At the Supreme Court Sitting as the High Court of Justice

HCJ 87/23

Before:	Honorable Justice N. Sohlberg Honorable Justice A. Baron Honorable Justice Y. Elron
The Petitioners:	1. _____ Jamjum 2. HaMoked - Center for the Defence of the Individual
	v.
The Respondent:	Military Commander of the Judea and Samaria Area
	Petition for *Order Nisi*
Session Date:	4 Shvat 5783 (January 26, 2023)
Representing the Petitioners:	Adv. Lea Tsemel; Adv. Nadia Daqqa
Representing the Respondent :	Adv. Yonatan Zion Moses; Adv. Sharon Aviram

Judgment

Justice N. Sohlberg:

1. The petition is directed towards a seizure and demolition order issued against the residential apartment of the perpetrator who had committed a murderous shooting attack inspired by nationalism, in which the late Ronen Hanania of blessed memory lost his life and three additional individuals were injured. The apartment is located on the top floor of a five story building in Hebron (hereinafter: the **Apartment**).

2. On October 29, 2022, in the evening, Muhammad Kamal Ya'kub Al-Jabari (hereinafter: the **Perpetrator**) arrived with his car to the "Ashmoret" checkpoint area in the city of Hebron, carrying an M-16 shotgun. While driving, the perpetrator started shooting at another car, consequently killing the late Ronen Hanania of blessed memory; his son Daniel, who was sitting next to him – was slightly injured. Shortly thereafter the perpetrator fired again at the medical and security forces that were called to the scene.

As a result of said shooting, the medic Ofer Ohana was severely injured, and a Palestinian resident whose name was not mentioned in the petition or in the response thereto was slightly injured. The shooting spree came to an end after the local military security coordinator hit the perpetrator with his car and an IDF officer on vacation, who had arrived to the scene, shot the perpetrator and killed him.

3. Examinations conducted by security bodies showed that the perpetrator who committed the attack was clearly motivated by nationalism and that he had been residing in the apartment together with his wife, Petitioner 1 (hereinafter: the **Petitioner**) and their three minor children. As aforesaid, the apartment is located on the top floor of a five story building. The perpetrator's siblings and their family members reside on the ground floor and on the two floors above it. In the past, the perpetrator's parents had resided in the apartment located on the lower floor, under street level. Since their death, this apartment is not used for residential purposes but for hosting purposes only.

4. Under the circumstances which were described above, given the murderous attack which had been committed and for the purpose of deterring additional potential perpetrators, the Respondent, the commander of IDF forces in Judea and Samaria (hereinafter: the **Military Commander**) decided, pursuant to the recommendation of the Israel Security Agency and with the consent of the Attorney General and the State Attorney, to exercise the power vested in him by virtue of Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: the **Defence Regulations**), and issue an order for the seizure and demolition of the perpetrator's residential apartment.

5. Accordingly, on December 18, 2022, the military commander notified the petitioners of his intention to seize and demolish the apartment, and of their right to appeal it prior to a final decision in the matter. On December 21, 2022, the petitioners filed an objection against the military commander's intention as aforesaid. The arguments were reviewed and considered, and eventually, on December 26, 2022 - the objection was dismissed. Simultaneously with the dismissal of the objection, the military commander issued a seizure and demolition order against the apartment. The petitioners were not satisfied with the response of the military commander to the objection, and hence the petition at hand.

The principal arguments of the parties

6. The petitioners challenge the very use of Regulation 119 of the Defence Regulations as well as the manner of its implementation in the circumstances of the case at hand. On the general level the petitioners argue, *inter alia*, that the practice of demolishing the family homes of perpetrators is prohibited according to international law, due to the severe harm inflicted thereby on innocent people and since it constitutes a collective punishment; that this sanction is imposed in a discriminatory manner since it is not used against Jews committing acts of terror; and that according to the interim agreements which were signed between Israel and the Palestinian Authority "**the military commander is not at all vested with the authority to impose this sanction [of demolishing the family homes of perpetrators] in Area A**". The petitioners argue further that there is no indication that house demolition accomplishes the purpose of deterrence, but that rather the opposite is true – "**Statements were heard that precisely the demolitions**

constituted an inciting and provoking factor." The above, applied according to them even more forcefully in the circumstances of the case at hand in which "**the family members [of the perpetrator] rushed to notify the authorities and alert them of the suspicion of the [perpetrator's] intentions**". Therefore, according to them, in the case at hand, avoiding house demolition will serve the purpose of deterrence and will prevent future attacks, making it clear that a family which tried to prevent and thwart a terror attack shall be rewarded.

