HCJ 2722/92

Mohammed Alamarin

v.

IDF Commander in Gaza Strip

The Supreme Court sitting as the High Court of Justice

[14 June 1992]

Before Justices D. Levin, G. Bach and M. Cheshin

Petition to the Supreme Court sitting as the High Court of Justice.

Facts: The son of the petitioner was arrested by the police after the murder of fifteen-year-old Helena Rapp. He confessed to the murder, and in his statement to the police he said that he decided to kill the girl because he did not have work.

Following the murder, the respondent decided to exercise his authority under the Defence (Emergency) Regulations, 1945, under which he is authorized to destroy a building inhabited by a person who committed an offence involving violence, and he ordered the destruction of the house where the murderer lived, namely the house of the petitioner.

In the petition, the petitioner challenged the authority of the respondent to make an order to destroy the whole house, since the house was inhabited by himself and other members of his family.

Held: (Majority opinion — Justices G. Bach and D. Levin): The respondent's decision to destroy the house in this case was not unreasonable, in view of the very serious nature of the crime and the fact that the building was not divided into separate units.

(Minority opinion — Justice M. Cheshin) A show cause order should be issued to ascertain what part of the building was used by the petitioner's son, and only that part of the building should be destroyed.

Petition denied, by majority opinion.

Legislation cited:

Basic Law: Human Dignity and Liberty, 5752-1992, ss. 3, 8.

Defence (Emergency) Regulations, 1945, rr. 59(b), 119.

Penal Measures (Gaza Strip Area) Order, 5729-1969, s. 5B.

Israeli Supreme Court cases cited:

[1] HCJ 4772/91 *Hizran v. IDF Commander in Gaza Strip* [1992] IsrSC 46(2) 150.

[2] CA 800/89 *Biton v. Russell* [1992] IsrSC 46(2) 651.

[3] HCJ 4644/90 — unreported.

[4] HCJ 680/88 *Schnitzer v. Chief Military Censor* [1988] IsrSC 42(4) 617; IsrSJ 9 77.

Jewish Law sources cited:

[5] Ezekiel 37, 7-8; 37, 14.

[6] Deuteronomy 24, 16.

[7] II Kings 12, 21-22; 14, 5-6.

[8] Jeremiah 31, 28-29.

For the first petitioner — A. Rosenthal.

For the second petitioner — Y. Gnessin, Senior Assistant to the State Attorney.

JUDGMENT

Justice G. Bach

1. The petitioner lives, together with his family, in Nuzirath in the Gaza Strip, in a house registered in his name (hereafter — 'the building'). The building has two storeys, and it contains five rooms, a kitchen, a shower and a toilet on the first floor, and another room and chicken coops on the second floor. One of the sons of the petitioner who lives in the building is Fuad Alamarin (hereafter — 'Fuad'), who was arrested on 24 May 1992 on a suspicion of having committed the murder of a fifteen-year-old Israeli school pupil called Helena Rapp in Bat-Yam.

The petition is directed against the decision of the IDF Commander in the Gaza Strip (hereafter — 'the respondent') to order the confiscation of the land on which the building stands and the destruction of the building, by exercising his power under r. 119 of the Defence (Emergency) Regulations, 1945 (hereafter — 'the Regulations'). The decision of the respondent was made on account of the fact that the aforesaid Fuad was one of the persons living in the building.

2. The following is a synopsis of the facts about the act that Fuad is alleged to have committed, as they arise from the evidence attached to the court file:

On the morning of 24 May 1992, Fuad, who was born in 1973, left the building, taking with him two knives that he took from the kitchen at home. Fuad went by taxi to Bat-Yam, carrying the knives on his person. When he reached Bat-Yam, Fuad noticed three girls waiting at a bus stop. In the statement which he gave to the police interrogators, Fuad said that he decided then to kill one of the girls. To the question of the interrogator 'Did you decide about the murder at home in Nuzirath?' Fuad replied: 'I thought at home, already then, that I would hurt someone. It didn't matter who came, I would hurt him… I wanted to hurt only Jews or an Israeli Arab…'

Later in his statement Fuad said:

> '… I took hold of the knife, I went to the bus stop. I saw the small girl and the girl who stood on the other side and then I stabbed the girl with the knife. The big girl. I stabbed her in the shoulder, all over the body… I stabbed her 3-4 times, I continued stabbing her even when she fell… and then I began to run away in the same direction from which I came…'

Following a chase made by citizens after the person who did the stabbing, Fuad was caught by the police and was arrested for interrogation.

