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At the Supreme Court sitting as the High Court of Justice

**HCJ 1336/16
HCJ 1337/16
HCJ 1721/16
HCJ 1777/16**

Before:

**Honorable Justice E. Hayut
Honorable Justice U. Vogelman
Honorable Justice Z. Zylbertal**

The Petitioners in HCJ 1336/16:

- 1. Firas Mustafa Atrash**
- 2. _____ Atrash**
- 3. _____ Atrash**
- 4. _____ Atrash**
- 5. _____ Atrash**
- 6. _____ Atrash**
- 7. HaMoked - Center for the Defence of the Individual, founded by Dr. Lotte Salzberger-RA**

The Petitioners in HCJ 1337/16:

- 1. _____ Abu Kaf**
- 2. _____ Abu Kaf**
- 3. _____ Abu Kaf**
- 4. _____ Abu Kaf**
- 5. _____ Abu Kaf**
- 6. _____ Abu Kaf**
- 7. _____ Abu Kaf**

The Petitioners in HCJ 1721/16:

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

The Petitioners in HCJ 1777/16:

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

v.

The Respondent in HCJ 1336/16, HCJ 1337/16, HCJ 1721/16 and HCJ 1777/16:
Petition for *Order Nisi* and
request for an Interim Order

GOC Home Front Command

Petitions for Order Nisi and Interim Order

Session Date: 29 Adar A, 5776 (March 9, 2016)

Panel secretary Alon Haspar
Typist: Galit Tovina

Representing the Petitioners in HCJ 1336/16, HCJ 1337/16 and HCJ 1777/16: Adv. Lea Tsemel

Representing the Petitioners in HCJ 1721/16: Adv. Andre Rosenthal

Representing the Respondents: Adv. Yonatan Zion-Mozes

Protocol

Honorable Justice E. Hayut: With respect to the three petitions of Atrash, Abu Kaf and Tawil we have doubts and we wanted to ask whether counsel agrees that the hearing will be heard as if an *order nisi* was issued to save time?

Adv. Zion-Mozes: To the extent a point or a clarification is required to complete an argument, if any.

Decision was given.

Adv. Zion-Mozes: In the three petitions my colleague made similar arguments with one of the arguments being the revocation of residency which was not revoked. Other than that I would like to review the arguments one by one.

I shall commence with a series of judgments also from recent time regarding the mere authority to use Regulation 119 and the court held that the authority by virtue of Regulation 119 exists in certain circumstances. This is the recommendation of the honorable court. Are these cases in which the authority should be exercised? The respondent is of the opinion that all four cases at bar are cases in which the authority should be exercised, considering all cases and all perpetrators.

Honorable Justice U. Vogelman: The basic point which somewhat differs from the main stream is what counsel mentioned in the response that there was no premeditation.

Adv. Zion-Mozes: There was no intent for murder but there was intent for manslaughter. Against all four, there is no difference between Dwayat and the others an indictment was filed for joint manslaughter. Even if they were not the ones who threw the stone, they threw stones toward the road. They handed over stones to Dwayat for him to throw from short range.

Honorable Justice E. Hayut: Counsel knows that people who throw stones their homes are not demolished. You indicted the person who allegedly threw the deadly stone. You told us that it was Dwayat. You write that he also admitted to having committed it. I don't know what happened in the arraignment. At least to my understanding he admitted to having thrown the stone and claimed that there was no causal connection since the death was caused as a result of the deceased's health condition or something of this sort.

Adv. Zion-Mozes: It is related to the Eggshell Skull Rule. It does not reconcile with the opinion. The pathological opinion is here and it may be reviewed.

Honorable Justice E. Hayut: The question is whether a distinction should be drawn when joint perpetrators are concerned between the person who caused the actual killing whose identity is known and the others who were present and participated on this level or another which may turn them into joint perpetrators according to the penal law, but perhaps due to the level of intensity of their actions a distinction should be drawn between them?

