

At the Supreme Court sitting as the High Court of Justice

HCJ 3287/16  
HCJ 2242/17  
HCJ 9249/17

Before: **Honorable Justice N. Sohlberg**  
**Honorable Justice A. Baron**  
**Honorable Justice Y. Willner**

Petitioners in HCJ 3287/16: 

1. Kfar Adumim Cooperative Village for Community Settlement LTD
2. Alon Neighborhood of Kfar Adumim Cooperative Association LTD
3. Nofei Prat Neighborhood of Kfar Adumim Cooperative Association LTD

Petitioners in HCJ 2242/17: 'Eid Hamis Jahalin et al.

Petitioners in HCJ 9249/17: 'Abdallah Ibrahim Jahalil et al.

v.

Respondents in HCJ 3287/16: 

1. Minister of Defense
2. OC Central Command
3. Head of the Civil Administration
4. Suliman 'Ali 'Ara'rah
5. Muhammad Suliman al-al-Kurshan
6. Ibrahim Hamis Jahalin

Respondents in HCJ 2242/17: 

1. Head of the Civil Administration for the Judea and Samaria Area
2. Civil Administration
3. Military Commander of the Judea and Samaria Area

Respondents in HCJ 9249/17: 

1. Head of the Civil Administration for the Judea and Samaria Area
2. Civil Administration for the Judea and Samaria Area – Subcommittee for Building Enforcement
3. Military Commander of the Judea and Samaria Area
4. Minister of Defense
5. Head of Infrastructure, Civil Administration for the Judea and Samaria Area

Applicants to Join Proceedings as Respondents or Amicus Curiae in HCJ 2242/17:

Prof. Dan Turner – Resident and member of Kfar Adumim Association et al.

*Petitions for Order Nisi*

Session date:

25 April 2018

Counsel for Petitioners in HCJ 3287/16: Adv. Avi Segal; Adv. Yael Cinnamon

Counsel for Petitioners in HCJ 2242/17 and HCJ 9249/17 and for Respondents 4-6 in HCJ 3287/16: Adv. Shlomo Lecker

Counsel for Respondents 1-3 in HCJ 3287/16 and Respondents in HCJ 2242/17 and HCJ 9249/17: Adv. Ran Rosenberg; Adv. Hadas Eran

Counsel for Applicants to Join Proceedings as Respondents or Amicus Curiae in HCJ 2242/17: Adv. Prof. Aviad HaCohen; Adv. Moshe Yaffe

## Judgment

### Justice N. Sohlberg

1. Before us are three petitions concerning a single matter: The decision of the State to remove the unlawful structures located in the Khan al-Ahmar compound and relocate their occupants to an alternative site.

### **Background for the petitions**

2. The background for the petitions at bar is lengthy and complex. At first stage, as an introduction, I shall describe the matter briefly.
3. In June 2009, construction began on three structures in the Khan al-Ahmar compound, which is located near Kfar Adumim, along Road No. 1 between Jerusalem and the Dead Sea. The structures had no building permits as required by law and have been used as a school for children living nearby. Shortly thereafter, on 23 June 2009, stop-work orders were issued and produced. On 23 July 2009, final stop-work and demolition orders were issued.
4. Two petitions were filed in relation to these orders, and were heard jointly. One petition was filed by residents of the area, families from the Bedouin Jahalin Tribe, challenging the legality of the demolition orders. The second petition was filed by Kfar Adumim and other communities, seeking that the State be instructed to execute the demolition orders. The Court dismissed both petitions (HCJ 6288/09 ‘Ara’rah v. Head of the Judea and Samaria Area Civil Administration (2 March 2010) (hereinafter: ‘**Ara’rah**; Justice U. Vogelman, with Justice (as was her title then) E. Hayut and Justice Y. Amit concurring)). The judgment found the structures had been built unlawfully and as such there was no cause to halt enforcement procedures against them. On the other hand, there was no cause to intervene in the decision made by the authorities to refrain from

executing the orders at the time, bearing in mind the discretion granted the supervision and enforcement authorities and in accordance to relevant priorities.

5. In 2011, two additional petitions were filed. Kfar Adumim petitioned again to have the demolition orders executed, whereas local residents petitioned once more against the demolition of the school. During proceedings in these petitions, the State initially issued notice that the minister of defense had decided the school would be relocated after an alternative site was found for the students. It then issued notice that two alternative sites were under consideration in furtherance of this solution – in the Nu'eimah North area, north of the city of Jericho, or in the Hashmonaim Palaces area, west of the city. The Court dismissed these petitions as well (HCJ 5665/11 **Kfar Adumim Cooperative Village for Community Settlement LTD. v. Minister of Defense** (10 October 2012) (hereinafter: **Kfar Adumim I**; again Justice U. Vogelman, with Justice (as was her title then) E. Hayut and Justice Y. Amit concurring)). The Court noted that the State had expressed its plan to arrive at a resolution and carry out the move 'within about a year', and that the hope was to do so with the residents' consent, though the matter would be considered even without obtaining said consent. The Court ruled that the petition filed by members of the Jahalin Tribe, inasmuch as it pertains to the demolition orders, mostly repeats arguments raised and ruled upon in the earlier judgment. As for their general arguments regarding the need to find a comprehensive statutory solution for the Tribe, State authorities agree, and a process to arrive at an overall planning solution is underway. On the other hand, the petition filed by Kfar Adumim was based on the time that had elapsed since the previous judgment, which, Kfar Adumim argued, rendered the State's delay unreasonable. However, given the attempt to reach a peaceful, consensual evacuation, and bearing in mind that the structures are not located on private land but on state land, there was no cause to intervene in demolition priorities at that point either.
6. Since the second judgment was handed down, various attempts have been made to reach an agreement on relocating the Khan al-Ahmar compound to a permanent site. Various suggestions offered by the Jahalin Tribe were examined by the authorities, but declared impracticable. Since no progress was made, Kfar Adumim filed a third petition. In the preliminary response to that petition, State authorities detailed the developments that had occurred in the matter, noting, inter alia, that the Hashmonaim Palaces option was no longer on the agenda and that the resident experts estimated Nu'eimah North (also known as Ramat Nu'eimah) was a viable option.
7. The third petition filed by Kfar Adumim was also dismissed (HCJ 7969/13 **Kfar Adumim Cooperative Village for Community Settlement LTD. v. Minister of Defense** (13 May 2014) (hereinafter: **Kfar Adumim II**; judgment rendered by the same panel that reviewed previous petitions)). The Court ruled that since the authorities were working on finding a planning solution rather than remaining passive, it cannot be said that the decision to refrain from executing the demolition orders yet was flawed in a manner justifying judicial intervention. Although the authorities were expecting to complete planning and discussions within about a year, given the dynamic nature of planning procedures and the need to thoroughly examine various alternatives, the delay was not cause for judicial review

