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At the Supreme Court Sitting as the High Court of Justice

HCJ 7040/15
HCJ 7076/15
HCJ 7077/15
HCJ 7079/15
HCJ 7081/15
HCJ 7082/15
HCJ 7084/15
HCJ 7085/15
HCJ 7087/15
HCJ 7092/15
HCJ 7180/15

Before:

**Honorable President M. Naor
Honorable Justice H. Melcer
Honorable Justice N. Sohlberg**

The Petitioners in HCJ 7076/15:

1. **Haj Hamed**
2. _____ **Mshaqi**
3. _____ **Tzuwan**
4. _____ **Bashir**
5. _____ **Ganem**
6. _____ **Ziat**
7. **The cooperative Housing Company of Government Employees**
8. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

The Petitioners in HCJ 7079/15:

1. _____ **Rizziq**
2. _____ **Rizziq**
3. _____ **Rizziq**
4. _____ **Rizziq**
5. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

The Petitioners in HCJ 7082/15:

1. _____ **Razeq**
2. _____ **Razeq**
3. _____ **Razeq**
4. _____ **Razeq**
5. _____ **Razeq**

6. HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger

The Petitioners in HCJ 7085/15:

1. _____ Haj Hamed
2. _____ Haj Hamed
3. _____ Haj Hamed
4. _____ Haj Hamed
5. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

The Petitioners in HCJ 7087/15:

1. _____ Kusa
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

The Petitioners in HCJ 7092/15:

1. _____ Kusa
2. _____ Kusa
3. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

The Petitioner in HCJ 7040/15:

_____ Hamed

The Petitioners in HCJ 7077/15:

1. _____ An'am
2. _____ An'am
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

The Petitioners in HCJ 7084/15:

1. _____ Mustafa
2. _____ Hamed
3. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

The Petitioners in HCJ 7180/15:

_____ 'Abd al Jani

The Petitioners in HCJ 7081/15:

1. _____ Amar
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

v.

The Respondents in HCJ 7076/15, in HCJ 7040/15 and in HCJ 7084/15: and respondents 1-2 in HCJ 7077/15:

1. **Military Commander of the West Bank Area**
2. **Legal Advisor for Judea and Samaria Area**

The Respondent in HCJ 7079/15, in HCJ 7082/15, in HCJ 7085/15, in HCJ 7087/15, in HCJ 7092/15, in HCJ 7081/15 and in HCJ 7180/15:

Commander of IDF Forces in the West Bank

Respondent 3 in HCJ 7077/15:

Fadel Albasheh

Applicants requesting to join as Respondents in HCJ 7081/15:

1. **Almagor - Terror Victims Association**
2. **Dvora Gonen**

Petition for *Order Nisi* and Interim Order

Session Date:

16 Heshvan 5776 (October 29, 2015)

Panel Secretary:

Chen Shidlovsky

Typist:

Ra'aya Atias

Representing the Petitioners

in HCJ 7079/15

in HCJ 7085/15

in HCJ 7087/15

and the petitioner in HCJ 7180/15

Adv. Labib Habib

**Representing the Petitioners
in HCJ 7076/15**

Adv. Gabi Lasky

**Representing the Petitioners
in HCJ 7082/15
and in HCJ 7081/15**

Adv. Andre Rosenthal

**Representing the Petitioners
in HCJ 7092/15**

Adv. Lea Tsemel

**Representing the Petitioners
in HCJ 7040/15**

Adv. Mufid Haj

**Representing the Petitioners
in HCJ 7077/15
and in HCJ 7084/15**

Adv. Michal Pomeranz

**Representing the state
in HCJ 7076/15
in HCJ 7079/15
in HCJ 7082/15
in HCJ 7085/15
in HCJ 7087/15
and in HCJ 7092/15**

Adv. Yuval Roitman; Adv. Yonatan Zion-Mozes

**Representing the state
in HCJ 7040/15
in HCJ 7077/15
in HCJ 7084/15
in HCJ 7180/15**

Adv. Avinoam Segal-Elad

**Representing Respondent 3
in HCJ 7077/15**

Adv. Mufid Haj

**Representing the state
in HCJ 7081/15**

Adv. Avinoam Segal-Elad

**Applicants requesting to join as
Respondents in HCJ 7081/15:**

Representing themselves

Protocol

Honorable President M. Naor: I have a few preliminary questions to the state. The state requests quick decisions with no hidden meanings.

Adv. Segal-Elad: We did not think that this would be the question.

Honorable President M. Naor: You say at this point that you cannot lose but you want a quick decision.

Adv. Segal-Elad: We will need time to consult.

Honorable President M. Naor: I have another preliminary question for you. An argument was raised that the state should undertake to compensate for the damage. What is your position?

Adv. Segal-Elad: We cannot assume an obligation.

Honorable President M. Naor: I want to know what the position of the state is, whether it is willing to assume an obligation.

Adv. Segal-Elad: We cannot assume an obligation. We fully accept the judgment of the Honorable Justice Rubinstein.

Honorable President M. Naor: In some of the petition the argument is raised in the group of the vast majority of the petitions that you undertook to provide the evidence or a part thereof. I understand that the state argues that the evidence is based on admissions. My question is therefore what is the problem to submit admissions?

Adv. Segal-Elad: wherever there are indictments this is what we did and we have also undertaken to do so verbally and we undertook in general that where we can provide material we shall provide it and so we did.

Honorable President M. Naor: Not also the admissions that a person incriminates himself?

Honorable Justice H. Melcer: There are admissions. At least the admissions of these individuals.

Adv. Segal-Elad: I noted in my response to Adv. Rosenthal that he called me. Obviously, if we can submit we will submit and we did.

Honorable President M. Naor: What is the problem to submit admissions? If parts should be deleted there from it is O.K.

Adv. Segal-Elad: I will ask the counsel who handled the murder case of the Henkin spouses to respond to that.

Honorable President M. Naor: Had the issue of the effectiveness of the deterrence been examined?

Adv. Segal-Elad: This issue was examined and examined recently by security agencies and the political level. It is not a mere assumption. It is based on intelligence information including recent information. Interrogees can point to that house demolition is a deterring issue.

Honorable President M. Naor: So are there studies?

Honorable Justice N. Sohlberg: Can you show the material *in camera*?

Adv. Segal-Elad: These are not studies. We can show the material *in camera*.

Honorable President M. Naor: We shall hear the files in three groups according to the late murdered individuals. There are common denominators in the files.