Adv. Zion-Mozes: Eventually we are concerned with a group that threw stones together. The fact that Dwayat's [stone] caused the death of the late Alexander is a consideration which should be taken into account but it is not the only consideration.

Honorable Justice E. Hayut: It is true for instance in the case of Esther Ochana which concerned a group of stone throwers and it was unknown which stone caused it, but here we know that Dwayat threw the deadly stone.

Honorable Justice Z. Zylbertal: In the first stage they were all throwing. At this stage the others were standing on the side of the road and he was standing on a traffic island and therefore it is not a coincidence that it was his stone.

Honorable Justice E. Hayut: Not on this car and the stones they threw did not hit this car and it can therefore be isolated.

Adv. Zion-Mozes: The fact that the stones which they had thrown did not eventually cause a person's death is not the issue here.

Honorable Justice E. Hayut: Had this not been the case we would not have been here in a house demolition case.

Honorable Justice U. Vogelmann: Counsel may be possibly convinced that there should not be a different treatment. Still there is a difference between a total sealing of the apartment in which family members live and a partial sealing. Counsel from the response in 1721 and I assume that this applies to both parties, for instance in paragraphs 40-41 balancing. If we are concerned with a situation and counsel referred to case law, counsel quotes cases in which a perpetrator came with intent to kill. The question is whether a different category should not be treated differently. I assume that the different treatment is manifested by sealing rather than demolition. The question is whether there is room for de-escalation?

Adv. Zion-Mozes: When things were considered including the alternatives this issue came up.

Honorable Justice U. Vogelmann: Was this the reason for the delay? Was the delay caused due to consultations on this matter? It was lost in the shuffle. It is a good thing that dilemmas arise. The dilemmas are important. One should not run forward.

Adv. Zion-Mozes: I shall pass this comment to the extent there are case in which there will be such additional dilemmas.

Honorable Justice U. Vogelman: We respect your will. As you are well familiar with case law a situation of delay has weight. Perhaps here it is not so extreme.

Adv. Zion-Mozes: There was a delay from the date of the event. Indictment was filed in October and a decision was made by the end of January.

Honorable Justice E. Hayut: We should not waste words. It does not cross the limit at least not according to our judgments about the period of time which thwarts execution. We should focus on the issues at bar.

Adv. Zion-Mozes: Less severe and more severe alternatives were considered. The question was whether under the circumstances of this case the sanction should be exercised, namely reversible sealing. There are different kinds of sealing. There is a sealing with cement, I estimate that for a 100 meters apartment about 16 trucks of cement are required which come and pour the cement in. Sealing with cement is an engineering sealing. The sealing in this case is a reversible sealing.

Honorable Justice E. Hayut: Does counsel know whether there were cases of reversible sealing in which the sealing was removed?

Honorable Justice U. Vogelman: Surely this option exists and we do not take it lightly. Being the military commander you must certainly know in how many cases, if any, the sealing was removed.

Adv. Zion-Mozes: I can try finding it out now. I can check this issue in connection with these dwellings in the future. Momentarily the decision is to seal

Honorable Justice U. Vogelman: We certainly do not expect counsel to say what percentage if any.

Honorable Justice E. Hayut: The question is whether such step has ever been taken?

Adv. Zion-Mozes: With respect to the involvement of the four petitioners we attached the police statements of the perpetrators as well as relevant Israel Security Agency (ISA) memoranda. We are of the opinion, these statements were also provided to my colleagues, that the involvement of all four in the execution of the action is clear. We were of the opinion that in this case the distinction between the perpetrator who had actually thrown the stone and the others who had actually thrown stones but not the stone that hit and killed, in the overall balancing it was concluded that ... the other houses should also be sealed.

As far as we are concerned based on the level of proof the military commander has decisive evidence regarding the deep involvement of each one of the involved in the activity and therefore the power could be used in this case.

With respect to the revocation of residency I would like to comment on the effect that revocation of residency may have on the power of the military commander to act pursuant to Regulation 119. These powers are vested with different authorities.