7. In addition, the petitioners do not accept the engineering opinion which was attached by the military commander to the seizure and demolition order, and are of the opinion that the opinion which was submitted on their behalf should prevail. According to them, past experience shows that contrary to the claims of the military commander, the demolition method which was chosen – "**hot detonation**" – causes great peripheral destruction, turning "**whole buildings inhabitable**". For this reason too the petitioners are of the opinion that the court should not accept the statement of the military commander which was made based on the engineering opinion on his behalf and whereby substantial efforts shall be made to reduce and even completely prevent damage to nearby apartments, and that it is likely that these efforts will bear fruit and prevent damage as aforesaid. The above, particularly, according to the petitioners, in view of the engineering characteristics of the building in which the apartment is located, and due to its great proximity to nearby buildings.

8. The military commander on his part is of the opinion that the petition should be denied in the absence of legal grounds for interfering with his discretion, and since he has already taken into account all of the necessary considerations which are required to make the decision. With respect to the arguments on the general level, the military commander argues that all of these arguments have already been discussed and rejected numerous times by this court, also clarifying that the court shall not be compelled to re-visit these issues whenever Regulation 119 of the Defence Regulations is used. Beyond that, the military commander refers in his response to judgments which were given by this court, in which the court has discussed in length these general arguments, which were rejected on their merit. With respect to the doubts expressed by the petitioners about the deterring effect that may arise from using the seizure and demolition tool, the military commander argues that the security bodies re-examine this issue from time to time, and their findings leave no room for a doubt. According to him, the security bodies are of the opinion that the demolition of the family homes of perpetrators has a deterring effect; clear and simple. To support his above statements, the military commander referred to an up-to-date opinion of the security bodies, which was submitted for our review only, with petitioners' consent, *ex-parte*, in the hearing which was held by us in the petition on January 26, 2023. In addition, with respect to the arguments which were raised on the individual level, the military commander clarifies that despite the fact that "**the petitioner suspected that her husband intended to commit a terror attack**", and even shared her concerns with additional family members, "**neither one of said family members had taken any action to prevent the attack or to inform the authorities of these intentions prior to the commission of the attack**".

9. The military commander is also of the opinion that petitioners' arguments concerning the demolition method – should be dismissed as well. The military commander argues, and

his arguments are supported by the engineering opinion on his behalf, that the demolition is planned to be carried out by way of "hot detonation together with mechanical means", a method with "'**low to very low' likelihood of damage to structural and non-structural construction elements**" with respect to the building in which the apartment is located, where "**maximal actions are meticulously taken in the engineering planning and execution stages, including on-scene control by an engineer, causing the demolition to have focused and controlled characteristics entailing a low level and likelihood of damage**" (emphases in the original – N.S.). In addition, according to the military commander, "**structural damage is not expected to be caused to near-by buildings**" and in any event "**an effort shall be made to disassemble and disconnect [nearby infrastructures which may be affected] prior to the activity, in a manner preventing them from suffering damage**", and "**an effort shall be made, where possible, to remove near-by glass constituting the most sensitive element that may be affected by blast and mortar bombs**" (emphases in the original – N.S.).

10. In an oral hearing held by us in the petition on January 26, 2023, the parties reiterated their arguments, and as aforesaid, a privileged opinion was submitted for our review only by the security bodies. Subsequently, statements were made, at their request, by Daniel, the son of the late Ronen Hanania of blessed memory, who had been with his father when the attack took place and unfortunately had witnessed his father's murder, had experienced the terrifying moments of the attack, and had also been injured; and Yossi Ohana, the brother of the medic Ofer Ohana, who as we were advised, was unable to come to the hearing due to his severe injury and the long and complex rehabilitation process he is undergoing. In their words, they have both expressed their great pain, and their position, request, that "anyone having the ability and the duty, should do whatever is possible to cause deterrence and prevent as many terror attacks as possible to prevent others from suffering as we suffer".

