

HCJ 9132/07

Jaber Al-Bassiouni Ahmed and others

v

1. Prime Minister
2. Minister of Defence

The Supreme Court sitting as the High Court of Justice

[27 January 2008]

Before President D. Beinisch, Justice E. Hayut and Justice J. Elon

Petition to the High Court of Justice for an Order Nisi and an Interim Order

Israeli Supreme Court cases cited:

[1] HCJ 3451/02 Almadani v. Minister of Defence [2002] IsrSC 56(3) 30; [20023] IsrLR 47.

[2] HCJ 168/91 Morcus v. Minister of Defence [1991] IsrSC 45(1) 467.

[3] HCJ 3114/02 Barakeh v. Minister of Defence [2002] IsrSC 56(3) 11; [2002-3] IsrLR 39.

[4] HCJ 320/80 Kawasma v. Minister of Defence [1981] IsrSC 35(3) 113.

[5] HCJ 2901/02 Center for the Defense of the Individual v. Commander of the IDF Forces in the West Bank [2002] IsrSC 56(3) 19.

[6] HCJ 2936/02 Physicians for Human Rights v. Commander of the IDF Forces in the West Bank [2002] IsrSC 56(3) 3.

[7] HCJ 2977/02 Adalah - Legal Center for Arab Minority Rights in Israel v. Commander of the IDF Forces in the West Bank [2002] IsrSC 56(3) 6.

[8] HCJ 3022/02 LAW - Palestinian Organization for the Defence of Human Rights and the Environment v. Commander of the IDF Forces in the West Bank [2002] IsrSC 56(3) 9.

For the petitioners - N. Peleg, Prof. K. Mann, F. El-Ajou, H. Jabareen, S. Bashi.

For the respondents - G. Shirman, O. Mendel

JUDGMENT

President D. Beinisch

1. The petition before us is directed against the respondents' decision to reduce or limit the supply of fuel and electricity to the Gaza Strip. In their petition for relief from this court, the petitioners specified primarily the need for various types of fuel (gasoline and diesel) for the proper functioning of hospitals and water and sewage pumps, as well as the need for the supply of electricity, whether via power lines from Israel or through the supply of industrial diesel for operating the Gaza Strip power plant.

2. The background to the petition is the belligerent actions that have taken place in the Gaza Strip for a long period, and the ongoing campaign of terrorism directed against the citizens of Israel. The terrorist attacks have intensified and worsened since the Hamas organization took control of the Gaza Strip. These attacks include the continuous firing of rockets and mortar shells at civilian targets in the territory of the State of Israel, as well as terrorist attacks and attempted attacks targeting civilians and IDF soldiers at the border crossings between the Gaza Strip and the State of Israel, along the border fence and in the territory of the State of Israel. The respondents' decision to limit the supply of fuel and electricity to the Gaza Strip was made in the framework of the State of Israel's operations against the ongoing terrorism. The following is the text of the decision that was adopted by the Ministerial Committee on National Security Affairs on 19 September 2007:

'The Hamas organization is a terrorist organization that has taken control of the Gaza Strip and turned it into hostile territory. This organization perpetrates acts of hostility against the State of Israel and its citizens, and it bears the responsibility for these acts. It has therefore been resolved to adopt the recommendations made by the security establishment, including the continuation of the military and intelligence operations against the terrorist organizations. Additional restrictions will also be placed upon the Hamas regime, to the effect that the passage of goods to the Gaza Strip will be limited, the supply of fuel and electricity will be reduced and restrictions will be imposed upon the movement of persons to and from the Strip. The restrictions will be implemented bearing in mind the legal ramifications of the

humanitarian situation in the Gaza Strip, in order to prevent a humanitarian crisis.'

The petition is directed against this decision.

