At the Supreme Court in Jerusalem **HCJ 3447/03**
Sitting as the High Court of Justice

In the matter of:

1. Rimawi
Beit Rima
2. Rimawi
Beit Rima
3. HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (Reg. Assoc.)

represented by attorneys L. Tsemel and/or F. Abu Ahmed and/or L. Habib
of 2 Abu Obeidah Street, Jerusalem
Tel. 02-6273373; Fax 02-6280327

The Petitioners

v.

Commander of the IDF Forces in the West Bank

Judea and Samaria Division Headquarters, M.P. 01149,
IDF
Tel. 02-9970200; Fax 02-9970436

The Respondent

Petition for Order Nisi and Temporary Injunction

A petition is hereby filed for an Order Nisi, directed at the Respondent and ordering him to give cause why he will not refrain from demolishing, or otherwise damaging, the Petitioners' house, and alternatively:

1. Why he will not present the Petitioners with a duly signed order, detailing the reasons therefor, before damaging the house.

2. Why he will not enable the Petitioners to voice their objection to him against damaging the house, before the house is damaged.

3. Why he will not grant the Petitioners, if he rejects their objection, another fixed period of time to approach this Honorable Court, before damaging the house.

Petition for a Temporary Injunction

The Honorable Court is further moved to instruct the Respondent, in an Temporary Injunction, not to cause irreversible damage to Petitioners 1and 2's house, including the demolition thereof, until the hearing of this petition is concluded.

The Reasons for the Petition for an Temporary Injunction

This petition concerns the Respondent's feared intention of damaging the house of Petitioners 1 and 2 (hereinafter: the house).

As specified below, the last visit paid by IDF soldiers to the Petitioners' house was in the night between 8 and 9 April 2003. Following is a description of the violent manner in which they came to the house, over and over again, while announcing their wish to demolish it and taking measurements. They handed over to the family no order, nor gave it any explicit notice of the existence of any order.

It should be noted that since the Intifada broke out, dozens of houses have been demolished in the occupied territories, more, even, than 200 houses, but no more than *5 notices have been written on an intention to act pursuant to Regulation 119 of the Emergency Regulations, and no more than 5 such orders have been issued*.

In other words, the rule is that houses are demolished without any prior warning, while denying the right for a hearing, and disregarding unequivocal decisions of the High Court of Justice.

Demolishing or sealing a house is an irreversible and highly injurious measure. Hence the necessity for the Temporary Injunction, to prevent the Respondent from taking this step until the Petitioners' claims are heard.

The grounds for the petition are as follows:

Introduction

1. This petition concerns the fate of a 3-story residential building, and of two neighboring buildings, in the village of Beit Rima in the West Bank. *As described below, there are various apartments in the building, which are inhabited by many people.*

2. The Petitioners have reasonable cause to assume that the Respondent wishes to damage the house pursuant to the authority vested in him in Regulation 119 of the Defense (Emergency) Regulations, after army forces arrived at the house on 25 January 2003, and took photos thereof and measurements therein. **This time too, as**

in the previous times, they announced that there was an intention of demolishing the entire house.

3. To the best of the Petitioners' understanding, there is no operational military need to demolish the house – its location is not strategic, and it neither served nor serves as a focus of collisions between Israel's security forces and armed Palestinians. The Petitioners assume that the demolition of the house is meant as a deterring sanction, as Israel is claiming that a member of the family committed a terrorist act, in which he was killed. Needless to say, the Respondent's precise intentions, as well as his reasons, are unclear.

4. The Respondent's authority to exercise a sanction of confiscating, sealing or demolishing a house is found in the Defense (Emergency) Regulations, 1945. Extensive case law by this Honorable Court has defined the framework for the Respondent's discretion when exercising his authority, the proper proceeding for exercising the authority and the scope of judicial review. The Petitioners shall claim that in the case before us, the Respondent is acting in deviation from these precedents. In a hasty and stealthy act, without hearing the relevant persons, and without basing his decision on all of the facts, the Respondent might order a severe and grave act, which would leave many persons without shelter.

The Parties

5. Petitioner 1 is an elderly woman with many offspring. She was widowed in 1995. She is the mother of _____ *Rimawi*, who is probably the person on the wanted list due to whom the security forces have targeted her house.

