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

**HCJ 9353/08**

Before: Honorable Justice A. Grunis
Honorable Justice M. Naor
Honorable Justice E. Rubinstein

**The Petitioners:** 1. **_____ Abu Dheim**
2. **HaMoked: Center for Defence of the Individual founded by Dr. Lotte Salzberger**

- Versus -

**The Respondents :** **GOC Home Front Command**

A petition for *Order Nisi*.

Session date: **20 Kislev 5769 (17 December 2008)**

Representing the petitioners: **Adv. Andre Rosenthal**

Representing the respondent: **Adv. Anar Helman**

## Judgment

**Justice M. Naor:**

1. The matter of this petition – the decision of the respondent, GOC Home Front Command - by virtue of his power pursuant to Regulation 119 of the Defence Regulations (Emergency), 1945 (hereinafter: the "**Defence Regulations**") to order the confiscation and demolition of two out of the four floors of the house whereby resided a terrorist who performed a deadly terror attack in the Mercaz HaRav Yeshiva in Jerusalem (hereinafter: the "**Yeshiva**").

2. On 6 March 2008, at the evening hours, the terrorist broke into the Yeshiva, shot at the Yeshiva students with a Kalashnikov rifle, murdered eight of the Yeshiva students, including minors, and wounded others. The terrorist himself was shot and killed during the terror attack by an IDF officer who resides nearby. The terrorist was a resident of Jerusalem with a license for permanent

residence in Israel, and resided with his extended family in Jabal al Mukabber neighborhood. The house belongs to the petitioner, who is the terrorist's father, and other brothers and sisters of the terrorist reside therein, some of them are married. After the terror attack, a mourners' tent was placed in the terrorist's house and flags of Hammas and Hizbullah were waved at the place, something which testifies, in the opinion of the security forces, on the family's state of mind and their desire to identify with the terrorist. According to information in the hands of the police and the General Security Service, the terrorist and his family are identified with the Hammas movement in Jabal al Mukabber. After the terror attack, posters with photograph of the terrorist, who was named as a "Shahid" who performed an "act of bravery", were scattered near the terrorist's house and in other areas in Jerusalem. The security forces also have much information on a "pilgrimage" to the terrorist's house, by locals associated with hostile terrorist activity, to express identification with the act. The petitioner declares that he was not aware of his son's intentions, and further declared that had he known of his intentions – he would have done whatever in his power to stop him. From the respondent's response it transpires that the security forces do not have information according to which the terrorist's family members were aware of the planning of the terror attack.

3. The respondent has decided, on behalf of the IDF Chief of Staff and the Minister of Defence, to exercise his power pursuant to Regulation 119 of the Defence Regulations towards the house whereby the terrorist resided. Here it would be indicated, and this issue constituted one of the central issues in the petition before us, that since the beginning of 2005 the power pursuant to Regulation 119 of the Defence Regulations was not exercised, not within the territories of the State of Israel, or within the territories of Judea and Samaria. As shall be further specified, the State announced the change of policy in this matter, at the time, to this Court in the framework of several pending petitions. Nevertheless, those announcements clarified that if the policy were to change again and a decision be made to demolish houses – an appropriate notice would be given in order to enable the filing of a petition. Since the power pursuant to Regulation 119 was not exercised for several years, the issue was reviewed after the terror attack on the Yeshiva, and before the respondent gave his decision, the Attorney General expressed his opinion on the matter. According to the opinion of the Attorney General although during several years the defence system refrained from demolishing houses, there is no legal impediment to order the taking of measures pursuant to Regulation 119 also nowadays, should such action be decisively necessary in the competent authority's opinion for security reasons. Use of power, thus instructed the Attorney General, is subject to the principles and to the fulfillment of the customary procedure.

