At the Supreme Court Sitting as the High Court of Justice

HCJ 4088/22

Before:	**Honorable Justice Y. Elron** **Honorable Justice G. Canfi-Steinitz** **Honorable Justice C. Kabub**
The Petitioners:	**1. _____ Alrafai** **2. _____ Alrafai** **3. _____ Alrafai** **4. _____ Alrafai** **5. _____ Alrafai** **6. _____ Alrafai** **7. HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger**
	v.
The Respondents:	1. **Military Commander of the West Bank Area** 2. **Minister of Defense**
	Petition for *Order Nisi*
Session Date:	23 Sivan 5782 (June 22, 2022)
Representing the Petitioners:	Adv. Nadia Daqqa; Adv. Tehila Meir
Representing the Respondents :	Adv. Areen Safdi-Atila; Adv. Yuval Spitzer

Judgment

Justice Y. Elron

The petition at hand is directed against a seizure and demolition order by virtue of Regulation 119 of the Defense (Emergency) Regulations, 1945 (hereinafter: the **Demolition Order** and **Regulation 119**, respectively), which was issued on June 9, 2022, with respect to land and a single-story building in the village of Rummanah (hereinafter: the **Building**). Petitioners 1-6 are the family members of the perpetrator Ass'ad Yusef Ass'ad Alrafai (hereinafter: **Ass'ad**), residing in the building.

Ass'ad is charged with committing a terror attack in Elad on May 5, 2022 (hereinafter: the **Attack**) together with the perpetrator Subhi 'Imad Abu Shqeir (hereinafter: **Subhi**), in which they have killed the late Yonatan Havakuk of blessed memory, the late Boaz Gol of blessed memory and the late Oren Ben Yiftah of blessed memory, and have severely wounded others.

Background

1. The demolition order concerns the residential home of petitioners 1-6 – Ass'ad's parents and his minor siblings. Ass'ad also lived in the building at the time of the attack. According to the information in respondents' possession, the building is apparently owned by Ass'ad's father.

2. On June 9, 2022, an indictment was filed against Ass'ad and Subhi (hereinafter collectively: the **Perpetrators**). The facts of the indictment are extremely severe and devastating – they describe a pre-planned, murderous and cruel killing spree.

   As specified in the indictment, following the death of Subhi's friend in clashes with IDF soldiers, he decided to commit a terror attack in Israel in order to die as a "Shahid". Subhi suggested to Ass'ad that the two commit the attack together but Ass'ad initially refused. On or about April 2022, following the death of another friend of Subhi, and Ass'ad becoming increasingly religious and their belief that the state of Israel was harming Muslim worshipers at Al-Aqsa Mosque – the two decided to commit a terror attack and murder Jewish Israeli citizens.

   To carry out their plan, the two planned to acquire improvised "Carlo" weapons and for this purpose they raised some NIS 11,000. After they failed in their efforts to purchase the above weapons, they decided to carry out the attack with knives and axes. The location of the attack, the city of Elad, was chosen since the perpetrators were familiar with the area due to the fact that in the past, when they had entered Israel unlawfully, they were employed to do some electrical work in a synagogue in the city.

   Before the attack, believing that they were required to do so prior to their death as "Shahids", the perpetrators transferred to a person named Ibrahim _____ (hereinafter: **Ibrahim**) an amount of money to pay-off their debts and for charity. Ass'ad even gave Ibrahim a will-letter which he had prepared for his family. Since the two thought that they could not enter Israel from the area in which they were living, they went on May 4, 2022, to Ramallah, where they took a room in a hotel, spent the evening in a restaurant and prepared wills.

   On the following day the perpetrators performed a "purification" ritual and purchased tools for the purpose of carrying out the attack – two axes, two knives and two "cutters" (to cut the separation fence). Subhi also purchased running shoes to make things easier for him. Later that day Subhi contacted a person called Tzahar _____ (hereinafter: **Tzahar**) and requested him to assist the two to cross the separation fence and reach the city of Elad. This under the false claim that he needed to meet his former employer. Tzahar complied with the perpetrators' request and met them in Rantis. He took them to an area in which there was a hole in the fence. Since the hole was closed, Subhi cut a hole in the fence and the perpetrators entered Israel and hid in a nearby grove. While the two were waiting for a vehicle to take them to Elad, they decided that if the driver was Jewish they would kill him upon arriving to Elad and steal his car for the purpose of carrying out the attack.

   On or about 17:13 Tzahar called the late Oren Ben Yiftah of blessed memory (hereinafter: **Oren**) and asked him whether he could pick up the two and take them to Elad. Oren answered in the positive and shortly after 19:36 he arrived to the grove and

picked up the perpetrators in his car (hereinafter: the **Car**). While on their way to Elad, Subhi sent the will he had drafted ahead of time to his relative and Ass'ad sent his will to Ibrahim. On or about 20:23 the car arrived to Ibn Gvirol Street in Elad. After Oren parked the car, Subhi acted to distract him. At this stage, Ass'ad pulled a knife, held Oren's head tightly and stabbed him 21 times – in the neck, chest and upper limbs. While Oren was bleeding, the perpetrators pushed him out of the car. After the perpetrator's attempts to start Oren's car failed, they decided to continue the attack on foot, using axes.

The perpetrators walked through the streets of Elad in search of victims. They initially chased Moshe Frenkel who managed to get away after Subhi dropped his axe. Thereafter, Ass'ad attacked with his axe a car driven by Ruth and Haya Weintraub, but the latter sped the car and managed to get away from the scene speed-driving.

Subsequently, the perpetrators noticed stairs leading to a playground where numerous citizens were celebrating Israel's 74th Independence Day. The two went down the stairs attempting to locate additional victims. When they reached the bottom of the stairs they noticed the late Boaz Gol of blessed memory (hereinafter: **Boaz**). They attacked and struck him with axe blows to the neck and head. As Boaz fell to the ground they continued striking him with their axes.

The perpetrators continued walking in the path crossing the playground when they noticed the late Yonatan Havakuk of blessed memory (hereinafter: **Yonatan**) with his six-year-old son. The perpetrators attacked Yonatan and struck him with axe blows to his head, neck and face, all of the above in front of his son. As they continued walking in the path they noticed Shai Ben Shlomo (hereinafter: **Shai**) who was sitting on a bench with his four young children next to him. Assa'd struck Shai with a heavy axe blow to the neck, and Subhi did the same. The perpetrators continued hitting Shai in front of his children until he fell to the ground. As they thought that they had killed Shai, the perpetrators continued walking down the road. Gathering every last ounce of his strength, Shai managed to stand up and gather his young children in a bid to escape the scene, but after a few steps he was unable to carry on and collapsed.

