment is attached as Exhibit **R/2**.

10. Said judgment is also relevant to our case *verbatim*.

11. Therefore, as this honorable court has expressed its opinion in identical petitions and rejected them, we request that the interim order which was granted in this petition be immediately abolished since there is no justification to leave it in force, especially in view of the fact that it may frustrate and delay operational activity of the IDF – if a decision to carry out such activity is made.

In the alternative, we request to schedule an immediate hearing in the petition.

As the court ruled in its judgment, the demolition of houses in which terrorists, who have scattered death, were living is "part of the all-encompassing combative activity" which is being presently carried out in the Area. This activity is essential and urgent and therefore this request is submitted.

Today, 28 Av, 5762

August 6, 2002

(signed)

Shai Nitzan

In charge of security matters
at the State Attorney's Office

Amar et al.

represented by counsel, Advocate Rosenthal et al.
Jerusalem

The Petitioners

v.

Commander of IDF Forces in Judea and Samaria

represented by the state attorney's office
Ministry of Justice, Jerusalem

The Respondent

Response of the State Attorney's Office

12. In this petition the petitioners request to obligate the respondent to give them an advance notification – if he decides to demolish their houses – so that they will be able to appeal before him on his decision beforehand.

The petitioners are concerned that the respondent will demolish their houses due to the fact that their relatives, who have committed a chain of very severe terror attacks which caused dozens and hundreds of dead and wounded, have lived in these houses.

The following is a summary of the pertinent factual background based on which we shall respond to petitioners' request.

13. Firstly, it should be noted that examinations conducted by us indicated that the houses of petitioners 4, 18 and 19 have already been demolished before the petition was filed.

The house of petitioner 4 was demolished due to the fact that the terrorist, who committed on August 9, 2001 the terror attack in the Sbarro restaurant in Jerusalem, in which 15 Israelis were killed and 107 Israelis were wounded, has lived therein.

The house of petitioner 18 was demolished, due to the fact that the terrorist, who committed on December 12, 2001 the terror attack near Immanuel, in which 10 Israelis were killed and about 30 Israelis were wounded, has lived in this house.

The house of petitioner 19 was demolished due to the fact that the terrorist, who committed on March 5, 2002 the terror attack in Egged bus No. 823, in which one Israeli was killed and 19 Israelis were wounded, has lived this house.

14. As to the houses of petitioners 1, 7 and 15, the possibility to demolish their houses was considered, due to the fact that terrorists who committed severe terror attacks have lived in these houses. However, it was decided for the time being not to demolish these houses for various considerations.
15. The decision concerning each one of the houses mentioned in sections 2 and 3 above, was made after a thorough examination of all data obtained with respect to each such house and its inhabitants and after the entire circumstances of the matter have been considered.
16. As to the houses of all other petitioners, until this time a decision to demolish them has not been made. However, this does not imply that such a decision will not be made in the future. In any event, if such decision is made, it will be made, as aforesaid, after a thorough examination of all relevant data.
17. Against the above background, we shall now refer to petitioners' request to receive an advance notification in the event that a decision is made to demolish any one of their houses.
18. In this respect we would like to note that in the short time that was available to us our examination indicates that petitioners' houses are mostly located in the A Area. In this area a **combative – operational activity** is carried out from time to time depending on conditions of time and place, within the framework of which houses in which terrorists have lived are demolished – mostly suicide bombers and those who sent them, and this as part of the comprehensive, continuous and uncompromising fight conducted by the State of Israel against terror attacks in general, and against suicide bombings, in particular.

The demolition of houses under such circumstances has been recognized in the past in judgments rendered by this honorable court as a legitimate and lawful measure to combat terror.

Under the present circumstances, which concern **combative – operational** activities, which in general are carried out in a **hostile area**, it is clear that the respondent can not give any advance warning concerning his intention to carry out such future military activity – if indeed a decision to carry such activity is taken in the future.

