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*Original Hebrew-language judgment available at [www.court.gov.il](http://www.court.gov.il).*

*Translation note: English translations of some documents referred to in the text are available at [www.gisha.org](http://www.gisha.org), "court documents".*

**At the Supreme Court, sitting as the High Court of Justice**

**H.C. 9132/07**

Before:           The Honorable Court President D. Beinisch  
                      The Honorable Justice E. Hayut  
                      The Honorable Justice Y. Eilon

The petitioners:

1. \_\_\_\_\_ al-Basyuni \_\_\_\_\_
2. \_\_\_\_\_ Najjar
3. Adalah – The Legal Center for Arab Minority Rights in Israel
4. Gisha – Legal Center for Freedom of Movement
5. Hamoked – Center for the Defence of the Individual
6. Al-Haq
7. Al-Mezan Center for Human Rights
8. Physicians for Human Rights - Israel
9. The Palestinian Centre for Human Rights
10. The Public Committee Against Torture in Israel
11. Gaza Community Mental Health Programme
12. B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

vs.

The respondents:

1. The Prime Minister
2. The Minister of Defense

Petition to issue an *order nisi* and an interim injunction

Session date:

27 January 2008

Representing the petitioners:

Attorney Noam Peleg, Attorney Professor Kenneth Mann, Attorney Fatmeh El-Ajou, Attorney Sari Bashi, Attorney Hassan Jabareen

Representing the respondents:

Attorney Osnat Mandel, Attorney Gilad Sherman

## **Verdict**

### **President D. Beinisch:**

1. The petition before us is directed against the respondents' decision to restrict or limit the supply of fuel and electricity to the Gaza Strip. In their plea for the assistance of this court, the petitioners mainly addressed the need for different types of fuel – gasoline and diesel – for the proper functioning of hospitals, water pumps and sewage systems, and also the need for electricity supply, both through electrical lines from Israel and through the supply of industrial diesel to operate the Gaza Strip's power station.
2. The background to the petition is the armed conflict that has been ongoing in the Gaza Strip area for an extended period and the terrorist offensive directed at the citizens of Israel. Terrorist activities have increased and intensified since the Hamas organization established its control of the Gaza Strip. These activities include the ongoing firing of rockets and mortar shells at civilian towns within Israeli territory. They also include terrorist attacks and attempted terrorist attacks targeting Israeli citizens and IDF soldiers at the border crossings between the Gaza Strip and the State of Israel, along the length of the border fence and within the territory of the State of Israel. In the framework of ongoing measures that the State of Israel is implementing against the ongoing terrorism, the respondents decided to restrict the supply of fuel and electricity to the Gaza Strip. The wording of the decision, which was made by the Security Cabinet on September 19, 2007, is as follows:

"Hamas is a terrorist organization that has taken control of the Gaza Strip and turned it into hostile territory. This organization engages in hostile activity against the State of Israel and its citizens and bears responsibility for this activity.

In light of the foregoing, it has been decided to adopt the recommendations that have been presented by the security establishment, including the continuation of military and counter-terrorist operations against the terrorist organizations. Additional sanctions will be placed on the Hamas regime in order to restrict the passage of various goods to the Gaza Strip and reduce the supply of fuel and electricity. Restrictions will also be placed on the movement of people to and from the Gaza Strip. The sanctions will be enacted following a legal examination, while taking into account both the humanitarian aspects relevant to the Gaza Strip and the intention to avoid a humanitarian crisis".

The petition is directed against this decision.

3. The petition against the decision was submitted on October 28, 2007, and on November 7, 2007, we held a hearing in the petition in the presence of the parties. At the time of the hearing, the state announced that a decision on the implementation of the restriction of electricity supply to the Gaza Strip had not yet been finalized, and therefore we heard arguments related to the restriction of fuel supply only. During the hearing, the respondents' representatives informed the court that the state recognizes its obligation to refrain from obstructing the supply of essential humanitarian needs to the Gaza Strip. It therefore announced that it would monitor the restrictions and ensure that they do not reach a level where they infringe on essential humanitarian needs.