4. On 6 August 2008, the respondent notified the council of the petitioner's family that he is considering to order the confiscation and demolition of the building whereby the terrorist resided, and that due to proportionateness grounds he is considering to make do with the confiscation and demolition of the house's basement and ground floor, because in parts of the house reside nuclear families other than the terrorist's. The respondent enabled the family

members to present their reservations and arguments. The petitioners' council, Adv. Rosenthal, indeed wrote down his reservations and raised arguments similar to the arguments raised in the petition before us. The respondent rejected the reservation with a reasoned decision, and published on 25 August 2008 a confiscation and demolition order with respect to the two floors. It would be hereby clarified that it concerns sealing with concrete, which is the same as demolishing the sealed area. The petitioner was given an option to approach this court with a petition. The petitioner has first filed a previous petition in which he requested to be given a copy of the report on the findings of Major General Shani who investigated in 2005 the execution of Regulation 119. He also petitioned to be given copies of the engineering plans that enable, according to the respondent, to seal the house's lower floors. He also requested copies of the evidence that relate, allegedly, the petitioner's son with an illegal organization. When he was granted what he sought, the petitioner's council withdrew the previous petition and filed the current petition. The respondent agreed for issuing an interim order in the framework of the petitions. On 17 December 2008 we performed a verbal hearing on the petition, and after hearing the parties' arguments we reached the conclusion that the petitions should be dismissed with prejudice. Nor do we deem to order the broadening of the panel as requested by the petitioners' council.

5. The petition's central axis revolves around the discontinuation of the use of Regulation 119 since the beginning of 2005. Before we refer to this matter, we shall briefly review the principles that were set in the past in this court's case law with respect to demolitions of houses by virtue of the power in that regulation. We shall focus on the case law concerning the residents of Israel. The case law ruled that the validity of the Defence Regulations in emergency is maintained even if they do not accord with the provisions of the Basic Law: Human Dignity and Liberty. Nevertheless, the power in the aforesaid regulations should be interpreted in the spirit of the provisions of the basic law. Therefore, before the holder of power executes the power embedded to him in Regulation 119 of the Defence Regulations, he should be relying on a worthy purpose. In setting the deterrent measure, the authority is required to act according to a test of proportionality: the measure being taken should rationally lead to the achievement of the worthy purpose; the measure being taken should violate the protected human right – the right to property – to the least possible degree for achieving the purpose; only if the purpose cannot be achieved by a less drastic measure, then it is justified to take the severe measure of demolition; the measure being taken should be appropriately proportional with the worthy purpose (according to Chief Justice Barak in AHHCJ 2161/96 **Sharif v. GOC Home Front Command**, *Piskei Din* 50(4) 485 (1996) and the authorities there). This court's case law has rejected in the past the claim according to which Regulation 119 cannot be used against the State's residents (HCJ 8084/02 **Abbasi v. GOC Home Front Command**, *Piskei Din* 57(2) 55 (2003)).

6. The case law discussed the claim that arose also in the petition in before us, according to which it is not appropriate, nor moral that the terrorists' family members, who did not help him nor were aware of his plans, shall bear his sin. This claim had also risen in the past and was rejected. Justice Turkel wrote in

this matter in HCJ 6288/03 **Sa'ada v. GOC Home Front Command**, *Piskei Din* 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 nor were 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**, *Piskei Din* 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 compel 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 claimed before us that the terrorist's family members are not related to the terror attack and that the father even opposes such acts. For this matter it is sufficient to refer to the ruling in HCJ 2418/97 **Abu-Farah v. IDF Commander in Judea and Samaria Area**, *Piskei Din* 51(1) 226 (1997) and to HCJ 6996/02 **Za'arub v. IDF Commander in the Gaza Strip**, 56(6) 407 (2002) in which it was ruled that deterrence considerations sometimes oblige the deterrence of potential performers who must understand that their actions might harm also the well-being of those related to them, and this is also when there is no evidence that the family members were aware of the terrorist's doings. An additional claim was claimed in this context according to which there is no room to use such power with respect to terrorists who are willing to die during a terror attack. Also in this matter it was ruled in the past that there is no room for interfering in the security forces' evaluation in such things (see: HCJ 6026/94 **Nazal v. IDF Commander of Judea and Samaria Area** (not yet published, 17 November 1994) (hereinafter: the **Nazal** Case)).