6. Petitioner 2, Petitioner 1's son, 21 years old and single, lives in the same apartment with his mother and is the affiant in this Petition.

7. Petitioner 3 is a registered association, which has engaged for many years in the protection of human rights in the territories occupied by the IDF in the West Bank and in the Gaza Strip.

8. The Respondent, the IDF Commander in the West Bank, holds the territories in which the house is located under belligerent occupation, and bears the duties and rights conferred upon him in this capacity by international law. The Respondent is also a "military commander" pursuant to the Defense (Emergency) Regulations, 1945. In this capacity, he has the authority to issue confiscation, sealing and demolition orders pursuant to Regulation 119 of the said Regulations.

The Facts

9. In the night between 8 and 9 April 2003, army forces arrived at the Petitioners' house. They had visited the house many times in the past, had already taken measurements and photographs of the house, and had even compelled its inhabitants to remove all of their belongings outside, including armchairs, sofas and other such furniture. In the past, they had already broken, in one of their sorties, the main door to the house, kitchen utensils, a boiler, a solar water heater, had emptied the contents of cupboards, etc. This time, a truck carrying many soldiers arrived, accompanied by a Jeep. The soldiers entered the house at midnight, noisily and violently, woke up the children of the various families, demanded to see the IDs of the persons present, and concentrated everyone in one apartment, while treating the rest of the house *as their own*. They started taking measurements around the house, without explaining their actions, *wrote down numbers on the entrances to the house*, and inquired what the house and its parts were made of. They left the house at 1:30 a.m., and close to 4:30 returned in the same manner, awaking everyone who had managed to fall asleep, took IDs, took new measurements in the house, etc. They carried a copy of the wanted brother's I.D.

At around 11:00 on the morning of 9 April 2003, IDF forces arrived at the house for the third time. Again, they took everyone out of the house, searched it again and started asking questions. They asked for the plans of the house and for its building license.

It should be noted that in the past, in late 2002, security forces arrested the brothers of the person deemed to be on the wanted list several times, transported them to the village Nabi Salih, approximately 13 km away from their village, beat them, and forced them to walk home on foot.

Throughout all of these traumatic events, the family was given no oral or written notice on the meaning of the frequent visits and on the cause for the security forces' behavior.

The house

10. The building has 3 floors, designed for two apartments on each floor. On the first floor, each separate apartment belongs to each of Petitioner 1's sons, _____, married adults with large families.

The Petitioners, together with another son and daughter, reside on the second floor. The person deemed to be on the wanted list, _____, whom the family has not seen for approximately two years, also resided in this apartment.

On the third floor there is, in the meantime, one apartment, which belongs to a married brother with a family, by the name of _____.

The adjacent house which is located approximately two meters away from the first house has two floors and in it reside adult family members, married with families of their own, each with his own apartment for the needs of his family.

Another *close house* belongs to neighbors, and is located approximately 2 meters away from the first house.

11. **Exhaustion of Remedies**

On 9 April 2003, family members of Petitioners 1 and 2 called Petitioner 3 and asked to appoint [an attorney] to protect their home. The undersigned immediately turned to the Office of the Legal Advisor for the Judea and Samaria Region, seeking to find out the meaning of the frequent harassments at the house which is the subject of the Petition. He had no clear answer, nor could he commit that there was no intention of damaging the house. The Assistant to the Legal Advisor, Mr. Timor Passo, kindly agreed to commit that nothing would be done to the house until the end of 10 April 2003, which is why this Petition is filed at this time. A faxed letter confirming this agreement was sent to the Assistant to the Legal Advisor.

The Legal Argumentation

The right to be heard

12. The right to be heard is one of the fundamental rules of natural justice. "Its origin and foundation are rooted in Jewish heritage from time immemorial, and the sages of Israel regarded it as the most ancient fundamental right in human culture" (the opinion of the Deputy Chief Justice M. Elon in HCJ 4112/90 *The Association for Civil Rights in Israel v. GOC Southern Command, Piskei Din* 44(4) 626, 637). It is well established in Israeli law that a person's property (as well as his status, reputation, etc.) may not be prejudiced without giving him the right to voice his claims. In its full scope, the right to be heard includes a notice to the effect that the authority is contemplating a decision that would prejudice such person; a specification of the authority's reasons and considerations; a presentation of the evidence underlying the authority's intention; and the granting of an opportunity to

the injured person or his attorney to raise arguments in writing or orally, including presenting evidence and examining witnesses on their behalf.

