

Before: The Honorable President A. Barak
 The Honorable Vice-President M. Heshin
 The Honorable Justice D. Beinisch

The Petitioners: 1. Adalah – The Legal Center for Arab Minority Rights in Israel
 2. The Palestinian Centre for Human Rights – Gaza
 3. Al-Haq – Ramallah
 4. Mahmud Alsha'ar, et. al.

v e r s u s

The Respondents: 1. IDF Southern Command, Dan Harel
 2. IDF Central Command, Moshe Kaplinsky
 3. The Chief-of-Staff, Moshe Ya'alon
 4. The Minister of Defense, Shaul Mofaz
 5. The Prime Minister, Ariel Sharon

Petition for Order Nisi and Temporary Injunction

Date of hearing: 14.6.2005

On behalf of
the Petitioners: Attorney Marwan Dalal

On behalf of
the Respondents: Attorney Aner Hellman

DECISION

President A. Barak

1. The petition before us (which was filed on 27 May 2004) involves the request of the petitioners, human rights organizations and Palestinian residents, to order the respondents to refrain from demolishing houses in Judea, Samaria, and the Gaza Strip on grounds of military needs. The petitioners contend that, since the outbreak of the armed confrontation between Palestinians and Israel in September 2000, the respondents have demolished thousands of civilian structures and residential dwellings of Palestinians, relying on the “military necessity” exception set forth in Article 53 of the Fourth Geneva Convention of 1949 and Article 23(g) of the Hague Regulations of 1907. The petitioners argued that military necessity alone is an insufficient basis to empower the respondents to demolish the residential dwellings of protected persons. Moreover, the demolition of houses is only permitted when there is an “imperative and immediate military necessity” as this term is construed in

international public law. According to the petitioners, the respondents are not permitted to act on the basis of the exception as long as the structure is being used for civilian purposes, and has not become an active military base that is conducting hostilities. The petitioners believe that the respondents' demolition operations are conducted extensively and disproportionately, while failing to meet the terms of the said exception. Therefore, the petitioners requested that the respondents issue explicit orders and directives regarding the use of the "military necessity" exception that are in accordance with international humanitarian law.

2. In their response, the respondents requested that the petition be dismissed summarily and substantively. In their opinion, the petition is general and it ignores the security situation in the area that is more like a real combat situation. The remedy sought by the petitioners [sic], the cessation of all demolition actions, at a time when frequent military actions are being conducted in the area, is a general relief that this Court does not customarily grant. Thus, for example, the respondents contend that the petitioners do not distinguish between different areas in which the military actions take place, and do not distinguish between an unplanned demolition, which is the consequence of a combat necessity and a planned demolition of a structure used for activity against the IDF. The respondents further argue that it is not this Court's duty to determine the means of combat to be used during hostilities. Regarding the substance of the petition, the respondents declared that IDF forces are acting in the area with an intent to minimize the damage caused to civilian structures. Moreover, the IDF's orders prohibit causing deliberate damage to civilian houses, unless there is an imperative military need to do so, and subject to the principle of proportionality. The respondents reject the petitioners' argument regarding indiscriminate and disproportionate house demolitions. They point to the severe combat situation prevailing in the area, which requires them to use varied means to cope with it, means that include, *inter alia*, house demolitions where necessary for combat needs. The respondents stated that the house demolitions are carried out by ground forces, while the occupants of the houses are given an opportunity to leave them.

3. A hearing on the petition was held on 26 October 2004. Because of the broad sweep of the petition, the parties agreed, upon our recommendation, that the petitioners reduce their petition to a number of specific kinds of situations of house demolition that they want to focus on. Therefore, in a statement (of 10 January 2005), the petitioners categorized the house demolitions into three typical kinds, as they see it: house demolitions in a populated area in Rafah during May 2004, which were intended to locate tunnels; house demolitions to create a buffer zone in south Rafah along the Egyptian border ("the Philadelphi Route"), in April-May 2004; and house demolitions by means of heavy equipment in the Jenin refugee camp in April 2002.

4. In their response (of 20 March 2005), the respondents stated that, in accordance with the announcement made by the prime minister at the Sharm el-Sheikh summit, whereby "Israel will cease its military operations against Palestinians everywhere" (statement of 8 February 2005), and in light

of the current calm, the respondents are refraining, as a rule, from demolishing houses. In the subsequent hearing (on 14 June 2005), the respondents repeated this declaration. They added that the primary aspect of the petition focuses on houses in the Gaza Strip, and in any case, with the coming implementation of the “disengagement plan,” no further house demolitions will take place in that area. As for houses that were demolished in Judea and Samaria, the respondents contend that they were destroyed in the special circumstances of Operation Defensive Shield, more than three years ago. According to the respondents, following their declaration regarding the cessation of the demolitions, and in light of the “disengagement plan,” which will turn the whole issue of house demolitions in the Gaza Strip into a theoretical matter, there is no justification to hear the petition, and it should be dismissed. Notwithstanding these statements, the petitioners insist on pursuing their petition, and request that we decide on the merits regarding their principle arguments.

5. We have concluded that, in light of the statement of the respondents regarding the intention to refrain from house demolitions, there is no need at this time to hear the substantive claims made in the petition. A decision on the fundamental arguments raised by the petitioners is not necessary at the present time. Indeed, in light of the new situation in the field, as stated by the respondents, the petition has become theoretical, and is moot (see and compare H CJ 6055/95, *Tzemah v. Minister of Defense*, *Piskei Din* 53 (5) 241, 250; H CJ 10026/04, *Poalim I.B.I. – Underwriting and Floating of Issues Ltd. v. Supervisor of Antitrust* (unpublished)). It seems that the cessation of the house demolitions in the region is part of the respondents’ overall policy. For this reason, too, we dismissed another petition (H CJ 7733/04, *Nasser v. Commander of IDF Forces in the West Bank* (unpublished)), in light of the statement made by the respondent in that case that the military commander decided to refrain from exercising his authority pursuant to Regulation 119 of the Emergency Defense Regulations of 1945, and does not intend to demolish houses (that is not incidental to military operations) to deter potential attackers. However, it is understood that dismissal of the petition herein does not constitute rejection of any of the petitioners’ arguments, and they remain available to them, should they decide to file another petition if the policy that the respondents declared before us in this matter should change.

The petition is dismissed. No order for expenses.

[signed]

President A. Barak

[signed]

Vice-President M. Heshin

[signed]

Justice D. Beinisch

Given today, 13.7.2005.