8. In the case law that preceded the change of policy in 2005 the question of the effectiveness of demolition or sealing of an house whereby the terrorist resides was discussed more than once, for this matter it was ruled that this a matter for the security forces to evaluate, and that the court has no ground to doubt the security forces' evaluation that this measure is effective (see the above **Sa'ada** Case, in pages 292-293). The case law cited, several times, the judgment of Justice E. Goldberg in the **Janimat** Case, according to which a scientific study which could prove how many terror attacks had been prevented and how many lives had been saved as a result of the deterrence created by house sealings and demolitions has never been conducted, nor could it be, but the impossibility of

disproving the view that a certain deterrence exists, is sufficient in order not to intervene with the discretion of the military commander (HCJ 2006/97 **Janimat v. GOC Central Command**, *Piskei Din* 51(2) 651, 655 (1997), for the matter of Regulation 119 as a deterrence measure, see also: HCJ 798/89 **Shukri v. The Minster of Defence** (not yet published, 10 January 1990); HCJ 8262/03 **Abu Salim v. IDF Commander in the West Bank**, *Piskei Din* 57(6) 569 (2003); HCJ 8575/03 **Azadin v. IDF. Commander in the West Bank**, *Piskei Din* 58(1) 210 (2003); the above **Nazal** Case, in paragraph 11; HCJ 10467/03 **Sharbati v. GOC Home Front Command**, *Piskei Din* 58(1) 810 (2003) etc.). During many years the court acknowledged that the use of the aforesaid regulation is intended to deter, to deter and not to punish or revenge. The court even abstained in the past from refuting the security forces' evaluation in the matter of the effectiveness of the deterrence.

9. And here we arrive the petitioners' principal claim: the petitioners turn, as aforesaid, the attention to the fact that in 2005 the respondent's policy has changed following discussions that took place in HCJ 7733/04 **Nasser v. IDF Commander in the West Bank** (not yet published, 20 June 2005) (the "**Nasser Case**"). According to the petitioners, the change of policy was in the respondent's decision to reconsider his intention to use Regulation 119. The petitioners' attorney indicates that in the framework of the discussion of the mentioned petition, an hearing took place in 13 December 2004 before Justice Barak, Justice M. Heshin and Justice Hayot. At the end of the hearing the continuation was postponed for 90 days. As arises from the decision – the purpose of the postponement was to enable the parties to consider an offer according to which one room on the second floor will be demolished or sealed. After the hearing on the petition, a think tank headed by Major General Shani was set up. In the presentation prepared by the think tank that the petitioner's attorney received in the framework of the former petition, it was stated that the act of demolition is no longer legitimate and that it is "on the verge of the law although everything is legal in the test of international law, in the test of international community, in the test of democracy, in the test of self image and in the test of quantity". In conclusion the presentation indicated "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 ceased although there were deadly terror attacks since then. The petitioners claim before us that the findings of the think tank are valid also today, three years after cessation of the use of Regulation 119 and that there is no justification to change the policy and reuse the aforesaid regulation. It seems that this claim with respect to returning to the former policy that was used before 2005 is the only claim in the petition before us that there is no ruling in this court's case law with respect thereto.

