HCJ 2557/05

1. Majority Camp
2. SHA'AL Educational Projects
v.
1. Israel Police
2. Magen David Adom in Israel
3. Fire Extinguishing Authorities
4. Tel-Aviv-Jaffa Municipality

The Supreme Court sitting as the High Court of Justice
[12 December 2006]
Before President Emeritus A. Barak and Justices M. Naor, E. Rubinstein

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

Facts: The petitioners applied to the first respondent to hold a demonstration in Tel-Aviv supporting the government's disengagement plan. The first respondent imposed various conditions upon the holding of the demonstration, including demands that the petitioners should arrange to have security, first aid and fire extinguishing services present at the demonstration. The second and third respondents demanded payment from the petitioners for providing the first aid and fire extinguishing services. The petitioners challenged the legality of the demands made by the first, second and third respondents, arguing, *inter, alia*, that the fourth respondent should be liable to pay the third respondent, since the demonstration was held on municipal property.

Held: The first respondent was not authorized to require the petitioners to provide security services at their demonstration. The police have the duty to provide security and maintain order at demonstrations, and they may not impose this responsibility on the persons organizing the demonstration.

The responsible ministers had not exercised their power to enact regulations authorizing the second respondent to charge fees for providing first aid services at public events. Therefore the second respondent had no authority to demand payment for providing first aid services at the demonstration.

The third respondent is authorized by regulations to demand payment for services. The party liable to pay for the third respondent's services is the 'recipient of the service.' According to the regulations the recipient of the service is the owner of the

land where the service was provided. Therefore the fourth respondent was found liable to pay for the third respondent's services at the demonstration.

Petition granted.

Legislation cited:

Basic Law: Human Dignity and Liberty, ss. 2, 4.

Basic Law: the Knesset, s. 7A.

Fire Extinguishing Services (Payments for Services) Regulations, 5735-1975, rr. 1, 2.

Fire Extinguishing Services Law, 5719-1959.

Magen David Adom (Fees for Emergency Ambulance Transport) Regulations, 5766-2006.

Magen David Adom Law, 5710-1950, ss. 5, 7A.

Police Ordinance [New Version], 5731-1971, ss. 3, 84, 85, 86.

Public Places Safety (Assemblies) Regulations, 5749-1989, r. 9(a).

Public Places Safety Law, 5723-1962.

State Economy Arrangements (Legislative Amendments for Achieving Budgetary Targets and the Economic Policy for the 2003 Fiscal Year) Law, 5763-2002, s. 56.

Israeli Supreme Court cases cited:

[1] HCJ 148/79 *Saar v. Minister of Interior* [1980] IsrSC 34(2) 169.

[2] HCJ 2740/96 *Chancy v. Diamond Supervisor* [1997] IsrSC 51(4) 491.

[3] HCJ 73/53 *Kol HaAm Co. Ltd v. Minister of Interior* [1953] IsrSC 7 871; **IsrSJ 1 90**.

[4] HCJ 153/83 *Levy v. Southern District Commissioner of Police* [1984] IsrSC 38(2) 393; **IsrSJ 7 109**.

[5] HCJ 4804/94 *Station Film Ltd v. Film and Play Review Board* [1996] IsrSC 50(5) 661; **[1997] IsrLR 23**.

[6] HCJ 14/86 *Laor v. Film and Play Review Board* [1987] IsrSC 41(1) 421.

[7] HCJ 2481/93 *Dayan v. Wilk* [1994] IsrSC 48(2) 456; **[1992-4] IsrLR 324**.

[8] PPA 4463/94 *Golan v. Prisons Service* [1996] IsrSC 50(4) 136; **[1995-6] IsrLR 489**.

[9] CA 105/92 *Re'em Contracting Engineers Ltd v. Upper Nazareth Municipality* [1993] IsrSC 47(5) 189.

[10] LCA 10520/03 *Ben-Gvir v. Dankner* (not yet reported).

[11] HCJ 6427/02 *Movement for Quality Government in Israel v. Knesset* (not yet reported).

[12] HCJ 7052/03 *Adalah Legal Centre for Arab Minority Rights in Israel v. Ministry of Interior* **[2006] (1) IsrLR 443**.

[13] HCJ 366/03 *Commitment to Peace and Social Justice Society v. Minister of Finance* **[2005] (2) IsrLR 335**.
[14] HCJ 402/89 *Israel Football Association v. Minister of Education* [1989] IsrSC 43(2) 179.
[15] HCJ 5009/97 *Multimedia Co. Ltd v. Israel Police* [1998] IsrSC 52(3) 679.
[16] HCJ 399/85 *Kahane v. Broadcasting Authority Management Board* [1987] IsrSC 41(3) 255.
[17] HCJ 1928/96 *YESHA Council v. Jerusalem District Commissioner of Police* [1996] IsrSC 50(1) 541.
[18] HCJ 4541/94 *Miller v. Minister of Defence* [1995] IsrSC 49(4) 94; **[1995-6] IsrLR 178**.
[19] HCJ 7081/93 *Botzer v. Maccabim-Reut Local Council* [1996] IsrSC 50(1) 19.
[20] HCJ 6055/95 *Tzemah v. Minister of Defence* [1999] IsrSC 53(5) 241; **[1998-9] IsrLR 635**.
[21] HCJ 6658/93 *Am Kelavi v. Jerusalem Police Commissioner* [1994] IsrSC 48(4) 793.
[22] HCJ 28/94 *Zarfati v. Minister of Health* [1995] IsrSC 49(3) 804.
[23] LCA 10962/03 *Harar v. State of Israel* (not yet reported).
[24] HCJ 2725/03 *Salomon v. Jerusalem District Commissioner of Police* [1995] IsrSC 49(5) 366.
[25] HCJ 6897/95 *Kahane v. Brigadier-General Kroizer* [1995] IsrSC 49(4) 853.
[26] HCJ 2979/05 *YESHA Council v. Minister of Public Security* (not yet reported).
[27] AAA 3829/04 *Twito v. Jerusalem Municipality* (not yet reported).