#### **The petitions at bar and developments subsequent to their submission**

8. On 18 April 2016, Kfar Adumim filed a fourth petition (HCJ 3287/16), concerning enforcement of the demolition orders against the school (hereinafter: the **Kfar Adumim petition**). In the preliminary response to this petition, the State noted that despite the estimation of resident experts that the Ramat Nu'eimah plan was viable, difficulties and delays arose in its implementation. Over the course of July 2016, after the petition was filed, the issue was referred to the minister of defense, who considered three alternatives. Two of these, Ramat Nu'eimah and Nabi Musa, were found to be remotely available. The third option, named Jahalin West, which is located in the area

of Abu Dis, was found to be immediately available in terms of planning. This alternative is included in a valid outline plan, Plan no. 1627/6, which provides for the construction of some seventy housing units. It is located at an aerial distance of about eight kilometers from the existing site. The question of regularizing the school was reviewed in the context of the issue of regularizing the entire compound, which has some 52 families. The plan was deemed suitable for this purpose as well.

9. On 22 August 2016, resident experts held meetings wherein the advantages and disadvantages of the various alternatives were presented. Following said meetings, the minister of defense decided that given the importance of evacuating the compound, which is located adjacent to a major traffic artery, the non-viability of the other alternatives, and the fact that other Bedouin-Palestinian tribes have previously refused the offer to relocate to the Jahalin West site, the school should be relocated to this site, and action should be taken to relocate the remaining unlawful structures in the compound along with it. In the context of these considerations, the plan was found to be advantageous also because the Civil Administration had carried out infrastructure and development work in the area, meaning it already has 35 lots on which 66 housing units can be built immediately. However, it was also found that in order to relocate the school to the Jahalin West site, several more planning procedures had to be advanced since the outline plan applicable to the area had no designated sites for public buildings.
10. Due to the last problem, a decision was made to amend the Regulations on Construction Approval and Licensing Exemption for Temporary Educational Facilities (Temporary Order) (Judea and Samaria Area) 2010, allowing the head of infrastructure at the Civil Administration to file an application for a temporary permit exemption to enable placing the school within the plan limits. The amendment of the regulations was completed on 31 August 2016.
11. In addition to the decision to relocate the school, a decision was made to advance the relocation of the entire Khan al-Ahmar compound to the Jahalin West site. To this end, another targeted negotiation with residents of the compound was decided upon, the intention being to relocate some 52 families that live in an area inside the compound. The proposed outline for the relocation of the dwellings is based on several principles: Those in possession of the unlawful structures would receive, at no charge, developed plots on land declared as state land, in the area where groundwork development has been completed and connections to infrastructure have been made; and residents would be given an adjustment period, during which persons in possession of the structures would be able to file building permit applications with the planning authorities, in keeping with the Jahalin West plan.
12. On 10 March 2017, a petition was filed by residents of the Khan al-Ahmar compound (HCJ 2242/17). In the original petition, an order nisi was sought, instructing the state to refrain from demolishing structures with pending demolition orders in the compound. Following discussions and once the Petitioners became aware of the full position of the State, they were given leave to file an amended petition with respect to the structures. This petition, filed on 16 November 2017, impugns the decision of the minister of defense to relocate the school and thereafter the remaining structures in the compound to the Jahalin West site (hereinafter: **the compound residents' petition**).
13. Shortly after submission of the amended petition, on 27 November 2017, the third petition in the order of petitions heard herein (HCJ 9249/17) was submitted. This petition was filed by Bedouin residents of the area whose children attend the school. These Petitioners argue that there is no plan at present to demolish their homes and relocate them to the Jahalin West site and their petition is aimed solely at the harm to their children as a result of relocating the school to that site (hereinafter: **the parents' petition**).

14. To complete the picture, it is noted that on 18 December 2017, an application was filed on behalf of ten residents of Kfar Adumim to join the compound residents' petition as respondents, or, alternatively, as amicus curiae (hereinafter: **Amicus Applicants**). These residents argue that they are involved in promoting a dialogue between residents of Kfar Adumim and the Jahalin Tribe and that they believe the solution proposed by the State – relocating the tribe to the Jahalin West site – is not a proper solution in the circumstances of the matter. They, therefore, seek to join the petition and make their position heard in the proceedings.
15. Having briefly reviewed the course of events from 2009 to the present, and the matters of the three petitions before us, we may now turn to the parties' arguments. I shall begin with the arguments made by the petitioners in each of the petitions, followed by a presentation of the State's position on all of the petitions as a whole.