3. After Fuad was arrested, and after he confessed to committing the murder, the respondent gave notice to the family of the petitioner of his intention to make the order which is the subject of the petition. The respondent also ordered the house to be sealed, and this order was carried out immediately.

On 26 May 1992 the family of the petitioner submitted an objection to the respondent's notice, and on 27 May 1992 the legal adviser for the area of the Gaza Strip notified the petitioner's attorney that the objection had been rejected.

On 31 May 1992 the petitioner filed his petition to this court, and on that day an interim order was made, to the effect that carrying out the destruction order was barred until a final decision of a full panel of the court with regard to the actual petition.

4. In his petition, counsel for the petitioner concentrated mainly on the following arguments:

a. The respondent's authority to order the confiscation, sealing and

destruction of the building under r. 119 of the Regulations, is limited to the territorial area of the Gaza Strip. It follows that the respondent is not permitted to order the destruction of a house in the Gaza Strip because of any act that was perpetrated in Israeli territory by someone who lived in that house.

The learned counsel of the petitioner does not, of course, ignore the provisions of s. 5B of the Penal Measures (Gaza Strip Area) Order (no. 277), 5729-1969 (hereafter — 'the Order'), which states:

> 'The military commander may exercise his powers under regulation 119 of the Defence (Emergency) Regulations), 1945, with regard to a house, structure or land situated in the area, even on account of an act that was committed outside the area and which if committed in the area would have allowed him to exercise his powers under the said regulation.'

However, according to the argument of Advocate Rosenthal, the aforesaid section 'is absolutely unreasonable', and in enacting it the respondent overstepped his authority.

b. Alternatively, counsel for the petitioner argues that the respondent was permitted to order the confiscation and destruction only of Fuad's room in the building, and not of the whole building, in which there live many members of the petitioner's family who took no part in the offence attributed to Fuad. In making this argument, Advocate Rosenthal relies on a minority opinion given by my colleague, Justice Cheshin, in HCJ 4772/91 *Hizran v. IDF Commander in Gaza Strip* [1], and he asked us to adopt the opinion stated there.

We will consider these arguments in order.

5. The argument about the territoriality of the respondent's authority under r. 119 of the Regulations and about the consequent illegality of the aforesaid s. 5B of the Order does not seem to me *prima facie* to have any weight, particularly when we are speaking of exercising the authority on account of a terrorist act carried out in the territory of the State of Israel. The approach that regards a violent act committed in Israel as if it were an act carried out 'abroad' in relation to the Gaza Strip seems to me to be artificial with respect to the issue under discussion. Cf. in this respect our judgment given recently in CA 800/89 *Biton v. Russell* [2], where we decided to apply the Israeli law of torts and the provisions about the exemptions from liability for the purpose of actions in torts extraterritorially to an act carried out in the area held by the IDF forces in Lebanon, in a case where an IDF soldier was

wounded by another IDF soldier.

However, in the present case we do not really need this argument, for it arises from the undisputed facts that Fuad committed an offence under the Regulations also in the area of the Gaza Strip.

I am referring to the offence under r. 59(b) of the Regulations, which, in the parts relevant to this case, provides the following:

> 'No person shall —
>
> ……
>
> (b) have in his possession any weapon, instrument or article or thing designed or adapted for causing death or serious injury…'

It seems to me that at the moment when Fuad, the son of the petitioner, took with him from the kitchen in the building the two knives, of which one was a particularly long knife, with the intention of using them for the purpose of carrying out murder or causing serious injury to a person, then he 'had in his possession weapons, instruments or articles or things designed or adapted for causing death or serious injury,' within the meaning of the aforesaid r. 59(b).

It follows that in any event there is no obstacle to the respondent exercising his authority under r. 119 with regard to the incident under consideration. It should be pointed out that this court reached an identical conclusion also in HCJ 4644/90 [3] and *Hizran v. IDF Commander in Gaza Strip* [1].

