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At the Supreme Court Sitting as the High Court of Justice

**H CJ 8024/14
H CJ 8025/14**

Before:

**Honorable Justice E. Rubinstein
Honorable Justice Y. Danziger
Honorable Justice N. Sohlberg**

The Petitioners in H CJ 8024/14:

1. ____ Hejazi
2. ____ Hejazi
3. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
4. **Addameer – Prrisoner Support and Human Rights Association**

The Petitioners in H CJ 8025/14:

1. ____ al-Akri
2. ____ al-Akri
3. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
4. **Addameer – Prrisoner Support and Human Rights Association**

v.

The Respondent:

GOC Home Front Command

Petitions for *Order Nisi* and Interim Orders

Session date:

9 Kislev 5775 (December 1, 2014)

Representing the Petitioners:

Adv. Labib Habib; Adv. Farah Biadsy

Representing the Respondent:

Adv. Yochi Genesin; Adv. Avinoam Segal-Elad

Judgment

Justice E. Rubinstein

- A. The two petitions before us concern the issue of demolition orders against the homes of the petitioners pursuant to Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: **Regulation 119**), following terror activities which are attributed to their family members.

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- B. Petitioners 1-2 are the parents of _____ Hejazi (hereinafter: _____), who, as argued by the State, and it seems that the petitioners do not refute same, shot Yehuda Glick (hereinafter: **Glick**) on October 29, 2014 and injured him in a very severe manner. On November 19, 2014 the respondent notified petitioners 1-2 that in view of the actions of their son he intended to seize, demolish and partially seal their residential apartment in Abu Tor neighborhood, Jerusalem, according to the authority vested in him under Regulation 119. Their submission was rejected and an order was issued on November 23, 2014. The petitioners request to revoke the order which was issued, and alternatively, to receive from the respondent an engineer opinion regarding the demolition of the apartment. Among other things, it was argued, that Regulation 119 was an old remnant of the Defence (Emergency) Regulations which were mostly revoked and replaced by less offensive civilian legislation, and therefore said Regulation should not be used. It was further argued that the demolition of the house, harmed innocent individuals and amounted to collective punishment, and was therefore, prohibited. It was also argued that the petitioners had no connection with the alleged actions, and that for this reason also the demolition or sealing of the house did not satisfy the proportionality tests; It was thereafter argued that demolition differed from sealing in the damage caused to the residents of the house, and that the respondent did not make it clear whether he intended to seal or demolish the property. It was also argued, that the order issued pursuant to Regulation 119 did not deter potential perpetrators, that the use of the Regulation – in general, and in our case in particular – discriminated between Arabs and Jews, and that the use of said tool was especially problematic when Israeli residents were concerned – as it so happened in the case before us.
- C. The State is of the opinion that the petition should be denied. It was argued, that the deeds attributed to _____ were very severe and justified the issue of such an order, particularly in view of the tide of terror which hit Jerusalem recently. According to the State, the evidentiary material in the file indicate that on October 29, 2014, _____ approached Glick in the Begin Heritage Center in Jerusalem, stood near him and said "Yehuda, I am sorry but you annoyed me very much", and thereafter shot him several times, as a result of which Glick was critically wounded, and fled the place. On the next day the security forces reached _____ home in order to detain him for interrogation, however, when the latter noticed the forces he climbed on the roof with a pistol in his hand, which he aimed against them; In response, the forces opened fire at him in a manner which caused his death. With respect to the arguments concerning collective punishment, discrimination and the use of Regulation 119 within the boundaries of the State of Israel, they were raised and denied many times in other petitions which were discussed by this court and the case before us was not different in that respect. As to the proportionality of respondent's exercise of his authority under Regulation 119, the respondent stated that it did not intend to demolish the entire structure but rather to partially demolish it and seal other parts of the apartment, according to an engineer plan which was prepared, causing minimum damage to the adjacent apartments, and as has been previously held by this court, petitioners' argument that the relevant engineer plan should be transferred to them should be denied.