### **Petitioners' arguments**

#### **(a) The Kfar Adumim petition**

16. As noted, this is the fourth petition filed by Kfar Adumim with the object of enforcing the demolition orders issued against the school. In the petition, filed, as recalled, more than two years ago, it was argued that the State's conduct since the third judgment was given indicates an unreasonable law enforcement oversight on its part. The State repeatedly argued before the Court that it was planning to take action toward evacuation soon but has thus far refrained from doing so. This conduct is extremely unreasonable, and the State must be ordered to take action toward the implementation of the demolition orders as it declared it would do.

#### **(b) The compound residents' petition**

17. In the amended petition filed by compound residents, the Court was asked to instruct the minister of defense to explain why he had decided to allocate the Jahalin West site to members of the Jahalin Tribe rather than to other Bedouin tribes, as had been planned initially and presented to this Court in other petitions; why the evacuation of the compound was 'strategically important' and how it differed from other Bedouin dwelling compounds located near Road No. 1 and within the limits of the E1 plan; why the objections of other Bedouin tribes to relocate to the site serve as justification to relocate the Petitioners to the site, although their arguments are identical; why he should not reconsider his decision to relocate the school and the other structures inhabited by the Petitioners after hearing and considering their arguments and thereafter – and as a result, why he should not reverse his decision.
18. The compound residents argue that while the State had declared for many years that it intended to arrive at a consensual solution with the residents, it suddenly, as emerges from the State's response to the Kfar Adumim petition, unilaterally decided, with no discussion, to relocate the residents to the Jahalin West site within a short time. However, the site is entirely unsuitable for the residents' needs and their evacuation thereto will violate their rights under the law. First, it was argued, contrary to the position taken by the State, the expert opinion they had obtained indicated that existing plans for the site would allow for the construction of only 38 residential units; the size of the plots on offer is not suitable for the Bedouin way of life, which is mostly based on raising sheep and goats and herding. The proposed plan is located in the heart of a bustling urban area. The site is 'trapped' between a main road linking Bethlehem and Ramallah and a residential neighborhood in the Palestinian town of al-'Eizariyah, so there is no viable possibility of having flocks or continuing to subsist on herding or on any type of agriculture.
19. It was further argued that the area is located near the Palestinian communities of al-'Eizariyah and Abu Dis, whose residents do not look favorably upon the relocation of Bedouins to the

Jahalin West lands. While these lands have been declared state land, some local Palestinians, including the Abu Dis City Council that explicitly objected to the plan, maintain that the land in question belongs to al-‘Eizariyah and Abu Dis. There is mutual hostility between the populations and the relocation would cause friction and discord. This state of affairs renders the plan non-viable and therefore the minister of defense must withdraw it.

20. In addition, the compound residents argue that the decision of the minister of defense is discriminatory, as compared to other Bedouin tribes. In this context, it was argued that in the late 1990s, Bedouins were relocated to a site the Petitioners refer to as Jabal Markaz, near Jahalin West, having reached an agreement with the authorities that secured those Bedouin living conditions that were suitable for their way of life. Each family was allocated 0.1 to 0.15 hectares of land along with additional monetary compensation, and some 300 hectares of pastureland was allocated nearby as well. There is no justification for discriminating the Petitioners as compared to those neighboring Bedouins. Secondly, it was argued that the Petitioners were discriminated against as compared to the Bedouin community of the Abu a-Nuwar tribe. As part of legal proceedings that took place with respect to illegal structures used by that community, the State considered the option of relocating them to the Jahalin West site. Members of the community rejected the proposition, for the same reasons detailed above with relation to the suitability of the proposed site to the community’s way of life. The position of the minister of defense, as presented in the preliminary response to the Kfar Adumim petition, noted that the decision to relocate the Jahalin Tribe to the site was made in light of the refusal of others to relocate there. There is, however, no explanation as to why the refusal of others was given weight and why their position was preferred over the position of the Jahalin when there had been no dialogue with members of the Jahalin on this issue.
21. In this context, it was further argued that the current alternative fails to meet the Participation of Local Residents in Planning Procedures Protocol (Judea and Samaria Area) 2014. The protocol requires the Civil Administration to hear the position of the relevant local population when promoting plans. The outline plan for the Jahalin West site underwent several different amendments to accommodate the addition of a school and adapt it to the residential needs of the Petitioners, but at no point in the planning process were the Petitioners invited to participate. As recalled, the plan was designed for the Abu a-Nuwar tribe. That was its purpose, and the Petitioners would have had no opportunity to file objections thereto. Finally, the Petitioners argue, their relocation to the Jahalin West site would be a breach of international law and a violation of their right to equality.
22. As a side note, the residents of the compound noted that they had proposed a counter planning initiative to the alternative proposed by the state, drafted in partnership with Bimkom – Planners for Planning Rights in 2013. The planning initiative was submitted to the Civil Administration and rejected out of hand for what the Petitioners claim are insubstantial reasons, and was never considered on its merits.