Adv. Habib (representing the Petitioners in HCJ 7079/15, HCJ 7085/15, HCJ 7087/15): I obviously reiterate the grounds for the petition. I would like to shortly emphasize important points from the petition. Firstly, even if we lose hope in our attempt to convince the honorable court as a general rule house demolition is unlawful, as a general rule it is unlawful to injure innocent people and even if we relinquish the desire to establish a principle which is a superior principle as far as human rights and international law are concerned that innocent people are left out of the picture, even then we clearly see from respondent's conduct, in the hearing as well as before this honorable court, that it is his duty to come and refer to this impingement which he requests which is moral impingement which is the last escape, the lesser of two evils. This duty to refer to the destruction of houses as something which is incumbent on us is not clear and does not arise from respondent's conduct or from the conduct of respondent's legal counsels. The attempt is, as we see and feel it, is to make this evil, the destruction of homes, as something which is immediate and obvious. As something which is issued... They issue a notice one day and we are forced to submit a response within a few hours, our request for extension is denied. The respondent tries to put us through an expedited procedure in which the petitioners and the system must internalize that house demolition becomes obvious. They have in their bag additional sanctions and impingements of which we will speak. House demolition is beyond debate even according to all acceptable tests. The respondent has never exercised real discretion. He did not think it was necessary to the petitioners what their son did. We are fed only from respondent's notice. By the way we did not receive any details as to when they intend to file an indictment. The argument that the material is confidential and they request to present it *ex parte* is an argument which was not intended to protect the material, but rather an argument which says that the petitioners should not intervene in our discretion. The petitioners are not parties to this consideration. They must accept this bad decree and fully surrender to it. This is the outcome of the above and there is a basic misconception here. It is made because there is no other alternative. Nothing in respondent's conduct indicates that he actually does it reluctantly. The opposite is true. I want to remind that this is a proceeding in which the evidence is important for the purpose of conducting a defense. The respondent refuses to give the demolition plan. This is also, the minimal thing, to come and examine the plan. To modify errors if there are any. To bring an opinion on our behalf so as to prevent damage to adjacent apartments in the area, as recently happened. This request was also denied. The respondent says the same thing, we shall demolish as we see fit. It shows that the respondent does not understand his obligations. Also the poor man's lamb, to step forward and undertake that should unplanned damage be caused we shall compensate. He also refuses to do as much. They are not even family members of the petitioners. The refusal is to give the minimal rights, the right to have a basic hearing, the right to receive reasonable time and not to demolish a family home hastily and in an expedited procedure. This right is also deprived of the petitioners. Reference is made to the case of the Haj Hamed family in petition 7085/15 where the respondent acted so hastily and gave us two orders in Hebrew and in Arabic.

Honorable President M. Naor: This mistake is not something you can depend on. It was a mishap.

Adv. Habib: We were given a demolition order.

Honorable Justice N. Sohlberg: Counsel, the mistake was amended.

Honorable President M. Naor: We read it. The mistake was amended. We know. You cannot rely on this.

Adv. Habib: We requested to amend the objection and they even did not deign to call and say that there was a mistake. It also proves that the respondent regards house demolition as a technical and immediate

measure. He did not fulfill his basic obligations that he would have fulfilled with respect to any other sanction exercised by him in any other procedure. There is disrespect to petitioners' rights. No opportunity to prevent the demolition, no discretion was exercised by the respondent. The respondent does not have the patience to do it. We are of the opinion that his discretion is deficient as far as petitioners' rights are concerned. I would like to refer to the specific case shortly. I will commence with the case of the Haj Hamed family. There were two copies. It is a four story building. They wish to demolish two floors ... even if we agree to the use of Regulation 119 and accept this bad fate even then the obligation to exercise discretion cannot be disregarded. On one floor the detainee's father, mother and another family member live. The detainee, as a result of the suspicions against him the demolition order was issued does not live on this floor which is the second floor in the building but rather, on the floor above it, which is located underneath the top floor. Even if the order is approved, the obligation to act proportionately as adopted by the honorable court in a host of judgments, the parameters which the respondent must examine before an order is issued, all obligate either to close down or seal one floor or at least not to demolish the other floor and demolish only one floor. The desire to demolish both floors also indicates that the respondent breached the obligation to act proportionately. We request the court to issue an order on the issue of the demolition of two floors rather than one floor. Reminds the Nadine Nazad judgment – refers to paragraph 40 of the state's response – quotes. All of the above are considerations which the respondent must take into account and it is clear that he did not consider them.

Honorable President M. Naor: We understood the case. There is no need to repeat.

Adv. Habib: I am not going to discuss in these petitions the environmental damage because I represent the families themselves. My colleagues will do it but obviously the respondent must comply with basic requirements. Disclosure of the evidentiary material and the demolition method. In the matter of Walid Kusa's family – the HCJ concerns an apartment located in a three story building in which lives the petitioner, the detainee's wife.

Honorable President M. Naor: We saw that.

Adv. Habib: The concern here is the damage to the entire building as a result of the explosives and the detonation. All of the above increase our concern. There is no attempt on behalf of the state in its response to mitigate these concerns.

Honorable President M. Naor: These are family members of the suspect? It is a ground floor which has two floors above it?

Adv. Habib: There are three floors. Correct, ground floor.

Honorable President M. Naor: We shall go back to the physical description in the previous petition.

Adv. Habib: It is a four story building in which they wish to demolish the two middle floors. In HCJ 7085/15.

Honorable President M. Naor: These are the three petitions in which Counsel appears?

Adv. Habib: Correct. Refers to the response of the state where reference is made to the anticipated damage to the entire house and it was stated as follows "out of consideration..." quotes.

Honorable Justice N. Sohlberg: It is not accurate. The state went into details to make sure that no damage is caused.

Adv. Habib: Correct, but they also did the same thing in the past and caused damage. "to avoid as much as possible" – paragraph 69 of the state's response, second paragraph, three last lines – page 30 – quotes. I

would have changed the order and say do not demolish at all or seal but without detonations. A condition for the execution of demolition. We request that no damage be caused to the neighbors.

Honorable Justice N. Sohlberg: Counsel said that he did not represent the neighbors.

Honorable Justice H. Melcer: Did Counsel's clients tried to persuade him not to commit the attack or condemned it?

Adv. Habib: The petitioners knew nothing of the deeds. I did not check and did not ask them. They are innocent for as long as...

Honorable Justice H. Melcer: This was not my question.

Honorable President M. Naor: O.K. we have exhausted this issue.

Adv. Habib: Refers to an additional petition in which a high rise is concerned. The detainee lived with his family, father, mother and siblings who are the petitioners. He was single and had a room in the apartment. Here too the obligation to act proportionately is binding. We request to receive the interrogation material. It is not intended to bother the respondent. Rather, it has real merit. It is indeed possible that the evidentiary picture be disclosed. Their motive. All details. The difference. Were their admissions given as a result of torture. Are these details relevant and can be used by us?

I request to issue an order to enable us to exhaust the right to be heard by the interrogation material.

Adv. Lasky (representing the petitioners in HCJ 7076/15): There is no argument against them. These are uninvolved neighbors who have no connection to the incident. We are concerned with one petitioner who lives on the ground floor. The order indeed referred to the ground floor. Following an examination the picture was clarified. The other petitioners are residents of a cooperative housing company. The distance between the buildings is 7-8 cm. I join the general arguments of my colleague regarding the violation of equality, collective punishment. It raises a question concerning the effectiveness of this measure.

Honorable President M. Naor: How do you know that a hearing was held when you were not here?