13. The objective of a hearing is twofold: First, it is a primary principle of procedural fairness. A person's right to voice his claims before he is injured, even when he appears to be unable to shake the authority's considerations, derives from the recognition of his human dignity. Second, the hearing contributes to the quality of the administrative authority's decision. Through the hearing, the relevant person can refer the authority's attention to considerations and facts which it did not previously have before it. He may shed new light on the facts. The hearing is an important dam against unfounded or erroneous decisions.

14. In HCJ 358/88 *The Association for Civil Rights in Israel v. the Central District Commander* (hereinafter: the *Association for Civil Rights* judgment), this Honorable Court was required to apply the hearing to the Respondent's authorities pursuant to Regulation 119 of the Defense (Emergency) Regulations, 1945. The Court ruled that:

> **… except for matters involving military-operational needs … it would be appropriate that an order issued under Regulation 119 should include a notice to the effect that the person to whom the order is directed may select a lawyer and address the Military Commander before implementation of the order, within a fixed time period set forth therein, and that, if he so desires, he will be given additional time after that, also fixed, to apply to this Court before the order will be implemented.**
>
> **Of course, the State may apply to this Court, in an appropriate case, and request that the hearing in a petition of this type be granted a right of preference.**
>
> **In urgent situations, the premises can be sealed on the spot, as distinguished from demolition, which is, as stated, irreversible, before the appeal or hearing of the Petition takes place. In the case of an on-the-spot sealing, as stated, notice is to be given to the affected party, clarifying that the right of objection or submitting a petition remains available.**

Thus the Court determined the balance between the security interest in the swift and deterring execution of orders pursuant to Regulation 119, and the necessity of holding

a hearing in a case of what was described there as a harsh and severe means of punishment, one of the central characteristics of which is that it is irreversible.

15. Needless to note, this precedent has been implemented in practice by the Respondent in the exercise of his authority for 12 years, and also in severe states of emergency such as the period of the attacks of Spring 1996, the Respondent made sure to give the injured parties sufficient time to arrange for representation and to deliver objections, and thereafter to approach this Honorable Court. This procedure was once again cemented in this Honorable Court's judgment of 19 March 2002, in HCJ 2264/02 (and in another five petitions) *Mativ et al. v. Commander of the IDF forces in the Gaza Strip* (not yet published). That case concerned the demolition of houses in the Gaza Strip. At least one of the petitions (HCJ 2329/02) was a general petition, which did not concern the demolition of a particular house, but the general procedure for demolishing houses throughout the Gaza Strip. The State declared that

> **If a decision should be made to demolish a house, other than due to operational reasons, an advance notice, with reasons, will be given about the demolition, so as to enable the owners of such house to challenge the demolition decision before the Military Commander; and if the objection is dismissed, no action will be taken to demolish the house for 48 hours after the dismissal of the objection, so as to enable the owners of the house to file a petition with the High Court of Justice.**

This declaration was the ground for the withdrawal of the said petitions.

16. Indeed, the right to be heard is not an absolute right, and there are urgent circumstances in which granting the right to a hearing is not realistic. Prof. Yitzhak Zamir, in his book *Administrative Authority* (Jerusalem: Nevo, 1996, p. 806), cites as examples for such situations firefighters, who deem it necessary to break into a house in which a fire is raging, or into an adjacent house, or security forces who demand that a public hall be evacuated due to the fear that a bomb had been placed in it. The judgment in the *Association for Civil Rights* affair also qualifies the hearing duty when "there are military-operational circumstances, in which the conditions of time and place or the nature of the circumstances are inconsistent with judicial review; for example, when a military unit is engaged in an operational action, in which it must clear away an obstacle or overcome resistance or respond on the spot to an attack on army forces or on civilians which occurred at the time, or similar circumstances..."

