At the Supreme Court Sitting as the High Court of Justice

HCJ 144/22

Before:	**Honorable Justice I. Amit** **Honorable Justice G. Karra** **Honorable Justice A. Stein**
The Petitioners:	**1. _____ Abu Skhidem** **2. _____ Abu Skhidem** **3.** **4. _____ Abu Skhidem** **5. _____ Abu Skhidem** **6. _____ Abu Skhidem** **7. _____ Abu Skhidem** **8. _____ Abu Skhidem** **9. _____ Abu Skhidem** **10. HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger**
	v.
The Respondents:	**1. GOC Home Front Command** **2. Minister of Defense**
	Petition for *Order Nisi*
Session Date:	9 Shvat 5782 (January 11, 2022)
Representing the Petitioners:	Adv. Nadia Daqqa; Adv. Daniel Shenhar
Representing the Respondents :	**Adv. Areen Safdi-Atila**

Judgment

Justice A. Stein:

1. Once again we are required to discuss a decision to demolish the home of a nationalist perpetrator filled with hate against the Jews and their state, who committed a fatal attack in which, unfortunately, the late Eliyahu Kay of blessed memory lost his life, and four other individuals – including two policemen – were injured. The perpetrator, _____ Abu Skhidem, resided, together with his wife and five children, in an apartment occupying the fourth floor of a five story building located in the Shuafat refugee camp, owned by the perpetrator and his brother, and divided into apartments in which the members of the perpetrator's extended family reside (hereinafter: the **Perpetrator's Apartment**).

2. On November 21, 2021 the perpetrator left his apartment equipped with a gun. He arrived to the area of the Chain Gate in the old city of Jerusalem and opened fire at a number of men who were identified by him as Jews. As a result of the fire, as aforesaid, the late Eliyahu Kay of blessed memory was killed and four additional individuals were injured. The perpetrator was shot by the security forces and was killed on scene. He was found with his body shaved – conduct which as we were informed by the professional bodies, characterizes a person planning a suicide attack. Before he committed the attack, the perpetrator had paid-off some of his debts and left his wife a video message in which he had used phrases consistent with the customs of persons committing suicide attacks including a statement that he was praying to Allah to reward his wife – reflecting the faith that a s*haheed* can intercede for seventy of his family members.

3. On December 26, 2021, Major General O. Gordin, GOC Home Front Command (hereinafter: the **Commander**) gave the attorney representing the family members of the perpetrator notice of his intention to seize and demolish the perpetrator's apartment. Following said notice, the family appealed the order, which appeal was reviewed and denied by the Commander on January 2, 2022. On that day the Commander issued a seizure and demolition order for the perpetrator's apartment. The order stated that its execution shall "deter potential perpetrators from committing terror attacks and shall assist to protect state security". The demolition order was issued by virtue of the authority vested with the Commander according to regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: **Regulation 119**). The order was technically flawed: the wrong scheme was attached thereto. For this reason, the order was revoked. Instead, the Commander issued on January 7, 2022 a new identical seizure and demolition order (hereinafter: the **Demolition Order** or the **Order**).

4. In the petition at hand, the Petitioner – the family members of the perpetrator and HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger – request that we order that the Demolition Order shall be cancelled, or, at least, that it shall be limited. Said remedies are requested, according to the Petitioners, "in view of recent changes in the international arena, and the increasing feasibility that the policy makers and the individuals implementing it shall be sooner or later exposed to personal criminal liability" and since according to them, it is necessary to re-examine the lawfulness of Regulation 119 and the ways by which it may be implemented, if any. The Petitioners also argue that the demolition of the apartment of the murderous perpetrator constitutes collective punishment, severely harms the rights of the perpetrator's minor children and does not promote any deterring interest but rather has the complete opposite effect. Alongside all of the above arguments it was argued that the number of attacks in the Jerusalem area, and in general, has considerably decreased; and therefore there was no justification for imposing against the perpetrator's family members, who were not involved in his crimes, such an extreme – and according to the Petitioners, patently disproportionate sanction – of demolishing the family's place of residence.