Giving such warning, of contemplated operational activity in a hostile area, may put in real risk and danger the lives of our forces, and may even frustrate the success of the action, since the warning will enable the enemy to mine the relevant houses, to ambush the force which is about to enter them etc. Incidents of this sort have occurred over the last few months in different places throughout the Occupied Palestinian Territories (OPT). For these reasons, as a general rule, no military force which carries out a combative-military activity in a hostile area gives prior notices of the operational activity it intends to carry out, and for the same reasons the commander of IDF forces in the Judea and Samaria Area should not be compelled to give such prior notices, which may put in real risk and danger the lives of its soldiers and to frustrate the success of the action.

This double concern, that the soldiers may be put in risk and that said operational activity may be frustrated, underlies respondent's decision not to give a prior warning

19. Therefore, any such activity – if and to extent carried out – will be carried out in accordance with the security circumstances which will be in effect at that time and according to the relevant operational needs, and this, as a general rule, without giving an advance notification thereof.
20. Nonetheless, there are circumstances in which a certain risk may be taken and a prior warning may be given, and when this is possible, a warning is given and the home owners are given the opportunity to appeal against the contemplated demolition.

This is for instance the case with respect to petitioner 17, whose house is located in Abu Dis, near Jerusalem. With respect to this house the respondent has reached the conclusion that it was located in a place which according to the "risk and prevention" test there was no reason which prevented him from giving an advance warning before demolition (with the exclusion exceptional operational circumstances which would mandate an immediate demolition), and therefore a notification has long been given to petitioner 17's family that if the demolition of their house be considered, a 48 advance notification of same shall be given to them.

This notification has been given to the family within the framework of HCJ 9646/01 as early as December 9, 2001. For his own reasons, petitioners' counsel failed to mention said undertaking and the fact that the family of this petitioner has already filed a petition with this court, sitting as a high court of justice, in the past.

21. In any event, it is evident that a parallel undertaking may not be given in a sweeping manner and therefore each case is examined on its merits in accordance with the tests which were clarified above.
22. This is the place to note, that the court, in judgments rendered on this issue, a decade ago, when no belligerent circumstances existed, has recognized the possibility of refraining from giving an advance notification in this matter, when, as stated by the honorable court (the honorable president Shamgar) "**military-operational circumstances so require**".

See: HCJ 4112/90 **The Association for Civil Rights in Israel v. GOC Southern Command**, IsrSC 44(4) 626, 637, which is also mentioned in paragraph 22 of the petition.

Said rule obviously applies to our case and therefore there is no place to give an advance notification in this matter in a sweeping manner.

23. Therefore, under the above circumstances, the petition should be rejected.
24. To all of the above we would like to add that as aforesaid, the activity being the subject matter of this petition, is mostly carried out in the A areas, which are hostile areas, within the framework of Israel's fight against terrorist organizations. Such military operational activity, which is carried out in these areas, belongs to the category of issues that this honorable court, as a general rule, does not interfere with, and therefore, for this reason alone, this petition should be summarily rejected.

On this issue reference is made to the judgment rendered in HCJ 5872/01 **MK Baraka v. the Prime Minister** (not reported), in which it was held that:

"Choosing the combative measures taken by the respondents for the purpose of preventing, in advance, deadly terror attacks, is not among the issues that this court sees fit to interfere with."

And compare: HCJ 1730/96 **Sabih v. Commander of IDF Forces in Judea and Samaria**, IsrSC 50(1) 353, 361.

25. Therefore the court is hereby requested to reject the petition.
26. As to the request for an Interim Order, since the petition is to be rejected on its merits, there is no place to grant the requested Interim Order.

Furthermore, the grant of an Interim Order may frustrate operational activity which may be carried out within the framework of the uncompromising struggle against terror, which is at its peak these days, and under such circumstances the grant of the requested Interim Order is undoubtedly inappropriate.

Today, 26 Av, 5762
August 4, 2002

(signed)

Shai Nitzan

In charge of security matters
at the State Attorney's Office