Honorable Justice E. Hayut: What my colleague referred to, is it conclusive?

Adv. Zion-Mozes: The petition is pending. The petition was filed by four East Jerusalem residents. In previous cases of revocation of residency it was also unequivocally noted that it was about a breach of allegiance and the basic duty of the residents of the state of Israel. Here we are concerned with a security authority.

Honorable Justice Z. Zylbertal: Even if we are concerned with two different objectives, if I correctly understand the argument, in view of the fact that an additional measure was employed it also has a deterring effect. By the way, even if it is not his plan does it change the [...]

Adv. Zion-Mozes: The deterring effect, at least in part, creates an interest for the perpetrator attempting to dissuade him from his activity. The deterrence is effective. Should you wish to review it, it is here. Said deterring purpose does not exist and therefore we are of the opinion that there is minimum connection.

Another issue which was raised pertains to the Planning and Building Law in a bid to carry out house demolition.

Honorable Justice E. Hayut: There are already judgments on this issue.

Honorable Justice U. Vogelman: There are judgments on the civil level that a permit is required. It usually comes up when a demolition order is issued for a dangerous building or the like and arguments were raised which claimed that in such cases it was also required [...]

Adv. Zion-Mozes: It is clear that we are concerned with a local authority. It does not enter under the umbrella of planning and building. This concerns the three other perpetrators.

Adv. Tsemel: I shall really refer to the three cases. Until now the residency of four was revoked by the Supreme Court. The residency of Tawil was not revoked because he is a minor. Revocation of residency is an extremely significant step. I shall not go over the petition now, Now beyond all causes deterrence is the most central because it is the heart and soul of the residents of Jerusalem. It does not enable them to vote for instance and the entire day-to-day existence, work, where to stay, to travel or not to travel, to stay in Israel, to get married, national insurance, medical insurance everything turns around the residency issue. The residency issue is extremely important. On the house demolition issue I cannot make the balancing. There is ample deterrence and we should be careful not to slip down this slippery slope.

I wanted to comment on the quotations quoted by my colleague in his long and detailed response. My colleague tried to base his words not only on great authorities but on many other authorities. Refers to Qawasmeh (quotes). It was even more brazenly said in the new judgment in Hamed. The court says I am forced against my will but where there is no alternative to take the measure of demolition or sealing, the court says these are the cases (quotes).

Namely, the uniqueness, rarity the special nature of the event which can justify house demolition, in Abu Dahan (quotes from the judgment of Justice Naor). What it takes to persuade the court to veer from case law and make such an extreme decision. Our case is very far from it. To indict for manslaughter. They argue that there was a central perpetrator and secondary persons who were with him. Intent? Obviously there is no intent. A person who goes to throw stones does not think that it will end up in such damage. These are different sectors under different circumstances. It is as if stone throwing are not offenses of Palestinians. This is such a widespread offense, in the case of Esther Ochana, the incident near Hebron in which a father and his son were consequently killed and this case. There is no other way but to say these things out loud. Indeed there is an indictment.

Honorable Justice E. Hayut: We are satisfied with the administrative evidence. We trust the military commander.

Adv. Tsemel: They all responded and responded beyond the liability issue and the stone throwing. There is an issue which relates to the Eggshell Skull Rule.

Honorable Justice E. Hayut: There is a pathological opinion on this issue.

Adv. Tsemel: We requested the medical records in the criminal proceeding due to different arguments in the file as if there were special problems. The opinion of the Institute of Forensic Medicine was submitted to the court consensually.

Some of the witnesses who live in A-tur and were on their way home testify of another group which was standing on the upper part of the road and according to their suspicion was throwing stones and there are stones scattered on the upper part of the road. The statements also do not connect them. Also three of these men were certain that it was a vehicle of an Arab woman who was driving there. It was distributed on the internet that night.

Honorable Justice E. Hayut: We don't know. We shall receive the evidence.

Adv. Tsemel: Let's say that nobody had the intention to cause death.