6. We are left with the alternative argument, that Fuad lived in a separate unit within the building, and therefore the respondent is authorized to destroy at most the room of that Fuad.

In order to examine this argument, the exact text of the relevant legislation ought to be before us. The following are the parts of r. 119 of the Regulations that are relevant to this petition:

> '119. (I) A Military Commander may by order direct the forfeiture to the Government of Palestine [read: the Government of Israel] … of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence against these Regulations involving violence or intimidation or any Military Court offence; and when any house, structure or

> land is forfeited as aforesaid, the Military Commander may destroy the house or the structure or anything in or on the house, the structure or the land…'

In view of this wording, it is not possible to accept the narrow construction of counsel for the petitioner with regard to the respondent's authority, when it is expressly stated here that the military commander may destroy any house —

> '… the inhabitants *or some of the inhabitants* of which he is satisfied have committed…' (emphasis added).

From this it can be clearly seen that the authority of the commander extends also to those parts of an apartment or house that are owned or used by the members of the family of the suspect or by others, with regard to whom it has not been proved that they took part in the criminal activity of the suspect or that they encouraged it or even that they were aware of it.

It is therefore difficult not to agree with the majority view in the judgment in *Hizran v. IDF Commander in Gaza Strip* [1], in which Justice Netanyahu said the following on page 154:

> 'The authority of the respondent under r. 119 is broad. It is not limited to the residential unit of the perpetrator himself. It extends beyond this, to the whole building (and even to the land), the inhabitants or some of the inhabitants of which have committed an offence.'

In practice, even my esteemed colleague, Justice Cheshin, did not question, in his minority opinion in the aforesaid judgment, the broad authority of the commander from a legal viewpoint. He merely discussed the need to use this power in practice narrowly, and he expressed, *inter alia*, his opinion that when a number of persons or several family units live in separate rooms in the building — and even if they live in this way with joint use of a kitchen, bath and toilet and by using one common entrance for that building — the commander must limit the use of his authority to make a destruction order under r. 119 merely to the residential unit of the person suspected of criminal activity, and he must not destroy the other units nor even the shared utility rooms.

It would appear that there is no basis in the said regulation, either in the literal text or in the spirit of what is stated there, for a construction that imposes such a far-reaching duty of restriction on the military commander. The contrary is true: the construction that make the authority broader has been adopted and applied by the various panels of this court with a

significant number of similar petitions that have been brought before us in recent years (as Justice Cheshin also states in his aforesaid opinion).

7. Nonetheless, I would like to point out that the above does not mean that the military commanders, who have the authority, are not required to use reasonable discretion and a sense of proportion in each case, nor that this court is not able or bound to intervene in the decision of the military authority, whenever the latter intends to exercise its authority in a way and manner that are unthinkable. Thus, for example, it is inconceivable that the military commander should decide to destroy a complete multi-storey house, which contains many apartments belonging to different families, merely for the reason that a person suspected of a terrorist act lives in a room in one of the apartments, and if nonetheless he should want to do this, this court could have its say and intervene in the matter.

8. I would also like to point out in this connection that the use of a destruction order under the said r. 119 undoubtedly constitutes a severe sanction, and we must be aware that as a result of using this method of deterrent, suffering and misery may be caused to persons who did not themselves commit any crime. I am convinced that the use of this sanction affords no pleasure to the persons who have this authority, and certainly no-one will be sad, if an improvement in the security of the State and the normalization of safety in the region will induce the legislator one day to regard this measure as redundant.

However, as long as this authority exists under the law, we are obliged to construe the provisions relating to this matter in accordance with its wording and its spirit, but we will try as stated to ensure that this measure is used only after exercising objective discretion which is not clearly tainted by manifest unreasonableness.