American cases cited:

[28] *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992).
[29] *Jones v. City of Opelika*, 319 U.S. 103 (1943).

Jewish law sources cited:

[30] Rabbi Y. Zilberstein, 'The Duty to Demonstrate Against Desecration of the Sabbath,' 7 *Tehumin* 117 (1986).
[31] Isaiah 33, 15.
[32] Mishnah, Tractate *Avot* (Ethics of the Fathers), 2, 16.

For the petitioners — T. Reshef.
For the first respondent — D. Chorin.
For the second respondent — Dr J. Weinroth, Dr G. Gontovnik.
For the third respondent — Y. Simon.
For the fourth respondent — R. Avid.

JUDGMENT

President Emeritus A. Barak

The petitioners wished to hold a demonstration. The police commissioner made the granting of the licence for the demonstration conditional upon the presence of cordons, security personnel and organizers on behalf of the organizers of the demonstration and at their expense. He also made the granting of the licence conditional upon the presence of fire engines and ambulances. The fire extinguishing authority and Magen David Adom made the provision of services conditional upon payment by the organizers of the demonstration. The petition before us challenges the legality of these demands by the police commissioner, the fire extinguishing authority and Magen David Adom.

The background to the petition

1. The petitioners wished to hold a march from Rabin Square to Dizengoff Square and to hold a demonstration there. The demonstration was intended to express support for the government's plan of disengagement from the Gaza Strip. Initially the first respondent refused the petitioners' request. After negotiations, the first respondent agreed to give a licence to hold the demonstration, but made the granting of the licence subject to many conditions, including building a front command room for the use of the police at Dizengoff Square and connecting it to a telephone line and electricity; erecting a loudspeaker system throughout the procession route and connecting it to the police front command room; erecting three close-circuit screens; cordoning off various areas by means of many dozens of cordon fences; deploying dozens of security personnel from a security company and dozens of organizers for ensuring security and public order; announcing the event in the media with details of traffic arrangements and the prohibition of bringing weapons; erecting signs prohibiting the parking of cars in the area of the demonstration; distributing pamphlets to the residents of the area about the traffic and parking arrangements; having towing vehicles present to remove cars from the area, and making arrangements with a parking lot for the towed cars; and having ambulances and fire engines present in case of emergency.

2. The financial outlay for the purpose of complying with these demands was estimated by the petitioners as approximately NIS 300,000. The

petitioners opposed these demands. After further negotiations, the first respondent waived some of the demands. Thus, for example, the first respondent waived the demand that the petitioner would build a police front command room and the demand to announce the event in the media. The first respondent did not waive the demands concerning the deployment of security personnel and organizers. Likewise the first respondent did not waive the demands concerning having ambulances and fire engines present. Even after the demands were reduced, the petitioners estimate the cost of the first respondent's demands at more than one hundred thousand sheqels.

3. The petitioners finally agreed to comply with the demands made by the police, and the demonstration has already taken place. Notwithstanding, in view of the fundamental questions that arise from the petition, we asked the parties to submit supplementary arguments on the questions in dispute. In view of the fact that the petitioners raise arguments concerning the financial obligation involved in having ambulances and fire engines present on standby during the demonstration, we ordered Magen David Adom and the fire extinguishing authorities to be joined as additional respondents in the petition. In view of the petitioners' argument that the Tel-Aviv Municipality should be the one to pay the costs of the fire extinguishing services, we ordered the Tel-Aviv Municipality to be joined as a respondent in the petition.

The arguments of the parties

4. The petitioners claim that the respondents are not entitled to impose on them demands that fall within the scope of the natural duties of the police and which have a considerable cost. They argue that this court has held in the past that the Israel Police is not entitled to demand the employment of policemen for remuneration, and it should only employ policemen in the course of their duties for events that constitute the realization of basic rights. The petitioners' position is that the police demands are merely an attempt to circumvent the court's ruling. Instead of a direct payment, the police are demanding that the petitioners provide 'private policing' by means of security personnel and organizers of their own and at their expense. According to the petitioners, there is no difference between a demand to pay for the deployment of policemen and a demand to provide security personnel, organizers and cordons. The petitioners claim that the demands of the police, the fire extinguishing services and Magen David Adom constitute a serious violation of the constitutional right of the petitioners and their supporters to demonstrate and their right to freedom of speech. Imposing a financial burden on someone who wishes to demonstrate is tantamount to restricting

the very realization of the right. It makes the freedom of speech a privilege reserved only for the rich, and it discriminates between rich and poor. Thus the right to freedom of speech is violated and the democratic character of the state is undermined.

5. The Israel Police request that we deny the petition. Its position is that it has the authority to demand that the organizers of a demonstration comply with certain conditions, including conditions involving a cost, in view of the size of the demonstration, the degree of disturbance that the demonstration causes to the public and additional considerations. The first respondent seeks to distinguish between tasks that are related to the internal organization of a demonstration, such as maintaining public order among the demonstrators and tasks that are related to security measures for the 'periphery' of the demonstration, such as closing roads along the demonstration's path and security against any hostile elements. The first respondent's position is that tasks that are related to maintaining public order among the demonstrators are not tasks that constitute a part of police duties. According to the police, this concerns the internal organization of an event, and as such the organizers of the event should be responsible for it. The police may make the granting of a licence for a demonstration dependent upon conditions that are intended to ensure that the organizers of the demonstration discharge this responsibility of theirs, even if complying with these conditions involves a financial cost. These conditions may include demands to cordon off the area of the demonstration and to arrange for organizers and security personnel to be present, in order to ensure public order. The police further argue that accepting the petitioners' position will lead to an intolerable result in which every organization will be able to demand that the police allocate considerable resources to every demonstration or public event that they wish to hold, without these organizations having any responsibility or being liable for any expense as the organizers of the event. Therefore, according to the police, there is nothing wrong in requiring the organizers of the event to bear some of the responsibility and the expense arising from the event that they wish to hold, provided that this responsibility relates to the internal organization of the event, and not the natural functions of the police. This should be the case particularly in view of the limited resources of the police in its budget and workforce.