Adv. Lasky: I build a pyramid. Certainly these are people who may be injured from the order. I will start from the end. My colleagues the respondents try to say that nobody will be injured. Refers o HCJ Abu Jamal where the respondents in fact stated in court that no damage would be caused. We attached in Exhibit 10 the neighbors' home which was damaged – a photograph. Despite the undertaking. In this our premise is that there is presumption. In some cases an engineering opinion had been submitted. Today they are not willing to submit. I find it hard to believe that petitioner 1 who lives on the ground floor will not suffer any damage. Nobody guarantees it. They do not satisfy the required burden to prove that no incidental damage will be caused. Indeed this court has ruled on many occasions that the mere exercise of the authority to demolish houses was not a collective punishment. Nevertheless the result becomes a collective punishment for many people. As noted many minors live really... Regulation 119 is a draconian regulation. The values of the legislator back then do not reconcile with the values of the state of Israel today. In this case not only that an indictment has not been filed against the suspects, but rather the interrogation has not yet ended in said proceeding.

Honorable President M. Naor: It is argued that the suspects in this affair admitted. We asked the state.

Honorable Justice N. Sohlberg: If we are presented with material, an opinion, satisfactory data regarding the effectiveness of the deterrence will your position change?

Adv. Lasky: There must be a prima facie high level of proof, also when the material is in the possession of the other party. Right now we are concerned with severe damage to dozens of people when the required evidence is minimal. I do not have the material before me.

Honorable President M. Naor: There was a hearing on this issue here when Counsel was not here. I do not allow to open a discussion on this issue again

Adv. Lasky: A person's fault justifies the demolition of his house. In fact the criminal procedure is contaminated. The criminal procedure here is not proper because the Supreme Court decided that he was guilty.

Honorable President M. Naor: It has nothing to do with the neighbors. Focus on your issue.

Adv. Lasky: Since the state has not provided an engineering opinion we had to prepare within a very short period of time an engineering opinion on our behalf. It is impossible to get organized on such short notice and prepare a thorough opinion which presents all damages. Had we known a little bit more, how they intend to carry out the demolition, I would have brought the experts. My objection is superficial.

Honorable Justice H. Melcer: Did you have a hearing? Were you contacted by the neighbors?

Adv. Lasky: The right to submit an objection and the right to be heard it is not stated in the regulations.

Honorable Justice H. Melcer: Counsel said that she was given only 48 hours but you have not received the order.

Honorable President M. Naor: I suggest that each one limits his arguments to his own petition only.

Adv. Lasky: An objection was submitted within the time frame of the entire proceeding.

Honorable Justice H. Melcer: Those who may be injured should be granted the right not their neighbors. Counsel comes and argues the arguments of the family members. These are not the arguments.

Adv. Lasky: As I said the presumption of validity is no longer in place. I was not given the opportunity to present my arguments regarding the damage, incidental damage.

Adv. Rosenthal (representing the petitioners in HCJ 7082/15): I will focus only on the damage which may be caused and reserve my arguments for the next file.

The state made progress on the issue of possible damage to the neighbors and promised us that the demolition would be executed without explosives... We are concerned with a three story building. Either the ceiling or the floor may collapse. With all due respect the presence of the military engineer did not prevent the destruction in the past. When later one turns to the state and request compensation the state argues that it is an act of war and that it is has no liability.

Honorable President M. Naor: What happened in these files?

Adv. Rosenthal: One case was thoroughly discussed before the Magistrates Court which denied the case altogether because they accepted the state's position that it was a war file.

Honorable President M. Naor: Does it mean that you can argue in the civil proceeding ...

Adv. Segal-Elad: The answer is no. It was examined in Sidr. An argument can be made. To the extent the demolition is carried out without objection and disorders, if an incidental damage is revealed, the state will not argue that it was an act of war.

Honorable Justice H. Melcer: How will it be carried out.

Adv. Segal-Elad: My colleague will answer that.

Honorable President M. Naor: We understand.

Adv. Rosenthal: In fact it is like saying that people should not go out at night so that they should not be raped. There is a limit. I do not want to repeat what my colleague said about the plan. Again in Sidr we received a plan, we received a letter on how things would be done. In that case there were also several floors and floor in between.

Honorable Justice H. Melcer: Where there disorders in that case during the demolition?

Adv. Rosenthal: In "Sidr"? Not as far as I know.

Adv. Tsemel (representing the petitioners in HCJ 7092/15): I have not received any evidentiary material on this issue. No indictment was filed. We requested the material but received no response. It is hard to say what was his part. It is very important to know what his part was and whether there was any. The description of the attack was made as if it was obvious. We filed a request of an interim order.

Honorable President M. Naor: Counsel is aware that it is not the stage, procedurally.

Adv. Tsemel: These are the family members and they also live in the same house.

Honorable Justice H. Melcer: These are the neighbors.

Adv. Tsemel: It is important and crucial that this person belongs to this house.

Honorable President M. Naor: I request the respondents... show your colleagues in terms of houses not in terms of petitions. Such and such house, first floor, second, etc. In cross reference to our data.

Adv. Tsemel: I represent the relatives of the Mussa family. With respect to the issue of Are A. They have certain rights.

Honorable President M. Naor: It has already been discussed in case law.

Adv. Tsemel: But it cannot be disregarded. We brought the various agreements. Brainstorming on how they should be implemented was carried out by all jurists and military personnel also... It is not an immediate response – quotes the section from the interim agreements. What was the response of the state to all of the above arguments? I would say sad. The response says that it makes no difference – quotes. Refers to paragraph 65 and 66. There is nothing beyond that. My clients have protections under the agreements. Another issue is the deterrence issue. There are data.

Honorable President M. Naor: Counsel, you were not here. We have discussed earlier the issue of deterrence studies. We asked the state what was the basis for its argument and we were told that privileged information would be presented before the court only.

Adv. Tsemel: I... what I learn about the deterrence in house demolition. I learn that as soon as somebody is suspected of having committed an attack, his family members almost automatically, such as those who abducted the three youths, they evacuate the house, dismantle the floor tiles, take out everything, remove the electric wires. The house is ruined before it is demolished.

Honorable President M. Naor: Counsel, maybe you know it, I don't know it.

Adv. Tsemel: Why is it automatic? Maybe differently. The "deterrence" is so deep that it is difficult to convince. What does it mean? I am trying to convince the population to trust the courts and it becomes more and more difficult. Refers to the words of the Honorable Justice Sohlberg who speaks of cost benefit – quotes. Is Hebron the center these days? Despite the fact that houses were demolished there.

Honorable Justice N. Sohlberg: The above was written based on studies which were made. Counsel speaks based on a gut feeling.

Adv. Tsemel: I am not talking about facts. To date we have received a list of attacks and victims of which we all regret and there are also demolitions.

Honorable President M. Naor: I hear this statement only from Counsel.

Adv. Tsemel: Six houses today. Why am I saying that it is a slippery slope. Quotes a poem about beautiful Bukhara. For instance – Today in Pakistan and India there is the issue of group rape or mutilation.

Honorable President M. Naor: We do not cite data. Counsel will leave it. We live in this country and we are also updated. Data aside.

Adv. Tsemel: There are data.

Honorable Justice N. Sohlberg: Counsel said that she prepared for the hearing this morning. At the same time she says that she read "Haretz" and quotes. Reading a newspaper is not a preparation for a hearing. These things should not be mixed.

Honorable President M. Naor: Ms. Tsemel.