As the perpetrators went on they noticed Shimon Ma'atuf (hereinafter: **Shimon**) and struck him with multiple axe blows to the head. When they noticed Haim Bechor (hereinafter: **Haim**), Ass'ad struck him with an axe blow to the head and did not stop also when Haim fell to the ground.

When the perpetrators reached the parking lot they noticed a car in which Elhanan Meir Alush (hereinafter: **Elhanan**) and Tzemach David Amrousi (hereinafter: **Tzemach**) were sitting. The perpetrators broke the windows of the car in an attempt to injure the passengers. Elhanan fought with Ass'ad and prevented him from hitting him with his axe. At the same time Tzemach also managed to prevent Subhi from hitting him with the axe. At this point, the perpetrators fled to a nearby open area and continued fleeing until they were captured on May 8, 2022.

3. In this severe attack, the late Oren, Boaz and Yonatan of blessed memory were killed. Shai, Shimon and Haim were very severely injured. For privacy reasons we shall not go into the details of their injuries. Elhanan suffered multiple superficial cuts in his arms and right palm, and Tzemach suffered cuts in his right arm and stomach.

4. For their deeds, the perpetrators were indicted on three counts of jointly committing an act of terror of aggravated murder according to sections 301A(a)(1), (7) and (10) and section 29 of the Penal Law, 5737-1977 (hereinafter: the **Law**); five counts of jointly committing an act of terror of attempted murder according to sections 305(1) and

section 29 of the Law together with section 37 of the Anti-Terrorism Law, 5776-2016 (hereinafter: the **Anti-Terrorism Law**); three counts of jointly causing serious injury in aggravated circumstances according to sections 333, 335(a)(1) and (2) and section 29 of the Law together with section 37 of the Ant-Terrorism Law; two counts of jointly committing an act of terror by causing injury in aggravated circumstances according to sections 334, 335(a)(1) and (2) and section 29 of the Law together with section 37 of the Ant-Terrorism Law; and an offense of unlawful entry into Israel according to section 12(1) of the Entry into Israel Law, 5712-1952.

5. On May 30, 2022, respondent 1 notified of his intention to seize the land and demolish the building in which Ass'ad had resided. The respondent attached to his above notice an aerial photo in which the building was marked and an engineering opinion concerning its demolition.

   On June 2, 2022, petitioner 1 appealed respondent 1's intention. In his appeal petitioner 1 argued, *inter alia*, that there was a serious concern that the demolition of the building by detonation would cause damage to the buildings in its vicinity; that Ass'ad's family members were innocent; that the demolition of the building was disproportionate; that the use of Regulation 119 was contrary to international law and fundamental principles of Israeli law; and that the deterring purpose of the house demolition policy was not realized.

   Respondent 1 denied the appeal on June 9, 2022. The principled arguments raised thereunder were denied on the basis of the case law of this court. With respect to petitioner's arguments concerning the manner of the demolition, it was clarified that according to the opinion which had been prepared by the engineer no damage was expected to structural components in adjacent buildings and it was emphasized that maximum efforts would be made to reduce to the maximum extent possible the damage to the surrounding area of the building. It was also noted that there was indeed no indication of petitioners 1-6's involvement or awareness of Ass'ad's intention to carry out the attack, but that said fact did not constitute a decisive consideration. Respondent 1 attached to his response to the appeal the investigation materials which could be disclosed at that time and the demolition order which is the subject matter of the petition before us.

The Main Arguments of the Parties

6. The petition consists of arguments on both the principled and concrete levels. In general, the petitioners reiterate their argument that the implementation of the house demolition policy through Regulation 119 is unlawful, and is contrary to fundamental principles of ethics and justice, international law, human rights law and Israeli law. According to them, this policy is premised on a regulation inherited from the era of the British mandate whose purpose is to punish and not to deter.

   It was also argued that it constitutes a deliberate and direct punishment of innocent persons contrary to the principle of personal culpability and the principle of the child's best interest; that the policy of house demolition of perpetrators does not achieve a deterring purpose; that harming the innocent and the policy of collective punishment increases hostility and hatred; and that the use of Regulation 119 is contrary to the principle of proportionality and the provisions of the Basic Law: Human Dignity and Liberty. According to the petitioners the case at hand provides a suitable opportunity to revisit the holdings of this court with respect to the above principled arguments by holding a hearing before an expanded panel.

With respect to the concrete circumstances of the case at hand the petitioners raised a few principled arguments: **first**, it was argued that there was a serious concern that a demolition by way of detonation would harm adjacent buildings. It was noted that the engineer on behalf of respondent 1 had presented in his opinion two options for carrying out the demolition – detonation or the use of heavy mechanical equipment together with mechanical tools, but no details were provided regarding the anticipated damage which may result from each option; **second**, it was argued that respondent 1 did not properly consider the fact that the petitioners were not involved in the attack, the fact that petitioner 2 – Ass'ad's mother had cancer and the damage that would be inflicted by the demolition of the building on Ass'ad's young siblings; **third**, it was argued that the demolition of Ass'ad's bedroom was sufficient; **fourth**, that in view of all of the above circumstances, combined, the demolition of the house was disproportionate; **fifth**, that the procedure in which the demolition order was issued violated the right to be heard and petitioners' right to due process, since respondent's decision in their appeal was made in an expedited procedure without properly considering all of the required considerations. The petitioners argue further that they were not given sufficient time to prepare for the appeal or for this petition.

7. In their response, the respondents argue that the petition should be denied in the absence of grounds for the court's interference with the decision of respondent 1. It was emphasized that the principled arguments which were raised in the petition had been rejected many times in the judgments of this court and that in the current security circumstances it is required to use Regulation 119 to deter perpetrators from committing similar attacks. It was explained that the decision of respondent 1 to issue the demolition order by virtue of his authority according to Regulation 119 stemmed, to a large extent, from the severity of the attack.

   With respect to the argument that the family members were not involved in the attack it was noted that this fact did not prevent, in and of itself, the exercise of the authority by virtue of Regulation 119 – even if minors were residing in the building. It was argued that the above details, alongside the ages of the family members residing in the building and the illness of Ass'ad's mother, were considered by respondent 1 while making his decision, and he has nevertheless found that due to the severity of the attack the demolition order should have been issued.

