HCJ 8397/06

Advocate Eduardo Wasser

v.

1. Minister of Defence
2. State of Israel — Ministry of Defence
3. Minister of Education
4. State of Israel — Ministry of Education
5. Head of Shaar HaNegev Regional Council
6. Shaar HaNegev Regional Council

HCJ 8619/06

1. Sederot Municipal Parents' Committee
2. Headquarters for the Struggle to Re-establish Security in Sederot
3. Batya Kattar
4. Alon Davidi
5. Movement for Quality Education in Israel

v.

1. Minister of Defence
2. Minister of Finance
3. Ministry of Education

The Supreme Court sitting as the High Court of Justice
[29 May 2007]
Before President D. Beinisch and Justices S. Joubran, D. Berliner

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

Facts: For many years 'Qassam' rockets have been fired from the Gaza Strip at the town of Sederot and settlements in Israel near the Gaza Strip. The government decided to equip the schools in the area with protection against the rockets. The method of protection decided upon by the respondents for the classrooms of students in grades 4-12 was the method of 'protected areas.' According to this, whenever the alarm is sounded that rockets have been fired from the Gaza Strip, the students are required to leave their classrooms and go to a protected area. The petitioners challenged this decision, on the ground that it did not provide adequate protection for the students in those classrooms.

Held: The respondents' decision was extremely unreasonable and should, therefore, be set aside. According to the respondents' experiments, only in 70-75% of cases did the students reach the 'protected area' within fifteen seconds - the critical period of time for doing so. Moreover, in some cases when rockets were fired no alarm was sounded. Although the cost of providing full protection for all the classrooms is considerable, and even though the court does not lightly intervene in matters of budgetary considerations, in view of the extent of the threat, the likelihood it will be realized, and the number of students exposed, the decision not to equip the classrooms with full protection is so unreasonable as to justify judicial intervention.

Petition granted.

Legislation cited:

Civil Defence Law, 5711-1951, s. 9C(b)(1).
Compulsory Education Law, 5709-1949.
Students Rights Law, 5761-2000.

Israeli Supreme Court cases cited:

[1] HCJ 3930/94 *Jazmavi v. Minister of Health* [1994] IsrSC 48(4) 778.
[2] HCJ 82/02 *Caplan v. State of Israel, Ministry of Finance, Customs Department* [2004] IsrSC 58(5) 901.
[3] HCJ 7510/05 *Lotan v. Minister of Industry, Trade and Employment* (not yet reported).
[4] HCJ 3472/92 *Brand v. Minister of Communications* [1993] IsrSC 47(3) 143.
[5] HCJ 4613/03 *Shaham v. Minister of Health* [2004] IsrSC 58(6) 385.
[6] HCJ 1113/99 *Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of Religious Affairs* [2000] IsrSC 54(2) 164.
[7] HCJ 2599/00 *Yated, Children with Down Syndrome Parents Society v. Ministry of Education* [2002] IsrSC 56(5) 834.

The petitioner in HCJ 8397/06 represented himself.
For petitioners 1-4 in HCJ 8619/06 — O. Keidar, K. Raz-Morag.
For respondents 1-4 in HCJ 8397/06 and respondents 1-3 in HCJ 8619/06 — R. Giladi.
For respondents 5-6 in HCJ 8397/06 — S. Kedem.

JUDGMENT

President D. Beinisch

The towns in the area near the Gaza Strip, including the town of Sederot, and the settlements within the jurisdiction of the Shaar HaNegev Regional Council, have suffered for years from attacks by 'Qassam' rockets fired from the Gaza Strip. The two petitions before us concern the question of whether the state has a duty to protect the educational institutions in the towns near the Gaza Strip.

1. The petitioner in HCJ 8397/06 is a resident of the Kefar Gaza Kibbutz, which belongs to the Shaar HaNegev Regional Council. The petitioner's two children study at the Shaar HaNegev Regional School, where approximately 1,200 students from settlements in the area study. No one disputes that this school is within the range of the 'Qassam' rockets that are fired from the Gaza Strip. The petitioners in HCJ 8619/06 are the Sederot Municipal Parents' Committee and other parties that are interested in protecting schools and kindergartens in the town, which are are of course also under threat from the 'Qassam' rockets. The two petitions before us raise the question of the reasonableness of the method of protection decided upon by the respondents in HCJ 8619/06 and respondents 1-4 in HCJ 8397/06 (hereafter: the respondents) with regard to the schools near the Gaza Strip.