(c) The parents’ petition

23. The third petition was filed by the parents of children attending the school, who are not slated for relocation to the Jahalin West site. They argue that in practice, the school would be relocated about 15 kilometers away. The route leading to the site runs partly on unpaved, rough dirt roads, and although it partly lies on a paved road, there is no public transportation. Part of the route runs through the village of al-‘Eizariyah, in an extremely traffic-dense area. Parents in the Bedouin community have no ability to shuttle their children to the planned school or help them reach it. In addition, the Palestinian Ministry of Education, which is responsible for the education of the

Petitioners' children, is unlikely to staff the new school, given the general objection of residents of Abu Dis and al-'Eizariyah to its relocation.

24. The parents further argue that the school was built with environmentally and ecologically sound methods, using mud and recycled tires. The structures attracted esteem and praise from architects and urban planners. The school was built more than eight years ago, and has thus far not been demolished. There is no urgency in demolishing it at this particular point in time, when there is no appropriate solution for the students. Contrary to claims made by the State, the current location of the school does not present a traffic-associated risk for the students. It is located 25 meters away from the road and is topographically above it. Structures closer to the road were demolished by consent as part of previous proceedings.
25. In terms of the law, the parents argue that the decision made by the minister of defense violates their right to education, as enshrined in international law and in domestic Israeli law. The right to education encompasses the requirement for availability and accessibility of educational facilities, with which the decision made by the minister of defense fails to comply. Israeli law also places a limit on the distance between a school and the students' place of residence, along with a requirement to provide public transportation where a variance from this limitation is sought. While this law does not apply to the Petitioners' matter, it should inform the case at hand. Finally, it was argued that the decision violates the right to equality as compared to residents of Ma'ale Adumim and other Jewish communities in the area and is tainted with unreasonableness and disproportionality.

(d) The position of the Amicus Applicants

26. As noted, ten residents from Kfar Adumim applied to join the petition filed by the compound residents, whether with the status of respondents or of amicus curiae. In their application, the Amicus Applicants note that members of the Jahalin Tribe have resided in the geographical area for many years, and as such have a moral, even if not legal, right to properly reside in the area. Acknowledgment of this should lead to a negotiated evacuation by mutual consent and through mediation. Despite past statements made by the State, this course of action has yet to be exhausted. To the Amicus Applicants' understanding, the residents of the compound were never presented with a detailed proposal – including the current proposal – that offers an honest, genuine and viable solution for their needs.
27. The Amicus Applicants further note that ever since the State announced its intention to execute the demolition orders, the Amicus Applicants brought the issue of the evacuation before residents of Kfar Adumim and it has been hotly debated in the community. The Amicus Applicants filed their application to join the proceedings after their attempts to persuade their fellow residents to alter their position in the court proceedings failed. The Amicus Applicants believe that an honest dialogue that includes an understanding of the compound residents' complex needs could result in an appropriate evacuation process, and ask that such dialogue be renewed with the help of an external mediator or under the auspices of the Court.

**The preliminary response and thereafter**

28. On 14 January 2018, the State filed its preliminary response to the three petitions, wherein it presented the outline of the proposed evacuation and why it maintains it must be implemented.
29. According to the description given in the State's response, the Jahalin West site is located at an aerial distance of eight kilometers from the Khan al-Ahmar compound and a ten-kilometer journey by car. The outline plan in effect for the site (1627/06) provides for about 70 housing units on 35 lots. Two of these lots would be used for the school. The groundwork has been

completed, and the site is connected to water infrastructure and roads. At this stage, 28 families living in a specific area within the Khan al-Ahmar compound, marked on the map presented to the court, would be relocated. These families would receive developed lots on land declared as government property, at the expense of the authorities in the area.

30. The families were given until early June 2018 to prepare for the relocation. The date was set given the school holiday schedule in the Palestinian Authority. During this time, the evacuated families may submit to the planning authorities applications for building permits in accordance with the provisions of the plan in effect at the Jahalin West site. The minister of defense has instructed planning officials to prioritize these applications and expedite issuance of building permits pursuant thereto to the extent possible. The State further noted that building permits have been issued in the past for some of the plots, and that land allocation applications may be filed with respect thereto without a need to issue new building permits.
31. The new school, to be built under a temporary exemption to be issued, will have seven structures for classrooms, administration and restrooms. It is slated to accommodate 150 students. The structures will be built with funding allocated from the budget of the Ministry of Defense and will be connected to permanent electricity and water infrastructure. Following the evacuation and relocation of the school, the Civil Administration plans to take action toward the execution of the demolition orders issued for the structures and the school as soon as possible. The State stressed in its response that the Civil Administration is prepared to hold another targeted dialogue with residents of Khan al-Ahmar for the purpose of coordinating the manner in which the school and the dwellings would be relocated.
32. With respect to the importance of evacuating the Khan al-Ahmar compound and rendering it a top priority for enforcement, it was stressed that there is no dispute that the structures on which the petitions focus were built illegally and in breach of planning and building laws. As this is the situation, according to case law, the Court does not intervene in policy making or priority setting with respect to law enforcement, other than in cases where these priorities reveal a serious flaw of extreme unreasonableness or another substantive flaw. The matter at hand, the State contends, presents no cause for the intervention of the Court in the discretion of enforcement authorities.
33. On the merits, the Khan al-Ahmar compound is located near a major road, Road No. 1, in the section between Jerusalem and the Dead Sea and Jordan Valley. This is a main traffic artery on both the regional and national levels. In the relevant section, the road has been expanded into a double-lane two-way road, and many planning developments have been made to the road over the years. The road serves a very large population. Tens of thousands of Palestinians who live in the area require use of this road, as does both existing and planned industrial activity. All this together indicates that the evacuation of this illegal cluster of structures, located near this traffic artery and posing clear and present danger to the residents and to those using the road, is strategically important.
34. With respect to the arguments made by the compound residents on the suitability of the Jahalin West site for their needs, it was argued that these must be rejected. The lots in the area can accommodate 300 square-meter housing units, and several can accommodate 400 square meters, which is suitable for the needs of families with many children. Moreover, the Jahalin West plan constitutes a continuation of the Jahalin neighborhood, which was validated at the turn of the millennium, when occupancy also began. The policy pursued by planning institutions for the area is aimed at bolstering the Jahalin neighborhoods and creating urban contiguity in a strong, sustainable community. The Jahalin West plan is part of this approach. So far, some 120 residential structures with some 300 residential units have been built in the Jahalin neighborhood. Roads have been paved, electricity and water has been connected, and public institutions and