Adv. Zion-Mozes: Other than the materials which were attached to the reports there are additional privileged materials which can be submitted *ex parte*.

Adv. Tsemel: We denied any connection.

Honorable Justice E. Hayut: Do you have any objection that we see the privileged material?

Adv. Zion-Mozes: There is an opinion on the issue of effectiveness.

Honorable Justice Z. Zylbertal: Is it the first one?

Adv. Zion-Mozes: It is updated as of February 2016. There is a specific opinion which discusses the evidence that ties the involved to the attack which does not constitute part of the criminal file. It is privileged information.

Honorable Justice E. Hayut: Has a privilege certificate been issued in the criminal file?

Adv. Zion-Mozes: Yes.

Adv. Tsemel: I requested the medical records of the deceased himself. It was submitted in the district court for the court's review and there is no need to go into the matter.

Honorable Justice E. Hayut: It is marginal.

Adv. Tsemel: We have affidavits and eye witnesses. There are witnesses in the file who claim that the vehicle did not drive like a car in the center of the road. It drove differently. It drove in this manner because it was hit by a stone from the right side and veered to the left.

Honorable Justice U. Vogelman: You could submit what you wanted. We are checking now the administrative evidence.

Adv. Tsemel: We have four people who are accused of manslaughter and we do not want to expose all cards now.

Honorable Justice E. Hayut: The decision of the military commander is a reasonable decision given the adequate evidence.

Adv. Tsemel: It was argued that a big stone was found in the car while the eye witness claims that she saw a small stone of about 7 cm. Reenactments were carried out on scene.

Honorable Justice E. Hayut: Counsel argues as if we were sitting in the criminal case.

Adv. Tsemel: There is no dispute that neither one of the throwers threw in a bid to kill.

Honorable Justice E. Hayut: When charges are pressed for manslaughter they should have been at least indifferent as to whether someone would die from the stone or not. These are the limits of the doubts.

Adv. Tsemel: Their main argument is that some of them were walking when they heard the car. In any event one cannot disregard the fact that Jerusalem is concerned here. Even in severe cases sealing is carried out in Jerusalem. They do not like to demolish in Jerusalem. This has always been so. Sealing... is not so simple. Bars are attached at least ostensibly to the windows and then they are welded. The sealing here is made like a post but even if the apartment is filled with foamed plastic ... shows how it looks from the outside. It is a reversible sealing not of the kind that Madam speaks of.

Adv. Tsemel: Reversible but ugly.

Honorable Justice E. Hayut: There are other ugly things in this case.

Adv. Tsemel: With respect to the nature of the neighborhood and the way it looks my colleague will testify maybe for all to see and beware but we shall not underestimate the effect [...]

Honorable Justice U. Vogelman: The level here is lower.

Adv. Tsemel: I wanted to join your honors. The solution which the court found was limitation on time. There were no such results. Limitation may be imposed on an area or on time.

Honorable Justice E. Hayut: Counsel should give us a response regarding the privileged information.

Adv. Tsemel: Petitioner's family in 1137. There is a social report which we intend to submit about the mother and the ramifications. There are five children and my client is the sixth. The children are in the second grade, fourth grade and ninth grade, from the age of eight through the age of eighteen.

Honorable Justice E. Hayut: There is a report here. It is unsigned and there is no logo. Anyone could have written it.

Adv. Tsemel: The report was transferred to us at our request.

Honorable Justice E. Hayut: Why is there no signature and logo?

Adv. Tsemel: As your honors see this is the social report, this is the name of the social worker.

Honorable Justice E. Hayut: It is not signed.

Adv. Tsemel: I shall see to it that the signed report is submitted.

Honorable Justice E. Hayut: Counsel shall transfer the signed report or else we shall not consider it.

Adv. Tsemel: We sent the notice regarding the inheritance order. The widowed mother of the detainee is only one of the owners of the house. There is an inheritance order from the father who passed away and the mother received 7 parts out of 80.