2. In June 2006, following an incident in which a 'Qassam' rocket fell inside the grounds of a school in Sederot, the Minister of Defence decided that action should be taken to protect the schools in settlements near the Gaza Strip. On 2 July 2006, the government (in government decision no. 219) adopted the protection plan prepared by the Home Front Command, according to which twenty-four schools in settlements near the Gaza Strip, which included sixteen primary schools and eight secondary schools, should be protected by means of the 'protected area' system. This system of protection is not based on the complete protection of all the classrooms in the various schools. Rather, under this system some of the classrooms are protected and others are not. The unprotected classrooms are close to protected areas - a proximity which enables the students in these classes to reach the protected area when they hear a warning that a 'Qassam' rocket has been fired. It should be noted that the protected areas on which this system of protection is based include classrooms, as well as areas in the school that are not classrooms, such

as protected corridors. According to the timetable determined in the government decision, protection for two-thirds of the schools (the sixteen primary schools) should have been completed by the beginning of the 5767 academic year on 3 September 2006, whereas the protection for the remaining third of the schools (the eight secondary schools) should have been completed by the end of the religious holidays in Tishrei 5767, namely on 16 October 2006. According to the government decision, a budget of NIS 75 million was allocated in order to implement the protection plan. According to the respondents, this budgetary allocation only made it possible to protect (by means of the 'protected areas' method) the main classrooms in each of the schools (i.e., the ordinary classrooms where most of the studies take place), but not the special classrooms, such as laboratories and computer rooms.

3. For various reasons the protection of all the schools in the settlements near the Gaza Strip was not completed by the time determined in the government decision. The two petitions before us were filed in October 2006. The petition in HCJ 8397/06 relates to the failure to complete the protection of the Shaar HaNegev Secondary School and includes claims with regard to the manner in which the studies were taking place in the school on the date when the petition was filed. It should be noted that the fifth and sixth respondents in this petition, which are the regional council and the head of the council, raised in their pleadings various arguments against the state's original decision not to protect the special classrooms in the Shaar HaNegev Secondary School. The petition in HCJ 8619/06 relates to the failure to complete the protection of the schools and kindergartens in the town of Sederot.

4. On 15 November 2006 a joint hearing of the two petitions was held (before Justices D. Beinisch, E. Arbel and D. Cheshin). The two main issues that arose during the hearing were the planned date for completing the protection works and the method of protection that was chosen. With regard to the completion of the protection works, before the date of the hearing there was significant progress in protecting the educational institutions in the settlements near the Gaza Strip. These works, however, had not yet been completed. With regard to the system of protection, it was argued in the hearing by counsel for the petitioners that the method of 'protected areas,' according to which all of the classrooms were not fully protected, was not suited to a situation in which the warning before 'Qassam' rockets fell was approximately fifteen seconds only. This is because fifteen seconds is not enough time to evacuate an entire class and move it to the protected area. We, therefore, decided at the hearing on 15 November 2006 to issue an order *nisi* with regard to the two reliefs sought. The first ordered the respondents to

explain why the whole protection process for the educational establishments in the settlements near the Gaza Strip, including the town of Sederot, should not be completed within a short period of time in view of the pressing circumstances. The second ordered the respondents to explain why they should not replace the 'protected area' method with a system fully protecting all the classrooms.