At the conclusion of the hearing, we determined that within 7 days the state would submit the complete figures on which it based its evaluation of the impact of the restriction of fuel supply to the Gaza Strip and would specify the mechanisms of monitoring and evaluating data it intended to implement in order to safeguard the humanitarian needs of the residents of the Gaza Strip.

#### **Restriction of Fuel Supply to the Gaza Strip**

4. On November 29, 2007, we determined, in relation to the part of the petition relating to the restriction of supply of fuel to the Gaza Strip, that the fuel which the Palestinian Energy Authority acquires from the Israeli company Dor Alon and which is distributed by private suppliers to the highest bidder and without prioritization, could also be distributed in another way. We noted that the different types of fuel supplied to the Gaza Strip could be distributed according to an order of priorities that takes into account the humanitarian needs of the civilian population and also the operation of the generators that power water pumps and electrical facilities in the area. In our decision, we gave weight to the state's position that currently, as offensive rocket attacks against Israeli towns are taking place, some of the fuel being transferred to the Gaza Strip is actually being used for different purposes by the terrorist organizations. Under these circumstances, the restriction of the supply of fuel, in the controlled fashion that was being implemented, was likely to harm the terrorist infrastructure and its capacity to act against the citizens of the State of Israel. This takes into consideration that the amount of fuel supplied to the Strip is supposed to be sufficient for humanitarian needs which require fuel. Therefore we were not convinced at that time that the respondents' decision to restrict the fuel supply to the Gaza Strip via Israeli border crossings, in accordance with the figures provided to us, harms essential humanitarian needs in the Gaza Strip. Therefore, it was determined that there was no cause to issue an *order nisi* and an interim order with regards to the restriction of fuel supply (gasoline and diesel). Our decision was based primarily on the obligation of the state to monitor the events unfolding in the Gaza Strip and to ensure that the said restrictions do not cause humanitarian harm to the residents of the Gaza Strip, an obligation derived from Israeli and international law. Under

these circumstances we concluded the discussion of the restriction of fuel supply to the Gaza Strip. We then began to examine the arguments relating to the expected harm to the residents of the Strip as a result of restrictions of electricity supply.

### **Restriction of Electricity Supply to the Gaza Strip**

5. The discussion of the part of the petition relating to the restriction of electricity supply to the Gaza Strip necessitated a complex factual investigation and we found it hard to get information on this issue from the state's representatives. Therefore we continued the proceedings on this issue as we received at various times detailed requests from the petitioners and oral and written responses from the respondents. On November 15, 2007, the petitioners submitted an urgent request for an interim injunction on the petition, and on November 23, 2007, they requested that we hold an emergency hearing on the petition, due to the state's announcement that as of December 2, 2007, the amount of electricity supplied to the Gaza Strip would be restricted. The petitioners claimed that there was no physical way to limit the supply of electricity to Gaza without causing power failures to hospitals and interruptions in the pumping of drinking water to the civilian population of Gaza, and without causing major disruptions to essential services. Their primary claim was that the implementation of the decision would cause certain, severe and irreversible harm to essential humanitarian systems in the Gaza Strip, to the hospitals, to the water and sewage systems, and to the entire civilian population.
6. According to figures that are not disputed by the sides, the amount of electricity required by the Gaza Strip at peak times is just over 200 megawatts. Some 120 megawatts is supplied by Israel and some 17 megawatts is supplied by the Egyptians. The remainder is supplied by the Gaza Strip's power station. The electricity supplied to the Gaza Strip by the State of Israel is transferred via 10 electrical lines, four of which are fitted with load regulators. The respondents planned to gradually decrease the supply of electricity on those four lines, at a level of 5% of the total electricity conducted on each of those lines. According to the respondents, this plan will force the ruling authority in the Gaza Strip to conduct load management and actively restrict the consumption of electricity in that area which is supplied by the relevant electrical line, and to prevent the supply of electricity to terrorist activities, such as workshops producing Qassam rockets and such. They maintain that if the government in Gaza properly manages the consumption of electricity in Gaza, no disruptions in the flow of electricity from Israel to the Gaza Strip are to be expected. Nevertheless, if the consumption exceeds the limits, the supply of electricity will automatically shut down, as a result of the load regulators affixed to the four lines mentioned above. The respondents emphasized in their response that the said restrictions on the electricity supply will not infringe on the essential humanitarian needs of the residents of the Gaza Strip.