- D. Petitioner 1 (hereinafter: **petitioner 1**) is the wife of ____ al-Akri (hereinafter: _____), who, according to the respondent, and it seems that the petitioners do not refute same, executed a ramming attack on November 5, 2014, as a result of which two individuals were killed and 14 others were wounded. On November 20, 2014, the respondent notified petitioner 1 that in view of the actions of her husband he intended to seize, demolish and partially seal their residential apartment in Shu'afat, according to the authority vested in him under Regulation 119. Petitioners' submission was rejected and an order was issued on November 23, 2014. The petitioners request to revoke the order which was issued, and alternatively, to receive from the respondent an engineer opinion regarding the demolition of the apartment. The arguments of the petitioners in this matter are similar to the arguments which were raised in HCI 8024/14 above. Among other things, it was argued, that Regulation 119 should not be used because it constituted part of the Defence (Emergency) Regulations which became obsolete, that the issue of an order pursuant to Regulation 119 amounted to collective punishment, and was therefore, illegal, and that the issue of a sealing and demolition order was not efficient, was discriminatory and particularly problematic when used within the boundaries of the State of Israel. With respect to the proportionality it was argued that the house itself was not owned by petitioner 1 or Ibrahim, but rather by petitioner 2, Ibrahim's brother, and therefore the demolition thereof was not proportionate, and the respondent did not clarify how he intended to execute the order.
- E. On the other hand the State argues that the deeds attributed to ____ were very severe and justified the issue of the order, particularly, as aforesaid, in view of the tide of terror in Jerusalem. It was argued that on November 5, 2014, while ____ was driving near the light railway station in Shimon Hatzadik Street, Jerusalem, he deviated from the regular traffic lane into the railroad tracks where pedestrians were standing and waiting for the train. Later on, _____ intentionally drove his car on the sidewalk and killed a cyclist. ____ continued to drive at high speed clashing into other vehicles until he stopped. Then he left his car holding a crowbar in his hand. At this stage _____ started to attack a police car and smashed the car's windows, at which time a police force arrived to the scene and shot him to death. It was further argued that one of Ibrahim's brothers was a prisoner who was released in the "Shalit transaction", who was convicted of the execution of two terror attacks in which three policemen were murdered, and who was expelled, within the framework of the transaction to Turkey. Another brother, petitioner 2 in this petition, praised the terror attack in an interview to the website "Shihab", and called hundreds of listeners to follow his footsteps. It was further stated, that petitioner 2 said in his interrogation that Khaled Mashaal, the political leader of the Hamas organization, called to congratulate him after the terror attack, and petitioner 2 thanked him. As aforesaid, with respect to the arguments concerning collective punishment, discrimination and the use of Regulation 119 within the boundaries of the State of Israel, it was argued that they were raised and denied a large number of petitions which were discussed by this court and that the case before us was not different in that respect. As to the proportionality of the demolition of the structure, it was argued that the respondent intended to demolish only the apartment in which _____ lived, causing minimum damage to adjacent apartments. It was also argued that as has been previously held by this court, petitioners' argument that the relevant engineer plan should be transferred to them should be denied

The hearing before us

- F. In the hearing, petitioners' counsels reiterated their main arguments in both petitions. It was argued that in view of the severe injury caused by the demolition of a home to its inhabitants, who are not suspects, said authority should be exercised in extreme cases only, but that apparently, the State turned it into a norm rather than to an exception.

With respect to HCJ 8024/14 it was argued, that the shooting was made based on political rather than national motives, and that therefore, the attack did not constitute part of the alleged tide of terror attacks in Jerusalem which justified the demolition of the house. In addition, an engineer opinion was submitted, according to which the demolition of the structure, even if partially, would critically damage it and may cause the second floor, located above the apartment being the subject matter of the demolition, to collapse, and may also cause damage to the adjacent apartment which shared the stairwell and some of the walls.

With respect to HCJ 8025/14 it was argued, that in the video which was referred to by the State in connection with petitioner 2, the petitioner criticized politicians for setting Jerusalem on fire, and did not call for additional killing of innocent civilians. Petitioners' counsel also submitted an engineer opinion, according to which the demolition of petitioner 1's home in HCJ 8025/14 may cause severe damage to the entire structure in which the apartment was located and even to adjacent structures.

- G. Respondent's counsel emphasized, that respondent's decision to issue the above orders pursuant to Regulation 119 was made in view of the significant increase in the scope of terror in Jerusalem in recent months, which required – in the opinion of security agencies – significant deterrence, and that such orders were not routinely issued. In response to the panel's question, whether, in fact, the terror attacks only increased ever since the earlier judgments, which approved house demolitions, were given, the State's counsel said that it was impossible to measure the effectiveness of the deterrence, but that this was the position of the security agencies. With respect to the proportionality of the demolition, it was argued that in HCJ 8024/14 it was decided to partially demolish and partially seal the apartment, in a manner which would not cause damage to the upper apartment; whereas in the house being the subject matter of HCJ 8025/14 the demolition was a simple one, in view of the fact that the apartment designated for demolition was located on the upper floor of the building which is a few stories high.