economic activity hubs have been built. As the name implies, the plan offers residential solutions for members of the Jahalin tribe. As noted, the neighborhood is located near Abu Dis and al-‘Eizariyah, as well as near Ma’aleh Adumim and the Mishor Adumim industrial area. This proximity supplies employment for many of the neighborhood’s residents. While the neighborhood is planned within an urban setting, and therefore does not offer large grazing fields or farmland, it does accommodate construction of sheds and small pens, to serve as secondary income for households. In addition, individuals who own large flocks would be able to continue to use the open spaces outside the neighborhood. Plans for the Jahalin neighborhood were drafted to meet the needs of the population for the next twenty years.

35. The State maintains that the aforesaid indicates there is no flaw in the plan under discussion, and that even if it is not the plan the Petitioners wish for, there is no justification to intervene therein. The plan will provide for the Petitioners’ needs and give them ample and varied opportunities for employment, education, health and other essential services, let alone given that the State is offering developed lots that required an investment of millions of Israeli shekels, at no cost.
36. Based on the aforesaid, the State maintains that the argument regarding discrimination must also be dismissed. The fact that evacuees from Bedouin tribes were offered larger lots as part of other arrangements does not point to discrimination. Arrangements for, and relocation of, an illegally-built compound naturally depend on many different factors, including site conditions, the population and cooperation with it, needs, budgetary and planning concerns and more. Therefore, different offers made to evacuees as part of such proceedings cannot be expected to be completely comparable.
37. With respect to the arguments regarding other, better, alternatives, proposed by the residents of the compound but rejected, the State maintains that this argument lacks a factual basis. Over the years, the Civil Administration considered multiple alternatives for the compound’s relocation, including ones proposed by its residents. However, none of these alternatives was ultimately deemed appropriate. The issue was debated in the presence of the head of the Civil Administration as early as on 28 November 2012. Counsel for the Petitioners was also present during this discussion and made three different suggestions for relocating the compound. These suggestions were considered on their merits, and on 7 February 2013, the Civil Administration provided a thorough and detailed response to each of the propositions, listing various planning and physical limitations precluding their acceptance. In March 2014, compound residents submitted various documents to the Civil Administration, including one authored by Bimkom. On 19 March 2014, the residents were informed, in response, that these documents did not constitute a plan as defined in the law, but rather general propositions. As for recent interactions between compound residents and the authorities, it was noted that on 13 September 2017, a meeting was held with the Mukhtars [traditional leaders] in the compound, in which they were presented with the Jahalin West plan and the outline for relocation thereto. However, the Mukhtars showed no proclivity to discuss the matter. Further contact made in an effort to hold another meeting never came to fruition, despite willingness on the part of state authorities to hold such a meeting. As noted, it was stressed that the State is prepared to hold a targeted dialogue for the purpose of relocating residential structures in the compound to the Jahalin West site.
38. Finally, the State argues that the arguments raised with respect to the relocation of the school should be rejected as well. It was noted that according to the bilateral agreements between the State of Israel and the Palestinian Authority, the responsibility for providing educational services to the Palestinian population rests with the Palestinian Authority. According to the Palestinian Authority, the school has 150 students up to age 12, a staff of 15 teachers and a principal. According to Civil Administration figures, no more than 82 of the students live in the compound designated for evacuation, and the remaining students come to the school from different

communities. As far as the state is aware, the Palestinian Authority provides shuttles for students from the Judea and Samaria Area who travel greater distances from the distance between the compound and the Jahalin West site where it sees a need to do so.

