

1. _____ Hijazi, ID No. _____
2. _____ Hijazi, ID No. _____ Petitioner
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
4. **Addameer – Prisoner and Human Rights Association**

all represented by counsel, Adv. Labib Habib et al.
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The Petitioners

V.

GOC Home Front Command

represented by the State Attorney's Office
Ministry of Justice, Jerusalem

The Respondent

Affidavit of Response on behalf of the Respondent

The Respondent hereby respectfully responds:

1. The petition concerns the request made by the Petitioners to refrain from the seizure and demolition of the apartment occupied by the terrorist _____ Hijazi (hereinafter: **the terrorist**), the son of Petitioners 1-2.
2. A hearing of the petition was held on December 1, 2014. At the same time another petition, concerning the demolition of the home of the terrorist _____ Akari was also heard, HCI 8025/14.
3. On December 31, 2015, the Court issued a number of judgments in petitions concerning Respondent's powers under Regulation 119 of the Defense (Emergency) Regulations 1945 (hereinafter – **Regulation 119**), as follows:

HCI 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defense** (hereinafter: **the general petition**) – a judgment dismissing a general petition filed by human rights organizations, which asked the Honorable Court to declare that the manner in which Regulation 119 is used is unlawful and that it breaches international law and Israeli constitutional and administrative law. The judgment given in the general petition dismissed the petitioners' claims, including the claim that house demolitions

amount to wrongful collective punishment, that it constitutes discrimination of Arabs compared to Jews, that the regulation must not be used against residents of the country and that the principle of proportionality demands use of a less injurious alternative than house demolition. To complete the picture, we note that a motion for a further hearing was filed in the general petition: HCJFH 360/15 **HaMoked: Center for the Defence of the Individual v. Minister of Defense**.

Judgment in HCJ 8070/14 and HCJ 8066/14 – a judgment dismissing two individual petitions filed by relatives of the terrorists who perpetrated the massacre in the Har Nof synagogue in Jerusalem.

Judgment in HCJ 7823/14 Ghabis v. GOC Home Front Command – a judgment wherein the Honorable Court dismissed an individual petition by relatives of the terrorist who perpetrated an attack using a bugger in Jerusalem.

The petition herein, HCJ 8024/14 – an *Order Nisi* was issued on the question of whether there is room to employ the measure of demolition with respect to the apartment occupied by the terrorist who perpetrated the attack which is the subject of the petition – the assassination attack on Mr. Yehuda Glick.

In the reasoning provided for the decision to issue an *Order Nisi*, the Honorable Court specified as follows:

I am of the opinion that prima facie, this case is different in terms of the severity of the actions attributed to Mu'ataz [the terrorist, A.S.]. Although these actions are extremely severe, they did not ultimately result in taking a man's life. To that we add 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, requiring the Respondent to appear and show cause why he should not refrain from the demolition of the apartment being the subject of this proceeding. We must emphasize at this stage, that we by no means accept the 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 Respondent 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 of sealing the house rather than demolishing it. Hence, although the actions attributed to Mu'ataz are extremely severe, the question is whether they meet the extremely high threshold which justifies issuance 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 the Petitioners' objection to the demolition, submitted November 24, 2014 indicates, that the proportionality of the decision had been examined vis-à-vis Respondent's general authority to issue orders for "a partial demolition and sealing of the terrorist's apartment" (paragraph 11). Prima facie, the proportionality should be examined vis-à-vis each 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 demolish it, 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 less injurious measure with respect to the inhabitants of the house.

In addition, and although it was not argued directly before us, I am also of the opinion that the fact that Glick's condition has improved – welcome news indeed – cannot be ignored, in view of the fact that the considerations as to whether or not the Regulation should be used include the results of the actions. It should be emphasized that the act attributed to Mu'ataz is very severe. However, in view of the fact that our case concerns the demolition of the home of individuals 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.

4. In other words, the Honorable Court held that the act perpetrated by the terrorist was extremely severe, and has wholly rejected Petitioners' claims, as argued at the hearing of the petition, that this was not a terrorist attack but rather a "political assassination". However, the Court did note that the combination of the particular circumstances of the case, in which, fortunately, Mr. Glick is recovering, and the absence of allegations of involvement on the part of the family members – does justify reconsideration as to whether to employ the measure of demolition under Regulation 119.

The Honorable Court also noted that "proportionality should be examined vis-à-vis each 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".

Respondent's Position

5. Following the judgment issued by the Honorable Court in the general and individual petitions, and following the *Order Nisi* issued in the petition herein, and after the Respondent has considered the manner in which Regulation 119 is to be used in the particular circumstances of the case, **a decision has been made to employ a more proportionate measure in the case herein, and to order the sealing of the room occupied by the terrorist alone, without harming the remaining parts of the apartment and the structure.**

We do, however, wish to clarify, Regulation 119 is employed for the purpose of deterrence, and therefore, the Respondent maintains that it is the severity of the acts and the need to deter others from perpetrating similar acts that should be given decisive weight, not their results. So, for example, there may be cases in future wherein severe and extreme acts are perpetrated at a certain time and in a certain place, acts that may, in Respondent's opinion, require use of Regulation 119 by way of demolition for the purpose of deterring others, even if such acts do not necessarily result in loss of life.

In any event, in the circumstances at hand, a more proportionate measure has been selected.

6. On the merits, the Respondent will argue that the decision to seal the room occupied by the terrorist in this case is a proportionate and reasonable decision and that it conforms to the judgments recently issued in the general and individual petitions.
7. Furthermore, and subject to the content of paragraph 5 herein, the Respondent asks the Honorable Court to view his detailed response to the petition submitted November 30, 2014, and supported with the affidavit of the GOC Home Front Command, as part and parcel to the Affidavit of Response.

Conclusion

8. In view of Respondent's current position and the judgments only recently issued by the Honorable Court in the general and individual petitions, Respondent will ask the Honorable Court to cancel the *Order Nisi* and dismiss the petition.
9. The Affidavit of Response is supported by the affidavit of Major General Eyal Eisenberg IDF GOC Home Front Command.

Today, 11 Adar, 5775, March 2, 2015

Yochi Genessin, Adv.
Senior Department Director
(Administrative Affairs)

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