Decision

- H. The normative framework within which the respondent exercises his authority and issues orders for the demolition of the homes of persons suspected of being involved in hostile activities against the State of Israel, pursuant to Regulation 119, was discussed in the judgment which was given in HCJ 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defence** (hereinafter: **HaMoked**) which was published today, and therefore there is no need to discuss it again. In said judgment, most of petitioners' arguments in the petitions at hand were discussed and denied, including the argument that house demolitions amounted to prohibited collective punishment, that the measure discriminated between Jews and Arabs, that the Regulation should not be implemented on Israeli residents, and that the principle of proportionality required the use of a less offensive alternative as compared to house demolition.
- I. With respect to the specific cases:

HCJ 8025/14: As noted in **HaMoked** case, when the deeds attributed to the suspect are particularly severe, house demolition may be justified based on considerations of deterrence in accordance with respondent's discretion (subject to certain exceptions which were specified in that matter). It seems that this is the case in the matter at hand, which concerns a severe incident in which two individuals were killed in a ramming attack and 14 others were wounded by _____, who apparently ceased injuring additional passersby only due to the resourcefulness of the security forces. I am of the opinion that the petitioners failed to show that respondent's decision in this matter was flawed and that there was room for interference. As to the demolition itself, the State undertook that "when demolition takes place all required measures will be taken by the respondent to minimize possible

damage to the apartments adjacent to the terrorist's apartment." (Paragraph 54 of the State's response). We noted before us the above undertaking of the State, and we will also add that the respondent will act wisely should it also use for this purpose the engineer opinion which was submitted to him for this purpose by the petitioners.

HCJ 8024/15: I am of the opinion that *prima facie*, this case is different in view of the severity of the deeds attributed to Mu'ataz. Although these deeds are extremely severe, they did not eventually result in taking a man's life. And we should add to that the fact that no allegation was made regarding knowledge or involvement by the family members in his actions. Therefore, if my opinion is heard, we should issue, at this time, an *order nisi* in HCJ 8024/14, in which the respondent will be ordered to appear and show cause why he should not refrain from the demolition of the house being the subject matter of this proceeding. We must already emphasize at this stage, that we not accept at all petitioner's argument concerning the alleged difference between a shooting based on political motives and a terror attack based on national motives; terror is terror is terror, and there is no room for the alleged distinction. I will explain the special and complex circumstances and the reason for issuing an *order nisi*.

As we have noted in **HaMoked** case, the respond must exercise the authority vested in him under Regulation 119 proportionately. Thus, for instance, when the respondent considers whether or not to demolish a suspect's house, he must take into account, *inter alia*, the severity of the actions attributed to the suspect, the damage which would be caused to innocent individuals and the possibility to seal rather than demolish. Hence, although the actions attributed to _____ are extremely severe, the question is whether they meet the extremely high level which justifies the issue of an order for the demolition of the home of individuals who were not accused of having any knowledge of his terror activity. Furthermore, respondent's decision in petitioners' submission dated November 24, 2014 indicates, that the proportionality of the decision was examined *vis-à-vis* his **general authority** to issue orders for "a partial demolition and sealing of the perpetrator's apartment" (paragraph 11). *Prima facie*, the proportionality should be examined *vis-à-vis* each one of respondent's options; it is clear that demolition is not the same as sealing, and that the latter, by its nature, is more proportionate. On this issue it should be noted, that despite the fact that the respondent eventually decided to partially seal the structure rather than to have it demolished, it seems that, *prima facie*, the decision derived from planning considerations and the damage which would be caused to adjacent apartments, rather than from an examination of a means which would injure the inhabitants of the house to the least extent possible.

In addition, and although it was not argued directly before us, I am also of the opinion that the fact that Glick's condition improved cannot be ignored – of which we should obviously bless – in view of the fact that the considerations as to whether or not the Regulation should be used, consist, *inter alia*, of the results of the actions. It should be emphasized that the action attributed to Mu'ataz is very severe. However, in view of the fact that our case concerns the demolition of the home of those who were not accused of anything, I am of the opinion that the respondent should meticulously examine each and every possible alternative for the demolition of the house, the severe damage inflicted thereby is not in dispute.

Therefore, it is proposed to issue an *order nisi*, on the issue of whether the measure of demolition should be taken in this case. Response within 15 days. Hence, we do not accept the petition in HCJ 8025/14, and we issue an *order nisi* in the petition in HCJ 8024/14.

Justice

Justice Y. Danziger

I concur.

Justice

Justice N. Sohlberg

I concur.

Justice

Decided as specified in the judgment of Justice E. Rubinstein.

Given today, 9 Tevet 5775 (December 31, 2014).

Justice

Justice

Justice