

Petitioner: **Hiddush – For Religious Freedom and Equality**

v.

Respondent: **Israel Defense Forces**

Attorneys for the Petitioner: Rabbi Uri Regev, Advocate; Sagi Agmon, Advocate

Attorney for the Respondent: Avi Milikovsky, Advocate

Before: Justice A. Baron, Justice Y. Elron, Justice O. Grosskopf

Petition for a decree nisi

(August 8, 2019)

### **Judgment**

#### **Justice A. Baron:**

1. The Petitioner is a registered association that works to promote freedom of religion and conscience, and equal rights. The petition concerns the funeral arrangements for soldiers who fall in military service. It is directed at the Respondent, the Israel Defense Forces, which is responsible for the burial of soldiers who die in the course of their military service. The Court is asked to issue a decree nisi ordering the Respondent to show cause:

1. Why the Army's orders and procedures should not be changed to allow *full military honors* for fallen IDF soldiers buried in military cemeteries, in a ceremony that expresses a secular worldview or a non-Orthodox religious worldview, whether by allocating a section for civilian burial in every military cemetery or in some other manner; and additionally

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2. Why the Army's orders and procedures should not be changed in a manner that would allow *full military honors* for fallen IDF soldiers buried in non-military cemeteries in a ceremony that expresses a secular worldview or a non-Orthodox religious worldview [emphasis original – A.B.].

The petition argues that when confronted with the most devastating news, the family of a soldier is given the choice between an Orthodox religious military funeral or a civilian funeral. They are offered no option for bringing their loved one to rest in a civilian or non-Orthodox funeral with military honors.

2. The Military Cemeteries Law, 5710-1950 (hereinafter: the Law) establishes the right of every fallen IDF soldier to be buried in a military or non-military cemetery, as his relatives may choose. The Law is silent in regard to the character of the funeral. While sec. 4(b) of the Law states that regulations shall be established in regard to the burial of soldiers in non-military cemeteries, no such regulations have been promulgated.

The Army's procedures for the burial of soldiers are, therefore, primarily regulated by the General Staff Orders and directives of the Ministry of Defense.

3. General Staff Order 38.0116 (hereinafter: the Order) concerns funerals. A military funeral held in accordance with the Order comprises a variety of characteristics intended to express the official nature of the ceremony and honor for the fallen soldier, such as an honor guard, burial in a casket draped with the national flag, military eulogies, the placing of wreaths, and a rifle-volley salute. In addition to these official elements, a military funeral also includes various religious elements.

As of the date of the filing of the petition, the Order allowed for the burial of a soldier in one of two ways: a military, Orthodox-religious ceremony in a military cemetery, or a civil ceremony in a civilian cemetery, without any military characteristics. The Order stated, *inter alia*, that a civil ceremony would not include a ceremonial carrying of the casket or a ceremonial laying of wreaths, an honor guard would not be present, nor would there be a rifle salute.

It should be noted that the Order did allow for deviating from the said procedures in exceptional cases, but only with the approval of very senior ranks.

4. Since the filing of the petition, the Order was amended such that the updated Order allows for deviating from the religious characteristics in a military funeral in a military cemetery, as well as for holding a military funeral in a civilian cemetery. That being the case, the Respondent was of the opinion that the petition had become superfluous, and should be dismissed.

While the Petitioner expressed satisfaction for the change, which it described as “no doubt constituting appropriate and welcome progress in comparison to the prior situation”, it nevertheless pointed out that the change does not provide a solution for those who wish to conduct a religious military funeral that is not Orthodox, and for those who wish to conduct a secular funeral in accordance with their own views – as for example, by adding a literary, philosophical or poetic reading – and not suffice simply with removing the religious symbols, such that what would remain would be what the Petitioner described as a “meager, sterile” ceremony. The Petitioner therefore insisted upon proceeding with the petition, and was permitted to amend it in light of the updating of the Order.

5. After the filing of the amended petition, the parties attempted to reach an out-of-court resolution of the dispute. We are informed by the Respondent that, among other things, a meeting was held that was chaired by the Deputy Attorney for Public and Administrative Affairs, with the participation of all the relevant government agencies and the Petitioner’s attorneys. There were also additional discussions and contacts between the parties. In the end, the Respondent was willing to make an additional change in the format of the Order that would expressly anchor the prevailing policy in regard to the manner of coordinating a military funeral, such that the *default* would be that changes in the format of the ceremony set out in the Order would be permitted, so that the funeral ceremony would be consistent with the expectations of the family, and would take their feelings into consideration.

The Petitioner welcomed this willingness to make an additional change to the Order, but had several caveats in regard to the proposed wording, and therefore gave notice of its desire to move forward with the petition. Once again, the parties conducted a joint discussion, following which the Respondent’s relevant authorities approved further changes to the Order, such that in the course of coordinating a funeral, the bereaved family would be informed that its loved one could be buried in a military funeral that would be consistent with its lifestyle and beliefs. In that framework, the family would be permitted to choose whether it desired religious elements in the

ceremony, and would be permitted to make other changes “as long as the structure of the ceremony is preserved” and there would be no “desecration of the sanctity of the cemetery”.

6. We held a hearing on the petition on July 4, 2019, at the end of which, at our suggestion, the Petitioner withdrew the petition, it having become clear that all the remedies sought in the petition had been achieved. Nevertheless, the Petitioner’s attorney requested that the Petitioner be awarded costs in view of the results. The Respondent’s attorney stressed that consideration should be given to the fact that strides had been made, and the Order had been amended with the cooperation of all those concerned.

Indeed, the Petitioner should be credited with raising and advancing a sensitive subject whose importance cannot be exaggerated, and which touches upon the raw nerves of Israeli society. Expressing honor and respect for those who have died in the course of military service is deeply rooted in the foundational values of the State of Israel and our common existence. Thus, the desire and aspiration, and even the duty, to permit every family that has made the ultimate sacrifice to accompany their loved one on the final journey in a manner that respects their memory and is consistent with their world view. Each by his faith shall live – and die, and the choice not to hold an Orthodox religious ceremony, if that be the choice, should not deny a person the official military honors of a military funeral. As for the Respondent, it is, indeed, clear that all the authorities relevant to the matter of the burial of fallen soldiers are sympathetic to the sensitivity of the matter and to the issues that the Petitioner brought into the spotlight, and that they carefully examined the arguments raised.

In the present situation, the bereaved family of a fallen IDF soldier can conduct the funeral in a manner that is consistent with its lifestyle and beliefs, while maintaining the structure of the ceremony and its official character. In response to our questions, the Respondent’s attorney even expressly clarified that it is possible to conduct a military funeral without religious characteristics, “to add elements and remove elements”, while permitting a family that so desires to bring its own rabbi, even a woman rabbi, from whatever religious stream. It was further clarified by the Respondent’s attorney that all those changes to the Order that were summarized above and that were discussed since the filing of the petition, which the Respondent agreed to adopt in the Order, have already been approved by the relevant authorities, and that the changes to the Order will be

made in the coming months, while already being adopted in practice, and that requests made by bereaved families are almost always accepted.

7. In view of all of the above, the petition is dismissed. Nevertheless, we will state the obvious, that the gates of this Court will be open should any concrete dispute arise in regard to a funeral procedure. In view of the contribution of the petition to advancing the matter it addressed, the Respondent will bear the Petitioner's costs in the amount of NIS 10,000.

Given this 7<sup>th</sup> day of Av 5779 (August 8, 2019).