Honorable Justice E. Hayut: But the mother and her children live there.

Adv. Tsemel: Yes. With respect to Tawil he lives separately on the other side. With respect to Atrash it is a smaller house. He lives with his father and two brothers in a room. It is an old house which was built before 1948. Submits to the court.

Honorable Justice E. Hayut: We are still waiting for a response to our question regarding the privileged information and also updated information regarding the deterring effect. It is written in the report. Truly I

don't see any reason for objection. In one of the judgments we wrote that a study should be conducted on the issue. According to our said judgment we wanted to see the results of an updated examination of the matter. If you do not agree it is also fine.

Adv. Tsemel: I quote Madam a lot precisely because we should not be held captive by outdated concepts. I prepared an opening statement to the effect that it was a terrible day to hear such things. On the other hand it is a day in which no conclusions have yet been reached as to the meaning of deterrence. We argued on this issue time and time again.

With respect to the material about deterrence I assume that what my colleagues bring as privileged material is taken from here and from there. Something like when I wanted to have my father's house demolished I did not carry out an attack. We did not hear the others who stayed alive because the deterrence of killing them was not effective enough. What do they bring? What sort of things?

Honorable Justice E. Hayut: There are two types of privileged materials which they wish to bring. The first is an update regarding the house demolition or sealing measure. I assume that if it was not privileged we would have heard more.

Adv. Zion-Mozes: As to the opinion about deterrence things were discussed in detail. It is the same paraphrase but not the same report.

Honorable Justice E. Hayut: Meaning that the material strengthens the paraphrase?

Adv. Zion-Mozes: Yes.

Adv. Tsemel: I shall join the words of my colleague

Honorable Justice E. Hayut: The additional privileged material pertains to administrative evidence. Administrative privilege certificate is about to be issued and they want to show it to us *ex parte*.

Adv. Rosenthal: The question is whether we were here in the case of Shabat stone throwers? The only reason we are here is because the state feels free to demolish houses of Arabs. I amend, the only reason we are here, according to Regulation 119 is because Palestinians are concerned. This is the feeling we get from the entire rulings. How can you as Supreme Court justices take the fact that a father is not liable for the acts of his son and say this is the case. We don't punish here, it is only for deterrence purposes. I am 30 years in the profession and I am unable to understand the rational other than the rational that since these are not Jews we can do whatever we want. I represent the mother and the sister who live in a quite wretched house I must say, but it is their home. They did not know, there is no evidence that they encouraged him.

Honorable Justice E. Hayut: There is no sister. Only the mother is here. The daughter is not a petitioner. How old is the daughter?

Adv. Rosenthal: The daughter is about 20 years old. I did not emphasize the need to add her as a petitioner. I understood that the court did not like petitions of many petitioners together.

Honorable Justice U. Vogelman: This is not the issue.

Adv. Rosenthal: I agree. There was a Justice who is no longer with us who used to constantly cite this judgment regarding the father's liability.

Honorable Justice E. Hayut: In Jewish law it is the other way around, it is the son who pays for the father's deeds.

Adv. Rosenthal: Since when is the father indicted for the acts of the son.

Honorable Justice E. Hayut: The proverb is: "The fathers have eaten sour grapes, and the children's teeth are set on edge".

Adv. Rosenthal: The son has reduced liability.

Honorable Justice E. Hayut: This is relevant when punishment is concerned. Here we are not talking about deterring others but about deterring the person who is still alive from carrying out another action.

Adv. Rosenthal: When you take Mandatory legislation, when the caption above Regulation 119 specifically provides (quotes) and why? I am not sure. To come and say like Justice Amit because each time there is another petition and another petition and thank God these petitions throughout history [...]. Is this the way of a Jewish democratic state to do everything forcefully? Just forcefully. And you have the force. You Madam presided over the panel of President Barak when it was said how can the mother be liable for the acts of the son? We raised all arguments which were raised by us here. The hearing was postponed by 90 days despite the urgency and the need to deter. 90 days passed and suddenly the military committee [decides] to demolish.