6. The second respondent, Magen David Adom, requests that we deny the petition. Its position is that regulation 9(a) of the Public Places Safety (Assemblies) Regulations, 5749-1989, gives Magen David Adom the authority to determine the appropriate first aid arrangements for every event

in a public place. The criteria according to which Magen David Adom determines the necessary arrangements for medical personnel for demonstrations and assemblies are objective and treat everyone equally, and they take into account the expected number of participants at the event, the character of the event, its location, etc.. Therefore, in view of the provisions of the law and the professionalism of the Magen David Adom in this sphere, there is no defect in the prevailing custom whereby the police defer to the professional judgment of Magen David Adom with regard to the arrangements for medical personnel at demonstrations and assemblies. When these arrangements are determined, the person in charge of the event is entitled to hire the medical services from any company that provides these services, and it is not liable to acquire these services specifically from Magen David Adom. There are private organizations that provide similar services, and the person in charge of the event may request services from them. When the person in charge of the event chooses to request the services from Magen David Adom, he cannot expect that these services will be provided without charge. Moreover, Magen David Adom is competent to collect payments for its services in accordance with what is stated in Magen David Adom's bylaws of 1992. The second respondent's position is that its authority to collect payments by virtue of its bylaws is valid despite the enactment of s. 7A of the Magen David Adom Law, 5710-1950, as amended in 2003. The reason for this is that appropriate regulations for the purposes of this section have not yet been enacted, and section 7A should not be interpreted as intending to take away Magen David Adom's authority to collect payments. The second respondent's position is that its charges are reasonable and proportionate. According to the figures presented by the second respondent, the cost of the services that were provided to the petitioners with regard to the demonstration was only NIS 9,740, and not NIS 25,000 as the petitioners claim.

7. The third respondent, the fire extinguishing authority, requests that we deny the petition. Its argument is that the authority of the various fire extinguishing authorities to collect payment for fire extinguishing services is enshrined in r. 2 of the Fire Extinguishing Services (Payments for Services) Regulations, 5735-1975. This payment is for a service that was provided to the petitioners, and it should not be regarded as a violation of their right of the freedom to demonstrate. In addition, the amount of the payment itself was low — approximately only one thousand sheqels — and this is a reasonable and proportionate amount.

8. The fourth respondent, the Tel-Aviv Municipality, supports the arguments of the third respondent. Its position is that the charge for the cost of the fire extinguishing services should be paid by the persons who wish to hold a demonstration, since they are the 'recipients of the service' for this purpose. The position of the fourth respondent is that the municipality cannot be considered the recipient of the service since it has no interest in the holding of the demonstration, and in any case the municipality has no need for or interest in receiving the fire extinguishing services that constitute a condition for holding the demonstration.

The normative framework

9. The authority of the police commissioner to make the holding of a demonstration dependent upon conditions is enshrined in the provisions of ss. 84 and 85 of the Police Ordinance [New Version], 5731-1971 (hereafter: 'the Police Ordinance'). Section 84 of the Police Ordinance provides that the district police commissioner may determine — whether in a general proclamation or a special proclamation — that the holding of a meeting or procession shall be conditional upon a licence. This determination depends upon the district police commissioner being of the opinion that this is required in order to 'maintain public security or public order.' On the basis of this provision, district police commissioners have issued general proclamations, according to which anyone who wishes to organize or hold a procession or a meeting in an open place must obtain a permit (see HCJ 148/79 *Saar v. Minister of Interior* [1], at p. 173). By virtue of this provision, anyone who wishes to organize or hold a meeting (which, according to the definition in the Police Ordinance, means an assembly of fifty or more persons for the purpose of hearing a speech or a lecture) or a procession (which, according to the definition in the Police Ordinance, means a march, or an assembly for the purpose of marching together, of fifty or more persons) is liable to submit an application to the district police commissioner for a licence. Sections 85 and 86 of the Police Ordinance provide that the district commissioner may give the licence, refuse to give it or give it conditionally:

> 'Licensing
>
> 85. If an application is submitted for a licence, pursuant to a proclamation that was published under section 84, the commissioner may —
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> (1) grant the licence;
>
> (2) grant the licence subject to a guarantee or on conditions or with other restrictions that

he thinks fit to require, and the conditions and restrictions shall be stated on the licence;

(3) refuse to grant the licence.