Deliberation and Decision

11. After I have reviewed the petition and the response of the military commander, including their appendices, and after I have heard the arguments of the parties in the hearing which was held before us, and have also considered the content of the privileged opinion which was submitted for our review, I came to the conclusion that there are no legal grounds for interfering with the decision of the military commander, who issued an order by virtue of the power vested in him according to Regulation 119 of the Defence Regulations; Therefore, I am of the opinion that the petition - should be denied.

12. As this court has often noted, and without derogating from the severity of the harm caused as a result of the use of Regulation 119 of the Defence Regulations, "**It is not necessary to discuss all over again the general issue regarding the mere authority to issue seizure and demolition orders according to Regulation 119, whenever the court hears a petition which concerns Regulation 119 of the Defence Regulations**" (HCJ 8150/15 **Abu Jamal v. Home Front Command**, paragraph 6 of the judgment of Justice **I. Amit** (December 22, 2015) (hereinafter: **Abu Jamal**); and see also: HCJ 1014/16 **Skafi v. Commander of IDF Forces in the Judea and Samaria Area**, paragraph 11 (February, 28, 2016); HCJ 3137/22 **Jarad v. Military Commander of the Judea and Samaria Area**, paragraph 11 (May 30, 2022) (hereinafter: **Jarad**)).

13. In the case at hand too, a similar statement would be adequate whereby the general arguments which were raised by the petitioners have already been discussed by this court many times, and were all rejected (see, for instance, a few of many: HCJ 8091/14 **HaMoked Center for the Defence of the Individual v. Ministry of Defence** (December 31, 2014) (hereinafter: **HaMoked**); HCJ 6826/20 **Dweikat v. Commander of IDF Forces in the Judea and Samaria Area** (October 25, 2020) (hereinafter: **Dweikat**); and very recently: HCJ 7787/22 **Abed v. Military Commander of the Judea and Samaria Area**, paragraphs 19-23 (December 14, 2022)); See also decisions denying petitions to revisit the issue in the framework of a further hearing: HCJFH 360/15 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Minister of Defence** (November 12, 2015); HCJFH 2916/16 **Dwayat v. GOC Home Front Command** (April 10, 2016); HCJFH 9324/17 **Abu Alrub v. Commander of IDF Forces in the West Bank** (November 29, 2017)). Among other things, the argument of prohibited collective punishment was rejected, making it clear that it is not a punitive action, but rather an undeniable necessity, which is taken solely to deter potential perpetrators from harming human-life (**HaMoked**, paragraph 4 of my judgment). In addition, with respect to the doubts that the petitioners tried to raise about the deterrence which is achieved as a result of the implementation of the Regulation, as noted many times by the court in its judgments, the opinion of the security bodies which shows that the use of this deterring tool is effective, provides a clear response to this argument (see my position with respect to this matter, referring *inter alia* to academic studies which were conducted on this issue and had similar findings concerning the deterrence embedded in the demolition of the family homes of perpetrators, as well as the complexity embedded in the attempt to measure the deterring effect, in my judgment in **HaMoked**, paragraphs 6-14 and in **Dweikat**, paragraphs 33-37). Moreover, according to the court's directions, the security bodies continue from time to time to examine the matter and the deterring aspects thereof, and update their opinion accordingly. And indeed, the opinion which has just been submitted for our review is clear, detailed and **up-to-date.** It unequivocally emerges therefrom that the professionals who are responsible for this area are of the opinion that it is an important tool in the fight against terror, resulting in effective deterrence. I find no good reason to refute this professional position. In this context it should also be noted that this court seldom interferes in opinions of this sort, relating to the area of expertise of professionals, members of the security bodies, (see: HCJ 144/22 **Abu Skhidem v. GOC Home Front Command**, paragraph 3 of the judgment of Justice **I. Amit** (January 19, 2022) (hereinafter: **Abu Skhidem**)). Therefore, petitioners' general arguments – should be dismissed, in their entirety.