Honorable Justice E. Hayut: Case law explains the changes which occurred.

Adv. Rosenthal: Has the wave changed now? Are there more attacks now than 20 years ago? than in 1996? What I see is just more force and more force. You can restrain them.

Honorable Justice E. Hayut: It is some sort of a bitter monolog about the judgments of this court to which we are bound.

Honorable Justice U. Vogelman: We understood what you said. We shall consider it.

Adv. Rosenthal: Regulation 119 commences, and I do not argue about its validity or invalidity. In the last part of the regulation reference is made to offense involving violence. There is no doubt that we fall under this. What I argue is that part of the regulation is used which is not really intended for that purpose. In addition there is regulation 9 I think which is also a basket provision. To come and say seal where no firearms were used, this is what it says, to seal the apartment, it seems to me like an escalation which I request you to stop.

Honorable Justice E. Hayut: An ax is not included in the first part, neither does a knife. I refer to counsel's argument. It is not included in the last part either, through an offense of violence because neither a knife nor ax is included in the first part.

Adv. Rosenthal: Correct but there we have premeditation.

Honorable Justice U. Vogelman: We spoke about it and asked. Now counsel is getting to the point. The general issue was argued by counsel. We saw, read and understood.

Adv. Rosenthal: I am trying to do my best. This is the way I see the matter.

Honorable Justice U. Vogelman: Counsel does his job, there are no complaints.

Adv. Rosenthal: The use of violence, when a stone is concerned and where there is no premeditation, when someone goes with an ax or a knife he takes it with him and goes. Namely, said stone was on the floor. He picked it up from the island.

Honorable Justice Z. Zylbertal: He stands some dozens meters away. What is the difference, assuming that this is the stone which is described here, between a person who holds a knife and a person who does

such a thing? Why should a distinction be drawn between the two? As far as the act itself is concerned and its killing potential? One must be a total fool to think that it does not kill in such circumstances.

Adv. Rosenthal: At the age of 19 when he picked up a stone I am not sure that he wanted to kill him or injure him.

I read the pathological report, I understand that the deceased died because his chest was crushed by the steering wheel.

Honorable Justice E. Hayut: Why was his chest crushed by a stone?

Adv. Rosenthal: Because he lost control. There is no certainty that it was a stone. It is an important sanction, one of the most severe sanctions.

Honorable Justice Z. Zylbertal: If it becomes evident in the criminal proceeding that the factual determination is incorrect it is reversible. Right now according to the administrative evidence this is the situation.

Adv. Rosenthal: But I searched. There the stone hit and crushed his brain. It did not happen. We don't know.

Honorable Justice Z. Zylbertal: It does not depend on the stone thrower. It is coincidental whether the stone hit or whether the process caused the same result.

Adv. Rosenthal: If I knew where the stone hit and if I knew that the stone hit his head, all right. The sanction is so severe. If the sanction was not so severe as my colleague suggests that it will be limited for a period, it may possibly be less severe. Your honor said so in the beginning. The court said in the beginning of the hearing that in stone throwing cases we did not see 119. There may be an escalation here.

Honorable Justice E. Hayut: The risk here is not realized? The throwers are caught and charges are not pressed against a nationalistic background. There is a nationalistic background here which aggravates the matter and there is also a fatal result. So Counsel compares these situations? They are not similar.

There may be different variants. We have therefore requested that with respect to the three the hearing would be held as if an *order nisi* was issued. These three indeed stand trial as joint perpetrators but according to what is attributed to them by the state, the throwing of the deadly stone is not attributed to them. Wherever possible variations [should] be created because the measure is difficult for us too.

Honorable Justice U. Vogelman: In any event counsel's argument will also be considered.

Adv. Rosenthal: This statement makes section 20 redundant.

Honorable Justice E. Hayut: Counsel goes back to the beginning. We shall not open the main issue in this case and this case not everything is open. We therefore request to receive an answer regarding the review of the material now.