   With respect to the manner of the demolition – according to the respondents, in similar events it has been proven that demolition by detonation did not lead to structural damage beyond the boundaries of the building which is designated for demolition. In addition, in the case at hand, and on the basis of consultation with the professional engineering bodies, it was clarified that the "targeted and controlled characteristics" of the demolition, as stated by the respondents in their own words, would lead to a low level and likelihood of surrounding damage. With respect to petitioners' arguments concerning their right to be heard, it was argued that considering the deterring purpose underlying the use of Regulation 119 and the extensions which were granted, the petitioners were given sufficient time to file an appeal or petition, as they have indeed done.

8. In the hearing, petitioners' counsel reiterated the main arguments which were included in the petition. She also argued, on the basis of publications in the press, that recently the state deliberately delays implementing the demolition and seizure orders even after the petitions challenging them are denied. According to her, this conduct is contrary to the alleged deterring purpose of said demolition orders. In response, respondents' counsel explained that there is a certain delay on this level, and that she would only be able to elaborate on the matter *ex parte*. We have subsequently held an *ex parte* hearing

with the consent of petitioners' counsel in which privileged material was presented to us, for our review.

In addition, respondents' counsel has also reiterated in the hearing the main arguments which were included in her written response, and added that the attack itself had been planned, *inter alia*, within the building. This allegation was denied by petitioners' counsel who argued that there was no evidence directly connecting the building to the decision to commit the attack.

We have also heard the counsel of Nofar Bat-Yiftah, the widow of Oren, of blessed memory, and the counsel of Limor Liora Havakuk and Galit Gol, the widows of Yonatan and Boaz of blessed memory. The two emphasized the great damage which had been caused to the families and their hope that the implementation of the demolition order would spare other families a similar fate.

Deliberation and Decision

9. Having thoroughly examined the arguments of the parties I was convinced that no grounds for our interference with the decision of respondent 1 were established. Therefore, the petition should be **denied**.

10. Petitioners' arguments on the principled level concerning the mere exercise of respondent 1's authority according to Regulation 119, have already been discussed and rejected by this court, including recently. As held, these arguments should not be discussed each time *de novo* (see, a few of many: HCJ 2770/22 **Ham'arshe v. Military Commander of the West Bank Area**, paragraph 14 (May 19, 2022)(hereinafter: **Ham'arshe**); HCJ 925/22 **Jaradat v. Military Commander of the West Bank Area**, paragraph 9 of my opinion (February 24, 2022)(hereinafter: **Jaradat**); HCJ 3137/22 **Jarad v. Military Commander of the Judea and Samaria Area**, paragraph 15 (May 30, 2022); HCJ 6826/20 **Dweikat v. Commander of IDF Forces in the Judea and Samaria Area**, paragraph 14 (October 25, 2020)(hereinafter: **Dweikat**); HCJ 564/22 **Jaradat v. Military Commander of the West Bank Area**, paragraph 15 (February 4, 2022)).

Hence, we should focus the judicial scrutiny in the case at hand as well on the discretion which is exercised in the concrete cases which are brought before the court.

Regulation 119 - the Legal Framework

11. In general, it has been consistently clarified in our judgments that the use of Regulation 119 is not aimed at punishing the innocent, but rather at saving human life by deterring potential perpetrators and their family members (HCJ 3401/22 **'Atzi v. GOC Central Command**, paragraph 12 of my opinion (June 8, 2022)(hereinafter: **'Atzi**).

Even in view of this deterring purpose, case law stresses that respondent 1 is required to exercise the authority vested in him by virtue of Regulation 119 in a prudent, proportionate and limited manner, meticulously adhering to the principles of reasonableness and proportionality (HCJ 8786/17 **Abu Alrub v. Commander of IDF Forces in the West Bank**, paragraph 20 of my opinion (November 26, 2017)(hereinafter: **Abu Alrub**); **Dweikat**, paragraph 21; HCJ 5141/16 **Mahamara v. Commander of IDF Forces in the West Bank**, paragraph 30 (July 24, 2016)(hereinafter: **Mahamara**)).

It was also held that the proportionality and reasonableness of the order are examined according to the various values underlying the decision of respondent 1, including the

level of the deterrence and its effectiveness; the anticipated harm to the rights of the perpetrator's family members; and the existence of unique circumstances which may justify in the specific case the limitation and even cancellation of the order. It was clarified that the list of the considerations that the court should take into account while judicially scrutinizing the discretion of respondent 1 was not a "closed list" (**Jardat**, paragraph 13 of my opinion; HCJ 6905/18 **Naji v. Military Commander of the West Bank Area**, paragraph 27 (December 2, 2018)).

While examining the proportionality of the demolition order, the manner by which it is carried out is also taken into account. Namely, it is incumbent on respondent 1 to examine whether the demolition order can be carried out only with respect to the part of the house to which the residential connection applies; whether it can be carried out without harming other floors against which the demolition order had not been issued and without harming adjacent buildings; and whether one can be satisfied with a demolition measure such as sealing the house or parts thereof (HCJ 5290/14 **Qawasmeh v. Military Commander of the West Bank Area**, paragraph 22 (August 11, 2014 (hereinafter: **Qawasmeh**)).

Another substantial consideration that respondent 1 is required to take into account is the severity of the actions attributed to the suspect and the magnitude of the evidence against him (**Abu Alrub**, paragraph 24 of my opinion; HCJ 8066/14 **Abu Jamal v. GOC Home Front Command**, paragraph 9 of the opinion of Justice (as then titled) E. Rubinstein (December 31, 2014).

From the general to the particular

12. As it emerges from respondents' response, a central consideration which guided respondent 1 in his decision to issue the demolition order was the severity of Ass'ad's deeds. It should be pointed out that the perpetrators have admitted to committing the attack and have recreated it on scene. Hence, the evidence against them – far exceed the "administrative evidence" requirement (see and compare: **Mahamara**, paragraph 33).

The deeds of the perpetrators, as described in the indictment, are at the highest severity level – Ass'ad and his accomplice pre-planned the attack in advance, they equipped themselves with knives and axes and have even prepared wills as they have assumed that they would be killed while committing the attack. They carried out their pre-planned attack in an atrocious killing spree in which Ass'ad played a direct and central role. The magnitude of the deterrence which is required should stand in proportion to the severity of the deed (HCJ 8091/14 **Hamoked Center for the Deference of the Individual v. Minister of Defense**, paragraph 18 (December 31, 2014)). Accordingly, in the circumstances at hand, the severity of the perpetrators' deeds "heavily tips the scales – against them" (HCJ 974/19 **Dahadha v. Military Commander of the West Bank Area**, paragraph 11 (March 4, 2019)).