This exception was applied in HCJ 4112/90 *The Association for Civil Rights in Israel v. GOC Southern Command*, *Piskei Din* 44(4) 626). That case concerned the demolition of houses not for reasons of deterrence, but in order to enable military control of a street that was the scene of violent acts against civilians and soldiers, which culminated in a brutal murder. The urgent need for action to protect the lives of passersby prevailed, in that case, over the duty of properly complying with the right to be heard, particularly considering the fact that a certain right to be heard was granted to the local residents, including the possibility of raising their claims before representatives of the army and the legal advisors of the Military Commander who were present on the scene.

17. In our case, neither is the exception in the judgment in the *Association for Civil Rights* affair applicable, nor are the circumstances of HCJ 4112/90 present. The demolition of the house is aimed at effecting general deterrence. It was not designed to meet an urgent military-operational need, or prevent the use of a house which would pose an immediate danger to the lives of passersby. The urgency is no different than that which existed in demolitions of houses such as those discussed in the *Association for Civil Rights* affair, or that were performed over the last 12 years in accordance with the procedure determined therein.

18. The Respondent cannot draw support from HCJ 6696/02. This is, in no way, a case of operational action or of a military act of war. There is no obstacle to giving notice and warning.

19. **Moreover, nowadays, when the IDF is the only effective authority and exerts full control over the area, no claim will be heard to the effect that a one-time entry to the area could cause damage if it is known in advance. Nor will the claim, that has already been raised, that if the demolition will be expected, there is a fear that the houses will be booby-trapped, be heard. Nowadays, it is no secret that the Respondent damages all saboteurs' houses, and if such fear would have been justified, we would have found several dozen booby-trapped houses awaiting the demolishers, which is not the case, nor is there any precedent for the aforesaid.**

20. ***In our case, it is important to emphasize that the security forces have arrived at the house several times and performed searches therein. Therefore, clearly there is no danger in giving prior notice before the execution of any sanction. Despite this, in the Respondent's early answer, he repeated the extremely vague "standard" answer to early objections. Giving this answer in the circumstances of the matter proves that the Respondent is not making pertinent use of the case law quoted in his letter,***

and chooses to give a vague and indefinite answer, without addressing the case on its merits.

Lack of authority – No justification to exercise the regulation

21. The Petitioners have been given no information on the reason for which the security forces are searching for the son _____. It has not been claimed to the Petitioners that he has committed any act.

22. The Petitioners shall claim that the Respondent has no authority to damage the house, since there is no reason and/or sufficient reason justifying the taking of such sanction.

23. ***The Respondent is probably not claiming that the son has committed any attack, and therefore, the threat to demolish the house as aforesaid, is designed as a means of applying pressure to the Petitioners to turn their son in. This is an illegal usage that is intended to apply pressure and threats to the families***.

24. Regulation 119 was not intended for such use! The use of this Regulation and/or the threat to exercise it and demolish the house, which were meant to cause the family to turn in its son, is a wrongful and illegal use also according to international law, and of course the Respondent will not be able to realize this threat as a means of pressuring the family.

Absence of an order

25. Alongside the lack of a hearing, the intention of demolishing the house is tainted by another defect, which concerns the fundamental principles of proper administration. The Petitioners were given no order – either verbal or in writing – specifying the Respondent's decision regarding their house. In the absence of an order, the Petitioners do not know whether an order was issued to damage the house pursuant to the Defense Regulations, the extent of the damage determined and which instructions accompanied the principal order, if any. It is doubtful whether the Respondent even issued such a methodical order, to guide the soldiers carrying out the task. In such a state of affairs, "one will neither know, nor be able to know, what is permitted and what is not, and therefore one cannot be required to be law-abiding and not to commit an unlawful act" (as ruled by this Honorable Court in a similar context in the early years of the State – HCJ 220/51 *Asslan et al. v. The Military Governor of the Galilee*, *Piskei Din* 5, 1480, 1487). In addition, issuing the order in writing provides further assurance that the decision has been weighed.

26. The duty of publishing the order so that it comes to the attention of the relevant persons is fixed in Article 6 of the Proclamation on the Administration of Rule and Justice (West Bank Region) (No. 2), 5727-1967:

> **A proclamation, order or notice on my behalf *will be published* in any way I deem fit** (emphasis added, Y.W.).