10. The respondent's respond indicated for this matter that it transpires from the presentation of the think tank headed by Major General Shani itself that the think tank indicated that executing the power was proved, in the opinion of all security forces, as an additional factor in deterrence of terrorists. They are also referring to the fact that in the ways of actions recommended by the think tank

it is indeed recommended that in general there shall be a reduction in damaging houses or demolishing them, up to cessation, *but while retaining the option to use it in extreme conditions*. 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 a 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 notified the decision to suspend the use of the power pursuant to the aforesaid regulation, in the framework of various petitions that were pending before this court, but it was well clarified that it is not a nonreversible decision, and that there exists an option in appropriate circumstances to use the aforesaid regulation also 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 the *Nasser* Case that was mentioned by the petitioners' attorney it was explicitly indicated that if a change of policy would be decided upon (namely upon reusing the aforesaid power), then the petitioner would have an option for an hearing (and see also: HCJ 4969/04 **Adalah v. GOC of Southern Command** (not yet published, 13 July 2005); HCJ 295/04 **Sa'ad v. IDF Commander** (not yet published, 7 April 2005); HCJ 294/04 **Hajazi v. IDF Commander in the West Bank** (not yet published, 4 May 2005) in all of them similar notices were given). In view of the State's notices, the court refused to have a hearing on the mentioned petitions that have become theoretical.

Thus, the option of changing the policy again existed even at the time when the various petitions were dismissed without prejudice. Furthermore, the respondent claims that *prima facie* it is clear that in our matter this is a severely extreme case, which also 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, it would be possible to consider with respect thereto to use the power pursuant to Regulation 119. Therefore, claims the respondent, this is sufficient for rejecting the petitioners' claim with respect to the change of policy. Nevertheless, the respondent clarifies that he intends to activate his power pursuant to Regulation 119 also towards houses whereby resided *other* terrorists residents of East Jerusalem, and that in view of the change of circumstances since the decision was made in 2005, there is no prevention to change the policy again and 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, 20 May 2008). The respondent specifies that according to data produced by the General Security Service, since 2007 there is a wave of terror in which residents from East Jerusalem are involved. The wave of terror strengthened in 2008. In contrast with the past, a principal characteristic of the current wave of terror, besides its extent, 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 also some additional terror attacks planned to be performed by residents from East Jerusalem were thwarted. The respondent added to his response a review of

the General Security Service with respect to involvement of residents of East Jerusalem in terror act. This review is updated for 22 September 2008. From this review it transpires that in 2008, 104 residents of East Jerusalem were arrested due to involvement in terror attacks, while during the whole period from 2001 until 2007, 374 people were arrested. It is, therefore, a steep increase in the number of terrorists from East Jerusalem. This review mentions prominent terror attacks in 2008 including the car ramming terror attack in Tzahal Square during which 18 Israeli civilians were injured; the ramming with a tractor terror attack in Mapu Street during which an Israeli civilian was severely wounded and 22 were lightly wounded; a shooting terror attack in the Old City during which one policeman was killed and another policeman was wounded; a ramming with a tractor terror attack in Jaffa Street during which 3 Israelis were killed and 42 were wounded; a stubbing terror attack in the Old City, near Nablus Gate during 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 of course - the terror attack in Mercaz HaRav Yeshiva that was performed by the petitioner's son. The General Security Service also indicates in its review that for the sake of confrontation with the new threat, there is a need to strengthen the deterrence measures, including demolitions of terrorists' houses and intensifying the sanctions against the terrorists' families, strengthening the Israeli security presence in East Jerusalem, exercising the full rigor of the law with those committing criminal felonies of trade and possession of means of warfare and pressing charges against whomever intends to perform a terror attack. The respondent notified in his response that he intends 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 in the respondent's change of policy. The new-old policy relies upon the aforesaid opinion of the General Security Service, and it is shared by the IDF Chief of Staff and the Minister of Defence. Indeed an authority can change a policy and surely it may change it with change in 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 exists a change of circumstances. As was ruled in the past in this court case law, this court is not inclined to intervene in the security forces' evaluation concerning the effectiveness of using the measure of demolishing houses or sealing them as a factor that deter others. The same is also when a few years ago there was a change of policy following the recommendations of the think tank headed by Major General Shani. As we mentioned above, the case law ruled more than once, that a scientific study that can prove how many terror attacks have been prevented and how many lives have been saved as a result of taking the aforesaid measure could never be conducted. For this matter nothing has changed. Indeed, the reality has changed and also the severeness of the events has changed. The conclusions to be drawn from that are a clear matter for the security forces to evaluate.