7. The petitioners claimed that there is no physical way to restrict the electricity to Gaza without causing power failures in hospitals and interrupting the pumping of fresh water to the civilian population in Gaza. And so they claim that the implementation of this decision will lead to certain, severe and irreversible harm to the essential humanitarian systems in the Gaza Strip, to hospitals, water and sewerage systems, and to the civilian population as a whole. In their additional arguments on November 27, 2007, the petitioners made claims relating to the future restriction of electricity supply to the Gaza Strip and argued that even at this stage, and since the bombing of the local power station by the Air Force in 2006, the Gaza Strip is experiencing an electricity shortage, which has forced the “Electricity Distribution Company” in Gaza to initiate, for lack of an alternative, blackouts for several hours a day. They maintain that regular power failures already harm the functioning of essential services in Gaza, such as hospitals, since the electrical infrastructure in Gaza does not have the capacity to distinguish between essential services and the civilian population. Additionally, it was emphasized that shutting down electricity to the homes of Gaza residents prevents them from accessing clean drinking water in their homes and impedes the functioning of water pumps and the sewage system.
8. On November 29, 2007, we held a hearing of the petition where we heard each side's arguments. During the hearing, we also heard a statement on behalf of the respondents by Col. Shlomi Muktar, head of the Department of Investigations at the Operations Branch at Headquarters of the Coordinator of Government Operations in the Territories, and Mr. Idan Weinstock, Director of the Electricity Administration at the Ministry of National Infrastructure. For the petitioners, we heard the words of Petitioner 2, Mr. Maher Najjar, Deputy Director of the Water Authority at the Gaza Coastal Municipalities Water Utility (CMWU). Afterwards we heard the arguments of the sides and their statements with regards to the planned restrictions in the supply of electricity to the Gaza Strip. As a result of the incomplete figures that were provided to us, we saw fit to ask the respondents to add to their claims on a number of points with regards to the possibility of regulating the supply of electricity in the Gaza Strip, in order to prevent harm to humanitarian needs. We also ordered that until the said additions were received, the plan to restrict the electricity supply to the Gaza Strip should not be implemented.
9. During the period that the petition was pending, the petitioners once again submitted a request that the state be obligated to continue the supply of electricity as usual, with no limitations. Their argument focused mainly on the fact that the local power station, which supplies electricity to essential humanitarian facilities, cannot operate in a normal fashion due to the severe shortage of industrial diesel. They claimed that the amount of industrial diesel that the respondents are allowing into the Gaza Strip is insufficient for the needs of the power station, and does not allow for the production of the amount of electricity required by the residents of the Gaza Strip during the winter months. It was further claimed that the shortage of industrial diesel has caused a 30% reduction in output of

electricity produced at the Gaza Strip power station, which has led to extended power outages in the Strip. It was emphasized that that the industrial diesel that is supplied to the Gaza Strip is used solely to produce electricity at the power station. On January 9, 2008, the petitioners submitted an updated statement in which it was noted that as a result of the severe shortage of industrial diesel at the Gaza Strip's power station, blackouts lasting eight hours each day had been imposed on the Central Gaza area, and blackouts of eight hours every other day had been imposed on Gaza City itself. It was claimed that as a result of the reduction in the generation of electricity, the central hospital in Gaza was suffering from daily power failures that last 6-12 hours, which were disrupting the functioning of the hospital.