Adv. Tsemel: I join the arguments of y colleagues and the court's words that the issue should be examined. Let's take the circumstances into consideration.

Honorable President M. Naor: Ms. Tsemel if you don't stop it I will have to ask you to sit down. You cannot argue based on the morning papers. You did not think right.

Adv. Tsemel: Take it easy, please calm down.

Adv. Mufid Haj (representing the petitioner in HCJ 7040/15): Mr. Fadel Moustafa Hamed is a businessman from Silwan who built a seven story building. He rented it and all apartments therein including apartment 23 located on the seventh floor with three additional occupied apartments. We knew of the demolition order which was issued. We did not receive any notice although we are the owners of the building and the state knew that we were the owners. The state did not give us any notice so as to enable us to submit an objection. We were not summoned for a hearing.

Honorable Justice H. Melcer: Nevertheless you submitted an objection.

Adv. Mufid: The decision was made before the state heard me,

Honorable President M. Naor: In this manner the flaw cannot be rectified.

Honorable Justice H. Melcer: Counsel did not disregard, he submitted an objection. Counsel did not have to submit an objection.

Adv. Mufid: Because of the short period that we were given to file a petition and to submit an objection, because of that we did not complete all arguments. In the beginning of the proceeding, the state was aware of the petition and knew that a hearing was scheduled. As far as the dates were concerned I could not appear

and I requested an extension which was given for November 2nd. The state argues that it is the same petition and the facts are similar. They are not similar and therefore the hearing should be held earlier on the 29th.

Honorable President M. Naor: OK and Counsel is here now.

Adv. Mufid: The petitioners did not have enough time. Our right to turn to court is breached. It is improper to give such a short notice, to schedule a house demolition within 48 hours. Damage will be caused. I am the owner of the house and I have property rights. We have worked our entire life to erect this house. The state wants within seconds to destroy my house. I am innocent. I did not know. I condemn violence. I am a person of peace. Why should I be sentenced to death?

Honorable President M. Naor: There is no need to exaggerate. There is no need to be swept away. The order is against the house not against you.

Adv. Mufid: As far my home is concerned it is a very severe sentence which I cannot accept in my lifetime. I apologize before the court. My rights are protected by law. The judgments upon which the state relied pertain to 1997 and 1998. They concern a tenant that by the end of the proceeding the apartment was sealed and not demolished. The state did not consider the correct considerations. I have a proprietary right. The state also has jurists who can also examine the damage *vis-à-vis* the rights. What is proportionate and what is the cost that one person will pay to deter the entire population. It is difficult for a home owner to build another house. Therefore before a demolition order it should be asked how a deterring message to the population may be given rather than causing damage to a person's property.

Honorable President M. Naor: As I told my colleagues, without belittling things. We have heard once and there is no need to repeat several times.

Adv. Mufid: We were not given the opportunity to submit an opinion. My client called me and wanted to come. He was not given entry permits. He could not come because of the date changes. I emphasize that the state knew that I was the owner, I attached documents. It failed to make any reference to this fact. The state did everything in an expedited proceeding. I think that justice shall come from you. I cannot sustain the damage which will be caused to me and most certainly to the building which will be caused to the entire building because it is my building.

Adv. Pomeranz (representing the petitioners in HCJ 7707/15 and in HCJ 7084/15): I represent the family members with respect to two houses. What is not in dispute here is the difficult security situation and the need to deter. The question is whether all measures indeed promote the purpose and whether the purpose is achieved. The state must still satisfy the burden on the issue of the fundamental rights. Refers to the HCJ in Akari – quotes. According to the judgment, the respondent in said case gave a sincere answer that there was no way to know. I believe that today in 2015...

Honorable President M. Naor: The respondents said in the beginning that there is indeed material which is privileged and they wish to present it *ex parte* if all parties agree.

Adv. Pomeranz: It is not a study.

Honorable Justice H. Melcer: They said that there was an opinion.

Adv. Pomeranz: In Sidr there are statements of people of the Israel Security Agency (ISA) that attacks were prevented. In the current situation, a week after the house of the perpetrator's cousin had been demolished he executed an attack. The deterrence issue should be examined. Refers to the words of the Honorable Justice Vogelman and Justice Rubinstein. The need to have a deterring measure is clear. This measure is used and in fact the result is that there is no deterrence. The Honorable Justice Sohlberg referred to the data. We are concerned with damage to houses in addition to the house designated for demolition.

Honorable Justice H. Melcer: I requested to limit the argument to the neighbor's issue. Counsel argues for the families of the detainees.

Adv. Pomeranz: The motivation to demolish is the severe security situation. The family members here are innocent. Their home is designated for demolition as a result of the actions of others. This undermines the measure used. I spoke about it in length. It is inconceivable that the perpetrators' homes would be used as a tool...

Honorable Justice H. Melcer: I asked beforehand, did they condemn the action or tried to talk him out of it?

Adv. Pomeranz: I don't have an answer to this question. I am just saying that we have here a presumption of innocence.

Honorable Justice H. Melcer: I asked a factual question and you don't have an answer so I understand. I will ask it in a different way. If someone wants to carry out an attack and someone talked him out of it is this relevant?

Adv. Pomeranz: I don't think so. People are being used as a tool for other purposes. I mentioned it. In the eight story building, a building in which they rent the apartment. A brother and a sister live in the apartment. The lease was signed between the mother who lives abroad and the owner. The demolition of the apartment will leave them with no support. They are young.

Honorable President M. Naor: I want to understand. A brother and a sister without a mother?

Adv. Pomeranz: The mother is abroad. The lease is for 12 months... option.

Honorable Justice H. Melcer: OK but it is renewed every year.

Adv. Pomeranz: The respondents bring case law from the end of the 90's. With respect to Hamed we are talking about the ground floor. We accept the judgments that there is no need to have a conviction for house demolition purposes. Here there is not even an indictment. The person is held by the Authority and has not been indicted and has not admitted. I do not understand what reference is made to the privileged information? Did they request it? I know that the state can request it from the Authority. The respondent attaches an indictment in the matter of Abdallah Itzkhak which incriminates him. Previously there was an ISA interrogation. From the little information I have received, Abdallah has two admissions which pertain to the date. Again we have a situation in which no criminal proceedings were initiated. When the interrogator asks him he says I may have mixed things up. We are talking about a person whose connection to the apartment is minimal. He did not live in the apartment since 2006 and a year ago he divorced and returned to the apartment to visit his mother. Otherwise he lives in his residence, his work place.

Honorable President M. Naor: It is difficult to say that his work place is his residence.

Adv. Pomeranz: He works in a hotel and resides there. I don't think that the connection is strong enough to justify the demolition. We do think that a thorough discussion is required. Finally I wish to refer to the schedule dictated to us by the respondent.

Honorable President M. Naor: Your colleague discussed it.

Adv. Pomeranz: And I would like to refer to it again. There are 16 house demolition notices. Decisions are sent at 21:00 which are received by us only in the morning. It is a violation of the right to liberty. The is no... This security situation did not start yesterday. Proper time should be given for the representation of our clients. This conduct is not proper.