Licence exempt from fee

86. No fee is payable for a licence under section 85.'

A reading of the language of s. 85 of the Police Ordinance shows that the authority given therein to the district commissioner to make the granting of a licence for a demonstration subject to conditions is general and vague. The section does not specify, even in general terms, what conditions the police commissioner may impose, and for what considerations he is entitled to impose such conditions. There is no guidance at all for the administrative discretion. This is vague legislation. Vague legislation is undesirable. It is capable of violating the principle of the separation of powers and the principle of the rule of law (see HCJ 2740/96 *Chancy v. Diamond Supervisor* [2], at p. 520). How does it violate the principle of the separation of powers? This principle requires the Knesset, and not the executive, to determine the general criteria for the exercising of administrative power. A broad and vague authority violates the Knesset's power of legislation. How does it violate the principle of the rule of law? The substantive rule of law requires the law to be 'clear, certain and understandable so that members of the public can manage their affairs accordingly' (*ibid.* [2]). A general and vague authority impairs the ability of members of the public to have a proper knowledge of their rights and duties. This, for example, is what happened in this case, when the petitioners were surprised by the demands that the police imposed on them. Vague legislation violates the provisions of the constitution (see for example: L. Tribe, *American Constitutional Law* (second edition, 1988), at pp. 1033-1035; P.W. Hogg, *Constitutional Law of Canada* (student edition, 2005), at pp. 1063-1068). This approach applies in our legal system as well, with regard to legislation that is not 'protected' from constitutional scrutiny by means of 'saving of laws' provisions. This approach also applies with regard to the legality of subordinate legislation (see the opinion of Justice M. Cheshin in *Chancy v. Diamond Supervisor* [2], at pp. 514-519).

10. Is it possible to regard s. 85 of the Police Ordinance as a source that authorizes the police to make a licence for a demonstration conditional upon providing security personnel, security cordons and security checks,

loudspeaker and announcement systems, and other similar conditions concerning the security of the demonstration that involve significant costs for its organizers? My opinion is that the answer to this question is no. This is because of the importance and status of the right of freedom of speech and the right to demonstrate, on the one hand, and the role of the state as a whole, and of the Israel Police in particular, in protecting this right and the possibility of realizing it, on the other. I shall discuss these two reasons below.

The constitutional right to demonstrate and the right of freedom of speech

11. The freedom of speech is the 'essence' of democracy — a basic right that is also a supreme principle in every democratic system of government (HCJ 73/53 *Kol HaAm Co. Ltd v. Minister of Interior* [3]; HCJ 153/83 *Levy v. Southern District Commissioner of Police* [4], at p. 398 {114}; HCJ 4804/94 *Station Film Ltd v. Film and Play Review Board* [5], at p. 675 {33}). The freedom of speech is numbered among the basic human freedoms in Israel. Its place is on the highest echelon of basic rights, since 'without democracy there is no freedom of speech, and without freedom of speech there is no democracy' (HCJ 14/86 *Laor v. Film and Play Review Board* [1987] IsrSC 41(1) 421). The right to demonstrate and hold processions is an inseparable component of the right to freedom of speech. It constitutes one of the main ways of expression opinions and raising social issues on the public agenda. Indeed —

> 'The right to demonstrate and hold processions is one of the basic human rights in Israel. It is recognized, alongside the freedom of speech or as deriving therefrom, as being one of those freedoms that shape the character of the system of government in Israel as a democratic system of government. There are some who think that the ideological basis for this freedom is the desire to ensure the freedom of speech, which in turn contributes to the discovery of the truth. Others think that the essence of the right is the existence and functioning of the democratic system of government, which in turn is based on the freedom of information and the freedom of protest. There are also some who claim that the freedom to demonstrate and hold processions is an essential component of the general human freedom of self-expression and independent thought… It seems that the freedom of demonstration and assembly has a broad ideological basis, at the centre of which is the recognition of the

> worth of the human being, his dignity, the freedom given to him to develop his personality and the desire to maintain a democratic form of government. By virtue of this freedom, means of expressing themselves are given to those people who do not have access to national and commercial channels of expression. Therefore it is accepted in our legal system, as well as in the legal systems of other enlightened democratic countries, that the right of demonstration and assembly is given a place of honour in the sanctuary of basic human rights' (*Levy v. Southern District Commissioner of Police* [4], at p. 398 {114}; see also *Saar v. Minister of Interior* [1]; HCJ 2481/93 *Dayan v. Wilk* [7]).

12. In 1992 the Knesset enacted the Basic Law: Human Dignity and Liberty. The principle of the freedom of speech was not enshrined expressly in the language of the law. But in a host of judgments this court has held that the Basic Law also includes the freedom of speech, within the framework of the rights and liberties protected by it, and it thereby gives the freedom of speech the status of a constitutional right. This was discussed by Justice Mazza:

> 'Admittedly, the Basic Law: Human Dignity and Liberty does not mention freedom of speech, nor does it define it expressly as a basic right. But this is immaterial: even without an express provision, freedom of speech is included in human dignity, according to the meaning thereof in sections 2 and 4 of the Basic Law. For what is human dignity without the basic liberty of an individual to hear the speech of others and to utter his own speech; to develop his personality, to formulate his outlook on life and realize himself?' (PPA 4463/94 *Golan v. Prisons Service* [8], at p. 157 {507}).

I too discussed this in *Dayan v. Wilk* [7], which concerned the right to hold demonstrations and processions:

> 'In the past, this right was recognized in case-law, and it was one of those basic rights that are "unwritten", but which derive directly from the character of the State as a freedom-loving democracy. It appears that now this right can be derived from the Basic Law: Human Dignity and Liberty, which provides a statutory constitutional basis for the human right to dignity and liberty. The freedom to express oneself — in words alone or by

> expressive actions — is a major expression of human dignity and liberty. Indeed, the freedom of demonstration and assembly has a broad ideological basis, at the centre of which is the recognition of the worth of the human being, his dignity, the freedom given to him to develop his personality, and the desire to maintain a democratic form of government' (*ibid*. [7], at p. 468 {335-336}, references omitted; see also CA 105/92 *Re'em Contracting Engineers Ltd v. Upper Nazareth Municipality* [9], at p. 201).

Indeed, 'today freedom of speech exists no longer as a basic right that is "unwritten"… It is a protected constitutional right' (*per* Justice E. Rivlin in LCA 10520/03 *Ben-Gvir v. Dankner* [10], at para. 10 of his opinion).

