

1. Misun Mahmoud Abu Rara Janimat
2. Suad Mahmoud Yussef al-Baradeia
v.

OC Central Command Maj.-Gen. Uzi Dayan

**The Supreme Court sitting as the High Court of Justice Before
President A. Barak and Justices E. Goldberg, M. Cheshin.**

**Request for an *order nisi* and interim order
Counsel for Petitioners – Allegra Pachko
Counsel for Respondents – Yehuda Scheffer**

JUDGMENT

President A. Barak

An explosion shook Tel Aviv's Apropro Café on March 21, 1997. A terrorist carrying explosives entered the café and blew himself up. Three of those sitting in the café met their deaths. Dozens of other people were wounded – some lightly, some seriously. Property damage was caused.

According to information gathered by the General Security Service (GSS), the bomber was Musa Abd el-Kader Janimat. He was the husband of petitioner 1 and the brother-in-law of petitioner 2.

On March 22, 1997, the military commander issued a confiscation and partial demolition order for the house where the bomber lived, in the village of Tsurif near Hebron. The confiscation order related to the apartment where he lived with his wife (petitioner 1) and their four children. This apartment is situated on the second floor. In the adjacent apartment lives the bomber's brother, the husband of petitioner 2. Obviously the confiscation and demolition order apply only to the bomber's apartment. The rest of the building would be left alone. Petitioners were delivered the confiscation and demolition order on March 22, 1997. They refused to accept it. This is the background of the petition at hand.

The Petitioners claim that the confiscation and demolition order is illegal. Their first claim is that the body of the bomber has not been identified to the required degree of certainty as Musa Abd el-Kader Janimat. This claim is baseless. Janimat's father identified the body as his son. The body somehow remained intact despite the explosion and the face was identifiable.

Furthermore, fingerprints of the bomber taken from his corpse match the fingerprints taken in the past from Musa Abd el-Kader Janimat. An Israeli identity card belonging to Janimat was found at the scene. The relatives of the bomber erected a "mourners' tent" where people came to comfort them. All these facts put together are sufficient, according to the requirements of administrative procedure, to conclude that the bomber responsible for the deaths of three women was indeed Musa Abd el-Kader Janimat, the husband of petitioner 1 and the brother-in-law of petitioner 2.

An additional claim brought before us is that the bomber's life was centered on the apartment where he lived in Rishon Lezion and not on the village of Tsurif. However this claim has also not been substantiated. The bomber's life centered on his village. There his family lived, there he would return at the end of his workweek, and from there he would set out again to Israel, where he resided illegally.

It was also claimed before us that the demolition of the bomber's home will cause damage to the rest of the building. Regarding this claim we have received the statement of the head of the construction unit of the IDF's Central Command. In his opinion, there is no reason why the home of the bomber could not be taken down in a controlled demolition.

The demolition will be carried out in a manner so as not damage the first floor of the building or the apartments adjacent to the bomber's home on the second floor, such as petitioner 2's home. Respondent declared before us that the demolition would be implemented in stages and with care in order to prevent damage to the rest of the building. If damage is caused, it will be repaired.

The petition raises additional claims regarding the authority of the military commander to make use of Regulation 119 of the Defense Regulations (State of Emergency), 1945. These claims have all been raised in the past and in a long list of judgments they have been rejected by this Court. Regulation 119

of the Defense Regulations – which dates from the Mandatory era and remains in force today – grants the authority and discretion to the military commander to adopt measures regarding a building which is home to someone who has seriously violated the provisions of the regulations. We have found nothing in the claims of petitioners that would justify a deviation from the many precedents on this issue.

We are aware that the demolition will leave petitioner 1 and her children without the roof over their heads, but this is not the aim of the demolition. It is not a punitive measure. It aims, rather, to deter. Its outcome does pose difficulties for the family, but respondent believes that this measure is essential in order to prevent further attacks on innocent people. He maintains that family pressure does discourage terrorists.

There is no absolute assurance that this measure will be effective. But considering the very few measures left to the state to defend itself against these "human bombs," we should not despise this one.

For these reasons I would reject the petition.

