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At the Supreme Court Sitting as the High Court of Justice

HCJ 7220/15

Before: **Honorable Justice N. Hendel**
Honorable Justice U. Shoham
Honorable Justice M. Mazuz

The Petitioners: 1. _____ 'Aliwa
2. **HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

v.

The Respondent: **Commander of the IDF Forces in the West Bank**

Petition for *Order Nisi* and Interim Order

Session date: 22 Heshvan 5776 (November 4, 2015)

Panel Secretary: Hani Rotshtein Cohen

Typist: Neta Shapira

Representing the Petitioners: Adv. Labib Habib

Representing the Respondent: Adv. Yonatan Zion-Mozes; Adv. Yuval Roitman

Protocol

Honorable Justice N. Hendel: The question is whether there is another case of which Counsels are aware that is related to this case concerning the same subject matter. From what I understand you agreed to regard the proceeding as if an *order nisi* was issued. It is inconceivable that there are several people in the same incident and the state has a certain approach to one of the participants in the incident and another to the others. In addition, it seems that Mr. Mozes emphasized that he wanted a quick decision. You object to the petition in both cases but it seems that also procedurally a sort of equality should have applied.

Adv. Mozes: Obviously, each case on its merits and also if there are three other cases concerning perpetrators who were involved in the same attack. In view of the fact that all arguments were put in writing on several occasions we agree to regard it as if an *order nisi* was issued. To the extent any issue is raised

which has not been raised before we request that permission be granted to us to complement the argument to the extent necessary.

Honorable Justice N. Hendel: If over there you gave material which is not related to this case, it is required.

Adv. Mozes: As far as the interrogation materials are concerned, the open material which could be attached has already been attached to the response. An indictment has not been filed. The perpetrator is still undergoing interrogation. His delayed meeting was issued only three days ago. The interrogation is still in process. If an indictment is filed, in view of the fact that it is the same interrogation with different interrogation stages and the delayed meeting will be removed gradually, I cannot say now whether the indictments be filed at the same time.

We notified retrospectively in the previous hearing and therefore the hearing was held as if an *order nisi* was not given.

Adv. Habib: I reiterate the grounds for the petition. I argue once again and object in general to house demolition, to the infliction of harm on innocent people. I also represented in some of the other petitions. On the general issue, I will not repeat all arguments; it was discussed in the general judgment. I do repeat my request to adopt this principle which the state demands from others, namely, to refrain from causing harm to innocent people. That it would be the principle which should not be breached. We are of the opinion that morally, legally and practically, causing harm to innocent people is never moral, but also from a practical point of view its benefits are outweighed by its drawbacks.

Honorable Justice N. Hendel: These two arguments are not necessarily connected. The state will argue that it is not punitive but rather deterring. There is a question as to whether it is deterring and there is a question as to whether it is proportionate or desirable. Counsel argued that it was neither [detering] nor [proportionate]. Assuming it is deterring, I assume that Counsel objects to this mechanism as well.

Adv. Habib: The entire legal system, in primitive legal systems, in Afghanistan for instance they rape a family member of the rapist, also in the name of deterrence. According to tribal law a murderer's brother should be killed. It deters. Undoubtedly.

Honorable Justice N. Hendel: There is no need to go so far. The question is why it is not proportionate while it is an action which is directed against his own property.

Adv. Habib: The present period proves that we have a slippery slope here, and that at times of rage the line which you put to yourself, to cause harm to the house only, may be very easily crossed.

Honorable Justice U. Shoham: If you do not dispute, for the sake of argument, the basic premise that it deters, if it deters smaller or larger parts, then why this measure shouldn't be used?

Adv. Habib: In this case we can see, if we examine this matter scientifically, what deters and what encourages. The evidentiary material indicates that these people, this cell, decided to act for certain reasons. One of the reasons they give is the murder and burning of the Dawabsheh family and the provocations in the holy sites, in Al Aqsa Mosque. If you want to check what deters and what encourages we can discuss all these reasons and handle them one by one.