9. It is not possible in this matter to lay down broad and comprehensive criteria, and each case should be considered according to its circumstances. But as a rule I would include the following considerations among the relevant factors for the decision of the military commander:

a. What is the seriousness of the acts attributed to one or more of those living in the building concerned, with regard to whom there is definite evidence that they committed them? The importance of this factor as a basis for the severity of the decision that the commander may make has been emphasized in the past more than once in the decisions of this court (see, for example, HCJ 4644/90 [3], where it was said: ‘The respondent ought to consider each case on its merits, taking account of the seriousness of the acts

and the consequences').

b. To what extent can it be concluded that the other residents, or some of them, were aware of the activity of the suspect or the suspects, or that they had reason to suspect the commission of this activity? It should be stated once more, to make matters clear, that such ignorance or uncertainty on this issue do not in themselves prevent the sanction being imposed, but the factual position in this regard may influence the scope of the commander's decision.

c. Can the residential unit of the suspect be separated in practice from the other parts of the building? Does it, in fact, already constitute a separate unit?

d. Is it possible to destroy the residential unit of the suspect without harming the other parts of the building or adjoining buildings? If it is not possible, perhaps the possibility that sealing the relevant unit is sufficient should be considered.

e. What is the severity of the result arising from the planned destruction of the building for persons who have not been shown to have had any direct or indirect involvement in the terrorist activity. What is the number of such persons and how closely are they related to the resident who is the suspect?

10. Let us turn from the aforesaid general principles to the specific case before us:

a. It is hard to imagine more serious circumstances that those relating to the act attributed to the aforesaid Fuad. Attacking a young and innocent girl, unknown to the attacker, and brutally stabbing her to death is an abominable act which reflects unfathomable baseness and which should arouse universal disgust. This aspect may influence the choice of a more severe sanction when the commander attempts to exercise a fitting measure of deterrent.

b. The building is admittedly a two-storey house, but almost all the living rooms and bedrooms in it are on the ground floor. Fuad's room is also on this floor. All the persons living in the building share utilities (the entrance to the house, kitchen, bath, toilet), and a living room for common use, and they are all related.

c. The murder suspect, Fuad, lives in the building, and nothing separates his room on the ground floor from the other parts of the house. I would point out in this respect that even my esteemed colleague, Justice Cheshin, points out in his opinion in *Hizran v. IDF Commander in Gaza Strip* [1], at p. 158, that:

> 'We do not dispute that where a young man lives in his parents' home — and he uses the whole apartment as if it were his — the

> whole house is "his", and consequently the whole house can be expected to be destroyed on account of the acts of that son.'

It is difficult to make any real distinction between that hypothetical situation and the present case.

11. In view of all the aforesaid facts, I am satisfied that the decision of the respondent which is the subject of this petition does not show that he overstepped his authority, and that there is no justifiable cause for us to intervene in it.

Therefore I would propose to my esteemed colleagues that the petition should be denied and the interim order issued in this case should be revoked, without making an order for costs.

Justice D. Levin: I agree.

Justice M. Cheshin

This is what Fuad Alamarin said to the police interrogator on 24 May 1992:

> 'I slept at home. In the morning [of 23 May 1992] I got up. I ate bread with a cup of tea. I sat at home on the bed. I read the Koran. I said the morning prayer. I prepared something. I took with me a shirt and blue trousers — the shirt was black — and a loaf of bread. I took a knife with me, a small knife… (also points to the second knife found at the scene…). I left home at 5:00… I left alone. I took a taxi to Gaza… I got out at Sejaia in Gaza. I arrived at approximately 5:30. After that I got into a taxi, a Mercedes. I don't remember the colour. The taxi wasn't new or old. The taxi went to the Erez roadblock. There were six passengers with me in the taxi. At the Erez roadblock we waited half an hour. At 6:15 we left the Erez roadblock. We went in the direction of Bat-Yam. One of the passengers got off by the bridge — I don't know where the bridge is. We came to Bat-Yam. There were five passengers with me. I don't know the taxi driver but if I see him again I'll be able to say that I went with him. The driver appeared about 30-40 years old. Medium build, short. I don't remember hair colour, I don't remember clothes. After the first person got out, the second person got out. After a kilometre, I reached Bat-Yam. I told the driver to stop at the bus

stop and I got out alone. The small knife was in a black bag with the black shirt and the trousers. I correct myself and say that the large knife was in the bag, the second small knife was in my pocket in the jeans trousers that I am wearing. The time was approximately 7:15. I saw girls at the bus stop, three girls at the bus stop. One was 25-27 years old, the second was 19-20 years old, and the third was 10 years old. Two were inside the bus stop. The oldest one was outside the bus stop. After I got out of the taxi, I thought to myself that I must hurt one of them.