5. In addition, the Petitioners requested that we issue an interim order preventing the demolition of the apartment until a decision is made in the petition, but it was not necessary in view of Respondents' clear undertaking that the Order shall not be carried out before a judgment is given in the petition (as was clarified in the decision of Justice **N. Sohlberg** dated January 6, 2022).

6. On the other hand, the Respondents argued that arguments similar to those raised by the Petitioners have already been discussed and rejected in many tens of judgments given by us. The Respondents also argued that the Order was proportionate since it was limited to the perpetrator's apartment and the execution thereof would not affect the other parts of the building. This argument was supported by an engineering opinion explaining that the perpetrator's apartment would be demolished from the inside by manual tools and that the damage which could be possibly caused to the adjacent apartments was very low.

7. The confidential material which was submitted for our review, and which was reviewed by us with Petitioners' consent, verified the position of the Commander who issued the Order that the murderous perpetrator acted out of nationalist motives and hatred towards the Jewish people and its state. I also found in said material clear support of Respondent's assessment concerning the deterring effect of demolitions of perpetrators' homes.

8. Indeed, the petition at hand does not raise any new argument with respect to the use of Regulation 119 as a means of defense against murderous perpetrators acting under the auspices of terror organizations or independently. Arguments similar to those raised in the petition at hand have been thoroughly discussed and rejected, one by one, in numerous judgments (see, for instance, HCJ 7961/18 **Na'alwah v. Military Commander of the West Bank Area**, paragraphs 13-14 and the authorities specified there (December 6, 2018); HCJ 8886/18 **Jabarin v. Military Commander of the West Bank Area**, paragraph 7 (January 10, 2019); HCJFH 416/19 **Jabarin v. Military Commander of the West Bank Area**, paragraph 5 (January 17, 2019)). In said judgments and others it was held that Regulation 119 constituted a harsh, but lawful measure, in the war against murderous perpetrators who do not hesitate to harm Jews wherever they may be, and who have harmed on many occasions innocent people including children and the elderly. It should be noted that a considerable part of said perpetrators acted – and continue to act – as the agents and with the financing of different terror organizations, including the Hamas organization that the perpetrator at hand was a member of, and that the hand of international criminal law, which was mentioned in the petitioner in the wrong context, has not yet reached the members of said organizations and their political and economic supporters.

9. It was also held in the judgments mentioned above and in the numerous authorities cited in said judgments, that the exercise of the power to demolish by virtue of Regulation 119 is a necessary evil in emergency situations when the citizens of our country are killed by perpetrators-murderers coming to sew within us fear and terror. It was also held in said judgments that the means of demolishing the home or apartment of a murderous perpetrator is not affected, as such, by extreme disproportionality requiring our interference with the decision of the military commander. The above, since there is a clear rational connection between the demolition of a perpetrator's home and the deterrence of potential perpetrators.

10. I am aware of the fact that not all Justices of this court stand behind the unequivocal ruling in connection with Regulation 119, but this is the case-law which clearly and firmly reflects the opinion of the majority – a vast majority – of the Justices, from which there is no reason to deviate. Therefore, I cannot accept Petitioners' request to re-examine

this fundamental ruling. I shall briefly note that it was accordingly held – and justifiably so – that the demolition of the home of a murderous perpetrator does not constitute collective punishment – since the consequential harm caused to the perpetrator's family members, as severe as it may be – is intrinsic to the sanction of house demolition. I shall note further that given the certainty of the fact that it is the home of a murderous perpetrator, this sanction does not differ from the severe harm caused to the family of a financial offender, who killed no one, who was sent to prison and his home was forfeited according to the provisions of the Prohibition against Money Laundering Law, 5760-2000.

