Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

At the Supreme Court

HCJFH 360/15

Before: **Honorable President M. Naor**

The Petitioners

1. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
2. **Bimkom – Planners for Planning Rights**
3. **B'Tselem – The Israeli Information Center for Human Rights**
4. **The Public Committee Against Torture in Israel**
5. **Yesh Din – Volunteers for Human Rights**
6. **Adalah – The legal Center for Arab Minority Rights in Israel**
7. **Physicians for Human Rights 8. Rabbis for Human Rights**
8. **Rabbis for Human Rights**

v.

The Respondent

Minister of Defense
Military Commander in the West Bank

Motion for further hearing in the judgment handed down by the Supreme Court in HCJ 8091/14, on December 31, 2014, delivered by Honorable Justices E. Rubinstein, E. Hayut, N. Solberg

Counsel for the Applicants Adv. Michael Sfard; Adv. Noa Amrami; Adv. Roni Peli

Counsel for the Respondents Adv. Aner Helman

Judgement

1. Before me is a motion for a further hearing in the judgment issued by this Court in HCJ 8091/41, dated December 31, 2014 (Justices E. Rubinstein, E. Hayut and N. Solberg). In the judgment, the panel unanimously dismissed the petition filed by the Applicants, eight human rights organizations, which challenged the legality of Respondents' powers under Regulation 119 of the Defense (Emergency) Regulations 1945 to seize the homes of individuals suspected of hostile activity against the State of Israel, demolish and seal them. The Court ruled that there was no room to "reconsider issues which have already been resolved by this Court, even if the grounds do not satisfy the Petitioners, in view of the fact that similar arguments were raised and rejected only a few months ago" (paragraph 16 of the opinion of Justice E. Rubinstein; see also paragraph 1 of the opinion of Justice E. Hayut). The Court, thus followed the path laid down in HCJ 4597/14

'Awawdeh v. Military Commander of the West Bank (July 1, 2014) (hereinafter: '**Awawdeh**) and in HCJ 5290/14 **Qawasmeh v. Military Commander of the West Bank** (August 11, 2014) (hereinafter: **Qawasmeh**); see also, recently, HCJ 5839/14 **Sidr v. IDF Commander of the West Bank** (October 15, 2015) (hereinafter: **Sidr**). This Court has repeatedly ruled, in numerous judgments in the past, that there is no conflict between the powers to demolish homes under Regulation 119 of the Defense Regulations and the provisions of international law (see HCJ 434/79 **Sahweil v. Commander of the Judea and Samaria Area** (IsrSC 34(1) 464, 466 (1979); HCJ 698/85 **Dajlas v. IDF Commander in the Judea and Samaria Area**, IsrSC 40(2) 42, 44 (1986); HCJ 897/86 **Jaber v. OC Central Command**, 41(2) 522, 525-526 (1987); HCJ 45/89 **Abu Daqah v. Minister of Defense**, IsrSC 44(3) 452, 454 (1990); HCJ 4112/90 **The Association for Civil Rights in Israel v. OC Southern Command**, IsrSC 44(4) 626, 636 (1990); HCJ 6026/94 **Nazal v. IDF Commander in the Judea and Samaria Area**, IsrSC 48(5) 338, 350 (1994)).

2. In their motion, the Applicants argued that "[T]he issue of whether the use of Regulation 119 is lawful (and ethical) is a very important and difficult question which justifies a further hearing by an expanded panel" (paragraph 8 of the motion). The Applicants further argued that since the arguments raised in the motion, that the use of this measure contradicts the norms of international law, including the prohibition on collective punishment (Article 50 of the Hague Regulations concerning the Laws and Customs of War on Land, 1907 (hereinafter: **the Hague Regulations**); Article 33 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: **the Fourth Geneva Convention**), and the prohibition on damaging the property of protected persons (Article 23(g) of the Hague Regulations and Article 53 of Fourth Geneva Convention) – were never directly resolved in the jurisprudence of this Court, "the ruling that is the subject of this motion is important and difficult to an extent justifying a further hearing by an expanded panel" (paragraph 8 of the motion). The Applicants, therefore, believe that it is precisely the fact that this Court has not ruled on the merits of these arguments that makes the ruling particularly difficult (paragraphs 22-33 of the motion). The third reason for holding a further hearing, according to the Applicants, rests on the "broad legal consensus" regarding their claim that the policy is unlawful, which is supported by an expert opinion that was submitted together with the motion (as well as with the petition that is the subject of this motion).

3. The Respondents maintain that the motion must be denied. They claim that no precedent was set in the judgment. All that the Court ruled was that previous consistent jurisprudence should be followed. Another reason for dismissal, according to the Respondents, is the improbability that previous rulings on Regulation 119 would be changed.

4. Having reviewed the material enclosed with Applicant's motion and the literature cited therein, I have reached the conclusion that the motion must be denied. In its judgment which is the subject of the motion herein, the Court found no reason to reconsider decisions made in previous judgments on house demolitions. In so doing, the Court took note of the fact that this policy was approved just a short time earlier in two judgments ('**Awawdeh** and **Qawasmeh**). The main argument put forward by the Applicants is that there is room for a further hearing given that their main arguments were not considered in depth in the judgment. However, a further hearing is not the appropriate venue for presenting such arguments. This particular proceeding is designed for discussing express, detailed rulings by the court rather than questions the Court did not address (see and compare: CFH 8184/13 **Dabah v. State of Israel**, paragraph 22 (May 8, 2014); CFH 1075/14 **Keren Hayesod United Israel Appeal v. Jewish National Fund via Israel Land Administration**, paragraph 15 (July 15, 2014); CFH 4439/10 **Haran v. Hekdesh Gavrielovitch (Deceased) Foundation**,

paragraph 9 (September 15, 2010) and many others). A further hearing is not meant for reconsidering matters that were not considered in the judgment.