13. Notwithstanding, not all the aspects of the right of freedom of speech are included in the constitutional right to human dignity, but only those aspects that are derived from human dignity and are closely related to 'those rights and values that lie at the heart of human dignity as expressing a recognition of the autonomy of the individual will, the freedom of choice and the freedom of action of the individual as a free agent' (HCJ 6427/02 *Movement for Quality Government in Israel v. Knesset* [11], at para. 41 of my opinion), or those aspects that are 'found in the heart of the right to human dignity' (HCJ 7052/03 *Adalah Legal Centre for Arab Minority Rights in Israel v. Ministry of Interior* [12], at para. 32 of my opinion). Indeed —

> '… one should not "read" into the right to dignity more than it can support. Not all rights can be derived from an interpretation of the Basic Law: Human Dignity and Liberty… when deriving rights that are not mentioned expressly in the Basic Laws dealing with human rights but are included in the concept of human dignity, it is not always possible to incorporate the whole scope that the "derived" rights would have had if they had been included separately as "named rights"' (HCJ 366/03 *Commitment to Peace and Social Justice Society v. Minister of Finance* [13], at para. 15 of my opinion; HCJ 4128/02 *Man, Nature and Law Israel Environmental Protection Society v. Prime Minister of Israel* [2004] IsrSC 58(3) 503, at p. 518; *Movement for Quality Government in Israel v. Knesset* [11], at para. 34 of my opinion; *Adalah Legal Centre for Arab Minority Rights in Israel v. Ministry of Interior* [12], at para. 31 of my opinion).

Determining the scope of the right to freedom of speech as a constitutional right derived from human dignity should be done in accordance with the meaning that should be given to the concept of human dignity. We do not need, in this case, to discuss in detail the aspects of the right of freedom of speech that are included in the concept of human dignity. It seems to me that a demonstration that has a political or social background is an expression of the autonomy of the individual will, freedom of choice and freedom of action that are included within the scope of human dignity as a constitutional right.

Freedom of speech and demonstration: a 'negative' and 'positive' right

14. The duty of the state to protect the constitutional right of freedom of speech and demonstration has two aspects. *First*, the state has a duty not to violate a person's right of freedom of speech and demonstration, such as by imposing a prohibition on his ability to realize his right. This is the negative aspect (the *status negativus*) of the right. It is enshrined in s. 2 of the Basic Law: Human Dignity and Liberty ('One may not harm the life, body or dignity of a person'). *Second*, the state has a duty to protect the right of freedom of speech and demonstration. This is the positive aspect (the *status positivus*) of the right. It is enshrined in s. 4 of the Basic Law: Human Dignity and Liberty ('Every person is entitled to protection of his life, body and dignity'). In our case, the significance of the positive duty is reflected in the duty of the state, within the limits of reason and taking into account the means available to it and the order of priorities determined by it, to allocate the resources that are required in order to allow the realization of the right of freedom of speech and demonstration. What I said with regard to the constitutional right to dignity in *Commitment to Peace and Social Justice Society v. Minister of Finance* [13] is apposite in this context:

> 'The two aspects, the negative (passive) aspect and the positive (active) aspect are different parts of the whole, which is the constitutional right to dignity. They both derive from the interpretation of the right to dignity, as enshrined in the Basic Law. Neither aspect takes precedence over the other… The prohibition against violating dignity and the duty to protect dignity both impose significant duties on the state and the individuals living in it' (*ibid*. [13], at para. 12 of my opinion).

15. The duty of the state according to the 'positive' aspect of the right of freedom of speech and demonstration means, *inter alia*, its duty to allow the realization of the right to demonstrate by providing security and maintaining

public order during the demonstration. The Israel Police is the body that is responsible for this aspect. The task of maintaining public order during a demonstration and protecting the possibility of realizing the constitutional right of freedom of expression, procession and demonstration is one of the main, patent and vital functions of the Israel Police. This conclusion is required both from the viewpoint of the functions of the police under the law and also in view of the importance of the protection of basic constitutional rights in a democracy. Section 3 of the Police Ordinance, which defines the functions of the police, tells us that: 'The Israel Police shall engage… in maintaining public order and security for persons and property.' The Israel Police is responsible for maintaining public order and protecting the safety and security of Israeli citizens from criminal acts and breaches of the law, as well as during public events, and especially public events that constitute the realization of basic rights, such as assemblies, processions and demonstrations. Admittedly, sometimes the question whether a certain act falls within the scope of the natural functions of the police may be a complex one. Thus, for example, questions have arisen as to whether security at football games falls within the scope of the police's functions (see HCJ 402/89 *Israel Football Association v. Minister of Education* [14], at pp. 182-183); or whether security at commercial-private festivals, such as the Jazz Festival in Eilat, falls within the scope of the natural functions of the police (HCJ 5009/97 *Multimedia Co. Ltd v. Israel Police* [15]). But no doubt of this kind arises in our case. It is clear and certain that maintaining order at public events which involve a realization of constitutional rights, such as demonstrations, falls within the very heart of the police's functions. This was discussed by Justice E. Mazza in *Israel Football Association v. Minister of Education* [14]:

> 'The occupation of maintaining public order and protecting the safety and security of the public, whether during and as a result of events that involve a breach of the law or on the occasion of national or mass public events, whose occurrence gives rise to concerns of breaches of the law and infringements of public order or public security, are clearly functions of the police, under s. 3 of the ordinance. The same is true of the duty of the police to take reasonable measures to maintain order and peace, when this is required to realize basic freedoms, such as the freedom of assembly and demonstration' (*ibid.* [14], at pp. 182-183).

