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At the Supreme Court Sitting as the High Court of Justice

HCI 8024/14
HCI 8025/14

Before:

Honorable Deputy President E. Rubinstein
Honorable Justice Y. Danziger
Honorable Justice N. Sohlberg

The Petitioners in HCI 8024/14:

1. _____ **Hijazi**
2. _____ **Hijazi**
3. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
4. **Adameer – Prisoner Support and Human Rights Association**

The Petitioners in HCI 8025/14

1. _____ **'Akari**
2. _____ **'Akari**
3. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
4. **Adameer – Prisoner Support and Human Rights Association**

v.

The Respondent:

GOC Home Front Command

Petitions for *Order Nisi* and
requests for Interim Orders

Session date:

Kislev 9 5775 (December 1, 2014)

Representing the Petitioners:

Adv. Labib Habib, Adv. Fareh Bidassi

Representing the Respondent:

Adv. Yochi Genesin; Adv. Avinoam Segal-Elad

Judgment (Complementary)

Deputy President E. Rubinstein

- A. The case before us concerns respondents' desire to partly demolish and partly seal the family home of the perpetrator who tried to murder Mr. Yehuda Glick, on a national basis, due to his activity concerning temple mount, and thank God and luckily enough he failed. The perpetrator himself was killed when he pulled a gun at the security forces which came to arrest him.
- B. On December 1, 2014, an *order nisi* was issued by us in this petition, concerning the proportionality of the use of Regulation 119 of the Defence (Emergency) Regulations, 1945 in this case; In this context we noted that we did not disregard the improvement in Mr. Glick's condition, who was seriously injured in the attack, and taking into account the severity of the action, we nevertheless requested to meticulously examine every possible alternative for the demolition of the house. The general aspects of the entire issue were discussed in the judgment in HCJ 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defense** (December 31, 2014), and we shall not reiterate it here.
- C. On March February 2015, respondent's response was submitted, which stated that after deliberation and following the judgment in the petition of **HaMoked: Center for the Defence of the Individual** and other individual petitions "it was decided to take in this case a very proportionate measure, and direct to solely seal the room in which the terrorist lived, without causing any damage to the other parts of the apartment and the structure" (emphasis in the original). It was nevertheless emphasized that the purpose of Regulation 119 was to deter the public at large, and therefore the use thereof depended on the circumstances of each case, even if human life were not taken.
- D. Earlier, on January 12, 2015, Mr. Glick requested to join the petition as a respondent, and alternatively, as an *Amicus Curiae*, being the victim. The respondent left it for discretion, although he noted again that his decision in this case was meant to deter the public at large; and the petitioners were of the opinion that in view of the fact that they were not accused of having injured the applicant, he should not be joined.
- E. In the hearing before us on June 14, 2015, Advocate Habib argued on behalf of the petitioners that in view of the fact that the incident did not end in a person's death and since it was not argued that the family was involved, the family was sufficiently punished by the death of its son and there was no room for additional deterrence, as it would be disproportionate even if the decision was changed, and the issue should not be regarded as falling under Regulation 119 altogether; especially in view of the fact that the scene calmed down after a difficult time.
- F. On behalf of the respondents it was stated that following the *order nisi* the issue was discussed by the security forces and the state attorney's office, and it was decided to solely seal the perpetrator's room, thereby achieving proportionality, after the general aspects were resolved. The entire issue concerns the deterrence of the public at large.
- G. On behalf of the applicant wishing to join the petition it was argued that the filing of a tort action against the perpetrator's family members was considered, and that the applicant has functioning difficulties; A complaint submitted by him to the police was presented, in which it was *inter alia* argued that the perpetrator's family received monies for the actions of the family member and that the family members were seen in a clip, watching their son who threatened to engage in terror activity and particularly in connection with temple mount. It should be noted that we have carefully heard applicant's arguments, and as far as this petition is concerned this will suffice.

- H. To the crux of the matter, we are of the opinion that in view of the fact that the general decision to demolish and seal was replaced by a partial decision to seal the room of the perpetrator only, and this is the decision which is currently before us – proportionality is realized, which is relevant also when deterrence is concerned. We do not see room for intervention in this new and moderate decision. Accordingly, and in view of the above mentioned general decision, the *order nisi* is hereby revoked. The petition is deleted without an order for costs.

Given today, Sivan 28, 5775 (June 15, 2015).

Deputy President

Justice

Justice