Adv. Habib (representing the petitioner in HCJ 7180/15):

Honorable President M. Naor: Counsel spoke about this earlier in the context of the other case and it is the same argument.

Adv. Habib: I will be short. We request that an undertaking be given to avoid damage and to compensate. This is the basic thing. The principle is that if damage is caused compensation is given, at least that. We request the court to be specific and obligate the respondent to refrain from causing environmental damage.

Honorable President M. Naor: This is what they say they would do.

Adv. Habib: They say to the extent possible. I have already quoted that. In other words, we will try; if we do not succeed we are sorry.

Honorable President M. Naor: Counsel repeats himself time and time again. Without belittling your arguments we understand the idea.

Adv. Habib: The undertaking is to prevent damage, not any damage. The tenants of the building are disregarded. They did not receive notice. Surely devaluation will be caused as a result of damages. I finally wish to remind the fact that these conditions are not satisfied and we request that such conditions be satisfied. Even if the demolition is approved we request that no damage be caused and compensation for damage caused, if any.

Adv. Rosenthal (representing the petitioners in HCJ 7081/15): We do not belittle the order. We do not encourage the current wave. I think that it is inevitable and we. As a society, are trying from the outset, as a state, to ignore the basic facts. I can only refer to the Zionist slogan from the beginning of the previous century. Land without people and people without land and so on and so forth. I know that you have already decided that Regulation 119 was a lawful procedure. I know that you have decided that Amendment No. 4 to the Law and Administration Ordinance which was enacted for the removal of doubt as to the continuity of the law which existed in Palestine-Israel during the Mandate enabled the use of Regulation 119.

I know that you have not accepted this argument until now but I am of the opinion that Amendment 9A(11)4 refers to the past. It was published where it should have been published.

Honorable Justice H. Melcer: Counsel makes this argument after 60 years.

Adv. Rosenthal: In the last hearing in Sidr the Honorable Deputy President said again something which I regard as somewhat problematic. Regulation 4 explicitly stipulates that there is no need to publish anything which derives from the regulation. The Honorable Justice Rubinstein stated that said provision referred to technical matters. I feel very uncomfortable with this dissonance.

Another issue which was argued and was accepted by you is deterrence, deterrence, deterrence. The legislator put Regulation 119 in the penal part. The regulations consist of a general part but regulation 119 was not placed there. It is trickery to say that it can be proved that this or that person may not have committed. Admission are no longer acceptable as a basis for conviction, only in Israel. People are not willing to admit to something they did not do. I have my doubts as to evidence/admissions concerning things that interrogees are willing to hear [*sic*]. We received the shocking admission of perpetrator and he will be tried.

Honorable President M. Naor: It is enough for the files.

Adv. Rosenthal: It is an incident which occurred and was investigated in the beginning of July. I received four admissions from July 4th, 5th and 6th. The Honorable Justice said that time acted against you.

Honorable President M. Naor: The argument regarding the passage of time is a different argument. Focus on main thing.

Adv. Rosenthal: I am sorry but for me this is the main thing.

Honorable President M. Naor: What was the purpose of this entire speech?

Adv. Rosenthal: I don't know whether he committed or not, there is another person who was present. They did not deign to identify him. There is enough now.

Honorable President M. Naor: It is clear that the current proceeding is very sensitive and emotional yet we are all in the court room.

Adv. Rosenthal: I am not talking about the murder, I am talking about the perpetrator's family. The duration of time is disproportionate. Things were already clear back then. Te use of Regulation 119 in June...

Honorable Justice H. Melcer: There is a failure. There are different arguments. One of the arguments is that for the purpose of using regulation 119 not only admission is required but also conviction. There is authority, Counsel does not refute that. Assuming that there was authority according to case law, it was necessary to wait. There are stages in this process. You cannot hold the rope at both ends.

Adv. Rosenthal: I argue that this is what the state does. In Sidr the Deputy President held and my colleague also quoted paragraph 8 where the Honorable Justice Rubinstein says that if you want to demolish the houses you should do it as soon as possible after the attack and as soon as possible after you know it. In addition, in the response to the objection, the military says, I ask why now, you already knew, the military argues (quotes). Does it mean that because of the current attacks we go backward four months and we are going to demolish that house too. This is what is written, this is what they say. To say that I hold the rope at both ends is not true. In many cases the perpetrator is not alive and there is no criminal proceeding. When there are no criminal proceedings, Regulation 119 does not apply to these cases.

The legal legitimization of the state of Israel is based on the United Nations and we show disrespect to international law on a daily basis. It is a dissonance that I cannot accept, as a jurist, as a human being who lives in this state.

Honorable Justice N. Sohlberg: The Geneva Convention and international law should be updated. They do not justify the reality. We are not in a war between armies. The war does not take place on the border between states. No distinction is drawn between soldiers and civilians Every device is a weapon with one can kill in the battlefield and the home-front.

A knife, a pistol, ramming, anything goes in this fight of terror to kill and injure. It is international law that should be updated. You cannot make arguments based on rules of international law and conventions which were created in a totally different atmosphere.

Adv. Rosenthal: In view of the fact that East Jerusalem is concerned the waves rise and descend. The state makes use of Regulation 119. What my colleague wrote in the response as if the military examined itself is not correct. The court has explicitly said that it would not continue to approve it. Obviously I do not have a protocol to that effect. I have my word and the word of my colleagues who attended the hearing. My colleague argues that it was the military which came to the committee to examine the necessity and the manner by which Regulation 119 may be used and what are its effects, does it increase hatred etc. and it is not correct. It is the court that did it. It is the court that said that it would not be willing to approve it again. There were six cases and I photocopied and gave the, When we requested a judgment no judgment was given because the state decided that it did not a judgment. I request that the court makes an attempt to stop this wave. It is a wheel. Adv. Tsemel also spoke about it. It is a rolling wheel. One thing leads to the other,

one thing leads to the other. We are a state in response to the Honorable Justice Sohlberg. There are certain things that a state does not do. In addition there are things that the court does. Refers to 5100/94 in which it was stated that our duty as judges was not so easy, but the law and the values, and here I speak more of the values. ... against people who have nothing but kinship with the perpetrator in my view cannot be upheld in a Jewish and democratic state. In this case we speak of a demolition of a third floor in a building while the respondent comes and says that he will use explosives. We did not file the petition on behalf of the tenants from the second floor and from the first floor. We did attach photographs of the building. Even without being a civil engineer or a military engineer one can see that unlike what is stated in the opinion, the building was not built according to the standards and if the third floor of the building is detonated, additional damage will probably be caused to the entire building. I therefore request that an *order nisi* be issued, that they will come and explain to us why after four months, in view of the current situation, the apartment should be demolished.

Recess

Adv. Elad-Segal (on behalf of the state in HCJ 7081/15): This case concerns a murder of someone who went for a walk near a spring . Another case concerns an innocent person who returned with his friends from a game. These are three very severe attacks. Eventually a very heavy burden is imposed on the shoulders of the security agencies. Regretfully, things came up only in response to the objections. The security situation since the attacks occurred did not improve to say the least. The situation only deteriorated. The reality is that one attack follows the other including until yesterday. There is an extreme situation. The state is aware of the fact that there are extreme measures. It is not a measure by which criminal charges are pressed. It includes administrative measures such as administrative detentions and in this case Regulation 119. To deter potential perpetrators. We have a professional opinion. It is also supported by interrogations of interrogees, even of one interrogee who a few months ago said I refrained from committing an attack because I was afraid that my house would be demolished and my family would be injured. It has a great significance. We will never know the exact number of attacks which were not carried out due to this deterring measure. Each use of Regulation 119 is approved by the Attorney General.