27. The Military Commander may not issue orders clandestinely, but is required to publish them. Even though, according to Article 1 of the Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730-1970, "any order may be issued orally", even then "the authority issuing the order will cause the notice on its taking effect to be given as early as possible and in such manner as it shall deem fit".

28. This Honorable Court has emphasized that "the rules of proper administration prescribe that even though orders may be issued orally, when the urgency passes and if justified, an order should be given in writing" (HCJ 469/83 *National United Bus Company et al. v. The Minister of Defense et al.* (*Takdin Elyon* 92 (2) 1477).

Defects in the establishment of the factual foundation

29. In a grave decision such as this, of the demolition of a house, it is essential for the Respondent to rely on true facts, which are founded upon the proper gathering and review of information (HCJ 802/89 *Nasman v. Commander of the IDF forces in the Region, Piskei Din* 44 (2) 601). On what factual information the Respondent is basing his intention – the Petitioners do not know, since they were given no written order with reasons. However, the Respondent's ability to establish a factual foundation which would enable him to weigh the considerations which he is required by case law to weigh is doubtful. Owing to the absence of military presence in the area of the house, and in the lack of a hearing, the Respondent has before him no data on the structure of the house, on potential danger to nearby buildings, or on the number, identity and special circumstances of the inhabitants of the house.

Lack of factual foundation concerning the suspect

30. The decision to demolish the house infringes the constitutional property rights of the owners of the house and the inhabitants' rights to shelter and dignity. As such, it should rely on clear, unequivocal and convincing evidence.

See: EA 2/84 *Neiman v. Chairman of the Central Elections Committee for the Eleventh Knesset, Piskei Din* 39 (2) 225, 250.

And with regard to authorities pursuant to the Defense (Emergency) Regulations, 1945:

HCJ 159/84 *Shahin v. Commander of the IDF forces in the Gaza Region*, *Piskei Din* 39 (19) 309, 327 (deportation order against an infiltrator);

HCJ 672/87 *Atamlla et al. v. GOC Northern Command*, *Piskei Din* 42 (4) 708, 710 (restriction order pursuant to Regulation 110);

HCJ 5973/92 *The Association for Civil Rights in Israel et al. v. The Minister of Defense et al.*, *Piskei Din* 47 (1) 267, 282 (deportation orders pursuant to Regulation 112).

31. And, indeed, the Respondent has relied in the past on particularly strong evidence. Thus, for instance, in HCJ 6026/94 *Nazaal et al. v. Commander of the IDF forces in Judea and Samaria* (*Piskei Din* 48 (5) 338, hereinafter: the *Nazaal* affair), the identity of a suicide bomber was determined by the cumulative weight of publications on behalf of the Hamas movement, police alerts and a comparison between tissue taken from the remains of the bomber's body and blood taken from his parents (p. 343 of the judgment). A similar accumulation of evidence led the Court to determine, in HCJ 1730/96 *Sabih et al. v. Commander of the IDF forces in Judea and Samaria et al.* (*Piskei Din* 50 (1) 353), hereinafter: the *Sabih* affair), that "there is no reasonable doubt as to the terrorist's identity", and that "we are satisfied that the evidence held by the Respondent justified his certain conclusion" (p. 360-361 of the judgment).

32. **In our case, the Petitioners have no knowledge at all of the reason for damaging the house, and of the factual foundation upon which the Respondent is relying.**

33. The binding precedent is that the Respondent is required to check whether the suspect's residence may be viewed as a residential unit separate from the rest of the building, and whether it may be demolished without harming the other parts of the building. If this is not possible, sealing that unit should be considered. (The *Sabih* Affair, p. 360, and see also HCJ 5510/92 *Turkeman v. GOC Central Command*, *Piskei Din* 48 (1) 217, in which the Court, in the opinion of Justice (as was his title then) Barak, ruled that the damage should be limited to the suspect's residential unit only, and since partial demolition of the structure is not possible, the less drastic measure of partial sealing of the building should suffice).