Honorable Justice U. Shoham: It is not meant to deter the person who has already committed the attack but rather others.

Adv. Habib: My ability to affect the state's position may be limited, but I can stimulate thought. How has its deterring effect been proved? We are of the opinion that it has not been proved. Logically, any injury

to innocent people, the members of the cell say that the burning of the Dawabsheh family caused them to take action.

Honorable Justice U. Shoham: The killing of the spouses, as far as they are concerned, is not an impingement of innocent people?

Adv. Habib: Murder of innocent people caused impingement on innocent people. It is a circle that should not be granted a lawful validation from the court. We request that the court stipulates in a judicial decision that it refuses to join this circle. It may happen in war or by the military, but actions which are prohibited under international law as well as morally should not be lawfully validated. International law wishes to undermine the benefits embedded in the impingement of innocent people. The purpose of the Geneva Convention which was enacted after the Second World War and the atrocities which were committed against the civil population was to prevent it. Despite the fact that the bombing of cities and civil infrastructure may deter, they chose to say that it was prohibited.

Honorable Justice U. Shoham: The analogy is not really befitting and comparable.

Adv. Habib: I only mentioned the underlying logic. Reference can be made to the failure to enforce the law in the territories, trees uprooting etc.

Honorable Justice N. Hendel: If Counsel intends to justify the action it is not a good direction.

Adv. Habib: Collective punishment is not the way.

Honorable Justice N. Hendel: The question is whether it may be regarded as an act which is taken against someone with ancillary ramifications. The house cannot be demolished and left intact at the same time.

Adv. Habib: When we say that we want to deter we say that we will hurt your family so that other families know that they will suffer and will prevent their sons from committing attacks.

Honorable Justice U. Shoham: Maybe the perpetrator will take it into consideration and will say that the attack may lead to the demolition of his home.

Adv. Habib: This is the line between personal punishment with incidental damage and incidental punishment the damage of which is the sought for damage.

Honorable Justice N. Hendel: It is still his property contrary to the case in which someone is killed and then it is an inheritance and its different. Here the man is alive and his house is demolished and the fact that there is a family therein is an ancillary ramification.

Adv. Habib: I remind that in this wave of house demolitions there were also some cases in which the house was rented, and owned by a completely different person. I have very good general arguments against house demolition. We are of the opinion that these arguments are justified. After I repeated the arguments in general I would like to get to my second line of defense. This case is somewhat different from the other members of the cell as far as the level of involvement and guilt are concerned. The severity of the actions of said detainee.

Already from the order we see that the argument against him is not that took part in the attack and shot.

Honorable Justice N. Hendel: It is not accurate. He was defined as a "commander" by the state. He communicated between the cells with respect to weapons etc. He was not on site and did not use the weapon there but on the other hand they allege that he was very much involved rather than a mere marginal party. He initiated many things and it seems that things would not have materialized without him.

Honorable Justice U. Shoham: At least according to the allegation, he was the "brain", the head of the cell. According to criminal law, his status is much higher than the status of those who actually carried out the attack.

Adv. Habib: In my arguments I do not justify the deeds, it is clear. I do not belittle the severe acts taken by him. We argue that even if house demolition is permitted it has limitations and one of the limitations is the examination of the actions and in this context the sanction should be examined very carefully, the procedure for the exercise of the sanction, and whenever there is doubt, the doubt is interpreted in favor of the revocation of the sanction or its mitigation. Already in the notice to the family, which is ... section 2, it is stated, quotes. Already from this moderate text it is evident that it is of a less severe level than those who actually committed the murder.

Honorable Justice M. Mazuz: It may be so understood, but later on it was noted that he was on higher level.

Adv. Habib: According to the statements he did obtain weapon but there is no indication that he was the commander of the cell.