Another consideration which should also be given weight is, as it emerges from the materials which were presented to us and particularly from a memorandum of Subhi's interrogation – that the decision to commit the attack was crystalized in the building itself the demolition of which is now requested (see and compare: HCJ 8150/15 **Abu Jamal v. GOC Home Front Command**, paragraph 15 of the opinion of Justice **M. Mazuz** (December 22, 2015)).

In view of the above, I shall now turn to examine petitioners' arguments.

13. Firstly, to petitioners' argument concerning the use of Regulation 119 as an effective deterring measure. According to them, the demolition of perpetrators' homes does not yield a deterring effect, but only increases the hostility level and the "flames" of the conflict, in their words. The respondents, on the other hand, emphasize the importance of carrying out the demolition order, particularly in view of the current security reality. For this purpose the respondents wish to rely on an up-to-date privileged opinion whereby individuals have refrained from committing attacks due to the fear that their homes would be demolished.

    Hence, the petitioners argue that the use of Regulation 119 is not efficient and is even damaging; while on the other hand the respondents argue that it is important and necessary. With respect to the resolution of this dispute, I have recently stated:

    > "The solution to this dispute, to a large extent, is not found in our subjective position, but rather in the data, facts and opinions of the professional bodies. As held, the effectiveness of the policy of the demolition of perpetrators' homes is a matter to be evaluated by the security bodies ('**Atzi**, paragraph 12; see also: **Dweikat**, paragraph 24; **Ham'arshe**, paragraph 16).

    Indeed, it is difficult to evaluate the effectiveness of the policy of the demolition of perpetrators' homes (HCJ 144/22 **Abu Skhidem v. GOC Home Front Command**, paragraph 12 of the opinion of Justice **A. Stein** (January 19, 2022)). A simplistic argument wishing to draw from the fact that attacks are committed the conclusion that the demolition of perpetrators' homes has no deterring effect – misses the point, since the reality is more complex than that. For this exact reason, we must rely on the opinion of those for whom fighting terror is their profession and expertise.

    I have thoroughly reviewed, once again, the privileged opinion which was presented to us with the consent of petitioners' counsel, *ex parte*. My opinion remains unchanged – the position of the professional bodies that at this time the use of Regulation 119 contributes to creating deterrence against terror attacks, is acceptable to me.

14. Another major argument in the petition is that respondent 1 did not properly consider the fact that the family members were not involved in the attack, and that it was not at all argued that they were aware of Ass'ad's intention to carry it out.

    It has been held more than once in case law that the fact that the family members were not aware of the perpetrator's malicious intentions did not point at a material flaw in respondent 1's discretion. In other words, the awareness of the tenants of the building designated for demolition of the perpetrator's intentions is not a necessary condition for exercising the demolition order (see for instance: HCJFH 5924/20 **Military Commander of the Judea and Samaria Area v. Abu Bahar,** paragraph 8 (October 8, 2020); HCJ 480/21 **Rabha v. Military Commander of the West Bank Area**, paragraph 12 (February 3, 2021)(hereinafter: **Rabha**); HCJ 799/17 **Kunbar v. GOC Home Front Command**, paragraph 10 (February 23, 2017)).

    It is therefore a consideration which respondent 1 is required to take into account, alongside other considerations, but it is not a decisive consideration. Accordingly, the fact that respondent 1 has nevertheless decided to carry out the demolition order in these circumstances, does not, in and of itself, justify our interference with his decision.

15. The above similarly applies to another argument raised by the petitioners whereby petitioner 1, while deciding to carry out the demolition order, did not give sufficient weight to the damage which would be caused to petitioners 1-6. In this context the

petitioners emphasized the medical condition of Ass'ad's mother and the fact that his siblings were minors.

As held, the fact that the perpetrator's minor siblings reside in the building does not deprive respondent 1 of the authority vested in him according to Regulation 119 (**Jaradat**, paragraph 18 of my opinion; **Qawasmeh,** paragraphs 21 and 26). Hence, I see no reason to interfere with respondent 1's determination that under the circumstances of the matter, all other considerations, and particularly the considerations of deterrence and the severity of the attack - prevail over the harm caused to Ass'ad's family (**Abu Alrub**, paragraph 33 of my opinion; HCJ 6420/10 **Al-Atzafra v. Military Commander of the West bank Area**, paragraph 13 (November 12, 2019)(hereinafter: **Al-Atzafra**).

16. With respect to the argument that the sealing of the room in which Ass'ad lived should suffice, it is true that the sealing of a single room in the building, instead of the demolition of the entire building, shall reduce the harm which would be caused to the family members. However, consequently, the deterring effect of Regulation 119 shall be considerably eroded, if not completely nullified. Under the circumstances of the matter, since in fact there is no dispute that a residential connection exists between Ass'ad and the entire building, and there is also no dispute that the building constitutes one residential unit – there is no room for limiting the demolition order to Ass'ad's room alone ('**Atzi**, paragraph 14 of my opinion; HCJ 751/20 **Hanatshe et al. v. Military Commander of the West Bank Area**, paragraph 24 (February 20, 2020)).

17. We shall now turn to petitioners' arguments concerning the manner of execution of the demolition order. According to them, the demolition of the building by detonation raises a heavy concern that damage would be caused to adjacent buildings, and alternatives of a lesser effect – have not at all been considered as required. The respondents, on the other hand, argue that it has been proven that the above demolition method does not cause structural damage to adjacent buildings.

It *inter alia* emerges, from a review of the engineering opinion dated May 24, 2022, that both demolition methods mentioned above are not expected to cause damage to structural components of adjacent buildings; that damage to non-structural components may possibly occur on a "low to medium" level and likelihood; and that adjacent infrastructures may be harmed and therefore an effort to dismantle or disconnect them shall be made prior to the action. It was also recommended that property and fragile items shall be removed from adjacent buildings prior to the demolition of the building.

As a general rule, the broad discretion to decide upon the manner by which the demolition order shall be carried out is vested with respondent 1 and the professional bodies on his behalf (**Hamarshe**, paragraph 22). Accordingly, in the absence of extraordinary circumstances, it was held that the court should not put itself in the shoes of respondent 1, who is held to act with the required prudence (**Rabha**, paragraph 13). In the hearing which was held before us it was clarified that like in other similar cases, maximum efforts shall be taken to prevent damage to the houses adjacent to the building. The above also emerges from the opinion itself (*Ibid.*, section 5.a.(2)). In the hearing respondents' counsels presented data whereby in recent years the damage which had been caused was quite low, in terms of financial value, to the houses adjacent to the buildings which had been demolished and that in the appropriate cases those whose houses had been damaged were compensated.