12. The petitioners also raised "engineering" claims based on the opinion of a specialist on their behalf, according to which sealing the building as proposed by the respondent's engineers, namely sealing with concrete which is the same

as demolition, adds weight to the existing building and jeopardizes the stability thereof. The respondent clarifies for this matter that the apartments intended for demolitions are apartments in the basement which are intended for rent and are empty today, and two apartments in the first floor that functioned as the terrorist's residences *de facto*. The respondent presented an engineering opinion on its behalf, the opinion specifies the ways to execute the sealing of the aforesaid two floors with the supervision of an authorized engineer, while following up on the development in the building's condition. The specialist on behalf of the respondent studied the opinion on behalf of the petitioners and submitted the respondent a response to the aforesaid opinion. Also after reviewing the opinion, the specialist on behalf of the respondent repeated his position according to which it is a solid and strong building and that there is no fear for executing the sealing work. We accept the respondent's claim according to which he is entitled to rely on the opinion of a specialist on his behalf. Otherwise, you in fact put veto on houses' demolitions or sealing on account of private opinions.

13. The petitioners requested that the petition be heard by an extended panel. We did not see room to order that. The only "innovation" in the petition before us versus previous petitions is by the respondent changing the policy that prevailed since 2005, this does not constitute a ground for broadening the panel. There is no innovation in the fact that it is allowed to change policy. The respondent has never admitted the petitioners' claim that the use of Regulation 119 is illegal, and has never undertaken in the framework of previous petitions not to repeat and change his policy. On the contrary: in those petitions in which the change of policy was announced, it was declared that the respondent may in the future rechange its policy. Thus was done in the case before us.

14. In conclusion: the petition is dismissed with prejudice. No order for costs.

Justice

**Justice A. Grunis:**

I agree.

Justice

**Justice E. Rubinstein:**

A. I concur with the opinion of my colleague Justice Naor. As transpires also from her ruling, 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. Namely, is houses' demolition or sealing to deter potential terrorists. And as

my colleague mentioned, following the case law, "the incapability to disprove the view that a certain deterrence exists, is sufficient in order not to intervene with the discretion of the military commander".

B. Indeed, any intelligent person understands that the use of that measure should be in extreme cases only. From this point of view, the position of the military think tank headed by Major General Shani reflects the common sense, in the conclusion that the one looking at the whole picture can reach it from the beginning, also from rational inference; namely, that the measure is severe and the use thereof should be limited – but the option to use it in extreme case is retained. But this must be remembered. The think tank's conclusions derive from its evaluation concerning the *circumstances* of the question of efficiency with a forward-looking perspective, and versus the question of cost. This side of the equation – the was said by the security forces – was changed with change in circumstances, in a way that justifies changing the think tank's balance formula. When the change of balance point was reasoned – we do not have room to intervene.

C. My colleague narrowed – rightfully so, with all due respect – the legal issue in question to the change in the respondent's policy, but as she mentioned the possibility for resuming the same in extreme cases was left open already in the decision to suspend the use of this measure in 2005. And here, the combination of the increase in the terror attacks in which resident of East Jerusalem are involved, as was documented by my colleague, and the need to deter from such and such "innovations" in the field of terror, which does not cease from evil inventions, caused the renewal of the policy at the time. If we won, there would have been no need in demolitions and sealings, not in change of policy, nor in the procedure before us. Since we did not win, and the respondent is forced to look for ways to deter indiscriminate killing by terrorists, there is no room for our intervention.