Honorable Justice N. Hendel: It is stated. He conspired, he was the motivating force. If your argument is correct it is correct but whether he is on level 1 or 2, he is not marginal. It seems that if this sanction is proper and constitutional this difference does not have any effect. I do not see how the second line of defense helps Counsel.

Adv. Habib: I ask, if eventually this man is acquitted from the offense of murder in the military court and assuming we stay the demolition today and wait.

Honorable Justice U. Shoham: What will be the basis for the acquittal?

Honorable Justice N. Hendel: The possibility of acquittal also stands with respect to the person who fired the shots. It is related to the fact that the criminal procedure has not yet ended.

Adv. Habib: It is true if this allegation was made with respect to people who fired and whose DNA was found on scene.

Honorable Justice M. Mazuz: Counsel does not dispute the rule that if the evidence is not on a high level it is not sufficient.

Adv. Habib: Yes, and also if the involvement is not clear, *prima facie*.

Honorable Justice U. Shoham: I will read a part of his first admission. Quotes.

Adv. Habib: If it is found that he was a member of the cell and gave weapons to people, it is not sufficient to convict of murder. There is no question as to his intention. A shooting attack can also be directed at a protected military post from a distance of 100 meters, the sentence for which is three years in a military court, and it can be a murderous attack. From these minutiae a defense in a criminal case is built, not from a dramatic change that said person had nothing to do with these actions, but rather, from the distinctions

Honorable Justice M. Mazuz: You say that there is a connection but not necessarily a conspiracy.

Honorable Justice U. Shoham: A previous attack was carried out, and a civil vehicle was shot at and he was informed that there were no casualties.

Adv. Habib: They did not need him to go out, they were independent.

Honorable Justice U. Shoham: After they shot at a civil vehicle using this weapon he knew what they were going to do.

Adv. Habib: He has a significant involvement, but if someone tells another person: "give me your gun I am going to commit a shooting attack" it does not mean by one hundred percent that he is going to commit a murder and that an involvement in murder can be substantiated. We are concerned with an interrogation which violates all rules of developed criminal law. There is no consultation with counsel, and most importantly, the interrogee says in the second statement, on October 7th, line 238, quotes. This dramatic occurrence that an interrogee cannot continue with his interrogation can indicate that there was either a critical medical condition or that he was substantially tortured, as often happens in such offenses. We do not have this information, the memoranda, whether he was tortured or not.

Even if we come and say that we will not be precise on this, whether as a result of substantial beatings a person can change the color of his admission and lie, turn himself from someone who bought and gave a gun without having been actually involved in the cell, into someone who bought and gave a gun as an involved member or the commander of the cell. Neither a presumption of innocence nor a clean interrogation, we shall disregard all that. But at least when the involvement is color dependent, namely, a person who was involved directly, even in a military court evidence is heard and in a case I had the court acquitted the man from murder.

I suggest two things: to say that in this case he has a chance, even a theoretical chance, that these facts are not final. Let us wait, stay the process, see what happens in the military court. I don't think that anyone will conduct proceedings just to stonewall. We will set a timeframe if it has the slightest chance. In so doing we will protect the house from demolition and the independence of the court, because in this order the cart was put before the horses.

I therefore request to receive a detailed description of the interrogation, its times, the memoranda, the tortures or what is referred to a "required interrogation" which he did or did not undergo. These are not mere arguments. The man is taken to a physician in the middle of the interrogation. He is not competent for interrogation and returns a day later as if nothing happened. The policeman has no interest in these facts. The wheel turns without stopping, without checking why he was hospitalized etc. This interrogation is not trustworthy at least as far as its color is concerned.