I am therefore of the opinion that on this level respondent 1 also acts proportionately, and he is held to take any possible action to prevent damage to adjacent houses, and at least to reduce the damage and the likelihood of its occurrence to a minimum, according

to the circumstances and the limitations on scene (HCJ 8567/15 **Halabi v. Commander of IDF Forces in the West Bank**, paragraph 11 (December 28, 2015)).

We do not have the expertise and it is not our role to direct respondent 1 how, engineering-wise, the building should be demolished. As I am satisfied that respondent 1 has taken into consideration the scope of the damage which may be caused to the nearby houses and the likelihood of their occurrence; as it has been clarified that all efforts shall be taken to prevent such damages; as data were presented pointing at a limited scope of damage which was caused in the past to adjacent houses, if any, and the amount of the compensation which was accordingly given; and since the position of respondent 1 is supported by an engineering opinion – there are no grounds for an interference on our behalf.

18. I also find no merit in petitioners' arguments concerning the violation of their right to be heard and their right to due process. The petitioners submitted a detailed appeal and they were granted, at their request, an extension for the purpose of filing the petition. The above, in the sense that respondent 1 undertook to refrain from carrying out the demolition order until June 16, 2022, the petition filing date. As is customary in these petitions, the petitioners did not have much time, but they were given reasonable time under the circumstances of the matter (**Hamarshe**, paragraph 13; **Al-Atzafra**, paragraph 11). In addition, respondent 1's response to petitioner 1's appeal is well reasoned and I do not accept the argument that it indicates that the arguments which were included in the appeal were not taken into consideration.

19. Finally, I shall refer to petitioners' argument that respondent 1 has recently refrained from carrying out demolition orders even after this court had denied petitions to revoke them. As aforesaid, respondents' counsel has decently clarified, that there was indeed a certain delay, and she has discussed this matter in more detail in the part of the hearing which was held *ex parte*. In any event, since in the case at hand there was no delay in the issue of the demolition order and no argument of delay has been made – it cannot assist the petitioners. In addition, it is only natural that the respondents have many considerations in the current complex security reality. Any specific delay or another certainly does not lead to the conclusion that demolition orders are not required in such circumstances.

20. Therefore, after respondent 1 has taken into account all relevant considerations, he was of the opinion that the scales tipped in favor of issuing a demolition order. His decision relied, first and foremost – on the severity of the attack; the need to deter; the magnitude of evidence against Ass'ad; and the fact that the idea to carry out the atrocious attack was conceived in the building. Respondent 1 was of the opinion that under the circumstances of the matter these considerations prevail over the harm to Ass'ad's family. No reason was presented to us justifying our interference with his discretion.

21. In conclusion: unfortunately, the security reality in recent months brought to our doorstep another petition concerning a seizure and demolition order by virtue of Regulation 119. This time, after a horrendous killing spree which was carried out in the center of a city on Israel's Independence Day. Ass'ad and his accomplice, equipped with knives and axes, have savagely attacked innocent citizens just for being Jewish, paying no heed to the vulnerable souls of some of the victims' children who were forced to watch their fathers ruthlessly attacked with axes.

There is no dispute that the use of Regulation 119 was and is still drastic. Petitioners' legal argument should be heard and has been seriously considered. At the end of the day, Ass'ad's choice and his inhuman actions led his family to their current distress. If others contemplating a terror attack wish to save this suffering from their families –

they can do it. We are hopeful that they choose to retract their murderous plans, at least for the fear for their family home. The use of Regulation 119 is therefore intended to prevent another terror attack leaving behind it miserable families, suffering orphans and victims who are disabled both physically and mentally.

22. Therefore, if my opinion is heard, the petition should be **denied**, without an order for costs.

    Under the circumstances of the matter, the petitioners shall be given a period of 7 days as of the date of this judgment to make the necessary arrangements prior to the execution of the demolition order.

J u s t i c e

Justice G. Canfi-Steinitz

I concur.

J u s t i c e

Justice C. Kabub

1. I do not share the opinion and conclusion of my colleague, Justice **Y. Elron**, who was also joined by my colleague Justice **G. Canfi-Steinitz**. I am of the opinion that in the case at hand the flaws in the decision of respondent 1 (hereinafter: the **Military Commander**) justify the revocation of the seizure and demolition order which was issued according to Regulation 119 of the Defense (Emergency) Regulations, 1945 (hereinafter: the **Defense Regulations** and **Regulation 119** or the **Regulation**, respectively) against the home of petitioners 1-6 (hereinafter: the **Petitioners**).

   Since my colleague has described in detail the factual background and given the position of my colleagues whereby the petition should be denied, I shall explain my reasons in brief.

The Authority

2. As stated in the opinion of my colleague, alongside specific arguments relating to the circumstances of the case at hand, the petition also raised principled arguments concerning the validity and the manner by which Regulation 119 is exercised. Among other things it was argued that the Regulation was contrary to the rules of international humanitarian law such as those prohibiting collective punishment and damage to property, and contrary to international human rights law. In addition, arguments were raised with respect to the principles of Israeli constitutional and administrative law, primarily the principle of proportionality. Moreover, arguments were also made casting doubt on the deterring effect of the Regulation and its reasonableness. In addition, arguments were raised with respect to the hearing proceedings and the timeframe which applies before the seizure and demolition order is issued and carried out.

   However, my colleagues are of the opinion, on the basis of previous judgments that there is no room to discuss the above principled issue "*de novo*". I do not share this position. However, since a ruling was established by many different panels of this

court with respect to the mere use of the authority I shall satisfy myself with a few short forward-looking statements.

3. I shall not deny that I am not satisfied with the severe harm caused to the residential home and with the seizure of the property of the family members, some of whom are minors, some of whom are ill, and all of whom are innocent, due to the murderous deeds of their family member the perpetrator – as occurs in the case at hand. We must remember that this is not the petition of a perpetrator petitioning against the proportionality of the harm inflicted on him. The perpetrator stands trial, and if and when convicted of the offenses attributed to him, he will most likely spend the rest of his life behind bars, as is fitting given the extreme and murderous crime described in the severe indictment which was filed against him.