11. The Petitioners invested substantial efforts in the argument which intended to put in question the deterring effect of the demolition of perpetrators' homes. However, this is a clear professional matter. The professional bodies that the Respondents rely on – and whose position was brought to our attention as part of the privileged material – are of the opinion that the demolition of the homes of murderous perpetrators has a deterring effect on potential perpetrators. The position of the professional bodies and the privileged material presented to us constitute high standard administrative evidence, which should be followed in such cases for clear and obvious reasons (compare: Daphne Barak-Erez **Administrative Law** Volume A 447-449 (2010)).

12. Indeed, the extent of influence that the demolition of a perpetrator's home may have on future perpetrators is difficult to numerically estimate – since real life does not always follow the rules of algebra and Bayesian probability – but the influence exists. This conclusion arises from the exercise of the professional discretion of the security bodies, with which we cannot interfere, as aforesaid. According to the rulings cited above and additional judgments supporting said rules (see, inter alia: HCJ 2492/19 **Abu Leila v. GOC of the Central Command** (April 16, 2019)) the court should not interfere with the decision of the Commander in the case at hand for the known reasons underlying the doctrine of the administrative authority. The military commander is responsible for protecting the safety of the residents of the state and maintaining the intricate balance between the natural and understandable desire to prevent casualties from among our residents as a result of fatal attacks, and the natural and understandable interest of the family members of the perpetrator – whose crimes are not their crimes – not to lose the roof above their heads. Namely: it is his responsibility – and not ours. Under these circumstances – which are the circumstances of the petition at hand – there are no grounds for our interference with the discretion of the military commander and with the difficult decision made by him between two evils.

13. Moreover: given the correlation, and all the more so, actual causality – between the demolition of homes of murderous perpetrators and the deterrence of potential perpetrators, how can it be said that the suffering of the perpetrator's family, whose disaster of having its home demolished was of the perpetrator's own doing, is greater than the almost never-ending suffering of the future terror victims caused by insufficient deterrence? My above question is not a rhetoric question aimed at justifying the demolition of the home of any perpetrator whoever they may be, without distinguishing one case from the other. The suffering of the perpetrator's family, when it is not guilty of his actions, should not be taken lightly, and therefore we shall not easily sign a judgment confirming the demolition of its home. However, when the security bodies appear before

us and incontrovertibly show us that the demolition of perpetrators' homes has a deterring effect – even if a relatively modest deterring effect – we must accept their position and dismiss the petition to enable the execution of the demolition order and in so doing to prevent the loss of life of residents of the State.

14. Petitioners' argument which was focused on the rights of the children also has no merit. The right of children to safe life and wellbeing do not distinguish one child from the other and neither shall we. On the basis of the assumption of equality between children, we shall juxtapose the children of the perpetrator – whose suffering we do not take lightly – with the children who were harmed and who may be harmed by murderous acts of terror similar to that which was committed by the perpetrator, and particularly the children of the people who were killed or may be killed for the sole reason of being Jews visiting or living in Israel. Whenever the deterrence which is obtained by the demolition of perpetrators' homes prevents harm to human life, Petitioners' argument referring to the rights of the perpetrator's children and his other family members collapses.

15. In conclusion, given that the conditions for the exercise of the power to issue a demolition order according to Regulation 119 are satisfied, the military commander is required to exercise said power reasonably and proportionately and to take into consideration the entire circumstances of the specific case (see: HCJ 974/19 **Dahadha v. Military Commander of the West Bank Area,** paragraph 8, and the authorities specified there (March 4, 2019)). In the case at hand, the Commander acted reasonably, proportionately and wisely by deciding to limit the seizure and demolition order to the perpetrator's residential unit and by taking effective measures which would minimize the harm caused to the other parts of the building. Naturally, this decision also takes into account, as a relevant consideration, the cruelty of the perpetrator's actions, the devastating results of the attack and the need to deter those who will seek to follow in the perpetrator's footsteps.

16. Under these circumstances, there are no grounds for our interference with the discretion of the Commander. Said discretion was properly exercised.