3. The petition against the decision was filed on 28 October 2007 and it was heard on 7 November 2007, in the presence of the parties. On the date of the hearing the state gave notice that a final decision as to the implementation of the restrictions on the supply of electricity to the Gaza Strip had not yet been made; therefore we only heard argument regarding the restrictions on the supply of fuel. During the hearing, counsel for the respondents told the court that the state recognizes that it has an obligation not to prevent the supply of basic humanitarian needs to the Gaza Strip, and it therefore announced that it would monitor the situation and ensure that the cuts being made do not affect the supply of basic humanitarian needs. At the end of the hearing, we ordered the state to present, within seven days, the data on which it based its assessment of the impact of reducing the fuel supply to the Gaza Strip, and explain how it would monitor and check the data of which it intends to make use in safeguarding the humanitarian needs of the inhabitants of the Gaza Strip.

Reduction of the fuel supply to the Gaza Strip

4. On 29 November 2007 we held, with regard to that part of the petition relating to the reduction of the fuel supply to the Gaza Strip, that the fuel that the Palestinian Energy Authority buys from the Israeli Dor Alon Co., which is distributed by private suppliers to the highest bidder, with no scale of priorities, may also be distributed in another manner. We said that the various types of fuel supplied to the Gaza Strip could be distributed according to a scale of priorities that takes into account the humanitarian needs of the civilian population, as well as the functioning of the generators that operate the water pumps and electricity plants in the Gaza Strip. In our decision we accorded weight to the state's position that at this time, when belligerent acts and missile attacks are being perpetrated against Israeli towns, some of the fuel that enters the Gaza Strip is in fact used for the various purposes of the terrorist organizations; in such circumstances the reduction of the fuel supply, in the controlled manner in which it is implemented, is likely to damage the terrorist infrastructures and affect their ability to operate against the citizens of

the State of Israel, since the amount of fuel that enters the Gaza Strip is supposed to suffice only for the humanitarian purposes that require the use of fuel. We were therefore not convinced at that stage, on the basis of the data presented to us, that the respondents' decision to reduce the amount of fuel allowed into the Gaza Strip through the border crossings with Israel violated the basic humanitarian needs of the Gaza Strip at that time. We therefore held that there was no basis for any order nisi or interim order concerning the reduction of the fuel supply (gasoline and diesel). Our decision was based mainly on the state's undertaking, as required by Israeli and international law, to monitor the situation in the Gaza Strip and ensure that the aforesaid reduction is not detrimental to the humanitarian needs of the inhabitants of the Gaza Strip. In those circumstances we concluded our discussion of the issue of the restrictions on the fuel supply to the Gaza Strip, and proceeded to examine the arguments relating to the anticipated harm to the inhabitants of the Gaza Strip as a result of the restrictions on the supply of electricity.

Reduction of the supply of electricity to the Gaza Strip

5. The hearing of that part of the petition that dealt with the reduction of the supply of electricity to the Gaza Strip required complex factual verification, and we encountered difficulty in obtaining figures on this issue from the state's representatives. Therefore the proceedings on this issue were drawn out while on various dates we received detailed applications from the petitioners and written and oral responses from the respondents. On 15 November 2007 the petitioners filed an urgent application for an interim order in the petition, and on 23 November 2007 they applied for an urgent hearing of the petition in view of the state's notice that as of December 2007 it would begin to restrict the amount of electricity supplied to the Gaza Strip. The petitioners argued that it is physically impossible to reduce the electricity supply to the Gaza Strip without causing power stoppages in hospitals and interrupting the pumping of clean water to the civilian population in Gaza, and without causing serious disruption to basic needs. Their main argument was that implementation of the decision would cause certain, serious and irreversible damage to the essential humanitarian needs of the Gaza Strip, its hospitals, the water and sewage system, and the entire civilian population.