Adv. Rosenthal: I quoted in the petition, in paragraph 8, the questions and answers of the accused himself (quotes). It seems to be an answer to the Honorable Justice Zylbertal, this is what he thinks. In this case to come and say we shall not punish but we shall only seal the house of the mother and daughter due to the action of the 19 years old son who may be sentenced to 20 years in prison for manslaughter, not to mention the additional charges which were pressed against him, I think that this sanction is disproportionate and is over and above need.

Honorable Justice U. Vogelman: Does counsel have an alternative argument regarding partial sealing.

Adv. Rosenthal: If you narrow it I shall request to limit it to the room in which he lived. He is single and lived with his mother and sister. It is a very old house. It is not a villa.

They visited the house several times. There was an argument whether there were three floors or two floors. It took several months before they decided to do it.

Honorable Justice U. Vogelman: Mr. Mozes said explicitly that the reason for the [...] was deliberations in view of the special circumstances and therefore the file was opened. It is a different situation.

Honorable Justice E. Hayut: Said deliberation could have possibly resulted in a lower level than demolition and irreversible sealing.

Adv. Rosenthal: In view of the fact the respondent himself found it necessary to consider it and in view of the criminal file and although it is not required because you do not examine the evidence. Administrative evidence suffices. Wouldn't it be right to wait for the results of said trial? The proceedings are about to terminate within a few months, not within two years.

With respect to the evidence I find it very disturbing that see only one side. Are there any statistics on the number of attacks which took place following the demolitions? Has such study been made? How many attacks take place? In the file in which the cousin saw the sealing the result was not dramatic.

Honorable Justice U. Vogelman: You do not impose anything. Without your consent we shall not review the privileged material.

Adv. Rosenthal: I request the court to review the privileged material.

Adv. Tsemel: Refers to memorandum dated September 25 paragraphs 25, 26 and therefore defendant 4 left the place because he thought that they wanted to throw only on the police. After the incident defendant 5 said that it was a car of an Arab woman. Refers to memorandum dated September 25 lines 34, 35.

Decision was given.

The court reviews the privileged material *ex parte*;

Honorable Justice E. Hayut: We reviewed the materials. Beyond what we said before we convened *ex parte* there is nothing to add. We would like to hear a response from Adv. Zion-Mozes to the arguments of Adv. Rosenthal. We would like to hear in the context of counsel's response also whether the possibility with respect to all of them in fact, was the possibility of partial sealing considered with respect to all or at least some of them, namely, only of the rooms or the rooms in which the defendants themselves lived and if such possibility was considered why was it denied? We would like to know, in the context of the response, whether in cases of sealing, were there any cases were reversed. Counsel will refer to these points.

Adv. Zion-Mozes: In the consideration of the alternatives in the four cases, in fact there are five cases. It should be remembered that there is a fifth accomplice. In the case of the fifth accomplice it was decided not to exercise the authority, he was not present over there across the road, he served as a lookout man. The same question that your honorable justices asked me was raised, whether a distinction should be drawn between the person who actually threw the stone which eventually caused the death and the mere involvement. After all possibilities were considered, including a more limited exercise of the authority and the possibility not to exercise the authority at all, the result is that this stone hit and caused death. Did they transfer the stone to Dwayat. It is known that they transferred stones to him. The level of involvement of all four justifies the exercise of the authority. Considering the deterring effect a lesser alternative will not suffice in the four cases to achieve the purpose for which the authority is exercised.

Honorable Justice E. Hayut: As far as the feasibility of the planning is concerned, the structural elements, the building, is the execution of the plan feasible? Has this been checked?

Adv. Zion-Mozes: Again, it depends on the nature of the sealing. A specific opinion is required to the extent we wish to take such a measure. It was decided that it would not be appropriate to take such measure and it was therefore decided to take the sealing measure [...]. This answers the first question.

I shall get to the first issue toward the end.