39. The school structure, which was indisputably built unlawfully, is located some 20 meters away from Road No. 1, within the limits of the highway strip and the area prohibited for construction off the highway, in a manner that creates a clear and present danger to anyone traveling to the school and to residents of the area. The school has no yard that matches regulations, which may result in students being located outside its monitored area, increasing the danger. It can be further presumed, given the fact that the structure is illegal, that it fails to meet standard security requirements such as earthquake standards, acoustic standards and waste management standards. In addition, the school lacks a standard, safe access road. These flaws will all be rectified once the school is relocated to the Jahalin West site, at the expense of the Ministry of Defense.
40. Given the aforesaid, the State believes that there is no flaw in the plan to relocate the school to the Jahalin West site, and that the distance between its current and planned locations should not be deemed extremely unreasonable so as to justify the intervention of the Court. It was further argued that because the current plan under which the school will be built is considered “a condition for an exemption” by the head of the Civil Administration, there is no legal requirement to include the Petitioners in the preparation of the plan.
41. In addition to the preliminary response that was filed, the State also filed a response to the application to join the petition. The State maintains the application should be rejected: There is no cause to add the Amicus Applicants as respondents as they are not a party that stands to be injured in the event that the petition is accepted. There is no cause to have them join as ‘amicus curiae’, since their application does not provide any new information or contribute to the proceedings beyond arguments already raised by the Petitioners themselves.
42. The Petitioners in the compound residents’ petition and in the parents’ petition requested to file a written response to the State’s preliminary response. The request was granted. Their response argued that the State had failed to provide a pertinent response to their arguments on the feasibility of the Jahalin West site as a solution in their matter; that it failed to provide a pertinent response to their arguments concerning discrimination as compared to offers made to other Bedouin communities; that it failed to clarify why this specific compound needed to be evacuated while other illegal construction clusters in the area did not; and that it failed to clarify why the Jahalin West site was specifically allocated to the Jahalin Tribe rather than other Bedouin communities that rejected the offer. The response also stated that the State’s contentions with respect to safety risks associated with the road has no connection to reality, as the road is not accessible from the school, and no incident posing a risk to passengers on the road or residents of the compound has ever occurred as a result of the school’s proximity to the road. It was further argued that the State discriminates between the Bedouin population and the Israeli population living in the Judea and Samaria Area that faces evacuation under similar circumstances.
43. It is further noted that the Amicus Applicants filed a supplementary response on 17 April 2018, requesting to attach various documents to their application. The Amicus Applicants argued that the documents reflect their extensive efforts over recent months to reach an agreed and appropriate solution and an arrangement in the matter of the petition. These documents include petitions and communications from public figures and intellectuals to the government supporting an agreed solution for members of the Jahalin Tribe in the Khan al-Ahmar compound and calling for renewal of the dialogue between the parties using an external mediator or under the auspices of the Court.

## **The hearing of the petitions and thereafter**

44. On 25 April 2018, a joint hearing of the three petitions was held, wherein all parties were given the opportunity to further clarify arguments provided in detail in the written submissions. Counsel for Kfar Adumim addressed the change of circumstances that had occurred after the petition was filed, given that the State notified of its decision to follow the Jahalin West plan after submission of the petition. Counsel for Kfar Adumim effectively admitted that the petition had essentially been exhausted, but argued that considering the State's conduct regarding the school so far, there is no certainty that the plan would, in fact, be implemented. Therefore, the State's proclamations regarding its plan to evacuate to school should be entered into judgment and the State should be given a deadline for implementation.
45. Counsel for the Petitioners in the compound residents' petition and in the parents' petition stressed his position that the State's proposition with respect to the Jahalin West alternative is impracticable, and that it was made in bad faith given that the authorities are aware that it is not feasible. In response to the question posed by the Court regarding what he maintains could be possible solutions, counsel for the Petitioners noted that the school could be left standing pursuant to the regulations that allow a temporary permit exemption, until such time as an appropriate solution is found. Counsel stated that such a solution is available, and that several proposals had been made to the State, but there was no agreement on discussions regarding these alternatives. In any event, counsel for the Petitioners did not point to a specific proposal that could serve as the basis for such discussions.
46. Counsel for the Amicus Applicants also noted his position that there is a basis for discussion of alternative, consensual solutions. Counsel for the Amicus Applicants also stressed that he did not dispute the existing situation could not be allowed to continue, but that it must be resolved peacefully rather than coercively. Counsel for the Amicus Applicants also failed to speak to a concrete proposal, arguing that speaking openly about such options could derail the process rather than rectify it. He stated his view that a mediator should be appointed to lead parties toward discussions and a consensual solution.
47. Counsel for the State, for her part, reviewed past attempts at discussions and alternatives previously considered, arguing that it was the compound residents who were, in fact, indisposed toward discussion and dialogue. In response to the question posed by the Court as to whether the State was prepared to enter discussions regarding alternatives, counsel for the State argued that at this point in time, there was no concrete alternative that had been proposed but not considered and that talk of considering other alternatives was no more than vacuous stalling. The possibility of preparing an entirely new outline plan was not on the table, given that this is a process that takes years and that an immediately available, appropriate alternative does exist and has been proposed by the State.
48. Following the hearing on 26 April 2018, we issued our decision, which states as follows:  
"Parties' counsel have concluded their argumentation. Inasmuch as counsel for the Petitioners in HCJ 2242/17 and 9249/17 are in possession of a proposal for an alternative site with a valid outline plan pursuant to which building permits may be issued, as is currently the case with respect to the alternative proposed by the State to relocate the Khan al-Ahmar compound to the Jahalin West site – they may file same within one week". On 3 May 2018, the Amicus Applicants filed a request to address this decision (despite the fact that they had not been requested or granted leave to do so), emphasizing that, in their view, having invested hundreds of hours in the matter and talked to people within the Jahalin Tribe as well as experts – it is clear that the residents of the compound will not agree to the State's proposition to relocate to the alternative currently on offer. Therefore, executing the demolition orders would result in a "cat and mouse"

game, whereby new tent encampments would be erected, then evacuated and so forth. In light of this, the Amicus Applicants propose designing an alternative for relocation of the tribe to the Nabi Musa area. The Amicus Applicants stressed that they were not speaking on behalf of members of the tribe, but that it was their understanding that this was a solution regarding which agreements could be reached and that no planning or proprietary impediments stood in the way of joint implementation thereof.

49. On 8 May 2018, the Petitioners also filed a response to our decision, reading: “This is a very unfortunate decision”, as “the Bench is fully aware that no such plan exists and that presenting a detailed, valid outline plan within one week is not possible even in theory, let alone in practice”. The response enclosed an opinion from Bimkom supporting this position.