5. Not as a side comment, I shall note that the petition which is the subject of the motion before me did not address a plan by the military commander to demolish a specific house under specific circumstances, but rather impugned the "policy" of house demolitions in general. The petition consequently did not rely on concrete facts. Though not in itself unacceptable, given that this Court does on occasion address general policies, this did set rather a high bar for the Applicants, particularly given that the vast literature on house demolitions did address, among other things, the concrete circumstances of each individual case, and analyzed the Court's jurisprudence accordingly (see, merely as an example: Yogev Tuval, *Home Demolitions: A Legitimate Counter-Terrorism Measure or Collective Punishment?* in **Exceptional Measures in the Struggle Against Terrorism: Administrative Detention, Home Demolitions, Deportation and "Assigned Residence"**, 189 (Hebrew version) (The Israel Democracy Institute, 2010); David Kretzmer, 145 (State University of New York Press, 2002); Dan Simon, *The Demolition of* **The Occupation of Justice: Supreme Court of Israel and the Occupied Territories** *Homes in the Israeli Occupied Territories*, **19 YALE J. INT'L L**. 1, 67 (1994); Yoram Dinstein, *The Israel Supreme Court and the Law of Belligerent Occupation: Demolitions and Sealing Off of Houses*, 29 **ISR. Y.B. HUM.** RTS. 285, 294 (1999); and especially considering the fact that in both judgments handed down just a few months prior, in petitions that did rely on concrete facts, the Court found no reason to depart from said policy. Without setting things in stone, it appears that this petition, at the time at which it was filed, was not the optimal vehicle for the Applicants' arguments, and it follows that the motion before me is not the right tool either, for all the reasons detailed above. I note: Three justices of this Court saw no room for revisiting matters that have been laid to rest, even if they did so briefly and even if they did not satisfy the Petitioners. This Court has done so, partly, as noted by Justice E. Hayut, as it is a court of law rather than a house of justices (see also **Sidr**, paragraph 6 of the opinion of Justice U. Vogelman). Now the Applicants seek that a panel of one hearing the motion for a further hearing order otherwise. I have found no room to do so.

6. Prior to concluding, I shall reiterate what my colleagues noted in the judgment that is the subject of this motion: There is no doubt that the issue of house demolitions does raise "difficult questions" and sometimes "moral dilemmas" (paragraph 16 of the opinion of Justice E. Rubinstein). Given the aforesaid, and given the grave harm done to the rights of persons who reside in a home that is demolished, it has been determined, in case law, that house demolitions should be limited (ibid), and used in cases in which the objective of deterrence is actually achieved and subject to the requirements of proportionality (ibid, paragraph 18 and references therein; see also paragraph 23). As noted by Justice E. Rubinstein in the judgment that is the subject of this motion, "looking to the future", the state has a *duty* to periodically re-examine the efficacy of the policy:

> The demolition of a house under Regulation 119 will satisfy the proportionality test, if, as a general rule, it is indeed effective and realizes the purpose of deterrence… the principle of proportionality does not allow us to forever presume that choosing the drastic option of a house demolition or even the sealing thereof always achieves the desired objective of deterrence, unless further information is provided to substantiate said presumption in a manner which can be examined... the use of a tool the ramifications of which on a person's property are so grave, justifies a constant examination of the question whether it bears the expected fruit; … State agencies should periodically examine this tool and the gains achieved by using it, including research and follow-up on the issue, and to bring

> to this Court in future, if so required, and to the extent possible, information which points to the effectiveness of house demolitions for deterrence purposes, to a degree that justifies the damage done to individuals who are neither suspects nor accused.
> (Ibid., paragraphs 24, 27; see also paragraph 6 of the opinion of Justice Hayut).

These remarks constitute another "careful" step taken by this Court in the judgment which is the subject of the motion herein. Indeed, use of house demolitions is meant to serve its purpose, in cases in which the benefit it provides outweighs the harm it causes. Thus, it is always necessary to examine whether house demolitions – *both generally and in the circumstances of each individual case* – are proportionate. My decision herein is handed down simultaneously with the publication of a judgment in concrete, rather than theoretical, petitions (HCJ 7040/17, HCJ 7076/15, HCJ 7077/15, HCJ 7079/15, HCJ 7081/15, HCJ 7082/15, HCJ 7084/15, HCJ 7085/15, HCJ 7087/15, HCJ 7092/15, HCJ 7080/15 **Hamad v. Military Commander of the West Bank** (November 12, 2015), wherein the efficacy of deterrence was expressed in different concrete ways in the specific cases.

7. In conclusion, as aforesaid, there is no cause to hold a further hearing in an issue that was not considered in the judgment that is the subject of the motion. The motion is denied. No costs order is issued.

Handed down today, 30 Cheshvan, November 12, 2015.

President