34. The Hon. Justice Cheshin's position, whereby the Respondent has no right at all to order an injury to residential units other than the residential unit attributable to the

terror suspect, is also known. See: HCJ 4772/91 *Hizran v. in Judea and Samaria*, *Piskei Din* 46 (2) 150; HCJ 2722/92 *Alamarin v. IDF Commander in Gaza Strip*, *Piskei Din* 46 (3) 963 (where Justice Cheshin clarifies that the matter touches on the fundamentals of the authority, as it should be construed in the spirit of Israel's basic principles), and see the *Nazaal* affair.

Danger to neighboring buildings

35. The danger to neighboring buildings, or to parts of the building that are not designated for demolition, is at the very least a consideration which the Respondent should weigh. See on this matter, the *Sabih* affair, p. 360, and see also HCJ 5510/92 *Turkeman v. GOC Central Command*, *Piskei Din* 48 (1) 217, in which the Court, in the opinion of Justice (as was his title then) Barak, ruled that damage should be limited to the suspect's residential unit only, and since partial demolition of the structure is not possible, the less drastic measure of partial sealing of the building should suffice. The Respondent did not properly weigh the danger to nearby buildings. His intention, probably, is to order merely the demolition of the house, but the significance of executing the order is to damage also the houses of neighbors, which the Respondent neither sought to order, nor is authorized to order.

36. **As aforesaid, at a tiny distance from the house in which the Petitioners reside, there are two other, separate, houses in which other families live. Damaging the Petitioners' house would necessarily damage the other houses, and for this reason alone, the demolition of the Petitioners' house should not be approved**.

Proportionateness

37. Reasonableness and proportionateness are superior principles, which govern the breadth of the Respondent's discretion. Thus it is in general, and particularly so in the exercise of such irregular authority to injure innocent people through no fault of their own.

> **It is well known that the measure embedded in the provisions of Regulation 119, is sharp and severe, and should be used only after strict consideration and examination and only under special circumstances… Furthermore, Regulation 119 itself provides for various degrees of means according to severity, starting with confiscation only, through confiscation accompanied by partial and full sealing, to the demolition of the building. It is only natural that the severity of the means used by the**

> **Military Commander be related to the severity of the act that was committed by the inhabitant, and that only in special cases will the measure of demolition of the building be taken.**

The opinion of the Hon. Justice Barak (as was his title then) in HCJ 361/82 *Hamri v. Judea and Samaria commander*, *Piskei Din* 36 (3) 439, 443.

38. In another case, the Court reviewed an order to demolish a house that was inhabited by a man who was convicted of cold-blooded murder. After determining that the authority should be exercised in accordance with the principles of relativity and proportionateness, the Court ruled, in the opinion of Justice (as was his title then) Barak:

> **It appears to me that demolishing the entire building would constitute a measure that is "disproportionate" –hence also unreasonable – between the murderous behavior of Muhammad Turkeman and the suffering that will be inflicted on the elder brother's family. Under these circumstances, it appears that the reasonable route was that which provided for partial demolition only. As we have seen, this route is impossible. Under these circumstances, the less drastic measure – which too is very severe – of partial sealing, should be employed.**
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> (HCJ 5510/92 *Turkeman v. The Minister of Defense et al., Piskei Din* 48 (1) 217, 220).

And see also in the detailed opinion of Chief Justice Barak in HCJFH 2161/96 *Sharif v. GOC Home Front Command*, *Piskei Din* 50 (4) 485, 490.

39. These statements are particularly pertinent to our case, in which no hearing was held and no essential examinations were conducted on the possible damage from the demolition of the building. Any doubt as to the scope of the terror suspect's activities, any doubt as to the scope of the injury to the inhabitants of the house and their neighbors, should operate in favor of the Petitioners. Once the Respondent chose to act in conditions of uncertainty and without adequate factual basis, he must employ a margin of caution, so as not to disproportionately infringe the constitutional rights of the inhabitants of the house. The Respondent's desire to exhaust his authority should

yield to the concern that under the conditions of uncertainty in which he is operating, he might disproportionately injure the property and dignity of innocent people.

Proportionateness is a consideration also in view of the fact that no material details are known about the attack and its circumstances.