Q — Why did you want to hurt one of them?

A — I didn't have work and I had to get married and I got angry and decided to kill one of them.

Q — Did you decide about the murder at home in Nuzirath?

A — I thought at home, already then, that I would hurt someone. It didn't matter what came, I would hurt it.

Q — By 'hurt' do you mean hurt anyone, or one or more persons who are Jews?

A — I wanted to hurt only Jews or an Israeli Arab.

Q — Why?

A — Because they are in charge of the work, that's why.

The small knife fell down in my trousers. When the knife fell down I had already reached the bus stop. I went behind the bus stop. When I turned round I reached the knife with my hand, I took hold of the knife, I went into the bus stop.

I saw the small girl and the girl who stood on the other side and then I stabbed the girl with the knife. The big girl. I stabbed her in the shoulder, all over the body. While I was stabbing I shouted *Allah akbar*. I stabbed her 3-4 times, I continued stabbing her even when she fell. I saw her falling, and then I began to run away in the same direction from which I came…' (square parentheses added)

And so Helena Rapp's soul returned to its Maker.

2. When reading this statement, the heart beats wildly and horror seizes us. The person who admitted murder did not have work to make a living and so he decided to murder a Jewish girl. Two girls came his way, and for some reason he decided to kill the older one. Was he in God's stead to decide as he

decided? The girl, Helena Rapp of blessed memory, went to heaven in the prime of her life merely because she was a Jewish girl, a Jewess in the land of the Jews. For the death of little Helena there is no atonement, nor will there ever be:

> 'And cursed be he who says: Revenge!
> Such revenge, revenge for the blood of a small boy,
> The Satan has not yet created —
> Let the blood pierce the abyss!
> Let the blood pierce through to dark abysses,
> And decay in the dark and there destroy
> All the rotting foundations of the earth.'

Thus lamented our national poet (H.N. Bialik) in 1903 — after the Kishinev pogroms — the murder of a small Jewish boy in the Diaspora. Ninety years have since passed, and we now lament a small girl in the land of the Jews, and the girl is Helena Rapp.

3. The petitioners before us are the father and family members of the person who admitted the murder. The respondent in the petition — the IDF commander in the Gaza Strip — has ordered the destruction of the house belonging to the petitioner (and the members of his family). This is the house where his son, who admitted the murder of Helena Rapp, lived. The petitioner argues that the respondent should not order the destruction of the whole house, for not only does his son, who admitted the murder, live in it, but also he and the other members of his family, who are in no way involved in the terrible act of murder. The respondent submitted to us a plan of the structure of the house which is to be destroyed. The house has two storeys and it is surrounded by a wall. On the ground floor there are five rooms (of various sizes), an open area between these rooms, and next to all of these are a kitchen, toilets and a shower room. One of these five rooms is described as 'the room in which the suspect slept'. The plan of the second floor shows us that it has one bedroom and next to it two chicken coops. In this two-storey building, the petitioner argues, he and his wife live with their two adult sons and their wives. His minor sons also live in the building and there are (apparently) four of these. Their living quarters are in the room of the suspect, who has admitted the murder. So it transpires that in the two-storey building which is to be destroyed there live three families: the petitioner, his wife and his children who are not married (and including the one who has admitted the murder), and in addition his two sons and their wives. The

petitioner argues that the destruction may only be ordered with regard to that part of the house which was used by the son who is the suspect, and it is not fitting nor is it right to order the destruction of the other parts of the house. He argues that we are dealing with separate families — even if they are related — and it is not proper that the home of those who have committed no crime should be destroyed.

4. In a minority judgment that I wrote in *Hizran v. IDF Commander in Gaza Strip* [1], I said that in applying r. 119 of the Defence (Emergency) Regulations the army commander does not have the authority to inflict collective punishment, and if we agree that a residential unit belonging to one person should be destroyed, it is not proper to destroy residential units belonging to others as well.