With respect to the environmental damage, I transferred this morning to my colleagues an opinion according to which there is a concern that damage will be caused to buildings as a result of the demolition. I have a copy for the court. This case concerns a four story building the middle floor of which is designated for demolition. There is a concern that a demolition by detonation would cause damage to the entire building, at least weaken it to the extent that it may collapse. Following the hearing on Thursday on this issue we did not receive an update to the state's response. At least with respect to compensation, now there are willing to compensate but they establish three conditions: that there were no riots and disruptions, that the owner of the building did not receive compensation from any third party and subject to section 5B. I will repeat our request from Thursday, that the environmental damage to the neighbors at least must be totally prevented. There is no undertaking to prevent this damage but they say "as much as possible". We argue that it should be determined that if environmental damage cannot be prevented – the demolition should not be executed or should not be executed by detonation. Alternatively, if environmental damage is caused we request an undertaking in advance to compensate the families. Filing a tort lawsuit by a resident of the Occupied Palestinian Territories (OPT) after the amendment to the law is a *via dolorosa*. Other than the obvious difficulty arising from the inability to enter Israel, the need to provide a guarantee of dozens of thousands of Shekels by people who earn, in average, 2000 ILS, actually locks the court's gates before them. If the state takes an action which is irreversible, we request that it undertakes in advance without any

restriction or condition to compensate. If there are riots on scene, the costs should not be borne by the inhabitants. The demolition may be canceled on the same day. They should not all be treated as one person. The state blames the inhabitants of the building of any disruption by any Palestinian.

The third condition too – refers to section 5B. The section provides that a member or an activist in an organization does not receive compensation, he has no rights. This is in and of itself very grave. We are of the opinion that this condition should not be put as a condition for the payment of compensation because it may be interpreted very broadly.

Honorable Justice M. Mazuz: Who does it apply to according to your understanding?

Adv. Habib: It applies to any person, even a neighbor or inhabitant, even if a shred of evidence is found.

Honorable Justice M. Mazuz: Does Counsel think that this condition may cause any problems to the family which lives in the apartment?

Adv. Habib: I do not envisage any such problem *a priori*, but I think that problems of this kind may be created and the state has the tools in such cases with privileged information etc. It is a slippery slope which may inflict harm on innocent people. If the action taken by the state is pre-planned and damage is anticipated in advance, section 5B should not apply. Because they can be shot and then told that no compensation may be paid to them because confidential information exists that they are terror activists. I request the minimum, that if you demolish according to Regulation 119 etc., at least demolish the specific apartment only, and if you caused damage, at least compensate. I reiterate my request to revoke the order. We did not hear anything about choosing the least injurious sanction as is required by the proportionality principle, why it is not sealed. In the previous hearing they said that the building would not carry such quantity of concrete and I think that it may be sealed without filling it up with concrete either. In any event to stay the order until judgment is given in suspect's criminal file. At least seal the apartment until judgment is given in his case. There are judgments which support this approach.

I request to be informed of the issues and nature of the confidential material which will be presented before your honors.

Honorable Justice N. Hendel: Obviously we cannot go into it.

Adv. Mozes: We have privileged materials with respect to the issue of deterrence and specifically we have administrative evidentiary material on a level of reasonableness close to certainty in addition to the admissions.

The vast majority of the arguments raised by my colleague both in the petition and in the hearing were discussed by the court and denied in a host of judgments. The judgment in HaMoked for the Defence of the Individual case, in the Qawasmeh judgment where it was also decided to demolish his apartment before he was even in the possession of the respondent because he was still wanted. The same applies to 'Awawdeh.

Honorable Justice M. Mazuz: The argument does not focus on the principle question of whether a seizure and demolition order may be carried out but goes at least one step forward and says that under these circumstances as distinct from the three who are directly involved in the murder, here there is a question which may be decided by the court whether he is a conspirator who bears legal responsibility for the murder or an accessory to the commission of an offense etc. Therefore there is a question mark regarding his status from which the legitimacy and reasonableness of the sanction derives. Maybe it justifies a more lenient sanction?

Honorable Justice N. Hendel: I prefer that we firstly discuss the issue in general terms. Are there any precedents for this type of sanction in the world, here. Thereafter you may also discuss the question of the offense of which he may be convicted in your opinion.