17. Therefore, I propose to my colleagues to dismiss the petition before us – as we customarily do at this time, without an order for costs.

The demolition order may be carried out as of January 30, 2022.

J U S T I C E

Justice G. Karra:

1. Having reviewed the opinion of my colleague, Justice A. Stein, I cannot join his opinion that the petition should be dismissed. In my opinion, the exercise of the power of the military commander for the purpose of house demolition by virtue of Regulation 119 of

the Defence (Emergency) Regulations, 1945 (hereinafter: **Regulation 119** or the **Regulation**), raises difficulties under domestic law and international law which have not been clarified and thoroughly discussed in the judgements of this court. These issues should be re-visited by an expanded panel of justices.

Things to this effect were expressed by me in HCJ 6905/18 **Naji v. Military Commander of the West Bank Area** (December 2, 2018) (hereinafter: **Naji**); HCJ 8886/18 **Jabarin v. Military Commander of the West Bank Area** (January 10, 2019); and recently in HCJ 4853/20 **Abu Baher v. Military Commander of the West Bank Area** (August 10, 2020) (hereinafter: **Abu Baher**). I have not changed my position this time as well.

2. Despite the fact that the ruling concerning the power to exercise the Regulation has not changed, the manner by which it is implemented by the military commander, its reasonableness and proportionality, like any administrative action, are not immune from judicial scrutiny. As held by this court, said power, due to the severity and extreme nature of the harm embodied therein, including the severe harm inflicted by it on innocent people who are not involved in the deeds of the perpetrator, neither before nor after the act, should be exercised with the utmost restraint and caution, and this applies even more forcefully after the enactment of the basic laws:

> "These extreme cases should not make us forget the need, as my colleague pointed out, to re-examine from time to time and raise doubts and questions concerning the constitutional validity of the house demolition measure according to the limitation clause tests" (HCJ 8091/14 **HaMoked Center for the Defence of the Individual v. Minister of Defence**, paragraph 6 of the judgment of Justice (as then titled) **E. Hayut** (December 31, 2014))

With respect to the implementation of the power it was stated that:

> "The scope of Regulation 119 of the Defence Regulations, as drafted, is very broad. However, in its judgments this court clarified that the military commander must make prudent and limited use of said authority, according to principles of reasonableness and proportionality […] The above ruling was reinforced following the enactment of the Basic Law: Human Dignity and Liberty, in light of which the Regulation should be interpreted (HCJ 7040/15 **Hamed v. Military Commander of the West Bank Area**, paragraph 23 of the judgment of President **M. Naor** (November 12, 2015)).

3. In **Abu Baher**, I referred to the fact that the power according to Regulation 119 is used "routinely". From power reserved for extreme cases, the Regulation became the first tool, let alone the only tool, exercised by the military commander in response to any attack in which human lives are taken, using the controversial explanation that it is required as a deterring measure against potential perpetrators. With respect to the above, I cannot but reiterate what I wrote in **Abu Baher**:

> The multiple and repeated use of the Regulation by the military commander whenever an attack resulting in the loss of human life occurs – arguing that it is a deterring rather than a punitive measure, expands the use of the Regulation as a matter of policy, and a sanction which should have been reserved for extreme situations and used rarely, is imposed frequently, let alone regularly. The continued application of this policy relying on security bodies' opinions that it is a deterring measure while refraining from a pertinent and thorough discussion of the general issues which are raised as a result of the use of this Regulation is severely regarded by me. The continued use of this measure inflicting severe harm on innocent people constitutes collective punishment imposed contrary to the fundamental principle whereby […] a person shall bear their own transgressions and a person shall die for their own sin."