### **Deliberation and decision**

50. The undisputed premise for a decision in the petitions is that structures in the Khan al-Ahmar compound, both the school and the residents’ homes, are illegal. There is no need to elaborate on this issue, both since it is undisputed and as it has been ruled so in the many judgments addressing the school. Thus, in ‘Ara’rah, the Court ruled that the matter concerned “unlawful construction of a school on land designated for a road, pursued without permit applications or any prior communication with any of the Respondents [...] These are structures erected on the route of a road that was designed to improve safety and transportation for all residents of the area, in an area prohibited for construction due to close proximity to the road. Therefore, there is no possible avenue for permitting the construction of said structure, particularly considering that having a school within the area of the road where construction is prohibited would put the safety of young children at risk” (‘Ara’rah judgment, paragraph 8). Given this, it has been ruled that arguments addressing the State’s plan to execute the demolition orders against the structures itself should not be accepted: “There is no cause to grant the Petitioners’ request to prohibit enforcement procedures against the school structures, which were built illegally, without permit applications and without prior communications to the authorities. On the merits as well, as noted in the previous judgment, the structures that are the subject of the demolition orders were built on land zoned for a road and are dangerously close to a major road” (Kfar Adumim I, paragraph 8, Justice U. Vogelman, with Justice (as was her title then) E. Hayut and Justice Y. Amit concurring). These remarks, made many years ago with respect to the school, are valid also to the additional structures in the Khan al-Ahmar compound near the school.
51. Given this premise, the legal question before us is whether there is cause for judicial intervention in the manner in which the State chooses to enforce the law, the timing chosen for the execution of the demolition orders, and the alternative offered to the compound residents and for the school. Previous petitions addressing the decisions made by the State in this context reviewed the State’s decision to delay execution of the demolition orders in order to arrive at an agreed and accepted solution for the compound residents. In this context, it has been ruled that the policy exhibited no legal flaw. On the contrary, the Court addressed the importance of such discussions. Currently, the State’s decision to go ahead with the execution of the demolition orders is under judicial scrutiny. Is the decision located outside the bounds of reasonableness? My answer is negative.
52. The legal framework for the decision on this matter was also established in previous judgments regarding the school: “As a rule, the Court tends not to intervene in policy making on this issue or in prioritizing law enforcement action – including enforcement of planning and building laws in the area – unless the competent authority completely or unreasonably evades law enforcement, or when the priorities it has set are flawed by extreme lack of reasonableness or by another substantive flaw that undermines their legality” (Kfar Adumim I, paragraph 16, Justice U. Vogelman, with Justice (as was her title then) E. Hayut and Justice Y. Amit concurring). Based

on this framework, the Court ruled that despite the State's repeated statements since 2009 that it was planning to remove the school, there was no flaw in its striving to find agreed alternatives for the school. Indeed, the desire to arrive at a consensual evacuation is worthy and forms a legitimate consideration for setting law enforcement priorities, particularly when a large-scale evacuation is concerned (HCJ 7292/14 **Musa v. Minister of Defense**, paragraph 12 and the references therein (28 February 2018)). However, in the matter at bar, the State believes that the process of considering possible alternatives, which lasted many years, has been exhausted. Attempts at discussions based on the currently proposed outline have failed. While the desire to reach a consensual evacuation is a legitimate consideration in setting law enforcement priorities, it is not a sole consideration (HCJ 8887/06 **al-Nabut v. Minister of Defense**, paragraph 15 (2 August 2011)). It certainly does not compel the State to refrain from enforcing the law where it believes its attempts have become futile.

53. The Petitioners' arguments largely rely on the claim that the Jahalin West alternative is not suitable for their needs – as residents or as students at the school – and is in fact impracticable. It is clear that the individuals who are in possession of the structures are displeased with the proposed plan. However, I have not been persuaded that these claims in themselves point to lack of reasonableness in the State's decision. In this context, it is important to note that the decision focuses primarily on the execution of the demolition orders, meaning, the question that is up for review is not whether the plan proposed by the State meets legal requirements, but rather if the execution of the demolition orders meets legal requirements. Despite the manner in which the proposed solution is presented by counsel for the Petitioners, I do not believe the solution offered to them is so extremely unreasonable as to render illegal the execution of the demolition orders, which were issued lawfully. On the contrary, the State has done a great deal for the development of the Jahalin West site, at its own expense, whether in the form of developing the neighborhood and infrastructure, or the lots themselves, which are offered to the Petitioners at no cost. Indeed, the distress of the residents, who have been living in the compound for many years, is understandable, as is their aversion to the solution they have been offered. However, given the specifics of said solution, the area offered for family residences and the arrangements providing for the possibility of continued shepherding by members of the tribe, this proposition does not render the decision of the State to execute the demolition orders unreasonable in a manner justifying judicial intervention.
54. Nor can I accept the arguments made by compound residents regarding other alternatives that were not thoroughly considered by the State. Once the mutual accusations are removed, it becomes clear that the State has consistently insisted on its plan to remove the school, and, along the way, considered possible alternative solutions – including the Hashmonaim Palace, Ramat Nu'eimah and Nabi Musa – whether initiated by the State or the petitioners. At the hearing held before us, compound residents, and those seeking to join them, stressed that other possibilities are available, but the claim was general and the impression was that the suggested alternatives were in fact aimed at stalling. Despite this, we did, following the hearing, offer the Petitioners the option of presenting the Court with “an alternative site with a valid, detailed outline plan”. Our language was precise: It is not enough to make vague propositions at this point, after the State delayed execution of the demolition orders for years in order to consider alternatives. The picture that emerges from the State's preliminary response is that when compound residents made concrete proposals, they were examined by the State, and when they made general arguments and propositions, it was made clear that this was not enough. The manner in which the State handled this matter – which, as stated, led to a lengthy delay in the execution of the demolition orders – has been pertinent and we have not found flaws therein.