I do not intend to respond to the general arguments of my colleague and to the arguments which have already been decided and considered and decided again by the court in recent months where the court held that there was no need to revisit all questions whenever the issue of the exercise of the authority pursuant to Regulation 119 was raised. This matter was discussed in HCJ 8150/15 Abu Jamal, reference is made thereto.

As I have noted at the outset, it is an exceptional case in which stone throwing actually caused death. In this context the honorable chair of the panel already referred to this issue when my colleague made his arguments. It is not an offense of vehicle endangerment. It is stone throwing because all four perpetrators and the fifth perpetrator were indicted for manslaughter, neither for causation of death by negligence nor for murder because we do not have here the special intent. But we have manslaughter. Reference is made to several places. There is knowledge of the result of the attack. Presumably death will be caused to the person in the car. It is the plausible result. It depends on the speed [of the car] and therefore it is manslaughter rather than a less serious offense.

Honorable Justice U. Vogelman: We did not mean to insinuate that it was a causation of death by negligence.

Adv. Zion-Mozes: Refers to page 40 of the documents of the police statement of Riad Abed line 52 and onwards (quotes). This concerns Dwayat. As to Tawil page 58 (quotes). There seems to be awareness to the act. Similar statements were given in the Al-Atrash case. Refers to page 45 line 68 to the response to HCJ 1136 (quotes). Namely, we actually have here unequivocal statements concerning the intent and the results of the action. Even if eventually the result would not have been caused, regrettably it did happen. Hence the cases of all four. Refers to the bottom of page 54 of same response. The statement of Muhamad Abu Kaf.

I find it important to clarify that it is one of the perpetrators. Each one of them was interrogated and these were the answers.

Honorable Justice E. Hayut: The question is whether there is no distinction between a group that throws stones and it is impossible to know which stone hit and what we have here, where you knew to isolate the stone which hit. Therefore, isn't there also room to differentiate between the joint perpetrators?

Adv. Zion-Mozes: When these acts are concerned and the manner in which they were carried out the coincidence. We did differentiate between the fifth and the four. We took into consideration.

Honorable Justice E. Hayut: He served as the lookout man.

Adv. Zion-Mozes: I would like to refer to another memorandum. We also have Tawil. It is a consideration that should be taken into account.

With respect to the level of administrative evidence, we are of the opinion that the evidence at hand meets this level and we are of the opinion that precedents may be deviated from. I remind that a week ago a request for additional hearing was denied. The request was denied because implementation was concerned.

Typist: Galit

Adv. Zion-Mozes: As far as we are concerned the deterring purpose requires immediate implementation as soon as a decision to act is made given the current security situation, and to the extent we meet the required level, we should not wait. With respect to Madam's question as whether an examination was made, it was brief. We request to respond to it within a few days. At least one case of remission has already been found in 2012, in HCJ 1596/09 a file of the Home Front Command where a decision of a partial remission was made. There were three floors one of which was remitted to the family in 2012 by the Minister of Defense. According to Regulation 119 the authority is vested with the military commander and the authority to remit is vested with the Minister of Defense.

Honorable Justice E. Hayut: When will you submit a complementary statement?

Adv. Zion-Mozes: Until Monday.

Honorable Justice E. Hayut: There was an argument about discrimination.

Adv. Zion-Mozes: This issue has also been considered more than once.

Honorable Justice E. Hayut: By virtue of which provision is authority vested?

Adv. Zion-Mozes: The same exact regulation.

Adv. Rosenthal: On one issue, I reiterate, we waited six months.

Honorable Justice E. Hayut: Five months.

Adv. Rosenthal: Five months. The incident occurred in September. If the deterrence is deterrence of others it is already too late. With respect to the re-opening, I am glad that my colleague brought an example. I submitted several requests but have not received, not even partially.

Honorable Justice E. Hayut: We shall receive a complementary statement in writing.

Adv. Rosenthal: Will I be able to respond?

Honorable Justice E. Hayut: Certainly.

Decision was given.

Typists: Galit, Ronit.