On January 21, 2008, we were updated by the petitioners that as a result of the shortage of industrial diesel the power station in Gaza had completely halted its generation of electricity, which had led to a 43% deficit in the amount of electricity required by the residents of the Gaza Strip. They claimed that on January 20, 2008, the respondents had placed a total ban on the transfer of industrial diesel to the Gaza Strip, and in the absence of reserves, it led to the closure of the power station. Under the circumstances, the petitioners claimed that many residents of the Gaza Strip had no access to drinking water, waste water was overflowing, and residents could not operate various medical equipment in their homes.

10. As a result of these developments, the respondents submitted an additional statement in which they addressed the different claims and the dynamic changes in the situation on the ground. They noted that in a meeting between Col. Shlomi Muktar, head of the Department of Investigations at the Operations Branch at Headquarters of the Coordinator of Government Operations in the Territories, and representatives of the Palestinian Energy Authority, it was stated by the Palestinians that they have the capacity to regulate the loads by reducing the consumption of electricity within the area that each line serves, and that this kind of regulation is already in use; so, for example, the Palestinian representatives confirmed that they have the capacity to reduce the consumption of electricity on a particular line in order to ensure the proper functioning of a hospital. It was also clarified for us that as a result of an agreement between Israel Electric and the Palestinian Authority in 2005, the supply of electricity on two of the lines through which Israel supplies electricity to the Gaza Strip was reduced to 11 megawatts. The respondents noted that recently the Nahal Oz border crossing, via which the industrial diesel required to operate the power station is transferred, had indeed been closed for a number of days. As a result, the transfer of industrial diesel to the Gaza Strip's power station was halted during those days. The respondents explained that the closure of the crossing and the halt of the transfer of industrial diesel to the power station were carried out under circumstances of a serious missile attack on Israel, such that between January 15 and January 18, 2008, 222 mortar shells were fired at towns surrounding Gaza, as well as Ashkelon and Sderot. As a result, seven civilians were wounded and many more suffered from

shock, and there was major damage to property. Nevertheless, at the present time, we were informed, it was decided that the amount of industrial diesel that will be transferred to the Gaza Strip will be 2.2 million liters per week, as was transferred before the restriction plan. With regards to the electricity that is supplied by Israel, the respondents noted that they intend to implement a gradual restriction on three electrical lines only of 5% of the total supply on each of these lines. As a result, the amount of electricity supplied through them will be 13.5 megawatts on two of them, and 12.5 megawatts on the third. The respondents emphasized in this regard that the Palestinians themselves stated on several occasions that they have the capacity to reduce loads in case of a restriction on the lines, in order to avoid a harming humanitarian objects and needs. In conclusion, the respondents stated that the breach of the Rafah border crossing in the direction of Egypt, which was carried out unilaterally by the Palestinians, will have implications for the general situation in the Gaza Strip and the State of Israel's obligations towards the Strip in general. However it was added that this final issue is new and is still under factual, legal and political investigation. On January 27, 2008, we held a hearing focusing on the supply of industrial diesel to the Gaza Strip, in which the sides reiterated the main points of their arguments, as detailed above, and the state announced the supply of industrial diesel at the level that had been accepted in the past.

### **Deliberation**

11. The question before us on this matter is, therefore, whether the various restrictions on the supply of fuel and electricity to the Gaza Strip are harming the essential humanitarian needs of the residents of the Gaza Strip. As we wrote in our decision of November 29, 2007, the State of Israel bears no obligation to allow the unlimited supply of electricity and fuel to the Gaza Strip, in circumstances where part of these products are being used by terrorist organizations in order to harm Israeli citizens. The obligation that it bears is derived from the essential humanitarian needs of the residents of the Gaza Strip. The respondents must fulfill the obligations imposed upon them by international humanitarian law, and in this framework they must allow the supply to Gaza only of goods necessary in order to maintain essential humanitarian needs of the civilian population.
12. The State argued before us that it is acting in accordance with the principles of international law and is fulfilling its humanitarian obligation under the laws of armed conflict. According to the State's representative, these obligations are limited and are derived from the state of armed conflict that exists between the State of Israel and the Hamas organization which controls the Gaza Strip, and from the need to prevent harm to the civilian population that finds itself living in a combat zone. In this regard, we note that since September 2005 Israel no longer has effective control over what takes place within the territory of the Gaza Strip. The military government that previously existed in that territory was abolished by decision of the government, and Israeli soldiers are not present in that area on an ongoing basis and do not direct what goes on there. Under these circumstances, the State of Israel bears no general obligation to concern itself with the welfare of the residents of the Strip or to