5. The respondents' affidavits in reply to the order *nisi* were filed on 20 December 2006. The affidavits were given by the Home Front Commander, General Yitzhak Gershon, and by the director-general of the Prime Minister's Office, Mr Raanan Dinor. According to the Home Front Commander, the protection of the main classrooms in the schools had been completed subject to certain protection improvements that were still needed on that date. These protection improvements, which originated in the comments of the protection consultants employed by the Home Front, mainly included additional doors that needed to be made to the classrooms in order to facilitate the quick evacuation of students on their way to the protected area when they heard the warning that a 'Qassam' rocket had been fired. The Home Front Commander's affidavit-in-reply also stated that it had been decided to protect the kindergartens in the area near the Gaza Strip fully, and that by the date when the affidavit was filed the protection for eighty-one out of one hundred and fifty-one kindergartens in the area had been completed. Protection for most of the other kindergartens would be completed by the end of March 2007. It was also argued in the affidavit-in-reply that the project of protecting the educational institutions around the Gaza Strip was an expensive and unprecedented project given the scope of the work, the engineering and logistic complexity required, and the almost NIS 180 million invested in accordance with timetables that were almost unattainable. Therefore, it was argued that the state was acting in accordance with the standard set out in the first part of the order *nisi* of 15 November 2006 (completing the protection process within a short time in view of the pressing circumstances), and that the petitions should be denied in so far as this aspect was concerned.

The affidavit-in-reply filed by the Home Front Commander also addressed in detail the second part of the order *nisi*, explaining the respondents' position that the schools (as distinct from the kindergartens) should be protected by the 'protected areas' method and not under a fully protected system. As we have said, according to the 'protected areas' method only certain classrooms are fully protected. The students in the other classrooms are required to go to the 'protected area' when they hear the warning that a 'Qassam' rocket has been fired. According to the affidavit-in-reply, the ordinary warning time for the

'Code Red' system, which gives warning that a 'Qassam' rocket has been fired, is between fifteen and thirty seconds, and after all the extra doors that are required for the classrooms have been added, a period of fifteen seconds will remain, which is a realistic time for evacuating the students of all ages to the protected areas. This, according to the affidavit-in-reply, means that the 'protected areas' method is a satisfactory solution to the security threat. It should be noted that this time assessment is based on the results of two different series of tests that were carried out in the months of September and November 2006 in various schools in the area near the Gaza Strip.

The Home Front Commander admitted in his affidavit that the 'full protection' method is the preferred method from a security viewpoint, but he argued that the major disadvantage of the system is its high costs. . On the date of filing the affidavit-in-reply, the total cost of protecting the main classrooms only (in grades 1-12) by means of the 'full protection' method was estimated at approximately NIS 162.5 million. Because of this cost, it was argued that implementing the 'full protection' system with regard to the schools in the area near the Gaza Strip might constitute a precedent of great consequence with regard to schools in other areas in Israel which are currently or may in the future be subject to a similar threat. This is because the only protection approach used hitherto for schools in Israel is the 'protected areas' method. To change the method of protection with regard to schools may have repercussions for the state's protection approach with regard to other institutions such as hospitals and senior citizens' homes.

An additional issue that was addressed by the Home Front Commander in his affidavit was the protection of the special classrooms (by means of the 'full protection' method or the 'protected areas' method). On the date of the affidavit-in-reply filing, the protection plans for the schools near the Gaza Strip did not include the protection of the special classrooms. The cost of protecting the special classrooms in the primary and secondary schools was estimated (as of the date of filing the affidavit-in-reply) at approximately NIS 58 million for the 'protected areas' method and approximately NIS 144 million for the 'full protection' method.

According to the affidavit-in-reply from the director-general of the Prime Minister's Office, which was also filed on 20 December 2006, following a meeting chaired by the Prime Minister on 19 November 2006, work was done by several ministries with regard to the question of the full protection of the main classrooms of students in grades 1-6. This was done so that the government could make a final decision on this matter. The need for further

work was to be considered with regard to protection for the special classrooms for students in grades 7-12 by means of the 'protected areas' method.

6. On 8 February 2007 a hearing took place before us with regard to the opposition to the order *nisi*. In a revised statement of 6 February 2007, which the respondents filed before the hearing, they addressed the changes that had occurred since they had filed the affidavits in reply to the order *nisi*. The respondents said that the work of carrying out the protection improvements for the schools, which had been known on the date of filing the affidavits in reply to the order *nisi*, had been completed. According to the statement new improvements would be carried out within about one month, the need for which emerged in an inspection by the protection consultants conducted in the schools at the beginning of January 2007. In addition, the respondents said that on 18 January 2007 the Prime Minister's Office decided to change the protection policy for the schools so that the main classrooms for students in grades 1-3 would be fully protected, while the main classrooms for students in grades 4-12 would continue to be protected by means of the 'protected areas' method. The special classrooms, which as a rule were not protected, would also be protected by means of the 'protected areas' method, subject to pedagogic priorities that would be determined by the Ministry of Education. The target date for completing these additional protection works was just prior to the beginning of the forthcoming school year (5768). In addition, the respondents said in their statement that the estimated revised cost of providing full protection for the main classrooms of students in grades 4-12 and the special classrooms (as the petitioners requested) would be approximately NIS 106 million for grades 4-12 classrooms and approximately NIS 86 million for the special classrooms.