6. According to figures that are not disputed by either party, the amount of electricity needed for the Gaza Strip at peak times is slightly more than 200 megawatts. Approximately 120 megawatts are supplied by Israel, and approximately 17 megawatts are supplied by Egypt. The remainder is supplied by the Gaza Strip power plant. Electricity is supplied to the Gaza Strip by the State of Israel via ten power lines, on four of which load limiting devices have been installed. The respondents' intention was to gradually reduce the supply of electricity through those four power lines, by a total of 5% of the amount of electricity transferred through each of the lines. The respondents claimed that this step would obligate the authority controlling the Gaza Strip to manage the load and reduce the actual consumption of electricity in the area to which the relevant line supplies electricity, and to prevent the supply of electricity for terrorist purposes such as workshops in which Qassam rockets are made. According to the respondents, if the authorities in Gaza would manage the consumption of electricity properly, the flow of electricity from Israel to the Gaza Strip could be expected to continue uninterrupted. But if consumption exceeds the permitted amount, the supply of electricity will cease automatically, due to the load limiting devices installed upon the four power lines described above. The respondents emphasized in their response that the aforesaid reduction of electricity is not detrimental to the basic humanitarian needs of the residents of the Gaza Strip.

7. The petitioners argue that there is no physical way of reducing the supply of electricity to Gaza without causing power stoppages in hospitals and interruptions in the pumping of clean water to the civilian population of Gaza; consequently, the implementation of this decision will cause certain, serious and irreversible harm to the vital humanitarian needs of the Gaza Strip, its hospitals, the water and sewage systems, and the entire civilian population. In their supplementary pleadings of 27 November 2007, the petitioners presented detailed arguments regarding the future reduction of electricity to the Gaza Strip. According to the petitioners, even at this stage, since the bombing of the local power plant by the Israeli Air Force in 2006, the Gaza Strip has suffered from a shortage of electricity that compels the Electricity Distribution Company in Gaza

to introduce electricity stoppages for several hours each day. They argue that even now the frequent power stoppages affect the functioning of essential services in Gaza, such as hospitals, because the infrastructure in the Gaza Strip does not allow for the disconnection of the electricity supply to the civilian population without disconnecting essential services. Moreover, it was emphasized that withholding the supply of electricity from the homes of Gaza residents denies them the possibility of receiving clean drinking water in their homes and disrupts the functioning of the water and sewage pumps.

8. At a hearing on the petition held on 29 November 2007 we heard the arguments of the parties. In the course of the hearing we also heard the respondents' deponents, Col. Shlomi Muchtar, head of the Operations Department of the Unit for Coordination of Government Activities in the Territories, and Mr Idan Weinstock, Director of the Electricity Authority at the Ministry of National Infrastructures. For the petitioners we heard the second petitioner, Mr Maher Najjar, Deputy-Director of the Water Authority in the Coastal Cities Administration in Gaza. After hearing the arguments of the parties and their deponents regarding the planned reduction of the electricity supply to the Gaza Strip, and after receiving the incomplete facts that were presented to us, we decided to request further pleadings from the respondents on several points concerning the possibility of regulating the flow of electricity to the Gaza Strip so that humanitarian needs will not be harmed. We also issued an order to the effect that until the aforesaid submissions were received, the plan to reduce the electricity supply to the Gaza Strip would not be implemented.

9. While the petition was pending, the petitioners once again filed applications to compel the state to continue the regular supply of electricity to the Gaza Strip without restrictions. Their arguments focused mainly on the fact that the local power plant, which supplies electricity to essential humanitarian facilities, cannot function properly due to a severe shortage of industrial diesel fuel. They argue that the amount of industrial diesel that the respondents are allowing to enter the Gaza Strip is insufficient for the needs of the power plant and does not allow it to produce the amount of electricity required by the residents of the Gaza Strip during the winter months. It was argued