14. I shall now focus on the arguments which were raised by the petitioners on the individual level, concerning the manner in which the Regulation was implemented in the circumstances of the case at hand. As described above, the petitioners argue not only that the family members of the perpetrator did not take part in his hostile activities, but rather, had actively acted to prevent his malicious plans. The attempt did not succeed, but according to them, the mere attempt shows that in the case at hand the house should not be demolished. Indeed, it was noted by case law that Regulation 119 is aimed at achieving deterrence on two levels: deterring the potential perpetrator fearing the fate of their family; and deterring their family members, causing them to take action towards

halting the hostile activity in advance to avoid the consequences which also affect their own lives (see for instance: HCJ 7040/15 **Hamed v. Military Commander of the West Bank Area**, paragraph 1(g) of my judgment (November 12, 2015) (hereinafter: **Hamed**); **Abu Skhidem**, paragraph 3 of the judgment of Justice **I. Amit**)). However, in the circumstances of the case at hand, this issue does not come up at all. The above, since I find no good reason to interfere with the factual determination of the military commander – underlying the seizure and demolition order issued by him – whereby neither the petitioner nor any other member of her family had indeed acted to thwart the perpetrator's plan, prior to its execution.

15. Initially it should be noted in this context that a clear picture emerges from the confidential material which was submitted for our review, which had previously been provided to the military commander prior to making his decision which is the subject matter of the petition, pursuant to which the petitioner did not act to prevent the attack; far from it. The above determination of the military commander is also supported by the open material, and beyond need I shall slightly elaborate on this issue. During her interrogation, after the attack, the petitioner described that the perpetrator, who had terminal cancer, had often told her in the period prior to his atrocious act, that a sick person was better off committing a terror attack, thus ridding themselves from the burden of life. In addition, she described, that in his last days the perpetrator spoke about entering the gates of heaven; that on the day of the attack, the perpetrator sat with his doctor, who gave him an update on the progress of his illness and his terminal condition; and that she found, also on the day of the attack, that the perpetrator had left for her review - for the first time in their life together - the notebook in which he kept his accounts and listed his debts, requesting her to pay off a debt that was still outstanding. Said request of the perpetrator, as explained by the petitioners, apparently arises from a customary concept in Islam – a concept with which the petitioner was familiar – that a person should not depart from the world before they have fully paid off their debts. In addition, it emerges from the interrogation of _____ Al-Jabari, one of the perpetrator's siblings, that contrary to petitioner's version, she did indeed see the perpetrator leaving the house, on the day of the attack, with a suspicious bag hidden under his clothes. Hence, the open material sufficiently shows that despite the fact that the petitioner was, at least, suspicious of the perpetrator's intentions, she refrained from taking any action against them; all the more so, together with the argument and substantial evidence brought in this context in the framework of the privileged information. In conclusion: given the above, I find no justification to interfere with the conclusion reached by the military commander, after he has examined the entire factual infrastructure presented to him; both open and privileged. It is for good reason that in his response to petitioner's appeal, the military commander noted as follows: "**As it emerges from the open and privileged information at the disposal of the security bodies, including according to the interrogation of ____, evidence exists in the case at hand substantiating that the [petitioner] had, at least, suspicions about the perpetrator's intentions to commit an attack, but she chose not to act in that respect prior to the commission of the attack**" (emphasis in the original –N.S.); Indeed, had the petitioner taken any action in that respect, as she claims in the petition, the unbearable consequences may have been avoided. Regretfully, it emerges from the material before us that no such actions were taken.