   However, the seizure and demolition order which is the subject matter of the case at hand harms the petitioners who are, as aforesaid, his family members – his father, his mother who has cancer, and his four minor siblings who were living with him in the same room, all of whom shall become, at once, homeless (and see recently: David Anoch and Eliav Lieblich "On House Demolition and Deliberate Harm to the Innocent: Following HCJ 2770/22 Hamarshe et al. v. Military Commander" ***Forum Iyunei Mishpat (Tguviyot Mishpat)*** 46 (June 2, 2022)). Such harm should not be taken lightly since a home for a person "is not only a roof over their head but also a means for determining a person's physical and social position […] their private life and social relationships" (HCJ 7015/02 **Ajuri v. Commander of IDF Forces in the West Bank**, IsrSC 56(6) 352, 365 (2002)).

4. Therefore, and although I am aware of the current case law, I feel obligated to point out that the principled arguments which were raised in the petition and in the hearing before us, are serious arguments raising legal and moral questions relating to aspects of both international law and our jurisprudence (see among many others: HCJ 8567/15 **Halabi v. Commander of IDF Forces in the West Bank**, paragraph 2 of the opinion of Justice **D. Barak Erez** (December 28, 2015); HCJ 1938/16 **Alrub v. Commander of IDF Forces in the West Bank**, paragraph 2 of the opinion of Justice (as then titled) **S. Joubran** (March 24, 2016); HCJ 974/19 **Dahadhe v. Military Commander of the West Bank Area**, paragraphs 2-3 of the opinion of Justice **M. Mazuz** and the references there (March 4, 2019)).

   Therefore, I am of the opinion that these questions should be revisited by an expanded panel of this court and undergo an up-to-date, thorough and comprehensive examination (see also the position of Justice (as then titled) U. Vogelman in HCJ 1336/16 **Atrash v. GOC Home Front Command**, paragraph 1 and the references there (April 3, 2016); the position of Justice **M. Mazuz**, *inter alia*, in HCJ 7220/15 **'Aliwa v. Commander of IDF Forces in the West Bank,** paragraph 3 (December 1, 2015); HCJ 7961/18 **Na'alawah v. Military Commander of the West Bank Area**, the opinion of Justice **G. Kara** (December 6, 2018) (hereinafter: **Na'alwah**)).

5. At the present time I shall be satisfied with the above, although it is clear that it does not exhaust the discussion concerning the exercise of the authority, examining the regulation externally (see and compare: **Na'alwah**, paragraph 1 of the opinion of Justice **D. Barak Erez** and the references there). Either way, the rule is that the authority and discretion are two separate and distinct issues; I shall turn now to the latter.

The Discretion

6. Even according to the applicable rule concerning the authority to act by virtue of Regulation 119, there is no dispute that it is incumbent on the military commander to exercise it prudently and with great restraint, reasonably and proportionately. This court has long stressed that exercising the authority according to the Regulation, requires a prudent and restrictive approach. These fundamental principles were reinforced after the enactment of the basic laws and the numerous judgments which followed them; the above, since the exercise of the authority severely violates several fundamental rights, including violation of the right to property and human dignity and a host of derivative rights.

As noted by Justice (as then titled) **A. Barak**:

> "It is well known that the measure embedded in Regulation 119 is an extreme and severe measure and that it shall be used only after strict examination and consideration and only in special circumstances […] Regulation 119 itself includes measures on different levels of severity, commencing from seizure only, going through seizure coupled with a full or partial sealing and ending with the demolition of the building […] only in special circumstances the measure of house demolition shall be used since the severity of the demolition is three-fold: **first**, it deprives the tenants of their residential home; **second**, it prevents the possibility of restoring things to their previous condition; and **third**, it may, occasionally, harm neighboring tenants" (HCJ 361/82 **Hamari v. Commander of Judea and Samaria Area**, IsrSC 36(3) 439, 443 (1982) (hereinafter: **Hamari**)).

And as held by President **M. Naor** in one of her judgments in the matter:

> "This court has made it clear in its judgments that the Military Commander must use this power in a cautious and limited manner, in accordance with the principles of reasonableness and proportionality […]. This ruling was reinforced with the enactment of the Basic Law: Human Dignity and Liberty, in light of which the Regulation should be interpreted (HCJ 7040/15 **Hamad v. Military Commander of the West Bank Area**, paragraph 23 and the numerous references there (November 12, 2015)).

Justice **N. Sohlberg** has also ruled accordingly, noting that:

> "In the judgments of this court it has been clarified that the military commander should make cautious, proportionate and limited use of his above authority […]. While exercising the authority vested in him by virtue of Regulation 119, the military commander should act in a manner reflecting, to the maximum extent possible, the spirit of the Basic Law: Human Dignity and Liberty […]. Therefore, according to the rules established by judicial precedence, the military commander must ascertain that the seizure and demolition actions are taken for a proper purpose and satisfy the proportionality tests. Namely, he must ascertain that the action taken may achieve the requested purpose; and that the proper relation is maintained between the harm caused by it and its underlying purpose (HCJ 6826/20 **Dweikat v. Commander of IDF Forces in the Judea and Samaria Area**, paragraph 21 of his opinion (October 25, 2020)).

7. Hence, this court has recognized on the one hand and notwithstanding reservations made by some of its members, the power to use Regulation 119, and on the other it set boundaries, limiting to a certain extent, the possibility to exercise said power; strictly requiring that the Regulation be used in a reasonable and proportionate manner.

8. Accordingly, for instance, Justice **M. Mazuz** specified the principle circumstances which it is right and proper to consider with respect to the perpetrator, his family members and the building which is the subject matter of the order, and I can only join my view to his words:

> "A. Was the house actually used for the terror activity of the perpetrator, such as shooting from the house, storage of weapons, or usage of the house for the purpose of meeting with his terrorism accomplices […]; or did it serve the perpetrator as his residence only?
>
> B. What is the connection between the perpetrator and the building – is the house owned by the perpetrator or is he only an "ancillary tenant" in a property which belongs to his parents or family members, or does he only rent the apartment which belongs to another? […]
>
> C. How and to what extent did the perpetrator use the house – did he live there on a permanent basis or only visited it and slept there occasionally? Which parts of the building were used by him alone, and which parts did he use together with his nuclear family or extended family?
>
> D. Were the inhabitants of the house involved in the activities of the perpetrator (whether or not he is a family member), and if the answer is positive – what is the type and scope of such involvement – only awareness of the fact of his involvement in terror activity, awareness of the specific action being the subject matter of the order, support or actual assistance to terror activity?
>
> E. What happened to the perpetrator – was he killed during the attack, arrested and incarcerated for many years, or maybe escaped?
>
> A prudent examination of these circumstances and passing them through the melting pot of the proportionality test will lead to the conclusion of whether there is a basis and justification under the relevant circumstances to exercise the sanction according to Regulation 119, and if the answer is positive, under what terms and conditions: seizure only, sealing (partial or full), or demolition (partial or full).
> (HCJ 8150/15 **Abu Jamal v. GOC Home Front Command,** paragraph 15 of the opinion of Justice M. Mazuz (December 22, 2015) (hereinafter: **Abu Jamal**)).