D. And finally, my colleague quoted Justice Turkel's judgment in HCJ 6288/04 6288/03 **Sa'ada v. GOC Home Front Command***, Piskei Din* 58(2) 289, 294 in which the verse from *Deuteronomy* was quoted "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" (24, 16). There was mentioned the judgment of Justice M. Heshin (his former title) in HCJ 2722/92 **Alamarin v. IDF Commander in the Gaza Strip***, Piskei Din* 46(3) 693, 705-706 that mentioned the passage from *Kings II* (14, 5-6) that repeats this idea, and see also the words of the prophet *Jeremiah* (31, 28-29): "In those days they shall no longer say, the fathers have eaten sour grapes, and the children's teeth are set on edge. But everyone shall die for his own sin; whoever eats sour grapes his own teeth shall be set on edge". To that I shall add the words of the prophet *Ezekiel* (33, 20) "house of Israel, I will judge each of you according to his ways". The Bible and the Sages settled the account with King Saul with respect to harming innocents, with the appellation "Bloodguilt House" (see *Samuel II*, 21, 1 and Babylonian *Yevamot* 78 2). The effectiveness of aforesaid principle, which its origin delt with *killing* fathers for the sin of their children and children for the sin of their fathers, was also expanded on another sanction, and there is no need to

elaborate. However, as was indicated by Justice Turkel in the **Sa'ada** Case "the prospect that a house's demolition or sealing shall prevent future bloodshed compel 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".

E. Indeed, on the one hand the State claimed that the terrorist and his family are identified with the Hammas movement in Jebel Muchbar, and that after the terror attack posters that defined him as a "Shahid" were scattered nearby, and that locals associated with hostile terrorist activity "make a pilgrimage", as was said, to the family's house to identify with them. Oppositely, it was said that the petitioner claims that he was not aware of his son's intentions, and should he knew he would have take moves to stop him; and there is no information according to which the terrorists' family members were aware of the planning of the terror attack. My colleague referred (paragraph 7) to case law in similar cases in the past. I shall add that with respect to the verse "Take off the soiled garments from him" (*Zecharia*, 3, 4) referring to Joshua, the Great Priest, that wore soiled garments, unclean, the Babylonian Talmud says that the intention is not to such real garments, but that "his sons married women who were unbecoming to the Kehunah, *and he did not protest*" (*Sanhedrin* 93, 1, emphasis was added – E.R.). I will add that versus the mentioned verses, and the moral principle derived therefrom, it was also said "I the LORD your God am a jealous God, *visiting the sin of the fathers on the children to the third and the fourth generation*" (*Exodus* 20, 4) – and our Sages of Blessed Memory have already noticed the rebutment and explained it: "this is (the verse from Exodus) – when they hold fast to their fathers' ways, this is (the verse from Deuteronomy) – when they do not hold fast their fathers' ways" (*Babylonian*, *Berakhot* 7, 1). Namely, when children support their fathers, and fathers support their children – their sin is sometimes visited upon the other, and should we like, it becomes a joint sin, factually and judicially. It is possible that in this case indeed the terrorist's father would have protested against his son if he knew of the planning of the terror attack, although question marks remain, due to the information brought about the atmosphere whereby the terrorist lived. However, in a forward-looking perspective, it is appropriate that families shall pay attention to the atmosphere in which their children grow up, in order to prevent them from reaching terror and death and all kinds of afflictions.

F. In the periphery of things: the petitioner's attorney has mentioned that it is a "terror attack in Mercaz HaRav which is a fort of the Right", while setting this up against the deprivation of East Jerusalem, in his opinion. I find it necessary, as a continuance to things said by the State's attorney and by us in the courtroom, to indicate that this kind of terror, injuring innocent people without distinction, is wrong is wrong is wrong whatever its purpose is, and it is a pity that someone implies that one blood is different than the other. I hope that this was not the intention.

G. At the end of the day, before us is a hope for deterrence for saving human lives versus injury, although painful, in property. Even with proportionateness criteria there is no room, as my colleague wrote, for our intervention.

Justice

Was decided, as aforesaid, in the judgment of Justice M. Naor.

Issued today, 9 Tevet 5769 (5 January 2009).

Justice Justice Justice