55. This point is particularly cogent given the various legal cycles the demolition orders against the school underwent, which were discussed in previous petitions. The State has consistently stated in these petitions that it was planning to execute the demolition orders and went so far as to set relatively tight schedules for same. Ultimately, however, the State sought to temporarily avoid the demolitions, until an appropriate alternative was found. The Court was prepared not to intervene in this delay, but made it clear to the State that it could not ‘drag’ the process of considering alternatives endlessly. The Court also made it clear to the Petitioners that inasmuch as they have alternative suggestions, they must promptly exhaust these vis-à-vis state authorities. The Court has already expressed its opinion, while hearing the previous petitions, that the time for a resolution was nearing, that the issue of the school needed to be settled and that alternative solution for it must be found. Several more years have since passed. Therefore, there is no justification to force the State to continue engaging in the issue by making new attempts to find a solution. What has not been achieved in nine years, will likely be achieved no more.
56. I cannot accept the allegations of discrimination presented by the compound residents, either. I accept the State’s position that no parallels can be drawn between past evacuations of Bedouin tribes, carried out nearly twenty years ago, and the procedure at hand. Every such evacuation requires special arrangements and preparations, and its outcomes derive from an array of considerations. An offer made beyond the letter of the law to one person, in order to arrive at his consensual, voluntary evacuation from an illegal structure, is not necessarily the offer that should or must be extended beyond the letter of the law to another person, even if the general context is similar. In addition, the contention regarding discrimination as compared to other Bedouins who had not been referred to the Jahalin West site cannot be accepted, particularly given that this neighborhood borders on another allocated to the Jahalin Tribe and successfully populated.
57. I shall now turn to the arguments presented by the parents of children attending the school. The premise for reviewing their arguments has also been established in the previous judgments regarding the school. These held that given that the structures are illegal, “the enforcement of planning and building laws does not violate the right of the Petitioners’ children to education. The right to education does not mean the right to build illegally, particularly considering that the Petitioners attended educational facilities under the jurisdiction of the Palestinian Authority subject to the division of powers under the Interim Accord. The Respondents are not blind to the difficulties alluded to by the Petitioners. However, the solution must be found within the planning frameworks pointed out by the Respondents, or through another alternative that might be reached, rather than through a violation of the law which could ultimately put the children themselves at risk” (‘Ara’rah, paragraph 8, Justice U. Vogelman, with Justice (as was her title then) E. Hayut and Justice Y. Amit concurring). The difficulty in shuttling the students a further ten kilometers to the school does not escape us. However, it cannot justify leaving the school at its current location, unlawfully, and it does not render the decision to execute the demolition orders an extremely unreasonable one – especially given that the obligation to provide educational services to these students lies with the Palestinian Authority.
58. Based on these grounds, the petition of the compound residents and the petition of the parents must be dismissed, and I shall propose to my colleagues as such. As for the Kfar Adumim petition, the latter impugned the State’s delay in the execution of the demolition orders, which is now planned to take place soon. This petition has, therefore, been exhausted and should be dismissed without prejudice. In the circumstances of the matter, given the formulation of a plan to be implemented in the near future and the fact that an opening remains for discussions with compound residents for the purpose of coordinating the manner in which the evacuation would be pursued, I see no reason to set an exact date for the execution of the demolition orders.

## **Conclusion**

59. We have come to the conclusion of this judgment. Our decision therein follows the letter of the law, according to which there is no legal cause to intervene in the decision of the minister of defense to execute the demolition orders issued for the illegal structures in Khan al-Ahmar.
60. The law does not ignore the human complexities naturally involved in a large-scale removal of illegal structures, despite their illegality. Law enforcement is important, as is the desire to enter discussions and reach a solution peacefully. The voices calling for discussions and a consensual solution were well heard in the proceedings in these petitions. The Court, too, asked to see whether there still remained a concrete proposal that could serve as a basis for such renewed discussions, despite the late stage in the process. On the other hand, the law is not subordinate to this desire.
61. At the end of the day, we are past the eleventh hour. As recalled, the first demolition orders were issued back in 2009. As worthy as the voices heard through the courtroom calling for collaboration and dialogue might be, they should have been directed at policy makers in real time over the years. The Court does not and cannot consider what the ideal solution for Khan al-Ahmar residents might be. The Court judicially reviews the decisions made by the State. This review has yielded that, just as there was no cause to instruct the State to enforce the law when it sought to refrain from doing so, so there is no cause to instruct it to withhold enforcement when it wishes to proceed with it.
62. This conclusion is not the end of the road. The State has declared before the Court its willingness to enter into an honest dialogue with the compound residents to make practical arrangements for the evacuation and relocation to the Jahalin West site. One hopes this, in fact, will take place. The end of the road can be reached peacefully and consensually.
63. The conclusion is, therefore, that the Kfar Adumim petition should be dismissed without prejudice and the other two petitions be dismissed.

Justice

**Justice A. Baron**

I concur.

Justice

**Justice Y. Willner**

I concur.

Justice

Decided as ordered in the judgment of Justice **N. Sohlberg**.

Rendered today, 24 May 2018.

Justice

Justice

Justice