Honorable President M. Naor: It does not immune it.

Adv. Segal- Elad: It is an exception as far as we are concerned and therefore the use of Regulation 119 and the authority apply to all cases which will be discussed, one by one. It is important to put it on the table at the outset of the hearing. With respect to the tight schedule, petitioners' desire to have more time is understandable. There is a superior importance here to cope with the current security situation.

Honorable President M. Naor: Some of the petitions are from June. Is the tight schedule justified? 48 hours?

Adv. Segal- Elad: We are concerned with deterrence.

Honorable President M. Naor: The question is whether, certainly in a range of four months and also in shorter ranges, reasonable time for response should be given?

Adv. Segal- Elad: We think it is a short period.

Honorable Justice H. Melcer: It was also on Friday and Saturday. You caused people to work on Saturday. And you had a mistake in the translation of the orders and you erred in that you failed to notify the owners. As a result of this rush you make mistakes.

Adv. Segal- Elad: The rush stems from what happens on scene. If we were in a calm period then the argument of giving more time could be heard. Eventually the political level comes and considers all relevant things. We are not in such a situation. The security situation is that we have one attack after the other.

Honorable Justice H. Melcer: To work on the weekend? It is exaggerated.

Honorable President M. Naor: Only at night.

Adv. Segal- Elad: We gave 48 hours. After I was requested. In that aspect we did agree.

Honorable Justice N. Sohlberg: There are also a few cases, in which we went through the entire procedure, and judgment was given and also after the judgment many months passed. It detracts from the argument regarding the effectiveness of the deterrence, regarding the urgent need to carry out the demolition.

Adv. Segal- Elad: It is true with respect to cases from November. It was also referred to in the judgment of the Honorable Justice Rubinstein.

Honorable Justice H. Melcer: You put the entire system under pressure and after judgment is given you change. I would like to receive a list of when judgment was given, when the incident occurred and when the order was realized by execution. There were months in which the procedure was delayed.

Adv. Segal- Elad: I can assume that this also applies to the attacks being the subject matter of this petition.

Honorable Justice H. Melcer: Can we receive a list by Sunday of cases in which judgment was given and you procrastinated. In said list Counsel will explain why the delay occurred.

Adv. Segal- Elad: Certainly. There were several quite months. If it is decided that demolition must be executed after judgment is given. The Prime Minister can come and say that he wants to wait with it for thousands of reasons. Therefore I say that the past should be severed from what happens today... we speak of deterrence. If things were calm maybe things would have been considered differently. Here immediate deterrence is required.

Honorable Justice H. Melcer: Counsel will give us an answer, because the court is accused of delaying things.

Adv. Segal- Elad: Things were scheduled expeditiously and also the judgments. We do not have on this issue...

Honorable President M. Naor: We are also concerned with past cases.

Adv. Segal- Elad: In house demolitions within Jerusalem.

Honorable Justice H. Melcer: By the way, submit it by Monday so that you do not have to work on Saturday.

Adv. Segal- Elad: With respect to the murder of Dani Gonen. By the way his mother sits here. There is a need to prevent the next case, so that no more people will have to sit in this court room. There is a need to prevent the next attack and it is important. We reiterate the arguments. It is argued that the petitioner is the owner of the asset. I repeat the previous arguments in the petition. The perpetrator himself said different things.

Honorable President M. Naor: Is it a registered asset?

Adv. Segal- Elad: It is not in our territory. We do not have information.

Honorable President M. Naor: You say that it does not belong to the petitioner?

Adv. Segal-Elad: In any event it does not change our position. The owner of the property petitioned rather than the family itself, therefore I did not attach it. There is a hard to watch report ON Channel 2.

Honorable President M. Naor: In this context I say what I said to Adv. Tsemel.

The Applicant requesting to join (representative of Almagor Association): I regard it as my fights against terror. We see here, without accusing anyone personally, there are very orderly jurists here. I want to comment on what I heard here on what is going on here. It is true that I am not a jurist but there is logic. We hear that the state of Israel decides to release perpetrators, in the Shalit transaction.

Honorable President M. Naor: Sir will not go into the Shalit transaction. Sir will go straight to the point.

The Applicant requesting to join: When necessary measures must be taken in a war the court should limit itself in its judgments as it did in the past. Arguments were made about the transparency of the petitioners. There are additional transparent people whose souls hover above this court and above the stones of justice. Their parents are here. They also have a moral claim. The Henkin family is not here. Atrociously enough, the children are orphans. Today they have a meeting on how to continue to raise the children.

Mrs. Gonen: I am Dani Gonen's mother – Dvora Gonen. I am a mother and grandmother and I work as nanny. I regard myself as an educator. I am a widow. Dani was the supporting pillar of the family.

Honorable President M. Naor: Obviously, we, the panel, share your sorrow.

Mrs. Gonen: I sit here because those who were murdered became transparent. I sit here and hear that the families of the perpetrators are also miserable, and we are not? You turned things around and blame the victims.

Honorable President M. Naor: There are limits even when a bereaved mother is concerned. Madam should not exploit the privilege given to her to throw accusations.

Mrs. Gonen: OK. So I will say a few things about myself. My son went for a walk. He was a 25 years old electric engineering student. He was not looking for trouble. He just went for a walk around Dolev spring. Half an hour from my home, It should have been the safest thing in the world. Unfortunately he went out and he never came back. Decide what you may. I cannot say anything because I am not a jurist. I am here and I am saying it from the beginning. We have a responsibility to prevent the next murder, that's why I am here. Also as a mother, a grandmother and an educator in Israel. If I don't prevent the next murder and I don't use my best efforts I don't know how I will be able to get up in the morning and look in the mirror. I go and lecture in the Ofer camp and speak. I ask that you understand and keep in mind that there are families here whose life was shattered not their walls.

Mr. Rosenfeld: Malachi graduated with honors. He should have started working in Hi-Tech and everything was severed by the terrorist. The question here is the balance between the sufferings of the families. We live in hell, every day, only because they wanted to murder Jews here, in our country. The perpetrator called his brother who lives in Silwan and the brother recruited his father in law. The murderer started to recruit a Hamas cell and started to solicit people to murder. He obtained a... a technician, a driver. There are all kinds of family relations that support the perpetrator, the murderer. *Ramban* says that three who know something is gossip. I imagine that in this case many knew and a Justice Melcer asked nobody tried to prevent. Nobody in the media condemns. Where is the equation here? We as families would have wanted death penalty and we know that it will not happen. I request a significant deterrence. Home in the Arab culture is the most important thing for him.

Honorable Justice N. Sohlberg: Adv. Tsemel, really. A bereaved father is standing next to you.

Honorable President M. Naor: Some restraint.