4. According to the evidentiary material, the perpetrator arrived to the area of the Chain Gate in the old city of Jerusalem, committed a shooting attack in which he killed the late Eliyahu Kay of blessed memory, and wounded two Israeli citizens and two policemen. The perpetrator was shot and killed on scene. It was also written in Respondents' response, all on the basis of the evidentiary material collected by the Respondents that "the perpetrator was found with his body shaved, conduct which characterizes a person who wishes to commit a suicide attack and plans it in advance. The perpetrator left his wife a video message characterizing a person wishing to commit a suicide attack. Accordingly, for instance, the perpetrator stated in the message that he was praying to Allah to reward his wife, reflecting the faith that a s*haheed* can intercede for seventy of his family members. The perpetrator has also stated in the message that he had paid-off some of his debts, a custom characteristic of a Shaheed before committing a suicide attack".

5. Petitioners 1-6 are the perpetrator's wife and five children, including three minors who live in the residential apartment located on the fourth floor of a five story building, in the Shuafat refugee camp (hereinafter: the **Residential Apartment**). Petitioners 7-9 are the perpetrator's three siblings, living on the other floors of the building. There is therefore no dispute regarding the perpetrator's connection to the Residential Apartment.

6. There is also no dispute that the perpetrator's wife and children had no knowledge of his intention to commit a suicide attack and had no ability to prevent it. It emerges from the interrogations that neither one of the family members noticed any "red" flags nor preliminary signs of the perpetrator's intention to commit an attack. It should be noted that the perpetrator has never been apprehended earlier by the security forces.

7. The perpetrator's wife left to Jordan a few days before the attack, and the privileged information indicates that the wife's departure had a considerable weight in the perpetrator's decision to carry out the attack. After the perpetrator's wife learnt of the attack, she returned to Israel knowing that she might be detained and interrogated about the perpetrator's deeds, as has indeed happened. She was interrogated but not detained in the absence of knowledge on her part and her inability to prevent the act. The same applies

to the other family members of the perpetrator including his minor children who were also interrogated by the security bodies.

8. In the framework of the considerations that the military commander should consider while exercising the power vested in him according to Regulation 119, there is a host of considerations, including, *inter alia*, the following:

> "the severity of the actions attributed to the perpetrator and the magnitude of the evidence against him; the harm caused by the demolition to the tenants of the building; the degree of involvement of the tenants in the actions of the perpetrator; and the existence of means causing less harm to the building which is about to be demolished and its neighboring buildings" (**Naji**, paragraph 27 of the judgement of Justice **Y. Willner**).

In the circumstances at hand, when none of the perpetrator's family members had any knowledge of his intentions before the action or any involvement therein, and did not identify with his actions after the fact, the sanction of demolishing the only residential unit of the family members is therefore unreasonable and disproportionate collective punishment having no moral or legal justification and is devoid of any deterring effect. Relevant to this matter are the words of Justice (as then titled) **M. Cheshin** in HCJ 2006/97 **Ghanimat v. COC Central Command** (March 30, 1997):

> "The first petitioner before us is the wife of the suicide-murderer and mother of his four minor children. The wife and children live in the same apartment in which the suicide- murderer lived, but no one argues that they collaborated with his contemplated actions – which he carried out – the killing of innocent human beings. Nobody argues that they even knew of the contemplated action. If we demolish the perpetrator's home, we demolish at the same time – and with the same hammer blows – the apartment of the wife and the children. In doing so we shall punish the wife and the children although they have not sinned. This is not done here. Since the establishment of the state – and certainly since the Basic Law: Human Dignity and Liberty we read into the provisions of Regulation 119 of the Defense Regulations, we read into it and entrench in it values which are our values, values of a Jewish, free and democratic state. Values which lead us directly to ancient times and now as then: they shall no longer say fathers have eaten unripe grapes and the teeth of the children shall be set on edge. But whoever eats unripe grapes his teeth shall be set on edge."