16. We should now examine whether there are grounds for our interference with the wide discretion of the military commander concerning the **scope** of the seizure and demolition order which was issued, in view of the argument that the family members were not aware of the perpetrator's atrocious intentions. On this matter according to case law "the awareness of the perpetrator's family members of his intention to commit a terror attack – is not required, in and of itself, to establish the power according to Regulation 119. Considerations of deterrence require, at times, according to case law, deterrence of potential perpetrators who must understand that their actions may also harm the property of their loved ones, the above also where there is no evidence that the family members were aware of the perpetrator's deeds" (HCJ 1633/16 **A v. Military Commander of the West Bank Area**, paragraph 31 (May 31, 2016); and see also, for instance: HCJ 5943/17 **Anonymous v. Commander of IDF Forces in the West Bank**, paragraph 9 (August 3, 2017) (hereinafter: **Anonymous**)). Alongside this rule, it was held that the family's conduct may indeed affect the **scope** of the seizure and demolition order, as opposed to limiting the mere issuance of the order (HCJ 4177/18 **Kabha v. Military Commander of the West Bank Area**, paragraph 14 (June 7, 2018)). In the circumstances of the case at hand, considering the fact that the order is limited only to the apartment in which the perpetrator actually resided and whose connection thereto is not in question, since it was found that other than the perpetrator, only the members of his nuclear family are residing in the apartment with him, and given the evidence which was before the military commander, undeniably showing that the petitioner at least suspected that the perpetrator was planning a terror attack, but did nothing to prevent it – I do not think that there are grounds for our interference with the scope of the order issued by the military commander.

17. We shall now proceed to petitioners' arguments concerning the method of the demolition. First and foremost, it should be clarified that with respect to petitioners' arguments concerning peripheral damages which are expected to occur, according to them, as a result of the demolition, harming innocent residents living near the apartment – the petitioners interfere in someone else's argument and fight the battle of individuals who could have come to this court but chose, for their own reasons, not to do so. It occasionally occurs in petitions of this sort, that tenants living in the vicinity of the house designated for demolition apply to the court and present their arguments before us (see for instance: **Hamed**, particularly in paragraphs 6-11; **Jarad**). For this reason, these arguments should already be dismissed in their entirety (see for instance: HCJ 1759/94 **Srozenbeg v. Minister of Defence**, IsrSC 55(1) 625, 631-632 (2001); HCJ 6972/07 **Lexer v. Minister of Finance**, paragraphs 24-25 (March 22, 2009)).

18. It should also be added that to the crux of the matter, I found no merit in petitioners' arguments. The military commander clarified in his response, which relies on a professional-engineering opinion, that the likelihood that peripheral damages shall occur as a result of the demolition – was partly low, partly very low, and partly non-existent. The above, given the proximity of the other apartments to perpetrator's apartment, as well as the types of the expected damages. It was also clarified that considerable efforts were and shall be made to prevent such damages, in the framework of the demolition. All of the above, taking into consideration the preliminary examinations which were conducted and the experience accumulated by the professional bodies engaged by the military, including the qualified engineer "**in diverse previous actions which were carried out**

using a similar method for similar outcome and description – without collateral damage according to an examination of the area conducted [by an engineer] after the detonation".

19. Indeed, the petitioners do not agree with the content of the above opinion, and are trying to support their arguments by an opinion submitted on their behalf and by arguing that in several cases in the past where demolitions of this kind had been carried out, severe damages were caused to near-by apartments and buildings. However, this is not enough. According to case law, the court shall not easily interfere with the wide discretion vested in the military commander. As a general rule, the demolition method, as well as other related issued are entrusted in the hands of the professional bodies (**Abu Jamal**, paragraph 10). In addition, and as I have recently noted "**We are concerned here with the process of judicial administrative review, and anyway, presenting an opinion to the contrary does not suffice to discredit the decision of the administrative authority, all the more so when it relies on its own professional opinion. In this very context it was held with respect to 'competing' opinions in the administrative process, that "preferring the opinion of an 'external' expert over the professional opinion of the administrative authority, does not reconcile with the nature of the judicial review process**" (**Jarad**, paragraph 14; and see also: HCJ 4874/21 **Ben Ari Ltd. v. Israel Land Authority**, paragraph 31 (February 6, 2022)). Therefore, I am of the opinion that with respect to the issue at hand the presumption of administrative regularity – stands, and that the opinion presented by the petitioners does not suffice to discredit it. The argument that in other cases of demolition, severe secondary damages were caused, was also properly answered by respondent's counsel who clarified, in the framework of the hearing before us, that among the cases which were presented by the petitioners, only one case is actually from recent years. Therefore, it seems that if anything can be learnt from the above about the issue of secondary damages – it actually works against the petitioners. The above, since it emerges from the aforesaid that in the vast majority of the cases – which regretfully are not few – the preliminary examinations, the engineering efforts which were invested, were successful, and no secondary damages were caused. Anyway, as has often been held by this court, if such damages are caused – the gates of compensation shall not be locked and the persons who will suffer damages will be able to turn to the appropriate bodies in the Ministry of Defence (see: **Hamed**, paragraphs 56-59; HCJ 2770/22 **Hamarsha v. Military Commander of the West Bank Area**, paragraph 4 of the judgment of the Deputy President, **U. Vogelman** (May 19, 2022)). Either way, the security bodies are held to carry out the order *verbatim* only, without deviations, with the required caution and professionalism, as was indeed argued by them; in their response as well as in the professional opinion on their behalf. I therefore see no room for our interference with the wide discretion vested in the military commander and in the method established by him for the exercise of his authority.