With regard to the protection of kindergartens near the Gaza Strip, one hundred and three kindergartens out of one hundred and fifty-one were protected. Protection and reconstruction works for most of the remaining kindergartens would be completed by the end of May 2007, with the vast majority completed by the end of March 2007. As for an additional group of twenty-nine kindergartens whose security needs emerged only after the petitions were filed, it was stated also in the revised statement that it had been decided by the Prime Minister's Office together with relevant government ministries that only kindergartens that were the responsibility of the Ministry of Education or the Ministry of Industry, Trade and Employment would be protected, as well as kindergartens that were located in public buildings designed for kindergartens (but not kindergartens that were located in private residential buildings).

As a result of the hearing held before us on 8 February 2007, we ordered the state to file another revised statement with regard to the work that had been carried out in enlarging the doors between the unprotected classrooms and the protected areas, and with regard to completing the protection of the special classrooms. We also recommended to the state that it reassess the question of the 'protected areas' in view of the short warning time given to the students to evacuate the unprotected classrooms. We also ordered the respondents to deliver to petitioners' counsel a list of all the places where according to the respondents project had been completed, so that the petitioner could respond or draw the respondents' attention to special needs.

7. The respondents filed an additional revised statement on 15 April 2007. According to the statement, following the court's recommendation to re-examine the 'protected areas' system, a large-scale experiment was carried out in the schools near the Gaza Strip between 18 March 2007 and 23 March 2007. This experiment included one hundred and fifty-two main classrooms, approximately 75% of the main 'white' classrooms in the schools near the Gaza Strip ('white' classrooms is the code name for classrooms that are not protected fully, but where the protection is based on the 'protected areas' system). Of the one hundred and fifty-two classrooms that took part in the experiment, thirty-six were classrooms for students in grades 1-3, which, as we have said, should be fully protected. From the results of the experiment it can be seen that for 57% of the classrooms examined, the students succeeded in reaching the protected areas within fifteen seconds or less. For 23% of the classrooms examined, the students succeeded in reaching the protected areas within sixteen to nineteen seconds. For the other classrooms, which were 20% of the classrooms examined, it took twenty seconds or more to reach the protected areas. According to the respondents, the results of the experiment were adversely affected because in many of the classes in the secondary schools there was a clear lack of cooperation, as well as a blatant disrespect on the part of the students when the experiments were carried out. According to the respondents, this could be seen from the fact that among students in grades 1-6 the amount of main 'white' classrooms where the students succeeded in reaching the protected areas within fifteen seconds or less was 71%-75%, whereas for grades 7-12 the rate was between 39-45% of the classrooms. The respondents further argue that it may be assumed that had the students in the higher grades cooperated fully with the experiment, their results for reaching the protected areas within fifteen seconds or less would also have been approximately 70-75%. In order to achieve complete success in reaching the protected areas within fifteen seconds, the respondents said the experiments

showed the necessity of widening and adding dozens of more doors between the main 'white' classrooms and the protected areas. Therefore, at a 1 April 2007 meeting, a list was drawn up for ninety doors that needed to be added or widened. According to the respondents these efforts had already begun and that the work was expected to be completed by the end of May 2007. The respondents also said that guidance from the teachers and increased drills by the students would also improve results. On the other hand, the petitioners argued that with regard to some of the classrooms there was a degree of positive bias in the experiment results since fewer students than normal were present when the experiments were conducted. In reliance on the results of the experiments set out above, the respondents claim that the results empirically proved the effectiveness of the basic premise of the 'protected areas' method, according to which as a rule the students could reach the protected areas within fifteen seconds.