Adv. Mozes: The purpose and the objective of the use of Regulation 119 is to deter rather than to punish.

Honorable Justice M. Mazuz: You argue, throughout the years, that the purpose is to deter. Why is it important to determine that this is the purpose, according to your approach? The fact that the objective is to deter does not mean that it is not punitive as well. In general it is the other way around. Deterrence and punishment go hand in hand. Therefore the fact that the objective here is to deter does not contradict the fact that it is also a punishment.

Adv. Mozes: Regulation 119 grants the military commander administrative rather than criminal authority.

Honorable Justice M. Mazuz: The caption of part 12 in which Regulation 119 is located consists of punitive provisions. The fact is that if you punish a person it should deter him and those around him.

Adv. Mozes: Certainly, but the procedure does not take place in the framework of criminal law but rather of administrative law the actual implementation of which derives from an array of considerations, including the question of whether it is necessary to deter additional potential perpetrators, and whether the military commander is of the opinion that the exercise of the authority according to the Regulation may indeed deter.

Honorable Justice M. Mazuz: It does not answer the question, because if the sanction is punitive in nature, even it has an additional deterring effect, it does not answer the basic law, that punishment is imposed based on the right to appeal, due process, etc. All these rules are meant to ensure that punishment is imposed based on due process. Therefore, regardless of the fact that as far as the military commander is concerned the purpose is to deter, if the action is punitive in nature it cannot circumvent all rules.

Adv. Mozes: Hence the importance of the distinction between punishment and a deterring purpose, a distinction which is well established in many judgments of this court. When the court drew this distinction it held with respect to Regulation 119 that the purpose was not punitive. We are in the realm of the administrative action and it is examined based on the relevant legal standards applicable to the administrative action rather than the criminal one. The decision to demolish is made based on administrative evidence, and not a criminal conviction. It is based on privileged information to the extent that according to the material there is a reasonable high level of certainty that the inhabitant of the house committed any prohibited act. We are of the opinion that the purpose is indeed to deter. It should be noted factually that respondent's current position, which is based on the position of the security agencies and the political level, is that the exercise of this authority against a perpetrator of attack in which two individuals are murdered in front of their children is a valid and required purpose.

Honorable Justice N. Hendel: Contrary to other cases, here according to your arguments, you do not wish to deter only the individuals who carried out the action and those who may carry out similar actions in the future, but families. It constitutes part of the deterrence. You want to deter people who may not necessarily commit such offenses. Why is it legitimate and is there any precedent to that effect?

Adv. Mozes: The intention is to also to deter people who are supposed to try to dissuade him from his intention to carry out the attack.

Honorable Justice M. Mazuz: Isn't it necessary to prove at least awareness of the family of his intention to carry out the attack?

Honorable Justice N. Hendel: A distinction should be drawn, whether the innocent people have ostensibly different obligations.

Adv. Mozes: This issue was also broadly discussed in the judgments of the court and it was held that the question of whether there was knowledge or not was not relevant.

Honorable Justice N. Hendel: Why?

Adv. Mozes: We focus on the perpetrator himself. He could have known and taken into account in the context of his considerations that he causes harm to his family members as well. It is one of the considerations which a potential perpetrator takes into account.

Honorable Justice N. Hendel: Is there intelligence material that such deterrence is relevant?

Adv. Mozes: We shall specify *in camera*.

Honorable Justice M. Mazuz: When deterrence is concerned, still I think that it is acceptable to you that there is no justification to take an action against people who are completely uninvolved. One can say that 100 people from the same city are executed etc., etc. By the way, Regulation 119 is not far from that in the authorities granted by it. The state of Israel has never gone farther from basic deterrence and rightfully so. So if a home of a perpetrator is demolished, even a rented one, whose family members had no knowledge as far as is known, how is this family different from a person who lives down the same street who does not know the perpetrator or is not related to him? The demolition of his house will also have a deterring effect.