The subject was also discussed by Justice M. Cheshin in *Multimedia Co. Ltd v. Israel Police* [15], where he held that the 'classical functions' of the

police include protecting the safety of citizens and their property, and also maintaining order at 'events that can be characterized as public events, such as events that involve rights of the individual, such as the rights of assembly, demonstration, election events, etc.' (*ibid*. [15], at p. 693; see also the remarks of Justice I. Zamir at p. 715-717).

16. In *Multimedia Co. Ltd v. Israel Police* [15], Justice M. Cheshin said that the question of which functions are included within the natural functions of the police will ultimately be decided according to the 'ethical criterion' (*ibid.* [15], at p. 693). This is indeed the case. These remarks are also apposite with regard to the function of the police in maintaining public order at demonstrations, assemblies, elections events and other similar events that involve a realization of the basic political freedoms. Indeed, just as it is inconceivable that the police should impose a financial burden on someone requesting its protection against a burglar (see *Multimedia Co. Ltd v. Israel Police* [15], at p. 692), so too it is inconceivable that the police should impose a financial burden on someone wishing to realize his right to freedom of speech and demonstration. Property rights and the right to physical safety are important rights. Protecting these is a part of police functions. But the freedom of speech and the right to demonstrate are also basic rights. The police are also charged with protecting them. They are not entitled to pass the responsibility for security and maintaining public order at demonstrations, in whole or in part, to the persons who wish to realize their right to demonstrate. Thereby the police fail in their public duty. Thereby a financial burden is also imposed on the persons wishing to realize their right, and their right to freedom of speech and demonstration is violated. Indeed, fixing a 'price tag' for the realization of a right means a violation of the right of those persons who cannot pay the price. Moreover, imposing a financial burden on persons who wish to realize their right to freedom of speech may harm in particular those persons who wish to express ideas that give rise to considerable opposition. This is because it may be assumed that the expense of maintaining security in such circumstances will be higher than the norm. The protection of the freedom of speech is important precisely in circumstances of this kind (see HCJ 399/85 *Kahane v. Broadcasting Authority Management Board* [16]). We are speaking therefore of a serious violation of the freedom of speech and the right of demonstration and procession, on the basis of financial ability or on the basis of the content of the speech and the degree of opposition that it arouses. The result of this violation, beyond the direct violation of the constitutional rights of the persons who wish to demonstrate, is that the public debate is harmed. The marketplace of opinions and ideas is

weakened. The democratic nature of the system of government is prejudiced. Indeed, as Justice Blackmun said in the United States Supreme Court: 'Speech cannot be financially burdened, any more than it can be punished or banned' (*Forsyth County, Georgia v. Nationalist Movement* [28], at p. 135). And in another case the United States Supreme Court stressed that 'Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way' (*Jones v. City of Opelika* [29], at p. 111). The conclusion is that providing security at events that involve the realization of basic freedoms is one of the most basic and obvious duties of the police. They are not entitled to impose this responsibility, in whole or in part, on the persons who wish to realize their right. This approach reflects the recognition of the centrality of the police as the body that has exclusive responsibility for maintaining public law and order and protecting the character of our system of government. This approach reflects the recognition of the centrality of constitutional human rights. It is capable of ensuring a broad, professional and equal protection of the realization of citizens' rights. It is capable of ensuring the safeguarding of the democratic character of the State of Israel.

17. My conclusion is that the police are not authorized to impose on those persons that wish to realize their right to demonstrate the responsibility, in whole or in part, to provide security for the event and to maintain public order during it. The respondents argue against this position that it will lead to a serious outcome whereby every organization will be able to demand that the police will allocate considerable resources for every demonstration or public event that they wish to hold, and thereby an intolerable burden will be imposed on the Israel Police. This argument cannot be accepted. My position is that the Israel Police has the duty to provide security at demonstrations and to main public order during them, and it may not impose this responsibility, in whole or in part, on the persons wishing to demonstrate. It does not follow from my position that the Israel Police is liable to provide security at every demonstration that is requested. The right to freedom of expression and demonstration, like all rights, is not an absolute right. It is possible to impose restrictions on its realization. When he makes a decision with regard to an application to hold a demonstration, the police commissioner is entitled to take into account, *inter alia*, the question of the forces and resources that are available to the police for the purpose of providing security at the event, the other operations that the police are liable to carry out at that time, and the police's order of priorities in carrying out its duties. Indeed, when giving a licence for a demonstration:

> 'Consideration should be given, *inter alia*, to the forces available to the police, their skill and equipment, and the size of the crowd of demonstrators and spectators. Consideration should also be given to the other tasks for which the police are liable. Even if providing proper protection for demonstrators is a duty of the police, it is not its only duty, and it should deploy its forces in a manner that it can carry out, in a reasonable manner, the other tasks that it is liable to carry out' (*Levy v. Southern District Commissioner of Police* [4], at p. 405 {121}).

Thus, for example, in HCJ 1928/96 *YESHA Council v. Jerusalem District Commissioner of Police* [17], this court accepted the position of the police commissioner who refused to give YESHA Council a licence to demonstrate in Jerusalem, after other options that were proposed by the police commissioner were rejected by the petitioner. We held that:

> 'The basic premise is not in dispute. Everyone in Israel has the constitutional right to demonstrate and hold an assembly… If a hostile group creates a risk to those taking part in the procession, the police should deal first and foremost with that group, and not with those persons who wish to march peacefully. Ruffians and persons who wish to prevent a demonstration or assembly should not be allowed a right of "veto." The function of the police is to prevent the hostile group from achieving its desire. This is of course conditional upon the forces available to the police. These are not unlimited… When examining the police resources, consideration should be given to the manpower available to the police, the other tasks that it has to carry out at that time, and the nature of the risks… After weighing the considerations for and against, we are satisfied that in the circumstances of the case before us the respondent acted within the margin of reasonableness… The case before us is a very exceptional one. The police were simultaneously required to carry out general security tasks relating to the suicide attacks in Israel in general and in Jerusalem in particular (while taking account of warnings of potential attacks), individual security tasks with regard to a considerable number of important guests who are visiting Israel, and the need to provide security for the petitioner's assembly or demonstration. In these circumstances, the respondent acted within the scope of the margin of reasonableness, when he requested that the procession should be

> brought forward to a date before the president of the United States came to Jerusalem or deferred until after he left the city' (*ibid*. [17], at p. 542).