Mr. Rosenfeld: We as families want to prevent the next murders. I assume that if deterrence is achieved even for one case we achieved our goal.

Adv. Segal- Elad: We are concerned here with a collaborator of Abdallah from the previous file who carried out his part in the murder, the shooting itself. He describes everything in great detail. How they planned and carried out the attack. In this respect also according to the open material in our possession the respondents have no doubt that he is the murderer. He is held by the Palestinian Authority. My colleague said that if we request we will receive, it is not accurate.

Honorable Justice H. Melcer: Did you request?

Adv. Segal- Elad: We can check. I don't know. We have privileged information which contradicts petitioners' argument in the petition. He does not deny. It is exactly the opposite. Indeed we are concerned with a perpetrator who committed the attack, we have no doubts. With respect to the house, in this respect too we shall do everything to avoid damage to adjacent buildings.

Adv. Roitman: I will discuss the specific cases. I speak now of the murder of the Henkin spouses. Second apartment out of three floors.

Honorable President M. Naor: How do you exactly intend to do it?

Adv. Roitman: We have discretion with respect to the demolition and also the fatal result of the attack as committed. I will not describe right now. It is written. With respect to the three perpetrators in these attacks, the severity of the incident coupled with the end-result and the circumstances justify the full sanction.

Honorable President M. Naor: I asked you in the beginning of the hearing, how it reconciles exactly with the theory that everything must be made quickly quickly within 48 hours. These responses should be submitted, I from the hearing today they either accept what I say or not and if not an *order nisi* will be given and the question regarding the urgency obligates you too to come to the hearing and ensure that there are affidavits.

Adv. Roitman: The urgency obligates us too. However, a judgment on these issues may have broad ramifications beyond the cases at hand. If the court sees fit to issue an *order nisi*.

Honorable President M. Naor: This was not my question, you said no.

Adv. Roitman: We think its urgent and so does the political level. There is value here. If the court wants to issue an *order nisi*. In the past a distinction was also drawn between cases in which an *order nisi* was appropriate.

Honorable President M. Naor: Everything is fine....

Adv. Roitman: The court rightfully expects us to consider the matter seriously. The executive authority considers seriously. We take it into account. If in these cases the court is of the opinion, we are willing to check it again and give the court a short answer.

Honorable President M. Naor: Counsel will go back to the specific cases.

Adv. Roitman: With respect to the information in our possession, it consists of intelligence information and interrogation material.

Honorable President M. Naor: What prevents you from showing that there are admissions? Material which stems from the interrogation.

Adv. Roitman: We checked the blackening option, it may affect a pending interrogation. The matter was reconsidered with security agencies and in fact we should receive blackened admissions. It was reconsidered and the comment which was made this morning was sufficient. We will present to the court ex parte. The admissions and the material include intelligence information. With respect to the engineering opinions on this level

Honorable Justice H. Melcer: Counsel will explain first how you intend to execute it? How do you detonate without causing damage to the upper and lower floors?

Adv. Roitman: I will explain in general terms. The intention is to detonate with explosive not the structural walls but rather internal walls.

Honorable Justice H. Melcer: If this is the case why don't you demolish mechanically?

Adv. Roitman: We have considered it. It takes time. According to the position of the Central Command this is what I was told demolition by detonation rather than by mechanical measures. There is also an engineering difficulty as I was told. There is a load of sealing, a load of concrete. There is a problem with said pouring. Sealing does not exactly close the door. If we speak of large quantities.

Honorable Justice H. Melcer: We saw the photographs. The question is whether you have checked it? Or is it a theoretic opinion?

Adv. Roitman: On the normative level the decision is demolition rather than sealing against the backdrop of a sanction.

Honorable Justice H. Melcer: In proportionality the least injurious measure should be examined. For instance sealing rather than demolition.

Adv. Roitman: In the Henkin file in which I represent the possibility was examined and rejected. Obviously we must consider each opinion submitted by the petitioners and examine whether the position is professional. Each decision will be considered seriously. The responsibility for the execution of the demolition is imposed on Central Command agencies and engineering agencies. Regrettably they have expertise in this matter. We are willing to consider any additional opinion. With respect to the effect of the demolition according to the opinion internal walls are concerned and consequently it would not be possible to use the apartment. Nonstructural damage may be caused, cracks may be created and damage to the windows.

Honorable Justice H. Melcer: Who will compensate?

Honorable President M. Naor: And who will compensate? According to you the neighbor should bear it?

Adv. Roitman: Correct. I will explain. We are of the opinion that it constitutes part of an act of war and therefore there is no need to compensate.

Honorable Justice H. Melcer: In HCJ Sidr you said that no damage would be caused and we saw that damage indeed occurred. Precisely the exception occurred.

Adv. Roitman: I say, exceptions may occur.

Honorable Justice H. Melcer: Also according to international law, if it is allowed it applies both to the perpetrator and to his immediate family which did not dissuade him. I am not talking of disorders which is a third party. If it occurs you should compensate.

Adv. Roitman: The instruction is not to cause...

Honorable President M. Naor: My colleague speaks of what happens if it occurs? If damage is caused? If it so happens there is no obligation to compensate?

Adv. Roitman: My colleague answered the court. I cannot add to that. Another detail with respect of which a question was asked was the orders preventing a meeting. The orders were applied to all three of them. With respect to Razek –October 25, Kusa – October 19 and Hamed – October 27. The orders were revoked. To the extent my colleagues dispute the involvement of the perpetrators in these attacks we think that the infrastructure is clear. We would have expected them to meet the perpetrators who raise this argument.

In the three cases the persons directly involved in the attack are held by us. With respect to the petitions in the Hamed case which concerns the demolition of two apartments in the same building 7085/15 – the perpetrator Hamed lives with his family on the first floor and he alternately lived on the second floor which was in the last stages of construction. We have a report which specifies the mapping that was made. We were informed of it today. I gave it to my colleagues earlier. He lived in both apartments.

Honorable President M. Naor: Did you see it?

Adv. Habib: I saw it today during the hearing. I object to its acceptance. They noted that he was living on the top floor. It is not privileged information. It should be before us. It constitutes part of the haste.

Honorable President M. Naor: We will not accept it in this manner.

Adv. Roitman: We have information which supports the statement that he lived alternately in his parents' apartment and in the apartment above it. In view of the exceptional circumstances of the incident including the circumstances of the attack, it is the opinion of security agencies and the political level that there are reasons to take the measures against [the two apartments] located in the same building.

Adv. Segal- Elad: On the demolition method I will not repeat, obviously. In 7180/15 the intention is not to demolish the entire apartment but rather to make it unusable. The intention is not to demolish structural pillars.

Honorable Justice H. Melcer: Will it be done with explosives?

Adv. Segal- Elad: Yes, with drills.

Honorable Justice H. Melcer: Can sealing materials be brought upstairs, was it examined?

Adv. Segal- Elad: It was examined. It is impossible. It is important to say that the consideration or request were examined by the legal counsels.

Honorable President M. Naor: We discuss house by house. You have already said that were considered.

Adv. Segal- Elad: The sanction of demolition is more deterring than the sanction of sealing. With respect to the petitioner who claims to be the owner of the building.