Adv. Mozes: Regulation 119 refers to the inhabitant of the house. Thereafter many things may be done, but in view of the proportionality in the framework of which the Regulation is exercised, it is not so.

Honorable Justice M. Mazuz: Quotes from the Regulation.

Adv. Mozes: There is no doubt that that the authority granted thereby is broad, the exercise is proportionate.

Honorable Justice M. Mazuz: Correct, if it is already proportionate in the sense that not any house is demolished, isn't it necessary to add some additional qualifications thereto?

Adv. Mozes: The scope of the exercise of the authority is examined. Things are considered. It was noted in our response. Refers to HCJ in the matter of Sabich v. IDF Forces – quotes. It is considered in the context of the nature of the authority, undoubtedly. We do not say at any point that these things are not considered. Eventually everything must be taken into consideration. The decisions are made following a systemic examination of the matter by the political level as well as by the state attorney's office and the Attorney General.

Honorable Justice N. Hendel: My question was whether other countries had similar provisions concerning demolition? You sometimes do it even the person died or if there is movable property in the house. Does a sanction of this type exist in the world?

Adv. Mozes: I don't know. It is a very harsh sanction. I don't have an answer.

Honorable Justice N. Hendel: What is the line? Is there a breach?

Adv. Mozes: We don't know.

Honorable Justice N. Hendel: With all due respect we are of the opinion that in the case at hand the question is less relevant. Right now I refer only to the open material attached by my colleague, but things are also relevant to the privileged material.

Honorable Justice N. Hendel: What do you say?

Adv. Mozes: The material clearly indicates that indeed he was not on scene. However, he was directly involved. He was in charge of the recruitment of activists and in the planning of this specific attack. We are not concerned with someone who was detached from the actions. A person has medical sensitivities. The interrogation was stopped to enable him to rest. According to the information I received no required interrogations were conducted.

In this regard refers to page 2 lines 52-53 – quotes. Thereafter to page 3 – quotes from line 7. Refers to page 4 – line 92 – quotes. After Razeq was wounded during the attack the perpetrator admits that he was the one who made contacts for the purpose of obtaining medical treatment – admission No. 1. Refers to admission No. 2 – quotes. He sent them to check the route. Refers to line 19 – quotes. It was the day on which we planned and carried out the shooting attack. Refers to admission No. 3 – line 69 – quotes. He answers yes, the purpose was to murder Jews. There is no doubt here that he planned in advance a murderous attack. We are not concerned with someone who was detached from the incident. He is not a lower level. The entire question of the charge is not relevant.

Honorable Justice N. Hendel: It is very relevant. The question is what is the direction.

Adv. Mozes: We, presently, it is necessary to carry out these demolitions as soon as possible and not in the future. Therefore we agree to conduct the proceeding as if an order was issued. Here it has also been repeatedly held by the court that there was no need to wait for conviction.

Honorable Justice N. Hendel: In view of the fact that the factual infrastructure is based on admissions, do you have anything to say about the duplicity?

Adv. Mozes: I would like to note in this context in connection with Sabich that cases of perpetrators who did not carry out the attack personally but rather sent others to carry it out have already been discussed. This issue has also been resolved by the court. Reference is made to paragraph 43 of our response. Detonations may be executed on different levels as things were explained to me.

Honorable Justice M. Mazuz: What is expected to remain over there after the detonation?

Adv. Mozes: It will be executed on the exterior wall. In addition manual hammers will be used to demolish the walls of the apartment. The purpose is to make the apartment unusable.

Honorable Justice M. Mazuz: Will it be a space?

Adv. Mozes: No. The demolition debris will remain. The apartment will be open and subject to weather hazards.

Honorable Justice N. Hendel: It is appropriate that reference be made to this issue in the intelligence material.

Adv. Mozes: Firstly, we have a professional engineering opinion prior to the demolition. Recent year judgments of the honorable court held that the court does not examine the demolition method.