9. In the case at hand there is no dispute that the building was not actually used for terror activity; and contrary to my colleagues I am not of the opinion that the materials presented to us substantiate the argument whereby the decision to commit the attack "was taken" on the roof of the home of the perpetrator's parents; moreover, the perpetrator is only an "ancillary tenant". The building is neither the home nor the property of the perpetrator. He lived together with his three minor brothers and sister – in one room of the entire building. The perpetrator's connection to the building is therefore on the low level; in addition, there is no dispute, as it also emerges from the investigation reports which were attached to respondents' exhibits, that the perpetrator's

parents had no involvement whatsoever, nor even awareness, and the above apply more forcefully to his minor siblings; furthermore, as it emerges from said exhibits his father even "objected to [the perpetrator's] deeds"; and it should be reminded that in the case at hand the perpetrator had been caught and arrested and a very severe indictment was filed against him. All of the above should be coupled with the medical condition of the perpetrator's mother, who has cancer.

In these circumstances, I cannot join the conclusion of my colleagues that the order to demolish the entire building which is the subject matter of the petition is proportionate to its alleged deterring effect, since the result of the act in this case is disproportionate to the benefit allegedly embedded therein. I am therefore of the opinion that at least in the absence of any involvement of the family members, the severe violation of the rights of the uninvolved tips the scale and defeats the opposing deterring considerations, to the extent that these are indeed deterring and not punitive considerations. Given all of the above I am of the opinion that the flaws in the decision of the military commander justify the issuance of an *order nisi* in the case at hand.

10. It should be immediately said that I join in my above position quite a few voices which came from this honorable court whereby the values of the state of Israel as a Jewish and democratic state, particularly after the enactment of the Basic Law: Human Dignity and Liberty, lead to the conclusion that the drastic measure of the demolition of the entire home of the perpetrator's family should not be taken, if he was living there with his parents and siblings or with his wife and children, with respect of whom no allegation was made that they have assisted him in his actions.

    See for instance the words of Justice (as then titled) **M. Cheshin**:

> Legislation that originated during the British Mandate — including the Defence (Emergency) Regulations — was given one interpretation during the Mandate period and another interpretation after the State was founded, for the values of the State of Israel — a Jewish, free and democratic State — are utterly different from the fundamental values that the mandatory power imposed in Israel. Our fundamental values — in our times — are the fundamental values of a State that is governed by law, is democratic and cherishes freedom and justice, and it is these values that provide the spirit in interpreting this and other legislation… This was the case since the establishment of the State, and certainly after the enactment of the Basic Law: Human Dignity and Liberty, which is based on the values of the State of Israel as a Jewish and democratic State. These values are general human values […] 'Fathers shall not be put to death because of their sons, and sons shall not be put to death because of their fathers; a person shall be put to death for his own wrongdoing.' This is the spirit and we shall act accordingly: 'In those days they shall say no more, the fathers have eaten a sour grape, and the children's teeth are set on edge; But every one shall die for his own sin: every man that eats the sour grape, his teeth shall be set on edge. (Jeremia 31, 28-29). No more, the fathers have eaten a sour grape, and the children's teeth are set on edge; But every one shall die for his own iniquity: every man that eats the sour grape, his teeth shall be set on edge; and a person shall be put to death for his own wrongdoing" (HCJ **Al'amarin v. Commander of IDF Forces in the Gaza Strip,** IsrSC 46(3) 693, 705-706 (1992)).

And in another matter he wrote as follows:

> "[…] the fundamental principle stands firm, without deviating left or right: every person shall die for his own sin and every person shall be put to death for his own wrongdoing […] This fundamental principle goes to the root of the authority and does not relate solely to the authority's discretion and to the compatibility (proportionality, relation) between the evil deed and the sanction imposed by the authority. […] I find it difficult to agree to the determination that the respondent is vested with the power to damage the entire building which is the subject matter of this discussion, although the killer did not own it and did not live in its entire area. The killer's room is designated for demolition, and the authority may demolish it if it so wishes. His own room but not the home of others" (HCJ 6026/94 **Nazal v. Commander of IDF Forces in Judea and Samaria**, IsrSC 48(5) 338, 352 (1994)).

And in another case he stressed that:

> If we demolish the perpetrator's apartment we shall 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 – we read into 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 will lead us directly to ancient times of our people, and our own times are just as those days: 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 sin: every man that eats sour grapes his teeth shall be set on edge" (HCJ 2006/97 **Janimat v. GOC Central Command**, IsrSC 51(2) 651, 655 (1997).

This position was also shared by Justice (as then titled) **U. Vogelman**, also in a minority opinion, who wrote as follows:

> It is one thing to destroy the house of a person who tried to annihilate us when he lives there alone; it is another thing to destroy the building in which his family or other residents live who were not involved in his malicious plan, and whose house collapses through no fault of their own. Justice M. Cheshin (as then titled) described it well […].
>
> I too join these just words. I should add that in my view the damage caused as a result of house demolition should not be regarded as an economic or property damage alone […] a damage which in and of itself should not be underestimated, since a person's home "is not just a roof over one's head but also a means for determining a person's physical and social position […] their private life and social relationships" […] These things are intended, as noted, primarily for innocent family members against whom there are no claims of aiding the criminal action of the perpetrator, when the military commander orders the demolition of the entire house (as opposed to demolition or sealing off of portions of it).
>
> The result of weighing the two scales against each other – between the benefit and the harm to human rights which result from implementing the Regulation's content – is that, at least in the absence of involvement by members of the household, the drastic harm to the rights of the

> uninvolved pushes the scales and enhances the considerations against such action. Demolition of the home is therefore within the authority, but the fault lies rather in the realm of discretion: in this situation the action is not proportional. (It should however, be noted that Justice U. Vogelman added there that "for as long as this precedent stands I bow my head before the opinion of this house." (HCJ 5839/15 **Sidr v. Commander of IDF Forces in the West Bank** (October 15, 2015), paragraphs 5-6 of his opinion)).