9. With respect to the military commander's argument that the power should be exercised for the purpose of deterring potential perpetrators, on the basis of a privileged opinion which was submitted on behalf of security bodies during the hearing at hand, and solely for our review, it should be noted that I do not share the position of the security bodies concerning the effectiveness of the deterrence that comes with demolishing homes of

those who are not involved in the attack in any way or manner whatsoever. In fact, I am not at all convinced that the opinion which was presented on behalf of the security bodies shows that their conclusion in that regard is based on actual evidence. On this matter I share the position of my colleague, Justice **A. Baron**, whereby:

> "A review of the opinion on Respondent's behalf, ostensibly serving as a basis for this estimate, shows that it does not have an empirical basis or scientific answer to the serious question of the deterring effect embodied in house demolition. For myself, I do not believe that the deterring picture arising from the opinion is so clear, certainly not decisive; and in any event it clearly raises piercing questions, particularly with respect to the scope of cases in which house demolition has precisely the opposite effect, when it encourages or increases hatred and other acts of violence against Jews" (HCJ 799/17 **Qanbar v. GOC Home Front Command** (February 23, 2017).

10. To the above I shall parenthetically add, but not less importantly, a comment concerning the nature of the privileged opinions which are submitted to this court in cases such as the case at hand. To convince us that the demolition of perpetrators' homes is an effective security measure the purpose of which is to deter, and which does indeed lead to actual deterrence, the Respondents submit security opinions to show us that there is a security-professional basis for the administrative action of demolishing the perpetrator's home, and that demolitions of this sort actually prevent future acts of terror. Said security opinions are premised on the assumption that their authors have security expertise, in a manner giving them an advantage over the court in estimating the security consequences of the demolition of a perpetrator's home.

In the case at hand, there is no dispute that the security forces of the state of Israel have considerable and highly appreciated expertise in fighting terror. But the fact that an IDF soldier or an ISA agent has extensive knowledge in fighting terror, and the ability to identify the risks posed by a perpetrator and act to neutralize them – does not necessarily turn them into experts who can identify potential "collective deterrence" of a civilian population by the means of house demolition. At the very least, we were not presented with any evidence substantiating the expertise of the author of the security opinion which was submitted to us in this regard, and we have no means enabling us to examine the level of its credibility, the data underlying it, the methodology justifying it and the like.

Expertise is not a negligible matter. Not every counter-terrorism expert is an expert in deterrence of a civilian population. Expertise requires proof and should be substantiated. An expert may testify only in the area of their expertise and only after their expertise in the area was properly proven. I am of the opinion, that the time has come to re-visit the professional validity, credibility and weight of the security opinions submitted to us in cases such as the case at hand.

In the case at hand, to justify the demolition of the residential home of a woman and minors who undoubtedly had no knowledge of the attack, did not identify with it in any way, and could not have prevented it, would require clear – empirical or other - evidence to show that the security contribution of the act would be substantial. No such evidence

has been presented to us. Therefore, I am of the opinion that there is no room to give much weight – if any – to the security opinion. In these circumstances, it cannot be said that the decision to demolish the residential apartment, on the basis of the security opinion, was an informed decision, and therefore it is unreasonable and disproportionate.

11. In conclusion, unlike **Abu Baher** where I joined the position of Justice **M. Mazuz** allowing the sealing of a room in the perpetrator's home, in view of the unique circumstances of said case, and in view of the existence of a "clear connection between the perpetrator's deed and the house against which the sanction was directed according to Regulation 119, since the attack was committed from the roof of the house" – in the case at hand no such connection exists.

The attack was committed far from the perpetrator's home and had no connection thereto; his family members, including those residing in the house, did not know of the intention to commit an attack and could not have prevented it; and no real evidence was presented indicating that the demolition shall serve any security purpose or deter a potential perpetrator from committing a future attack.

Under these circumstances, since the sanction that the military commander wishes to exercise against innocent people lacks reasonableness and proportionality, I am of the opinion that an *order nisi* should be issued, prohibiting the execution of the demolition order which was issued against the residential apartment.

J U S T I C E

Justice I. Amit:

In the dispute between my colleagues, I agree with the operative result of my colleague Justice **A. Stein**, whereby the petition should be dismissed, and I shall add a few short comments of my own.