This is what I said in that case, on p. 160:

> '… If we are talking of a building that is physically divided — in practice — between different families, and even between related families, what normative significance is there, or should there be, to the fact that they have one roof or share toilets? The concept of a 'residential unit' is not imposed on us: it is a product of our thinking, we created it with a certain thought pattern and for a specific purpose, and therefore the relevant question is merely what use is made, in practice, of a particular apartment or a particular house.
>
> 15. We are not concerned with architecture or engineering or interior design — separate structures and combined structures and the like — but with determining *proper norms* within the framework of the existing law, with regard to the question, what ought to be destroyed and what ought not to be destroyed. It is evident that the distinction in our society between residential units — 'apartments' — is both vertical (and in this case there is not 'one roof') and also horizontal, and our standard of living allows us 'residential units' that are completely separate even if alongside them there is common property. But I do not know why a merely horizontal division ('under one roof') into independent residential units — units allocated to families each living its own life alongside common property — should not create separate residential units. It may indeed be assumed that originally the apartment was one residential unit with a certain number of rooms, and only at a later date did it become, in practice, several residential units such that in each of those units

> a family lives on its own. But is it right for us to continue to regard it as one residential unit, merely because it was originally built that way? The same applies to the shared kitchen and toilets. Are these capable of making separate residential units into one residential unit? We know that all we are talking about is the standard of living of the population. Just as a shared storage room in a cooperative house cannot make separate residential units into one residential unit, neither can a shared laundry room, a shared roof, a shared courtyard and shared toilets. The same is true in this case. Indeed, it is hard to escape the impression that the concept of the 'separate residential unit' — originally a tool and our servant — has become, as if of itself, a major principle and a master to rule us. We created a tool — a separate residential unit — out of a desire and intention to identify a building that should be harmed, as distinct from a building that should not be harmed, and now, against out will, it is being put before us as if it were a creature with a life of its own. If we consider the matter in this way — and this is how, in my opinion, it should be understood — then those shared toilets and kitchen cannot make any difference.
>
> Among a certain population and in certain places a kitchen and toilets shared by several families is not a rare phenomenon, and therefore these cannot prove whether a certain residential unit is, or is not, 'separate' from another. This is definitely so with regard to a shared roof. The case is one where the opposite logic applies: if toilets are shared both by a person whose home is to be destroyed and also by others, we can conclude from this precisely the fact that they should not be destroyed and that they should not be harmed in any other way, simply for the reason that others also make use of them.'

Where someone is suspected of an act as a result of which a destruction order is made with regard to his home, I did not agree then, nor do I agree now, that someone else's home may be destroyed merely because he lives next to that person.

5. Were we dealing in this case with a five-storey building, and the persons suspected of the act of murder and his family lived on the ground floor, and on the four floors above it there lived families unrelated to the family of the murder suspect, we may surely assume that the military commander would not have ordered the demolition of the whole house,

namely the destruction of the four storeys inhabited by families totally unrelated to the family of the murder suspect. This, I believe, would be the law, were we dealing with a house with only two storeys, and on the second storey there lived a family unrelated to the family of the murder suspect. The difference between these two examples and our case is this, that in the building under discussion there live three related families. I do not know what difference there is between this case and those other cases, seeing that the other family members were not partners in the wicked deed, either directly or indirectly, and no-one even suggests that they were in any way involved in the terrible deed.