Therefore, if the police commissioner if of the opinion that in view of the police's additional operations, or in view of the size of the forces that are required for providing security at a given event, it is unable to allocate the forces required to maintain public order, he may make the demonstration conditional upon restrictions of time, place and manner. In extreme circumstances, in the absence of a less harmful possibility, he may even refuse to give a licence for the demonstration (see *Levy v. Southern District Commissioner of Police* [4], at pp. 407-409 {122-124}). Notwithstanding, we should reiterate in this context that the saving of resources is not a consideration that will in itself justify a refusal to provide security at a demonstration. Indeed, 'the protection of human rights costs money, and a society that respects human rights should be prepared to bear the financial burden' (Barak, *Legal Interpretation* (vol. 3, 'Constitutional Interpretation,' 1994), at p. 528). '… when we are concerned with a claim to exercise a basic right — and such is the case before us — the relative weight of the budgetary considerations cannot be great' (*per* Justice E. Mazza in HCJ 4541/94 *Miller v. Minister of Defence* [18], at p. 113 {197}; see also the remarks of Justice D. Dorner in that case, at p. 144 {240}; HCJ 7081/93 *Botzer v. Maccabim-Reut Local Council* [19]; HCJ 6055/95 *Tzemah v. Minister of Defence* [20], at p. 281 {683-684}; *Adalah Legal Centre for Arab Minority Rights in Israel v. Ministry of Interior* [12], at para. 94 of my opinion). There is no doubt that the police's duty to allow the realization of the constitutional right to freedom of speech and demonstration will not be easy. It may impose on it considerable responsibility and a financial burden. But this is the price of democracy. This is also the source of its strength. Indeed —

> 'We are aware that the police at this time bear a heavy burden. They are acting out of a genuine desire to allow the realization of the demonstrators' constitutional rights, while maintaining the peace. They are operating under difficult conditions. But it is the strength of democracy that it allows an expression of the different opinions that prevail in society, and it is the strength of the police force that it does all that it can, within the framework of the resources available to it, to allow members of the public to express their opinion on public affairs' (HCJ 6658/93 *Am Kelavi v. Jerusalem Police Commissioner* [21], at p. 797).

The demand to provide ambulances and fire engines

18. Does the police commissioner have the authority to make the granting of a licence for a demonstration conditional upon the presence of emergency services such as ambulances and fire engines? The answer to this is yes. It cannot be said that providing emergency medical services and fire extinguishing services are included among the natural functions of the police. These are tasks that fall within the expertise of other bodies — Magen David Adom and the fire extinguishing authorities. In practice, even had the police not demanded the presence of the fire extinguishing services and the emergency medical services, the organizers of the demonstration would have needed to ensure the presence of these services, by virtue of an independent statutory duty. Thus, the authority of Magen David Adom and the fire extinguishing authority to supervise safety arrangements, in their respective fields, with regard to assemblies and processions is provided in the Public Places Safety (Assemblies) Regulations, 5749-1989, which were enacted by virtue of the Public Places Safety Law, 5723-1962. Regulation 9(a) of the aforesaid regulations provides the following:

> 'The person responsible shall ensure for each meeting appropriate arrangements for first aid and for preventing fires, by arrangement with the Magen David Adom station and the fire extinguishing authority and in accordance with their instructions, and he shall also ensure appropriate entry and exit arrangements for persons coming to the assembly.'

The authority of Magen David Adom and the fire extinguishing authorities to charge payment for their services

19. Are Magen David Adom and the fire extinguishing authorities entitled to demand payment for providing ambulances and fire engines? As we have said, the Public Places Safety (Assemblies) Regulations authorize Magen David Adom to give instructions with regard to the first aid arrangements that are required for the holding of assemblies and demonstrations. In the circumstances before us, Magen David Adom decided that at the event that was planned, two intensive care vehicles, two ambulances and first aid units should be present. This decision was based on a procedure for determining the amount of medical assistance at public events (procedure no. 06.20.04 of 1 May 2002). It takes into account, *inter alia*, the expected number of participants at the event, the location of the event and the distance between it and nearby Magen David Adom stations, etc.. The petitioners have no complaint against the procedure in general and against the first aid

arrangements that Magen David Adom determined for the demonstration under discussion in particular. Their complaints are directed only against the demand to pay for them. Their argument is that this demand has no basis in law. The authority of Magen David Adom to collect payment for its services is provided in s. 7A of the Magen David Adom Law, 5710-1950:

'Fees

> 7A. The association shall charge whoever received from it services that are provided under this law or his insurer a fee in an amount that shall be determined by the Minister of Health and the Minister of Finance; the ministers are entitled to determine a liability to pay interest and linkage differentials and the imposition of a fine for arrears in a case of a failure to pay all or a part of the fee on time.
>
> The fee, the interest, the linkage differentials and the fine will be collected under the Taxes (Collection) Ordinance, as if they were a tax within the meaning of that Ordinance.'