With regard to the special classrooms, according to the respondents' 15 April 2007 revised statement approximately seventy special classrooms required protection at this stage (according to the 'protected areas' method), and that following the current timetable most of the protection works would be completed in so far as possible by the beginning of the next school year. The remainder of the works would be completed by the end of the religious holidays in October 2007. With regard to the kindergartens, the respondents said that the protection works (according to the full protection method) had been completed for one hundred and seventeen out of one hundred and fifty-one kindergartens. With regard to the remainder of the kindergartens, the respondents said that there was a delay in the timetable become it had become clear that additional budget funds were required. In their statement the respondents also provided details of the expected dates for completing the protection works. Two kindergartens would be completed by the end of April 2007; thirteen kindergartens would be completed by the end of May 2007; three kindergartens would be completed by the end of July 2007; and eight kindergartens would be completed by the end of the religious holidays in October 2007. As for the eight additional kindergartens in Sederot, work had been frozen for reasons that were not within the state's control – because of claims raised by a contractor who lost the tender held by the municipality.

In addition, the respondents said in their statement of 15 April 2007 that on 1 April 2007 the government decided to budget an additional amount of NIS 135.15 million for protecting the educational institutions in Sederot and settlements near the Gaza Strip (government decision no. 1528). This amount was intended for the protection of kindergartens, the complete protection of

main classrooms for students in grades 1-3, and the protection of the special classrooms in the primary and secondary schools. The respondents also pointed out in their statement that these funds were in addition to the approximately NIS 200 million already invested by the government in protecting these educational institutions.

Shortly before writing this judgment, the respondents filed on 24 May 2007 a revised statement in which they responded to our request that they answer whether in view of the change in the security situation in the area of Sederot there was a change in their approach to protecting the classrooms. They clarified that there was no change in their position. Notwithstanding, in view of the situation that prevails at the moment in the area, the Minister of Defence declared a 'special situation on the home front' by virtue of the power given to him under s. 9C(b)(1) of the Civil Defence Law, 5711-1951. The government extended this declaration, and the Foreign Affairs and Defence Committee of the Knesset approved the extension.

8. Thus, we see that the question that lies at the heart of the dispute between the petitioners and the respondents is whether the state should be required to protect the main classrooms for students in grades 4-12 in Sederot and the other settlements near the Gaza Strip by the full protection method, or whether it is possible to make do with the protection of these classrooms by means of the 'protected areas' method. A similar question also arises with regard to the protection of the special classrooms in the primary schools and secondary schools near the Gaza Strip.

According to the petitioners, the results of the large-scale experiment that the respondents conducted (described in paragraph 7 above), which shows that approximately 43% of the students did not succeed in reaching the protected areas within fifteen seconds, prove that the 'protected areas' method is not a reasonable protection method. This is especially so in view of the fact that at least in some cases no warnings were given that 'Qassam' rockets had been fired. The petitioners also claim that the total budget required for the complete protection of the main classrooms for the students in grades 4-12 and the special classrooms (as can be seen from the respondents' statement of 6 February 2007) of approximately NIS 192 million, is not an unreasonable expense in order to avert the danger that threatens the lives of hundreds of students. The petitioners further claim that the respondent's protection policy violates the right to life, the right to physical integrity, and the right to education of the students who study in classrooms that are not properly protected. Such violations are inconsistent with the duties of the state under

the Compulsory Education Law, 5709-1949. According to the petitioners, the budgetary considerations raised by the respondents do not justify a violation of these human rights.