6. My colleague, Justice Bach, says (in paragraph 6 of his opinion) about what I said in *Hizran v. IDF Commander in Gaza Strip* [1]: 'There is no basis in the said regulation [119 of the Defence (Emergency) Regulations], either in the literal text or in the spirit of what is stated there, for a construction that imposes such a far-reaching duty of restriction on the military commander' (square parentheses added). I agree that in the language of the regulation — in its literal text, in the words of my colleague — there is no basis for the restrictive construction, the construction which is acceptable to me. Indeed, the military commander has the authority, according to the text of the regulation, to order a wide-scale destruction such as the destruction of that five-storey building in the example I gave, and even far more than this, as I said in *Hizran v. IDF Commander in Gaza Strip* [1]. But I believe that no-one would even think of exercising authority in that way. I also agree with my colleague that 'in the spirit of what is stated there', in the regulation, there is no basis for limiting its construction, if by this he means the 'spirit' when the regulation was enacted in 1945, and the spirit which a court made up of English judges during the British Mandate would have read into the regulation. But that 'spirit' of the regulation vanished and became as if it had never existed, when there arose a greater spirit, in 1948, when the State was founded. Legislation that originated during the British Mandate — including the Defence (Emergency) Regulations — was given one construction during the Mandate period and another construction after the State was founded, for the values of the State of Israel — a Jewish, free and democratic State — are utterly different from the fundamental values that the mandatory power imposed in Israel. Our fundamental values — even in our times — are the fundamental values of a State that is governed by law, is democratic and cherishes freedom and justice, and it is these values that provide the spirit in constructing this and other legislation. See for example, by way of comparison: HCJ 680/88 *Schnitzer v. Chief Military Censor* [4], at pp. 625 {86} *et seq.* (*per* Justice Barak).

This has been so since the founding of the State, and certainly after the enactment of the Basic Law: Human Dignity and Liberty, which is based on the values of the State of Israel as a Jewish and democratic State. These values are general human values, and they include the value that 'One may not harm a person's property' (s. 3 of the law) and 'The rights under this Basic Law may only be violated by a law that befits the values of the State of Israel, is intended for a proper purpose, and to an extent that is not excessive' (s. 8 of the law).

7. A piece of legislation on its own is like the dry bones of the prophet Ezekiel:

> '… and bones came towards one another. And I looked, and behold, there were sinews on them and flesh arose and skin formed over them, but there was no spirit in them' (Ezekiel 37, 7-8 [5]).

Only when the spirit comes — the spirit of God, the spirit of man — will we know which way we should go and what construction we should give to the law:

> 'And I shall put my spirit into you and you shall live…' (*ibid*., 37, 14 [5]).

This is the human spirit, the Jewish spirit, which has carried us on its wings throughout the generations, and on which we have suckled with our mother's milk:

> 'Fathers shall not be put to death because of their sons, and sons shall not be put to death because of their fathers; a person shall be put to death for his own wrongdoing.'

So we are taught in the Book of Deuteronomy (24, 16 [6]) and we learn also in the second Book of Kings that this is the law of Moses: in the reign of Joash, king of Judah, his servants Jozachar the son of Shimeath and Jehozabad the son of Shomer rose up against him and killed him (II Kings 12, 21-22). Amaziah ruled after him in Judah, and Scripture tells us the following (*ibid.*, 14, 5-6) [7]):

> 'And it came to pass when the kingdom was firmly in his control that he slew his servants who killed the king his father, but he did not put the sons of the killers to death, in accordance with what is written in the book of the law of Moses that God commanded him as follows: fathers shall not be put to death because of their sons, and sons shall not be put to death because

> of their fathers, but a man shall die (read: be put to death) for his own sin.'

This is the spirit and this is what we should do:

> 'In those days people shall no longer say: fathers ate unripe fruit and their sons' teeth shall be blunted, but a person shall die because of his own sin; any person who eats unripe fruit shall have his teeth blunted' (Jeremiah 31, 28-29 [8]).

No longer do fathers eat unripe fruit and their sons' teeth are blunted, and no longer do sons eat unripe fruit and their fathers' teeth are blunted, but a man shall be put to death for his own sin.

8. Admittedly, we are not talking of the application of the Defence (Emergency) Regulations inside the borders of the State of Israel but in the Gaza Strip, which is not Israel. But it seems to me that the difference is not great and is even insignificant. The connection between Israel and the Gaza Strip — and the same applies to Judea and Samaria — is so close in everyday life that it would be artificial to talk of exercising powers in Gaza as if it were somewhere beyond the seas. The respondent did not seek to base his decision on this distinction in exercising his powers — and rightly so — and I too will not do so.

9. Were my opinion accepted, we would issue a show cause order in order to ascertain what part of the building should be destroyed, or sealed, and the destruction order would apply only to the home of the murder suspect. But since I find myself in the minority, the case will be decided in accordance with the opinion of my colleagues.

14 June 1992.

Petition denied, by majority opinion (Justices G. Bach and D. Levin), Justice M. Cheshin dissenting.