- maintain public order within the Gaza Strip, according to the international law of occupation. Israel also has no effective ability, in its current status, to instill order and manage civilian life in Gaza. Under the current circumstances, the primary obligations borne by the State of Israel with regards to the residents of the Gaza Strip are derived from the state of armed conflict that prevails between it and the Hamas organization which controls the Gaza Strip; its obligations also stem from the degree of control that the State of Israel has over the border crossings between it and the Gaza Strip; and also from the situation that was created between the State of Israel and the Gaza Strip territory due to years of Israeli military control in the area, as a result of which the Gaza Strip is at this time almost totally dependent on Israel for its supply of electricity.
13. In this regard, the respondents cited various provisions of international humanitarian law in their arguments that are relevant to our case. Among others, the respondents cited paragraph 23 of the Fourth Geneva Convention on the Protection of Civilians in Times of War, 1949 (hereafter: **the Fourth Geneva Convention**), which obligates each side in a conflict to allow the passage of goods intended for the civilians on the opposing side. Nevertheless, it was noted that this refers to an extremely limited obligation under which a party to a conflict is obligated to allow unlimited passage of medical supplies, and also allow for passage of food, clothing and medicines for children under the age of 15 and pregnant women. The respondents also cited paragraph 70 of Protocol I Additional to the Geneva Convention, 1977, (hereafter: **Protocol I**), which they say represents customary international law, which establishes a general and very broad obligation under which the parties to a conflict must allow the swift passage of essential goods to the civilian population without interference. Finally, in their arguments the respondents also cited paragraph 54 of Protocol I, which prohibits the starvation of a civilian population as a military tactic, and also prohibits the attack, destruction, removal or placing out of order of essential facilities for the civilian population, including food storehouses, agricultural fields, and drinking water supply facilities.
14. The state's arguments on this matter are based on norms that are part of customary international law, that specify the basic obligations imposed upon the opposing sides in a time of armed conflict, and obligate them to ensure the welfare of the civilian population and safeguard its dignity and basic rights. It should be added that according to the principles of customary international humanitarian law, each party to a conflict is obligated to avoid impeding the passage of basic humanitarian aid to the population in need of it that is located under the control of that same party to the conflict (J. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law* (ICRC, Vol.1 1, 2005), p. 197, 199). Additionally, in the commentary to paragraph 70 of Protocol I it says that paragraphs 70 and 54 of Protocol I should be read together in a way that does not allow one party to a conflict to refuse to allow passage of deliveries of food and basic humanitarian equipment necessary for the survival of the civilian population (Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, Eds. *Commentary on*

*the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (ICRC, Geneva, 1987), p. 820).*