Honorable Justice N. Hendel: Does not examine. There are cases which are in between.

Honorable Justice M. Mazuz: What is confidential?

Adv. Mozes: If there is a way to present the engineering report to court we shall present it.

Honorable Justice M. Mazuz: The petitioners need it, not the court.

Adv. Mozes: We do not transfer the method and manner of demolition to the petitioners. The opinion will obviously be considered prior to execution.

Honorable Justice N. Hendel: It should at least be transferred to petitioners' counsel.

Adv. Mozes: Considerations regarding the demolition were examined. The damage which will be caused is...

Honorable Justice N. Hendel: OK. We understood the petition. There is no need to repeat.

Adv. Habib: I request that no weight be given to it on the issue of the actions or suspicions. Regulation 119 refers to someone who committed an offense. When this term is used, I referred to case law in page 20 of the petition. I brought the Avrahami judgment as an example.

Honorable Justice M. Mazuz: It depends on the context. You do not dispute the fact that an offense was committed.

Adv. Habib: Correct, only the scope of involvement.

Adv. Habib: Counsel does not have to argue at this point.

Adv. Mozes: Refers to case law on the issue – quotes.

After examination of the privileged material

Adv. Mozes: With respect to the compensation issue, as pointed out by Justice Mazuz this petition concerns the apartment in which the perpetrator lived and we do not have petitioners who are neighbors and therefore the arguments on this issue are not clear. However as we have noted in the response the position on the compensation issue is clear and to the extent anyone has an argument in this regard, we are willing to refer to them if a request on this issue is made.

Adv. Roitman: Following to comments of my colleague and the court we have checked with the military prosecution what was the direction of the interrogation and I was advised as follows: "Considering the fact that the interrogation has not yet ended, and based on the material which was transferred for our review at this point, *prima facie* the intention is to attribute to the petitioner the offense of causing death intentionally."

Adv. Habib: I repeat once again that the open material which was transferred to us leaves room for a doubt or room for the conduct of defense. It was clearly meant to serve the position of the prosecution, but it already indicates that he was not the commander. It is true, there is a statement which says "we planned and decided" but there are no further details for this mere statement. We don't see that he planned the attack. For instance, when he speaks on October 6th, line 126, the man did not know in advance, but only in the last minute, who went out to carry out the attack. He did not decide on the place, the outline etc. It is true that he is not unrelated, but still there is a question as to the scope of the involvement. There is a question as to the measures and pressure which was exerted on him. It was stated that he did not undergo a "required interrogation", but he was taken to the hospital in the middle of an interrogation. I request the court again to receive all open material related to the case and allow me to shortly refer to the matter. I don't ask for a general decision but only a decision that under these circumstances the proportionality obligation requires reconsideration and disclosure of all material and that the order be stayed until judgment is given on that matter. I am reminded of a judgment which was given not long ago by the Honorable President emeritus Beinisch which concerned a person against whom there was administrative evidence based on which his residency was revoked, the family unification procedure underwent by him was severed and then, in the criminal proceeding against him he was acquitted for technical reasons and the Supreme Court held that the

technical acquittal overpowered the unequivocal administrative evidence and that his residency should be returned. The language of the Regulation which stipulates "committed an offense" as well as the proportionality obligation, all require that we be cautious and stay the matter until it is clarified. And clearly, the fact that the prosecution files against him an indictment on this offense is not surprising but the final word has not yet been said.

Honorable Justice N. Hendel: The final word has not been said by the prosecution as of yet either.

Adv. Habib: In such a case the weight of administrative evidence is negligible. I raise the possibility that he be acquitted by the military court but it will be too late. We can refrain from putting the court and the reality in such an inconvenient situation and wait several months. Deterrence shall be served by the detonation of several apartments which are about to be detonated with respect of which there is no question as to the scope of involvement, and here we shall wait for a while and if necessary it shall be detonated too.

Deferred for review and decision