that the shortage of industrial diesel caused a reduction of approximately 30% in the amount of electricity produced by the power plant in the Gaza Strip, which has led to long electricity stoppages. It was emphasized that the industrial diesel supplied to the Gaza Strip is used solely for producing electricity at the power plant. On 9 January 2008 the petitioners filed an update, in which they said that as a result of the severe shortage of industrial diesel at the power plant in the Gaza Strip, power stoppages of eight hours every day were being imposed in central Gaza, and in the city of Gaza itself stoppages were being imposed for eight hours every two days. It was further alleged that as a result of the reduction in electricity production, the central hospital in Gaza was suffering power stoppages of six to twelve hours each day, which disrupted the functioning of the hospital. On 21 January 2008 the petitioners informed the court that due to the shortage of industrial diesel, the power plant in Gaza had stopped the production of electricity entirely, which resulted in a shortage of approximately 43% of the amount of electricity required by the residents of the Gaza Strip. They claimed that on 20 January 2008 the respondents imposed a total ban on the entry of industrial diesel into the Gaza Strip, and in the absence of reserves this led to the shutdown of the power plant. In the prevailing circumstances, the petitioners claimed that many residents of the Gaza Strip had no access to clean drinking water, sewage was overflowing and residents who so required were unable to operate various items of medical equipment in their homes.

10. In the wake of the aforesaid, the respondents filed a further statement, in which they addressed the various claims and the ongoing changes in the factual position. They said that at a meeting between the Head of the Operations Department of the Unit for Coordination of Government Activity in the Territories, Col. Shlomi Muchtar, and the representatives of the Palestinian Energy Authority, the Palestinians had said that they were able to regulate loads by reducing the consumption of electricity in the distribution area of a certain line, and that such regulation had already been activated; thus, for example, the Palestinian authorities confirmed that they were able to reduce the consumption on a particular power line in order to allow the proper functioning of a hospital. We were also informed that as a result of an

arrangement between the Israel Electric Corporation and the Palestinian Authority in 2005, the supply of electricity through two of the lines providing electricity from Israel to the Gaza Strip was limited to eleven megawatts. The respondents admitted that the Nachal Oz crossing, through which the industrial diesel fuel needed to run the Gaza power plant enters the Gaza Strip, had indeed been closed for several days, and therefore the supply of industrial diesel to the power plant in the Gaza Strip had been withheld during those days. The respondents explained that the closure of the crossing and the stoppage in the supply of industrial diesel to the power plant occurred as a result of a very serious rocket barrage against Israel from the fifteenth and eighteenth of January 2008, during which 222 mortar shells had been fired at Israeli towns near the Gaza Strip, Ashkelon and Sederot, causing the wounding of seven civilians, many victims of trauma and considerable damage. Despite that, we were told that it has now been decided that the amount of industrial diesel supplied to the Gaza Strip will be set at 2.2 million litres a week, as it was before the reduction plan. Regarding the supply of electricity from Israel, the respondents said that they intend to implement a gradual reduction in only three power lines, in an amount of 5% of the total current in each of those lines, so that the amount of electricity supplied through them will total 13.5 megawatts in two of them and 12.5 megawatts in the third. The respondents emphasized in this context that the Palestinians themselves have said on several occasions that they are able to carry out load reductions if restrictions are imposed on the power lines, so that humanitarian purposes and needs are not affected. Finally, the respondents said that the opening of the Rafah crossing into Egypt, which was an action taken unilaterally by the Palestinians, is likely to affect the entire situation in the Gaza Strip and all of the obligations of the State of Israel towards the Gaza Strip, but they added that this is a new development and the matter is being examined from a factual, legal and political perspective. On 27 January 2008 we held a hearing that focused on the supply of industrial diesel fuel to the Gaza Strip, at which the parties reiterated their main arguments, as set out above, and the state announced, as aforesaid, that industrial diesel fuel was being supplied to the Gaza Strip in the same format as it had in the past.

Deliberations

11. The question confronting us is whether the various restrictions upon the supply of fuel and electricity to the Gaza Strip harm the essential humanitarian needs of the residents of the Gaza Strip. As we said in our decision of 29 November 2007, the State of Israel is under no obligation to allow an unlimited amount of electricity and fuel to enter the Gaza Strip in circumstances in which some of these commodities are in practice being used by the terrorist organizations in order to attack Israeli civilians. The duty of the State of Israel derives from the essential humanitarian needs of the inhabitants of the Gaza Strip. The respondents are required to discharge their obligations under international humanitarian law, which requires them to allow the Gaza Strip to receive only what is needed in order to provide the essential humanitarian needs of the civilian population.