1. With respect to the principled issues which were raised by the Petitioners, I shall reiterate what I have said in the past that "It is not necessary to discuss all over again the general issue regarding the mere authority to issue seizure and demolition orders according to Regulation 119, whenever the court hears a petition which concerns Regulation 119 of the Defence Regulations". (HCJ 8150/15 **Abu Jamal v. GOC Home Front Command**, paragraph 6 (December 22, 2015); HCJ 2322/19 **Rafaya v. Military Commander of the West Bank Area**, paragraph 7 (April 11, 2019)).

2. The demolition of a perpetrator's home is a complex and sensitive issue, and different considerations may be pointed out, on the moral-legal-utilitarian level, pulling in opposing directions. In view of the degree of caution and restraint which are required in exercising the power, it is incumbent upon the Respondents to examine their policy from time to time, to prevent the demolition of a perpetrator's home from becoming an almost "automatic" or "routine" measure, as stated by my colleague Justice **G. Karra**.

3. With respect to the deterrent aspect, as it emerges from the privileged material which was submitted to us for our review. I have examined and re-examined the material, and although I am not as decisive as my colleague Justice **A. Stein**, I agree with him that we have before us real administrative evidence, and it is my impression that the security bodies continuously update and re-validate the opinion. I can only reiterate my conclusion in HCJ 480/21 **Kabha v. Military Commander of the West Bank Area** (February 3, 2021) (hereinafter: **Kabha**):

> "I will add, with a measure of caution, that according to the material presented for our review by the Respondents, I believe there is support for their position with respect to the existence of effective deterrence achieved by the use of Regulation 119."

My colleague, Justice **G. Karra**, is of the opinion that the opinion is not within the realm of expertise of the security officials. I hold a different opinion. In my opinion, there is a weight of "expertise" to the security officials, as the professionals acting on the ground, who are familiar with the public mood, and can point at and demonstrate the deterring effect of the exercise of the power according to Regulation 119.

And in general, the assumption that a potential perpetrator may be deterred from committing their evil intention considering the harm and the effect of their deed on their family members is a sensible assumption. Naturally, people seek the well-being of their family members. Therefore, it may be reasonably assumed that the price paid by the family is a consideration that a potential perpetrator takes into account, even if not an exclusive consideration. Moreover, the assumption that the family members of the potential perpetrator shall try to dissuade their family member from committing an attack, is also a sensible assumption. This particularly applies to young potential perpetrators who are still under the custody or influence of their parents, who shall naturally try to supervise them or convince them or prevent them from committing an attack, in view of the heavy price that the family is expected to pay by having its home demolished.

4. Similar to many other cases, the Petitioners requested a temporary interim injunction/interim order until the petition is heard and decided. Justice **N. Sohlberg** wrote in his decision dated January 6, 2021 that "there is no need to make a decision (see and compare: paragraph 2 of the opinion of Justice D. Barak-Erez in HCJ 480/21 **Kabha v. Military Commander of the West Bank Area** (February 3, 2021)." Indeed, we can learn from the above paragraph of the customary practice whereby the filing of a petition requires another short delay of the execution date, to enable the petition to be heard without creating an "*ex post facto*" situation.

In any case, if an additional clarification of the above is required I shall register before us Respondents' declaration that when a petition is filed the execution of the order shall be postponed until a decision is made therein. As I have noted in **Kabha**: "It is difficult to accept that such an extreme and sensitive measure of house demolition shall be carried out without the perpetrator’s family being given the opportunity to put the

demolition and seizure order to the scrutiny of this court, which obviously necessitates delaying the execution of the order until a decision is made on the merits of the petition".

J U S T I C E

Decided as stated in the judgment of Justice **A. Stein,** who was joined by Justice **I. Amit** against the dissenting opinion of Justice **G. Karra**.

Given today, Shvat 17, 5782 (January 19, 2022).

Justice Justice Justice