15. Based on what has been said above, the respondents do not by any means dispute the existence of humanitarian obligations incumbent upon them, which obligate the State of Israel to allow the passage of essential humanitarian goods to the Gaza Strip, and to avoid intentionally harming humanitarian facilities. According to the respondents, and they have confirmed this in statements and affidavits from the authorized officials, that not only do they allow the passage of essential goods to the civilian population in the Gaza Strip, but they see this as a humanitarian obligation imposed upon them by international law and by decision of the cabinet. Nevertheless, the respondents emphasize that there is nothing to obligate them to allow the transfer of non-essential good or goods in quantities that exceed that which is needed to meet basic humanitarian needs, and this is the main dispute between them and the petitioners.
16. This last point was raised before us during our final hearing by Col. Nir Pres, Commander of the Coordination and Liaison Administration, and he detailed the relevant figures and the information based on which the respondents operate. Col. Pres explained the affidavits that were given on behalf of the state, and maintained that the amount of fuel and electricity transferred to the Gaza Strip is enough to ensure the proper operation of all the humanitarian services in the Strip; Col. Pres described for us the contacts that exist with Palestinian bodies for the purpose of continuous monitoring of the functioning of humanitarian facilities in the Gaza Strip. Among other things, he described how the State of Israel allows the transfer of patients requiring treatment to the State of Israel and allows the passage of food and medicine without any limitations. This is in order to avoid harm to the residents of the Gaza Strip beyond that which necessarily results from the state of armed conflict that prevails between the State of Israel and the Hamas organization, which controls the Gaza Strip. In his statements before us, Col. Pres confirmed that the situation of the civilian population in the Gaza Strip is indeed grave, but he nevertheless provided examples of exaggerated descriptions being publicized by the Hamas organization with regards to the humanitarian crisis in the region.
17. The primary issue that that remains before us, as was raised in our final hearing, relates to the amount of industrial diesel required for the operation of the Gaza Strip power station. As noted above, we are convinced by the affidavits of the respondents that they intend to continue to allow the supply of industrial diesel at the level that prevailed before the implementation of the restrictions, which is 2.2 million liters per week. Since it was clarified that industrial diesel can be used, and is actually used, solely by the power station operating in the Gaza Strip, it can be assumed that the supply of industrial diesel will not decrease from this amount. In our investigation it was found that the amount of industrial diesel supplied to the Gaza Strip during the winter months last year was similar to the amount which the respondents undertake to allow to be supplied to the Gaza Strip at this time,

- and this fact indicates that it is a reasonable amount, which is sufficient for the essential humanitarian needs in the Gaza Strip. True, for several days the border crossings were closed and as a result the necessary amount of diesel was not transferred. However, as was explained, this was a case of a temporary security necessity that was brought about as a result of a very severe missile attack targeting Israeli towns from Gaza Strip territory. It should be noted that during that period, when there arose a specific security need to close the border crossings, the State of Israel continued to transfer the same amount of electricity to the Gaza Strip, without any change.
18. Concerning the updated plan that was presented to us, a 5% reduction in electricity supply on three of the ten electrical lines that supply electricity to the Gaza Strip from Israel, to a level of 13.5 megawatts on two of the lines and 12.5 megawatts on the third line, we were convinced that this restriction does not violate the humanitarian obligations borne by State of Israel as result of the armed conflict that prevails between it and the Hamas organization that controls the Gaza Strip. Our conclusion is based, in part, on the fact that the respondents' affidavit revealed that the relevant Palestinian bodies stated that they have the capacity to reduce loads in a case of a restriction on the electrical lines, and that they have in fact made use of this capacity in the past.
19. It should be emphasized: during the hearings of the petition, the state reiterated its undertaking to monitor the humanitarian situation in the Gaza Strip, and in this context various affidavits on behalf of the respondents showed us that this undertaking is being fully implemented with responsibility and seriousness. The security apparatus conducts a weekly evaluation of the situation that relies, in part, on communication with Palestinian bodies active in the areas of electricity and healthcare, as well as on communication with international organizations. In this regard, it is noted that from the discussion before us, as well as in other cases where there was need for an immediate response to humanitarian issues, it was made clear that it is possible to reach understandings and arrangements between the parties in this area. Therefore, a solution such as contacts between representatives of the security apparatus and those bodies maintaining contacts with them and informing them of the basic essential needs, is the best way to rapidly resolve practical problems that arise from time to time; an example of this is the fact that even before we held a hearing on the issue the state announced at its own initiative that it would reinstate the normal supply of diesel which is needed, among other things, for the running of ambulances and generators for hospitals, at the level which preceded the supply restrictions, and likewise in relation to the industrial diesel. These facts show that the state is indeed monitoring the situation in the Gaza Strip, and facilitates the supply of fuel and electricity required for essential humanitarian needs in the area.
20. We have already stated more than once that we do not interfere in security measures adopted by the security forces on the basis of their effectiveness or their wisdom – but only on the basis of their legality. Our role is limited to conducting