12. The State argued before us that it acts in accordance with the rules of international law and fulfils its humanitarian obligations under the laws of war. Counsel for the state argues that these obligations are limited, and they are derived from the state of armed conflict that exists between the State of Israel and the Hamas organization that controls the Gaza Strip, and from the need to avoid harm to the civilian population that finds itself in the combat zone. We should point out in this context that since September 2005 Israel no longer has effective control over what happens in the Gaza Strip. Military rule that applied in the past in this territory came to an end by a decision of the government, and Israeli soldiers are no longer stationed in the territory on a permanent basis, nor are they in charge of what happens there. In these circumstances, the State of Israel does not have a general duty to ensure the welfare of the residents of the Gaza Strip or to maintain public order in the Gaza Strip according to the laws of belligerent occupation in international law. Neither does Israel have any effective capability, in its present position, of enforcing order and managing civilian life in the Gaza Strip. In the prevailing circumstances, the main obligations of the State of Israel relating to the residents of the Gaza Strip derive from the state of armed conflict that exists between it and the Hamas organization that controls the Gaza Strip; these obligations also derive from the degree of control exercised by the State of Israel over the border crossings between it

and the Gaza Strip, as well as from the relationship that was created between Israel and the territory of the Gaza Strip after the years of Israeli military rule in the territory, as a result of which the Gaza Strip is currently almost completely dependent upon the supply of electricity from Israel.

13. In this context, the respondents referred in their pleadings to various provisions of international humanitarian law that apply to this case. Inter alia, the respondents referred to art. 23 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: "the Fourth Geneva Convention"), which requires a party to a conflict to allow the free passage of consignments intended for the civilians of the other party. They said, however, that this is a very limited obligation, since it only requires a party to a conflict to allow the unlimited passage of medical equipment, and to allow the passage of foodstuffs, clothing and medicine intended for children under the age of fifteen and pregnant women. The respondents also referred to art. 70 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, 1977 (hereinafter: "the First Protocol"), which in their opinion constitutes customary international law, and which imposes a general and broader obligation whereby parties to a conflict are required to allow the rapid and unimpeded passage of essential goods for the civilian population. Finally, the respondents also referred in their pleadings to art. 54 of the First Protocol, which prohibits the starvation of civilians as a method of warfare, as well as any attack, destruction, removal or rendering useless of installations required by the civilian population, including foodstuffs, agricultural areas and drinking water installations.

14. The state's pleadings in this regard are based upon norms that are part of customary international law, which set out basic obligations that govern combatants engaged armed conflict, and require them to ensure the welfare of the civilian population and respect its dignity and basic rights. It should also be noted that under the rules of customary international humanitarian law, each party to a conflict is obliged to refrain from disrupting the passage of basic humanitarian relief to populations in need of such relief in areas under its control (J.

Henckaerts & L. Doswald-Beck, Customary International Humanitarian Law (ICRC, vol. 1, 2005), at pp. 197, 199). In the commentary to art. 70 of the First Protocol, too, it is stated that arts. 54 and 70 of the First Protocol should be read together, to the effect that a party to a conflict may not refuse to allow the passage of foodstuffs and basic humanitarian equipment necessary for the survival of the civilian population (Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Y. Sandoz, C. Swinarski, B. Zimmermann, eds., (ICRC, Geneva, 1987), at p. 820).

15. It transpires from the aforesaid that the respondents do not in any way deny the existence of their humanitarian obligations, which require the State of Israel to allow the passage of essential humanitarian goods to the Gaza Strip, and to refrain from deliberately inflicting damage on humanitarian facilities. According to the respondents' arguments, which they supported with affidavits and statements of the responsible authorities, not only are the respondents allowing the transfer essential goods to the civilian population in the Gaza Strip, but they also regard this as a humanitarian obligation for which they are liable pursuant to international law and to a cabinet decision. The respondents emphasized, however, that this does not require them to allow the passage of non-essential goods or of goods in amounts that exceed what is required for basic humanitarian needs: this is the core of the disagreement between them and the petitioners.