It was so held by Justice **M. Mazuz** in numerous cases, including, *inter alia*, in **Abu Jamal**:

> "7. The conscious and deliberate infliction of harm on innocent people, and even more so, a severe violation of their constitutional rights, only so that other potential perpetrators "**will see and beware**", is an act that would be inconceivable in any other context.
> …
>
> 13. I am of the opinion that the power according to Regulation 119 should be exercised in view of the fundamental principles which derive from the mere fact that the state of Israel is a **Jewish state** ("a man shall be put to death for his own sin") **and a democratic state** (compare: HCJ 73/53 **"Kol Ha'am" v. Minister of the Interior**, IsrSC 7, 871 (1953)), and **in view of the principles of our constitutional law,** mainly from the aspects of **proportionality**, as well as in view of **universal values**. I am of the opinion that all these principles **inevitably lead to the conclusion** that the sanction under Regulation 119 may not be taken against uninvolved family members, regardless of the severity of the event and the deterring purpose underlying the use of the power. Needless to point out that apparently the biblical principle according to which "a man shall be put to death for his own sin" constitutes the ideological basis of the prohibition against collective punishment in international law.
>
> In my opinion, a sanction which directs itself to harm innocent people cannot be upheld, whether we define the flaw as a violation of right, act in excess of authority, unreasonableness or disproportionality..."

I also join now these just and accurate words.

11. Following the above I wish to say a few words about the deterring purpose that the respondents and also my colleagues to a large extent, allude to.

12. In its ample judgments concerning Regulation 119 this court held that the main purpose of the seizure and demolition order was to deter the public from committing, assisting, supporting and even encouraging similar terror attacks (and see the language of the Regulation addressing the military commander who is satisfied that "**the inhabitants or some of the inhabitants** [of the land – C. K.] **have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence against these Regulations**"). The principle of deterring the public in our context is based on the assumption that the public which should be deterred realizes that the act of terror takes a heavy toll; and the actual fear from this toll will prevent others from acting in a similar manner.

13. In view of this assumption, puzzling to me is the determination that the proven fact that the family members, the tenants of the building which is the subject matter of the order, were totally unaware of the perpetrator's intentions – did not suffice to nullify the need to demolish the entire building.

    The above, since this determination is contrary to logic and common sense, and certainly does not reconcile with the alleged deterring purpose, as it treats equally those who were unaware of the intentions of their family member and those who assisted the perpetrator to commit an act of terror or collaborated with him after the fact. And it was so noted in **Abu Jamal**:

> A deterring purpose assumes that a rational connection exists between the prohibited action and the sanction. Said purpose does not reconcile with the infliction of harm on innocent people. Focusing the sanction only against family members who were involved in the terror activity, and on the other hand, leaving uninvolved family members unharmed, may create an incentive for the family members to act for the prevention of attacks when they become aware of such intention, in a bid to avoid the expected sanction. On the other hand, taking the sanction against those who are not involved as well, does not create an incentive for the family members to act for the prevention of the terror activity in view of the fact that the sanction would be taken against them in any event, even if they act for the prevention thereof (without success).
>
> (*Ibid*., paragraph 17 of the opinion of Justice **M. Mazuz**).

14. Following the above I wish to clarify that I cannot accept the determination of my colleague, Justice **Y. Elron** that if we satisfy ourselves with the sealing of the perpetrator's room only "the deterring effect of Regulation 119 shall be considerably eroded, if not completely nullified" (paragraph 16 of his opinion).

    This determination is contrary to the language of the Regulation and its purpose as well as to prior judgements such as in **Hamari** where it was held that "**Regulation 119 itself includes measures on different levels of severity, commencing from seizure only, going through seizure coupled with a full or partial sealing and ending with the demolition of the building […] only in special circumstances the measure of house demolition shall be used**".

    Moreover, I cannot join this determination where no evidence was presented to us with respect to the deterring effect of a more proportionate measure such as the sealing of the perpetrator's room. And to be precise, even if my position is not accepted in the case at hand, the respondents should take heed of the above comment such that in similar cases which may be brought before this court they shall also provide as detailed an opinion as possible concerning the deterring effect of a partial demolition of a house or its partial sealing.

15. All of the above and more. As far as I am concerned it should be taken into consideration that alongside the argument about the deterring effect with its above limitations, one should not disregard the concern that the severe and disproportionate harm inflicted on innocent family members, who at once become homeless and destitute, shall create feelings of anger and frustration yielding an opposite result than expected. In this actual context, Justice **D. Barak Erez** pointed out in **Na'alwah** that:

> I find it disturbing that the perpetrator's will in the case at hand referred to the "house demolition" argument as one of the motives underlying

his lethal decision, as opposed to a deterring factor." (*Ibid*., paragraph 2 of her opinion).

State officials should take the above into consideration and in the future should also take this detail into account in the privileged opinion which is presented, subject to the petitioners' consent *ex parte*, to the panel hearing such petitions, all of the above such that when the time comes, and hopefully soon, this issue shall be thoroughly and comprehensively reviewed by an expanded panel of this court.

16. Before I conclude I wish to note that a grim picture arises from the words of respondents' counsel in the hearing before us, with respect to the financial compensation given by the Ministry of Defense to the neighbors who were harmed as a result of the exercise of the demolition order. The absence of an explicit undertaking to compensate the owners of the adjacent properties for any damage inflicted on them, certainly in view of the amounts described to us and particularly where the respondent chose to carry out the demolition by way of 'detonation' is unacceptable. It is advisable for the responsible bodies to establish an accessible and practicable compensation procedure (see and compare, *mutatis mutandis*, Ma'ayan Neizana "Foreknown failure: the procedure as a tool to deny substantial rights of Palestinian Residents" **Ma'asei Mishpat 9(2)** 128 (2018)).

17. In conclusion: the state of Israel, as a democratic state is obligated to protect the life of its citizens, thwarting any attempt to harm them. But it is obligated to do so without harming the life, personal property, real property and rights of innocent people who did nothing wrong and nevertheless are expected to find themselves without a roof over their heads.

    Therefore, if my opinion is heard, we would accept the petition and cancel the seizure and demolition order issued by the military commander against the petitioners' home.

J u s t i c e

Decided as specified in the opinion of Justice **Y. Elron**, who was joined by Justice **G. Canfi-Steinitz**, against the dissenting opinion of Justice **C. Kabub**, to deny the petition.

Given today, Tamuz 8, 5782 (July 7, 2022).

J u s t i c e J u s t i c e J u s t i c e