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**At the Supreme Court**

**A.H.H.C.J. 181/09**

Before: Honorable Deputy Chief Justice E. Rivlin

**The Petitioners:** 1. Abu Dehim  
2. **HaMoked: Center for Defence of the Individual founded by Dr. Lotte Salzberger**

- Versus -

**The Respondents :** **GOC Home Front Command**

A petition for an Additional Hearing on the Supreme Court's judgment dated 5 January 2009 in HCJ 9353/08 issued by the Honorable Justices A. Grunis, M. Naor and E. Rubinstein

Representing the petitioners: Adv. Andre Rosenthal

**Decision**

1. This is a petition for an Additional Hearing on the judgment issued in HCJ 9353/08 **Abu Dehim v. GOC Home Front Command** (not yet published, issued on 5 January 2009). The judgment was issued following a petition to the HCJ that was filed by the petitioners after the respondent exercised the power bestowed upon him pursuant to Regulation 119 of the Defence Regulations (Emergency), 1945, and ordered the confiscation and demolition (sealing with concrete) of two floors in the house wherein resided the terrorist who performed the deadly terror attack at the Mercaz HaRav Yeshiva on 6 March 2008. In the judgment, the Court (the Honorable Justices Grunis, Naor and Rubinstein) dismissed the petitioners' petition to annul the respondent's decision in their matter.

The petitioners argue that in the judgment, the Court avoided deliberating the issue at bar, namely the use of the 'guilt by association' doctrine which is embodied, in the petitioners' opinion, in the power set forth in Regulation 119. The petitioners further argue that the respondent's re-exercise of his power, after having ceased from doing so for a certain period of time, justifies an additional hearing, because the State cannot "act against one of its residents due to the evil of others", in which context there shall be no punishment or deterrence through harming a terrorist's family.

The petition is dismissed with prejudice.

2. The Supreme Court judgment examined the principles outlined in the case law in the matter of the power set forth in Regulation 119. This case law, on the one hand, dismissed the argument that this power cannot be used against the State's residents, and on the other hand, determined that the powers set forth in the Defence Regulations should be interpreted in the spirit of the basic laws. In the judgment, the justices indicated that the argument which denies harming the family members of terrorists was also dismissed in the case law in view of the deterrence considerations served by exercising the power set forth in Regulation 119.

Thereafter, the Court turned to discuss the principal issue that arose in the petition, which is – the respondent's retraction of the policy declared by him in 2005, namely suspension of the exercise of the power set forth in Regulation 119, whilst reserving the discretion to retract this policy in the appropriate circumstances. In its judgment, the Court found no room to intervene in the respondent's decision to change his policy in accordance with the principle that allows an authority to adapt its policy to the changing circumstances. The Court emphasized that the respondent's change of policy did not lead to a change of the Court's consistent policy according to which the Court is not inclined to intervene in the evaluations of the security forces with respect to the efficiency of such and other deterrence measures.

The judgment, then, is supported by two pillars: **The first**, the precedents set forth in case law with respect to the exercise of the power established in the provisions of Regulation 119; **the second**, the principle that allows an authority to change its policy in accordance with the change in circumstance. These two pillars are well established in this Court's case law, they do not contradict previous precedents, nor constitute any innovation that justify an additional hearing by virtue of the provisions of Article 30(B) of the Courts Law [Consolidated Version] 5744-1984.

3. The petition is therefore dismissed with prejudice.

Issued today, 10 Tevet 5769 (6 January 2009).

The Deputy Chief Justice