16. In this last respect, Col. Nir Press, the commander of the Coordination and Liaison Authority, appeared before us during the final hearing and supplied details of the relevant data and information upon which the respondents rely. Col. Press clarified the statements made on behalf of the state, and insisted that the amount of fuel and electricity entering the Gaza Strip is sufficient for the proper functioning of all the humanitarian services in the territory; Col. Press further told us of contact that he made with Palestinian representatives for the routine monitoring of the functioning of the humanitarian services in the Gaza Strip. Inter alia, he described how the State of Israel allows the safe conduct of the sick for treatment in the State of Israel, and the unrestricted passage of food and medicine, in order to avoid harming the residents of the Gaza Strip beyond the extent

necessitated by the state of armed conflict between the State of Israel and the Hamas organization. Col. Press admitted to us that the situation of the civilian population in the Gaza Strip is indeed difficult, but he also gave examples of exaggerated descriptions published by the Hamas organization regarding a humanitarian crisis in the region.

17. The main issue remaining before us, as became clear from the last hearing, is the amount of industrial diesel fuel required for the operation of the power plant in the Gaza Strip. As stated above, we were convinced by the respondents' declarations that they intend to continue to allow the supply of industrial diesel fuel at the same level as prior to the implementation of the reductions, namely 2.2 million litres per week. Since it has been clarified that industrial diesel can be, and is in fact, used solely for the power plant in the Gaza Strip, it can be assumed that the supply of industrial diesel will not fall short of this amount. Our enquiry into the matter revealed that the supply of industrial diesel to the Gaza Strip during the winter months last year was similar to the amount that the respondents promise to allow into the Gaza Strip at present, and this fact, too, indicates that it is a reasonable amount that is sufficient for the basic humanitarian needs of the Gaza Strip. Admittedly, for several days the border crossings were closed and consequently the required amount of diesel was not delivered, but as we explained, this was due to a temporary security need caused by a very fierce rocket attack launched against Israeli towns from within the Gaza Strip. Needless to say that even during this period, when there was a specific security need to close the border crossings, the State of Israel continued to supply the Gaza Strip with the same amount of electricity that it usually provides.

18. As for the revised plan presented to us, which concerns a five per cent reduction of the supply of electricity through three of the ten power lines supplying electricity to the Gaza Strip, to a level of 13.5 megawatts in two of the lines and 12.5 megawatts in the third, we are convinced that this reduction does not breach the State of Israel's humanitarian obligations within the context of the armed conflict taking place between it and the Hamas organization that controls the Gaza Strip. This conclusion is based, inter alia, upon the fact that the respondents' deposition reveals that the relevant Palestinian authorities have said that they have the capability of carrying out load reductions

if limits are placed on the power lines, and they have made actual use of this capability in the past.

19. It should be emphasized that during the hearing of the petition the state reiterated its undertaking to monitor the humanitarian situation in the Gaza Strip, and in this context we were informed, in various affidavits filed on behalf of the respondents, that this commitment is being discharged very responsibly and seriously, and that the security establishment carries out a weekly assessment of the position in this regard, which is based, inter alia, upon contacts with Palestinian authorities in the fields of electricity and health, and on contacts with international organizations. It should be noted in this context that from the hearing of this issue before us, as well as from other cases in which an immediate response was required on matters regarding humanitarian concerns, it became clear that the parties are capable of reaching understandings and arrangements in these matters. Indeed, a solution in the form of communication between persons designated by the security establishment and those entities who maintain contact with them and inform them of the essential basic needs is the best way of finding speedy solutions to concrete problems that arise from time to time; that is evident from the fact that even before the matter came to court, the state announced, of its own initiative, that it was renewing the supply of regular diesel fuel, which is required, inter alia, for ambulances and operating generators in hospitals, in the same amount as prior to the reduction, as well as the supply of industrial diesel. These facts show that the state is indeed monitoring the situation in the Gaza Strip, and allowing the supply of the amount of fuel and electricity needed for the essential humanitarian needs in the region.