Honorable President M. Naor: Why hasn't the owner of the property been granted the right to heard?

Adv. Segal- Elad: We could check it in retrospect. In a quite significant number of cases things are postponed. We try. Sometimes we do not have the entire information. According to the regulation it is the inhabitant.

Honorable President M. Naor: Isn't it a matter of routine to check whether there are owners?

Adv. Segal- Elad: In any event if there are comments it is checked. The owner of the property knew about it and submitted an objection and then he also succeeded to file a petition. In this context the argument may have merit, from a forward looking perspective. But it is not relevant because a hearing was conducted.

Honorable President M. Naor: Also the mistakes in Hebrew and Arabic and the failure to check, they all stem from the same place.

Adv. Segal- Elad: You call it haste we call it significantly important because of the security situation. This is the reality.

Adv. Habib: It is inconceivable that material will be brought, not in a study-like manner, from which it may be ostensibly understood. I guess what they intend to bring and if my memory does not fail me I think I came across this material. I object to it because this opinion does not refer in any manner whatsoever to the murder of the Dawabsheh family.

Honorable President M. Naor: The speech is redundant. The answer is no. I understood.

Adv. Habib: There is no dispute on the damage to innocent people, the contrary is true.

Adv. Mufid: We were not convinced by the other party that there is privileged information.

Honorable President M. Naor: We will not know until we see it.

Adv. Mufid: We are open to any other suggestion. I am willing to remove the family which lives in the apartment. Deterrence is not showing that we suffer.

Honorable President M. Naor: Counsel, with respect to other issues. I asked a different question.

Adv. Tsemel: We totally object to the submission of material which is unknown to us.

Adv. Pomeranz: With respect to the comment of my colleague we do not represent the suspects but rather their family members. It points at a failure, to extradite the suspect and bring it to the state of Israel. Such a possibility exists.

Adv. Habib: I wish to refer to the petition in which I have explicitly noted that the detainee lived on the top floor alone on a floor which he built for himself and where he slept. We did not argue beyond that and did provide more details because no other arguments were raised before us. I request that the demolition be revoked at least the family's floor. I want to offer another explanation, that in the framework of this haste whoever decides on the demolition wishes to thwart the ability of the court to actually review the issue and exercise discretion. Many things were not checked. Refers to the words of Ms. Tsemel regarding the slippery slope.

Honorable President M. Naor: Counsel says things that were said. Counsel will conclude.

Adv. Habib: With respect to the sealing and the load it is not necessary to pour tons of concrete. This method is not a must. I wish to emphasize the damage which was taken as a possibility. I wish to condition it on that no damage will be cause if an order is issued, and alternatively, a written undertaking regarding the compensation.

Adv. Lasky: I must say that the answers of my colleagues repeatedly stated that in fact the decision was made by the political level. We do not have an affidavit of the political level.

Honorable President M. Naor: At this stage affidavit is not required.

Adv. Lasky: We are talking of a different legal system. The political level.

Honorable President M. Naor: Counsel opens a front. There is no need.

Adv. Lasky: Only this year 2015 out of five demolitions which were carried out

Honorable President M. Naor: Excuse me Counsel. You cannot bring data in your response. It does not work.

Adv. Lasky: They did not refer to the question of proportionality, to the question of the Honorable Justice Melcer whether less severe measures than demolition were examined. The answer was yes but it does not appear in state's response. We are satisfied with an incidental statement that it was examined. It is not enough. An end must be put to this circle.

Adv. Mufid Haj: The last paragraph of the order states (quotes). It refers to the entire thing not only to one apartment.

Adv. Segalovitch: We do not insist on the demolition of the building. The size of the apartment ... It is an argument which was raised now. If he wants a formal answer I will send a formal response. I think he raises an issue here. I understand his concern but it is clear from the entire order that it pertains to the seizure of the specific apartment in which the perpetrator lived.

Adv. Rosenthal: Despite the evasive answer of my colleague who does not wish to disclose the admissions... and the study... I think that it is important that the court sees the material in petitions 7801 and 7802.

Honorable President M. Naor: We may review the privileged information in these two petitions only.

Adv. Rosenthal: Meanwhile I checked in HCJ Sidr and in HCJ 5839/15, overall no damage was caused to additional apartments other than the apartment located exactly below the apartment which was demolished as all the debris fell into it and caused damage. I will further examine the issue and provide additional details on Sunday. Again, it was not a detonation. It was a mechanical manual demolition with one meter high external walls which remained to prevent weather damages. We especially request that the state be given directions concerning the interim order specifically regarding this weekend. Lately every weekend this is how we spend our Fridays and Saturdays as the Honorable Justice Melcer said and as your Honor said.

Honorable President M. Naor: We will review the material and give it weight. With respect to the other who did not agree that we see the material

Adv. Rosenthal: With respect to the owner of the apartment in the file in which we do not represent the tenants but rather the family of the perpetrator, we wrote that the grandmother was the owner of the apartment. My colleague in his response wrote that according to inquiries made by him the owner of the apartment was the uncle. I have an affidavit. Indeed upon receipt of the response we went back to the grandmother. The grandmother says that it is her apartment. She also received the land from UNRWA at the time, when she was a refugee and she added the floors. If the uncle claims that he owns it?

Refers to the words of the Honorable Deputy President in the hearing, where he explicitly says (quotes the words of the Honorable Justice Rubinstein). If you want to use it do it soon. The ink is still wet, a few days passed and they come with an additional request.

Adv. Pomeranz: We in the two petitions do not object to the review of the privileged information.

Honorable President M. Naor: You also know that there is a great risk in a refusal to allow a review of the privileged information.

Adv. Tsemel: The fact that organized material is brought the purpose of which is clear is a surprising fact. Had we known that they were bringing such material

Honorable President M. Naor: It is written. There are two different things. The material with which we are concerned was referred to in one of the responses.

Adv. Tsemel: We want to know what the nature of the privileged material is. Whether the material consists of parts of the interrogations of different suspects different defendants who say that the concern of house demolition deterred them that's OK. We have the right to respond to these things. Had I known I would have gone to the prisons to interview the inmates, did or didn't you know.

Honorable President M. Naor: Counsel says that she does want us to see the material.

Adv. Tsemel: I request to let us know what the nature of the material is and enable us to bring material of a similar nature. The families of the petitioners are not here and I deeply respect the families and certainly share their sorrow and pain.

Honorable President M. Naor: Ms. Tsemel some sensitivity will not hurt.

Adv. Tsemel: The question regarding the demolition method. There is a concern that... to use explosives on such walls above which there is additional construction is not meant to alleviate the execution. It is meant to show the big explosion, the big revenge. There are other ways to prevent the continued residency in the asset, there are very simple ways which do not require it.

Honorable President M. Naor: We will review the material *ex parte*.

Adv. Segalovitch: The only thing is whether we can regard the order as an order nisi. We can submit it later on today. My colleague went outside for a minute.

Honorable President M. Naor: You can submit in writing with a copy to the other party.

Adv. Segalovitch: It will be submitted today with copy to the other party.

The court reviews the privileged material *ex parte*.

Decision was given.