20. Before conclusion, it should be noted that after the hearing of the petition and after we have advised the parties that the petition was deferred for review and that judgment would be subsequently given, the petitioners submitted 2 notices notifying of the existence of additional pieces of evidence supporting their arguments. These pieces of evidence were attached to said notices, without a preliminary application on behalf of the petitioners for leave to submit them. The urgency – is understood under the circumstances, but it does not exempt the petitioners from submitting to the court an

application in the customary manner for the introduction of supplementary evidence. In any event, after I have reviewed these notices including their appendices, I did not find anything therein which could change my conclusion, whereby no grounds were found for our interference with the decision of the military commander.

21. Unfortunately, in this case, similar to previous cases, the military commander had to exercise the power vested in him by virtue of Regulation 119 of the Defence Regulations, and issue and order for the seizure and demolition of the family home of the perpetrator. This is not done with joy. A decision to demolish the residential home of a family that many times did nothing wrong, is not made easily, but is an undeniable necessity. As aforesaid, the position of the military commander which relies on a privileged opinion of the security bodies is that this measure may deter potential perpetrators from choosing to follow the path taken by the perpetrator, who has abruptly terminated the life of the late Ronen Hanania of blessed memory, and injured others, all innocent people. Considering this noble goal – literally saving lives – as it clearly emerges from the current opinion which was submitted for our review, occasionally, severe, offensive measures which are available to the security bodies, must be lawfully used to fight terror.

22. Therefore, since no grounds were found for our interference with the decision of the military commander, I shall propose to my colleagues that we order to dismiss the petition.

J U S T I C E

Justice Y. Elron

I concur.

J U S T I C E

Justice A. Baron

1. The perpetrator committed a hideous and atrocious murder. With relentless cruelty he shot into the car driven by the late Ronen Hanania of blessed memory and his son, Daniel, and has later continued to shoot at the security and medical forces which arrived to the scene to assist them. From his seat in the car Daniel watched the execution of his father. Ofer Ohana, a medic who arrived to the scene to assist the victims of the attack, was also shot by the perpetrator and was severely wounded. Another person was slightly injured. There are no words to describe the horror.

   The starting point of the deliberation in the petition at hand is that the military commander is vested with the power by virtue of Regulation 119 of the Defence (Emergency) Regulations, 1945, to issue an order for the demolition of the family home

of the perpetrator – despite the fact that allegedly innocent family members reside therein, who did not take any part in the act. However, as is known "power and discretion are two separate things" – meaning that the proportionality and reasonableness of the use of the measure of house demolition is examined on its merits in each petition *de novo* according to the circumstance, and the same applies to the case at hand. It should be reiterated and emphasized at this point that house demolition is solely a **deterring** measure, intended to prevent murderous attacks, and in no event should it be used as a **punitive** measure or in **retaliation** for terror attacks.

2. I agree with the result reached by my colleague Justice **Noam Sohlberg**, whereby in the circumstances of the case at hand there is no room for our interference with the seizure and demolition order against the residential apartment in which the perpetrator had resided with his family. I shall add a few words on the deterring purpose and the proportionality of the demolition order.