20. We have said on more than one occasion that we do not intervene in the question of the effectiveness or the wisdom of the security measures adopted by those responsible for security, but only in the question of their legality. Our role is limited to judicial review of compliance with the provisions of Israeli and international law that bind the State of Israel, which, according to the declaration of the respondents, are being scrupulously observed by the state. In this regard it has been said in the past that in times of war legal norms continue to apply, and the laws of war should be observed. In HCJ

3451/02 Almadani v. Minister of Defence [1] we held, in a similar context, that:

'Israel finds itself in severe combat with rampant terrorism. Israel acts pursuant to its right to self-defence (see art. 51 of the Charter of the United Nations). This combat is not conducted in a normative void. It is conducted pursuant to the rules of international law, which determines principles and rules for conduct of combat' (Almadani v. Minister of Defence [1], per President Barak; see also HCJ 168/91 Morcus v. Minister of Defence [2], at p. 470).

And in a judgment concerning the humanitarian obligations of the State of Israel during the combat operations carried out in the 'Defensive Shield' campaign, we said:

'Even during periods of combat the laws of war should be upheld. Everything should be done in order to protect the civilian population (see HCJ 2901/02 Center for the Defense of the Individual v. Commander of the IDF Forces in the West Bank [5]; HCJ 2936/02 Physicians for Human Rights v. Commander of the IDF Forces in the West Bank [6] ; HCJ 2977/02 Adalah - Legal Center for Arab Minority Rights in Israel v. Commander of the IDF Forces in the West Bank [7]; HCJ 3022/02 LAW - Palestinian Organization for the Defence of Human Rights and the Environment v. Commander of the IDF Forces in the West Bank [8])' (HCJ 3114/02 Barakeh v. Minister of Defence [3]).

21. Indeed, in times of war, as in our case, the civilian population unfortunately finds itself in a combat zone, and it is the first and main victim of the state of hostilities, even when efforts are made to limit the harm caused to it. In the territory of the State of Israel too, in an era of terrorist attacks that have been continuing for years, the immediate and main victim of the state of hostilities is the civilian population. But as far as the acts perpetrated against Israel are concerned - this is not accidental harm or collateral damage, but frequent terrorist attacks that directly target the civilian population with the intention of harming innocent civilians. This is the difference between the State of Israel, a democratic state fighting for its survival by the means that the law provides, and the terrorist organizations that seek to destroy it:

'The state is fighting in the name of the law and in order to preserve it.

The terrorists fight against the law and in violation thereof. The war against terrorism is also the struggle of the law against those who seek to undermine it' (HCJ 320/80 Kawasma v. Minister of Defence [4], at p. 132; see also Almadani v. Minister of Defence [1]).

In this case, the facts that were presented to us, as set out above, show that the State of Israel accepts and respects the rules prescribed in the laws of war, and it is committed to continuing to supply the amount of fuel and electricity needed for the essential humanitarian needs of the civilian population in the Gaza Strip.

22. In conclusion, we reiterate that the Gaza Strip is controlled by a murderous terrorist organization, which acts relentlessly to inflict harm on the State of Israel and its inhabitants, violating every possible rule of international law in its violent acts, which are directed indiscriminately at civilians - men, women and children. Despite this, as we said above, the State of Israel is committed to fighting the terrorist organizations within the framework of the law and in accordance with the provisions of international law, and to refrain from intentional harm to the civilian population in the Gaza Strip. In view of all of the information presented to us with regard to the supply of electricity to the Gaza Strip, we are of the opinion that the amount of industrial diesel that the State said it intends to supply, as well as the electricity that is continually supplied through the power lines from Israel, are capable of satisfying the essential humanitarian needs of the Gaza Strip at the present.

Therefore, for the reasons set out above, the petition is denied.

Justice E. Hayut

I agree.

Justice J. Elon

I agree.

Petition denied.

23 Shevat 5768

30 January 2008