The respondents argue in response that the results of the experiment that was conducted in March 2007 show that the 'protected areas' method provides a satisfactory security solution to the classrooms, especially in view of the significant negative biases they claim affected the experiment (as set out in paragraph 7 above). The respondents further argue in this regard that the position of the Home Front Commander, according to which the 'protected areas' method provides a satisfactory solution from a security viewpoint, is the professional opinion of the administrative authority in the case before us. As such, it enjoys a presumption of administrative propriety and very weighty evidence is required to rebut this presumption. The respondents also claim that although the state undertook on its own initiative the responsibility for protecting the educational institutions near the Gaza Strip, the assumption that it has a legal duty to do so, and especially to finance the whole cost of the protection, is not self-evident. The respondents admittedly recognize the fact that the state has a general duty to ensure the security of its citizens, but they claim that this is a duty with regard to which the state has broad discretion in determining how it is achieved, and that this discretion is subject *inter alia* to budgetary considerations. In this regard, the respondents claim that even if the petitioners were to prove that the protection solution proposed by the state was unsatisfactory from a security perspective, that this would be insufficient to entitle them to the relief they seek. This is because a question of budgetary allocations based on budgetary priorities is essentially a matter of government policy and not one of law. The respondents say further that the state has allocated the unprecedented sum of more than NIS 330 million to protect educational institutions near the Gaza Strip, and that the economic significance of granting the petitions would be an additional budgetary cost of hundreds of millions of sheqels in the short term, and apparently billions of sheqels in the long term.

9. The question before us, therefore, is whether the respondents' decision not to protect the main classrooms of students in grades 4-12 and the special classrooms fully, but rather to make do for this purpose with the 'protected areas' method is a decision that falls within the margin of reasonableness. We should point out that in this case we are not required to make any firm determinations with regard to the question whether in principle the state had a duty under the Compulsory Education Law or under any other normative source to ensure the protection of the educational institutions near the Gaza

Strip and to fund the necessary protection works. Since in so far as the town of Sederot and the other settlements near the Gaza Strip are concerned, the state took upon itself the responsibility for protecting the educational institutions. Once the state decided to take upon itself the professional and budgetary responsibility for protecting the educational institutions near the Gaza Strip, it had the duty to adopt a reasonable protection policy with regard to these educational institutions.

10. The premise for examining the respondents' choice of basing the protection of certain classrooms in the schools near the Gaza Strip on the 'protected areas' method is that this choice reflects the professional position of the administrative authority, which has expertise in this matter, and therefore a court that scrutinizes the discretion of that authority will not intervene in its professional decision lightly (see, for example, HCJ 3930/94 *Jazmavi v. Minister of Health* [1], at pp. 785-786; HCJ 82/02 *Caplan v. State of Israel, Ministry of Finance, Customs Department* [2], at pp. 908-910; HCJ 7510/05 *Lotan v. Minister of Industry, Trade and Employment* [3], at para. 23 of the judgment). Moreover, the fact that the choice between the various methods of protection has significant financial consequences, and that this choice reflects, *inter alia*, certain budgetary priorities concerning the manner of distributing the resources in society, affects the degree to which the court will tend to intervene in that choice (see, for example, HCJ 3472/92 *Brand v. Minister of Communications* [4], at pp. 152-153; HCJ 4613/03 *Shaham v. Minister of Health* [5], at pp. 393-394). On the other hand, it should be remembered that no sphere of activity of the authority is absolutely immune from judicial scrutiny, and this is certainly true when we are speaking of areas concerning the fulfilment of the authority's duties to the citizen and when the scrutiny concerns the executive decisions of the authority. The scope of the scrutiny depends on the matter and the circumstances. With regard to the allocation of budgetary resources, the scope of the scrutiny is admittedly narrower, but it is based on the weight of the considerations, rights and interests that are balanced against the budgetary considerations (see, for example HCJ 1113/99 *Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of Religious Affairs* [6]; HCJ 2599/00 *Yated, Children with Down Syndrome Parents Society v. Ministry of Education* [7]). Therefore this court will intervene — albeit on rare occasions and with restraint — even in decisions concerning the professional discretion of the authority or the budgets allocated by it, if these decisions depart in an extreme manner from the margin of reasonableness given to the administrative authority. It will be self-evident when the court will be called upon to intervene — to a greater degree where

we are concerned with decisions that may affect human rights in general, and risks presented to human life in particular. The reasonableness of decisions of this kind will of course be examined, first and foremost, on the basis of the facts that were before the authority when it made the decision.