Justice M. Cheshin

The suicide murderer was a resident of the village of Tsurif near Hebron. If the military commander had decided to demolish all the houses in the village of Tsurif, then he would be acting, apparently, within the framework of his power pursuant to Regulation 119 of the Defense Regulations (State of Emergency), 1945. If the military commander had decided to demolish all the houses on the street where the suicide murderer lived, then he would be acting, apparently, within the bounds of his power under Regulation 119 of the Defense Regulations. Had the military commander sought to destroy the home of the suicide murderer and all the adjacent houses on all sides, then he would be acting, seemingly, within the framework of his powers pursuant to Regulation 119 of the Defense Regulations. Had the military commander decided to demolish both floors of the building where the suicide murderer lived, then he would be acting, apparently, within his powers under Regulation 119 of the Defense Regulations. Had the military commander sought to destroy the second floor of the building where the suicide murderer lived, then he would be operating, apparently, within his powers pursuant to Regulation 119 of the Defense Regulations.

However the military commander seeks to demolish the suicide murderer's apartment alone. The military commander therefore restricted the demolition order to the private domain of the suicide murderer. Pursuant to the wording of Regulation 119 of the Defense Regulations, the commander apparently acted within his powers. What, therefore, can petitioners claim against him?

On many occasions I have pointed out the difficulties inherent in exercising the powers granted by Regulation 119 of the Defense Regulations. See H CJ 5359/91 *Khizran v. IDF Commander of Judea and Samaria District*, IsrSC 46(2) 150, 151; H CJ 2722/92 *Elamrin v. IDF Commander of the Gaza Strip*, IsrSC 46(3) 693, 701; H CJ 6026/94 *Nazal v. IDF Commander of Judea and Samaria District*, IsrSC 48(5) 338, 351; H CJ 1730/96 *Sabiah v. IDF Commander of Judea and Samaria District*, IsrSC 50(1) 353, 365. In all these judgments I rooted myself in a basic legal principle, and from it I will not be swayed. This is a basic principle which our people have always recognized and reiterated: every man must pay for his own crimes. In the words of the Prophets:

“The soul that sins, it shall die. The son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son; the righteousness of the righteous shall be upon him, and the wickedness of the wicked shall be upon him.” (Ezekiel 18:20)

One should punish only cautiously, and one should strike the sinner himself alone. This is the Jewish way as prescribed in the Law of Moses:

“The fathers shall not be put to death for the children, nor the children be put to death for the fathers; but every man shall be put to death for his own sin.” (II Kings 14:6)

Petitioner 1 is the wife of the suicide murderer, and she is the mother of four small children. The woman and her children reside in that same apartment where the murderer lived, but nobody claims that they were accomplices in his plot to murder innocent souls. Likewise nobody claims that they knew about the intended attack. If we demolish the bomber's apartment we will simultaneously destroy the home of this woman and her children. We will thereby punish this woman and her children even though they have done no wrong. We do not do such things here.

Since the establishment of the state – certainly since the Basic Law: Human Dignity and Liberty – when we have read Regulation 119 of the Defense Regulations, we have read it and vested it with our values, the values of the free and democratic Jewish state. These values guided us on the path of justice during our people's glory days of old and our own times are no different:

“They shall say no more, The fathers have eaten sour grapes, and the children's teeth are set on edge. But every one shall die for his own iniquity: every man that eats sour grapes, his teeth shall be set on edge.” (Jeremiah 31:28-29)

In the judgments cited *supra* I said similar things. However what I say now I have never said before. I deliberated long and hard until I reached this conclusion. This is the Torah that I learned from my teachers, and this is the doctrine of law that I have in my hands. I can rule no other way.

If my opinion will be heard, then we will allow the petition and issue an *order nisi* as petitioners request.

Justice E. Goldberg

I share the opinion of my colleague the President.

A study that can show conclusively just how many terrorist attacks have been prevented and how many lives have been saved as a result of house sealings and demolitions has never been conducted and never could be conducted. However, as far as I am concerned it is sufficient that the effectiveness of this deterrent measure has not been disproved in order to stop me from interfering with the discretion of the military commander.

Therefore it was decided by majority opinion to deny the petition.

March 30, 1997