judicial review of whether the principles of Israeli and international law that apply to the State of Israel are upheld, and in this regard the respondents stated before us that the state adheres to them. It has been stated above that even in times of armed conflict legal principles apply, and the laws of armed conflict must be upheld. In the matter of the **Church of the Nativity** it was determined in a similar situation, by President Barak, that:

"Israel finds itself in the middle of difficult battle against a furious wave of terrorism. Israel is exercising its right of self defense. *See* The Charter of the United Nations, art. 51. This combat is not taking place in a normative void. It is being carried out according to the rules of international law, which provide principles and rules for combat activity". (HCJ 3451/02 Almidani v. Defense Minister, PD 56 (3) 30; *See also* HCJ 168/91 Morkum v. Defense Minister, 45(1) PD 467, 470).

And in a judgment which addressed the humanitarian obligations borne by Israel in times of armed conflict that was made during Operation Defensive Shield, it was noted that:

"Even in a time of combat, the laws of war must be followed. Even in a time of combat, all must be done in order to protect the civilian population (*See* HCJ 2901/02; HCJ 2936/02; HCJ 2977/02; and HCJ 3022/02)" (HCJ 3114/02 Baraka v. Defense Minister, PD 56(3) 11).

21. Therefore, in times of armed conflict, as in our case, a civilian population may unfortunately find itself in an area where fighting is under way, and it is the first and foremost casualty in a conflict situation, even when efforts are made to reduce the impact on it. Within the territory of the State of Israel, too, in an era of ongoing terrorist attacks, the first and foremost casualty of the conflict is the civilian population. However, with regard to all activities targeting Israel, it is not a case of harm that is accidental or a side effect, but rather frequent terrorist attacks that directly target the civilian population with the aim of harming innocent civilians. This is the difference between the State of Israel, a democratic state that is fighting for its existence using the means afforded to it by law, and the fighting of the terrorist organizations that rise up against it. "The state fights in the name of the law and in the name of upholding the law. The terrorists fight against the law and exploit its violation. The war against terror is also the law's war against those who rise up against it". (*See* HCJ 320/80 Kawasma v. The Minister of Defense [4], at 132, HCJ 3451/02 Almidani v. Defense Minister, PD 56 (3) 30). In our case, from the facts presented to us, as detailed above, it is clear that the State of Israel accepts and respects the principles determined under the laws of armed conflict, and undertakes to continue to transfer to the Gaza Strip the necessary amounts of fuel and electricity for the essential humanitarian needs of the civilian population in the Strip.

22. In conclusion, we reiterate that the Gaza Strip is controlled by a murderous terrorist organization, that works unceasingly to harm the State of Israel and its residents, and violates every possible principle of international law in its violent activities, indiscriminately targeting all civilians – men, women and children. Nevertheless, as noted above, the State of Israel is obligated to act against terrorist organizations in the framework of the law and in accordance with the provisions of international law, and to refrain from intentionally harming the civilian population of the Gaza Strip. In light of all the information presented before us with regards to the supply of electricity to the Gaza Strip, we are of the opinion that the amount of industrial diesel that the state declared that it intends to supply, as well as the electricity supplied on an ongoing basis through the electrical lines from Israel, are sufficient to meet the essential humanitarian needs of the Gaza Strip at this time.

Therefore, and for the reasons specified above, the petition is denied.

President

Judge A. Hayut

I agree.

Judge Y. Eilon

I agree

Decided as noted in the opinion of President D. Beinisch.  
Issued today, 23 Shevat 5768 (30.1.2008).