11. In this case, after presented with the relevant factual basis on which the decision not to protect the main classrooms of the students in grades 4-12 and the special classrooms with full protection but only by means of the 'protected areas' method, there is no avoiding the conclusion that this decision departs from the margin of reasonableness. The two main considerations on which the state's decision not to equip the aforementioned classes with full protection rests upon are professional-security considerations and budgetary ones. In so far as the professional-security consideration is concerned, the respondents do not dispute the fact that full protection of the classrooms provides a better security solution to the threat of the 'Qassam' rockets in comparison to the 'protected areas' solution. The question that arises in this context is whether the 'protected areas' method provides a reasonable security solution for the students who study in those classes. It should be noted that the respondents do not have an absolute duty to protect the students against any and all threats or dangers. Imposing a duty of this kind is impossible from a practical perspective, and it is questionable whether it is desirable from a theoretical perspective. The respondents' duty, once the state took upon itself the responsibility for protecting the educational institutions near the Gaza Strip, is to provide a reasonable security solution for the students in the schools who are exposed to the threat of 'Qassam' rockets. This duty lasts as long as the students are required to attend lessons at these educational institutions.

12. In our opinion, the results of the large-scale experiment conducted in March 2007 with regard to classrooms where the protection is based on the 'protected areas' method (explained in paragraph 7 above) support the petitioners' claim that this method of protection does not provide a reasonable and satisfactory security solution to the risks faced by the students. Approximately 43% of the classes that took part in the experiment did not succeed in reaching the protected areas within a period of time of up to fifteen seconds, which according to the respondents is the relevant time period in this case. In their 15 April 2007 statement, the respondents gave various explanations with regard to the results of the experiment and they attributed the results, *inter alia*, to the lack of cooperation on the part of the students who took part in the experiment and to the lack of sufficiently wide doors in the various classrooms. These explanations, which are really only suppositions, cannot convince us that the 'protected areas' method provides a proper

security solution to the threat faced by the students. First, even according to the respondents, had the students in grades 7-12 cooperated fully with the experiment, the amount of classes (among these grades) that would have succeeded in reaching the protected areas within the time period of fifteen seconds would have been approximately 70-75%, like the corresponding rate among students in grades 1-6. Second, we have not been persuaded that the widening and adding of doorways, which the respondents intend to make, will significantly reduce the number of classes that will not succeed in reaching the protected areas within the stipulated period of time. The respondents did not submit any evidence that supports this supposition, whereas the results of the experiment that took place show that the students in grades 1-6 only succeeded in reaching the protected areas on time in 70-75% of cases, even though *prima facie* the problem of the width of the doorways should affect them less than the older students.

In addition it should be remembered — and this is very important — that at least in some cases there is no advance warning at all that the 'Qassam' rockets have been fired. In these cases, there is no doubt that the risk faced by the students in the classrooms where there is no complete protection is more significant than that faced by students in the classrooms that have this protection, even though the latter, as can be seen from the respondents' claims, also face a considerable degree of risk.

13. The conclusion that follows from the aforesaid is that the 'protected areas' method does not provide a proper security solution for the classrooms. Notwithstanding, this alone is insufficient to determine that the respondents' policy is so unreasonable that it justifies being set aside. In order to reach such a conclusion, we should examine what additional considerations lie at the heart of the respondents' decision. The consideration that the respondents weighed, as they themselves argued before us, against the professional-security concern was the budgetary one. This consideration is legitimate and it is not irrelevant to the matter here. This consideration may also sometimes override various security concerns. The state does not have an absolute duty to protect every citizen, or even every student, at any price against all personal security threats. Whenever the state is required to decide whether to allocate a certain sum of money in order to reduce one security threat or another, it should weigh up the likelihood that the security threat will be realized, the risk that can be anticipated to human life if that risk is realized, the financial cost involved in preventing or reducing that threat and other considerations that may be relevant in the specific circumstances of a particular case. The balance

between the considerations should be made within the scope of the margin of reasonableness given to the administrative authority.