Justice under fire

40. We are in the midst of ongoing violence, which has already taken a heavy toll in terms of human life, both Palestinian and Israeli. In view of the horrors, the ever-increasing casualties, the blood boils, commanding us to do everything possible to stop the bloodshed. The urge for desperate acts is great, so long as something is done. Also the urge to take revenge is great. Under the harsh impression of the events, it is difficult to exercise sober and orderly discretion. It is also difficult to be considerate of the rights of those who are perceived to be part of the "enemy". However, it is these very conditions that compel us to strictly exercise discretion, lest it stray off course.

> **It is our duty to preserve the legality of government also in difficult decisions. Also when the canons roar and the muses are silent, the law exists and is active and determines what is allowed and what is prohibited, what is legal and what is not.**
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> The opinion of Chief Justice Barak in HCJFH 2161/96 *Sharif v. GOC Home Front Command, Piskei Din* 50 (4) 485, 491.

41. Moreover, it is actually times such as these that are the greatest test of democracy. It is for hours such as these that the Courts have been designed as a restraining and balancing factor.

42. When the cry of Sodom and Gomorrah rose to the Heavens, God was in no haste to eradicate them. "I will go down now, and see if they have done entirely according to its outcry, which has come to Me", He says (Genesis 18, 21), and such statement has been construed by the Sages as attesting to the duty of conducing a factual inquiry and a hearing before the act (see the opinion of the Deputy Chief Justice Elon, as was his title then, in the said HCJ 4112/90 on p. 638). And on the same matter, it was said:

> **Far be it from You to do such a thing, to slay the righteous with the wicked, so that the righteous and the wicked are**

> **treated alike. Far be it from You! Shall not the Judge of all the earth deal justly?** (Genesis18, 25).

43. And even if the language of Regulation 119 permits such an act to be committed, to injure the innocent as a lesson for all to see, we are bound, and the Respondent is bound, to interpret and exercise the authority in the foregoing spirit. And once the Respondent failed to investigate what should have been investigated, and did not hear the person entitled to be heard, he should be wary of leaving a large family without shelter, and should pursue peace and security by other means.

44. So it was stated in this Honorable Court's case law, by the Hon. Justice Cheshin:

> **Since the beginning of our being, we have all known and memorized the same basic principle: Everyone shall bear his own crime and be put to death for his own sin. In the words of the Prophet: "The person who sins will die. The son will not bear the punishment for the father's iniquity, nor will the father bear the punishment for the son's iniquity; the righteousness of the righteous will be upon himself, and the wickedness of the wicked will be upon himself" (Ezekiel 18, 20). There is no punishment without a warning, and punishments are inflicted only upon the offender himself. This is the Law of Moses, and it is written in the book of the Law of Moses: "The fathers shall not be put to death for the sons, nor the sons be put to death for the fathers"** (2 Kings 14, 6).
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> … **Since the establishment of the State – and certainly so since the Basic Law: Human Dignity and Liberty – we read into the provisions of Regulation 119 of the Defense Regulations, read into it and embed in it, values which are our values, the values of a Jewish, free and democratic state. These values will lead us directly to the ancient times of our people, and our times are like those times: In those days they will not say again, the fathers have eaten sour grapes, and the children's teeth are set on edge. Each man who eats sour grapes, his teeth will be set on edge.**

(HCJ 2006/97 *Janimat et al. v. GOC Central Command*, *Piskei Din* 51 (2) 651, 654-655; and see also the opinion of the Hon. Justice Cheshin

in HCJ 4722/91 *Hizran et al. v. Commander of the IDF forces in Judea and Samaria* (*Piskei Din* 46 (2) 150); in HCJ 2722/92 *Alamarin v. IDF Commander in Gaza Strip* (*Piskei Din* 46 (3) 693) and in HCJ 6026/94 *Nazaal et al. v. The IDF Commander in Judea and Samaria* (*Piskei Din* 48 (5) 338)).

45. In view of the urgency of the circumstances and the impossibility of meeting with the Petitioners, this Petition is supported by the affidavit of the undersigned, who has maintained telephone contact with the Petitioners.

On all of the foregoing grounds, the Honorable Court is moved to issue an Order Nisi and a Temporary Injunction as requested at the outset of the Petition, and, after hearing the Respondent's answer, render them absolute.

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L. Tsemel, Attorney

Counsel for the Petitioners