Justice **Sohlberg** notes that during the hearing of the petition a professional opinion was submitted to us on behalf of the respondents showing that according to the position of the security bodies house demolition is an important tool in fighting terror which achieves effective deterrence, and that there are no good reasons to discredit said professional position (paragraph 13 of his judgment). A similar position was often heard in the judgments of this court (see for instance recently: HCJ 8604/22 **Tamimi v. GOC Home Front Command** (January 3, 2023)). With all due respect, my opinion on this matter is different. The privileged opinion which is presented to us from time to time in petitions of this sort is far from convincing that the measure of house demolition is an effective deterring tool. The opinion which was presented to us in the hearing was indeed more current with respect to the data presented therein, but not more convincing. As I have noted in the past as well as recently, the problem with the opinion lies not in what it contains – but rather in what it does not contain:

> It is clearly difficult to quantify in numbers the manner by which house demolition prevents terror acts, as it is similarly difficult to quantify the manner by which this measure acts in the opposite direction: incites violence and hatred against Jews. The mere attempt to present effective deterrence as empirically proven is doomed to fail. In terms of results, recent years were bloody and filled with terror attacks. The above, despite the fact that all that time the military commander was making frequent use of the tool of house demolition. Some will say that the above proves that this is an ineffective deterring tool; others will say that but for house demolition, the situation would have been much worse. Such is also the opinion which was presented to us, far from being clear-cut" (HCJ 4359/22 **Abu Shakir v. Commander of IDF Forces in the West Bank** (July 17, 2022).

3. While considering the proportionality of the demolition order, actual weight should be given to the doubts circling around the deterring power embodied in an order of this sort. Demolishing a person’s home, although no guilt or involvement in the attack is attributed to them, harms the core of human rights and contradicts the values at the heart of the State of Israel as a Jewish and democratic state. Therefore, my approach is that

"**demolition of a home of innocent family members solely due to the gravity of the actions of the perpetrator, with no weight to the knowledge or involvement of the family members in the act, does not as a rule meet the proportionality test**" (HCJ 752/20 **'Atawaneh v. Military Commander of the Judea and Samaria Area**, paragraph 3 (May 25, 2020); HCJ 480/21 **Rabha v. Military Commander of the West Bank Area**, paragraph 2 (February 3, 2021); For a more elaborate discussion see my words in HCJ 1125/16 **Mer'i v. Commander of Military Forces in the West Bank** (March 31, 2016)).

In the case at hand, the picture which arises from the material presented to us is that the perpetrator's wife (hereinafter: the **petitioner**) suspected that he had intended to murder Jews and did not act as required to prevent him from carrying out the murderous plan. During the month which preceded the attack the perpetrator had often told the petitioner that a sick person like him was better off committing a terror attack thus becoming a "Shahid"; and on the day of the attack she even noticed a clear sign for the sincerity of his intentions as he left his account book for her review for the first time in their life together and requested her to pay-off all of his debts. In addition, one of the perpetrator's siblings said that the petitioner had seen the perpetrator leaving the house hiding something under his shirt and understood that it was a weapon; while the petitioner denies that she was at home when the perpetrator left it on his way to the scene of the attack, but it emerges from the interrogation material which was presented to us that there is substantial doubt concerning her sincerity. In any event, the petitioner suppressed her increasing suspicions until the perpetrator had already opened fire at the car of the late Ronen Hanania of blessed memory and his son Daniel, and only then called her brother and shared her suspicions with him – however, even at that stage she did not ask him to contact the security bodies or thwart the attack in any other way. The Palestinian security bodies were eventually contacted at the initiative of the perpetrator's brother, who was contacted by petitioner's brother at his initiative, after the petitioner had shared her suspicions with him as aforesaid. However, regretfully, at that stage the reporting was of no use.

In the above described circumstances, and since it emerged that the petitioner at least suspected that the perpetrator had murderous intentions and that he was on his way to carry them out, and nevertheless did nothing to prevent the horrendous attack, there is no room to hold that the demolition order is not proportionate.

J U S T I C E

It was therefore decided as stated in the judgment of Justice **Noam Sohlberg**.

Given today, 14 Shvat 5783 (February 5, 2023).

Justice Justice Justice