14. In this case, as can be seen from the respondents' statement of 6 February 2007, the expected cost of equipping the main classrooms of students in grades 4-12 and the special classrooms with full protection amounts to approximately NIS 192 million. This is not an inconsequential amount. This court will not lightly order the state to allocate a sum of this magnitude for a specific purpose, when the state has previously decided not to allocate it for that purpose. On the other hand, in the circumstances of the case before us, the allocation of the aforesaid sum is required in order to protect human lives against a security threat that is not merely a potential or theoretical one. We are speaking of a daily, real and concrete threat to which thousands of students in the schools near the Gaza Strip and in Sederot are exposed. This threat hovers over the heads of children in schools that are situated not far away from the centre of the country. This threat has continued for a long period because these students and their families live in an area where the inhabitants face a risk to their lives and unceasing tension. This is a threat not faced by students in other schools in Israel. The duty to go to school that applies to the vast majority of students under the Compulsory Education Law, and their right to study at the official educational institutions under the Compulsory Education Law and the Students Rights Law, 5761-2000, justifies in these circumstances imposing a duty on the state to provide protection for their lives and physical integrity. Even if this is not an absolute duty, it is without doubt a very major duty in the circumstances that have arisen. It is not reasonable to force parents with the dilemma of choosing between realizing their children's right to education and protecting their children's lives. Equipping the main classrooms for students in grades 4-12 and the special classrooms in the schools near the Gaza Strip with full protection and not by means of the 'protected areas' method will provide better protection against the risk that is presented to the students' lives and physical integrity. In these circumstances, and especially in view of the degree of the threat, the likelihood that it will be realized, the number of students exposed, and the practical possibilities that can be adopted to improve this security risk, we have reached the conclusion that the balance struck by the respondents in this case between the professional-security considerations and the budgetary considerations significantly departs from the margin of reasonableness. In other words, the decision not to equip the aforesaid classrooms with full protection and to protect them solely by means of the 'protected areas' method is such an unreasonable one that it justifies judicial intervention.

We should also point out that this judgment is limited to the circumstances of this case, as can be seen from the factual basis presented before us. We are not today determining that there is a duty to provide full protection for all the classrooms in every school in Israel that faces a security threat of any kind where full protection of the classrooms would be relevant to contend with that threat, or that the 'protected areas' method is a method that may not be used to protect schools or other public institutions in Israel. The concern that the respondents raised in the affidavit-in-reply that the decision to protect the schools in Sederot and the western Negev will lead to the protection of schools throughout Israel is not a sufficient reason for refusing to protect them when the lives of the students are in such serious danger. The conclusion that we have reached in the matter before us is based entirely on the specific facts concerning the risks that the schools in Sederot and the other settlements near the Gaza Strip confront, and the threats facing the students in these schools.

15. I, therefore, propose to my colleagues that we make an absolute order that the respondents shall equip all the main classrooms in the schools in Sederot and the other settlements near the Gaza Strip with full protection, and not by means of the 'protected areas' method. The respondents shall complete the protection works for these classrooms by the beginning of the 2007-2008 academic year. The respondents are also required to equip the special classrooms in these schools with full protection, and not by means of the 'protected areas' method. The special classrooms that will be equipped with this protection are those listed, according to pedagogic priorities determined by the Ministry of Education, in the director-general of the Ministry of Education of 13 March 2007 letter (attached as appendix 4 to the respondents' statement of 14 April 2007). The protection for these special classrooms shall be completed by the end of the religious holidays in October 2007. With regard to the kindergartens near the Gaza Strip, we see no reason to make an absolute order because there is no disagreement that they should be equipped with full protection and because the work to protect them is being carried out at a reasonable rate.

Justice D. Berliner

I agree with the result reached by my colleague the president, and I would like to add the following few remarks.

It seems to me that within the margin of reasonableness in the circumstances that prevail at the current time in the settlements near the Gaza Strip and the town of Sederot especially, it is also possible to include

considerations that we ought to give encouragement to the local inhabitants and show our concern for their fate and for their feeling of maximum security, in so far as this is possible, especially where children are concerned. This is in addition to the considerations set out by my colleague with regard to the degree of security provided by the proposed method of protection.

I accept that as a rule these are not considerations that should be included within the margin of reasonableness for examining different methods of protection. But the times are exceptional and the suffering being experienced by the town of Sederot and the additional settlements is of unusual proportions, both from the viewpoint of the period during which the inhabitants have been exposed to the threat of the 'Qassams' and from the viewpoint of the number and extent of the injuries.

Exceptional times justify exceptional measures, and the margin of reasonableness should, as I have said, also reflect this outlook

Justice S. Joubran

I agree.

Petition granted.

12 Sivan 5767.
29 May 2007.