This section was added to the Magen David Adom Law in 2002, within the framework of the State Economy Arrangements (Legislative Amendments for Achieving Budgetary Targets and the Economic Policy for the 2003 Fiscal Year) Law, 5763-2002 (hereafter: 'the Arrangements Law'). The transition provision with regard to this amendment is provided in s. 56 of the Arrangements Law, which states the following:

'Magen David Adom Law — commencement and transition provisions

> 56. The commencement of section 7A of the Magen David Adom Law… is on 28 Adar I 5763 (1 March 2003); until the aforesaid date, the association shall collect… for the services that it provides payments in the amounts that it collected lawfully before the commencement of this law.'

Before the enactment of the aforesaid section 7A, the authority of Magen David Adom to collect payments for services was provided in the Magen David Adom bylaws of 1992, which were enacted by virtue of s. 5 of the Magen David Adom Law, 5710-1950. Bylaw 50 of these bylaws provided:

'Ancillary powers

> 50. The association shall have ancillary powers as set out below:

(1) To fund the activities of the association by collecting payments for services in amounts that shall be approved from time to time by the Ministry of Health and for providing anything ancillary to the services;

(2) To receive donations, gifts, aid and grants from anyone in Israel and abroad;

(3) To collect a payment for the lease of properties and a fee for the use and sale of worn-out equipment;

…'

Thus we see that until 1 March 2003, the Magen David Adom association was competent to collect payment for its services under bylaw 50 of Magen David Adom's bylaws. From that date onward, the authority to collect payments is enshrined in s. 7A of the Magen David Adom Law. But from the date on which s. 7A was enacted until today, no regulations have been enacted under this section. Magen David Adom's position is that in these circumstances it should be allowed to continue to collect payments under the law that preceded the enactment of s. 7A, i.e., in accordance with bylaw 50 of Magen David Adom's bylaws. I cannot accept this position. Section 7A of the Magen David Adom Law was intended to replace bylaw 50. Section 56 of the Arrangements Law provides expressly that the commencement of s. 7A is on 1 March 2003. From this date onwards Magen David Adom is competent to collect payments for services only in accordance with the provisions of s. 7A. Bylaw 50 was admittedly not formally repealed, but Magen David Adom cannot continue to operate thereunder (see and cf. HCJ 28/94 *Zarfati v. Minister of Health* [22]). According to the prevailing legal position, s. 7A is the section that authorizes Magen David Adom to collect payments for its services. This section provides that the amounts of the fees shall be determined by the Minister of Health and the Minister of Finance. The ministers exercised this power when they enacted the Magen David Adom (Fees for Emergency Ambulance Transport) Regulations, 5766-2006. The regulations provide that they commence on 1 January 2003. But these regulations concern emergency transport in an ambulance, and there is no authority in them to collect a fee for the type of service that was provided to the petitioners before us. My conclusion is that there is no authority to

demand the payment under consideration in this petition in s. 7A of the Magen David Adom Law or in the regulations that were enacted thereunder.

20. The power of the fire extinguishing authorities to collect payments for their services is provided in r. 2 of the Fire Extinguishing Services (Payments for Services) Regulations, 5735-1975, which were enacted under the Fire Extinguishing Law, 5719-1959. The following is the language of r. 2:

> 'For a service provided by a fire extinguishing authority as set out in column 1 of the schedule, the recipient of the service shall pay the fire extinguishing authority a payment in the amount provided in column 2 alongside that service.'

The schedule to the regulations sets out the services for which it is permitted to demand payment, and providing security services for an event is contained in the list. The schedule also stipulates the price of the service. As we have said, in the circumstances of the demonstration before us, the cost of the security service amounted to NIS 970. The petitioners do not contest the legality of the demand for payment, or its reasonableness. The parties differ on the question of who is the 'recipient of the service' within the meaning of this expression in the aforesaid r. 2. The definition of 'recipient of the service' is provided in r. 1 of the Fire Extinguishing Services (Payments for Services) Regulations, which states:

> '"Recipient of a service" — the owner or occupier of a property in which, or for whose protection, the fire extinguishing operation was carried out, or who received a lifesaving service for himself or for a family member.'

The petitioners argue that they do not fall within the definition of 'recipient of a service,' since they are not the owners of the land or the property in which the demonstration took place. The owner of the land is the Tel-Aviv Municipality, the fourth respondent, and therefore the third respondent should have sent the demand for payment to it. The third and fourth respondents oppose this interpretation. According to them, the expression 'recipient of a service' should be interpreted in accordance with the purpose of r. 2. This purpose, according to the respondents, is that payment for fire extinguishing services should be collected from those persons who benefit from them. The respondents are aware of the difficulty of reconciling this position with the language of the regulation, and they suggest methods of interpretation that will overcome this difficulty. The fourth respondent suggests that the word 'property' should be given a broad interpretation, and it should also include the right to hold an event or

demonstration. According to the third respondent, since the right to hold a demonstration is a property, it is possible to regard the organizers of the demonstration as the owners of the property, and therefore to impose on them the payment for the fire extinguishing services that were provided. The fourth respondent suggests making a distinction between the first half of the definition of 'recipient of a service' and the second half. According to it, the first half concerns fire extinguishing services relating to land, with regard to which the payment should be imposed on the owners of the land. By contrast, the second half should be interpreted in a manner that will make it possible to impose the payment for fire extinguishing services that do not relate to land on the persons who benefited from receipt of the service. My opinion is that these positions should not be accepted, and in any case it is questionable whether they can help the third and fourth respondents.

21. The 'right to hold a demonstration' is not a property in the context before us. The third respondent also did not suggest any general consideration of principle that is capable of supporting this interpretation, beyond the fact that this interpretation will lead to the outcome that the respondent is interested in reaching in this case. The fourth respondent's position should also be rejected. Admittedly it does have some logic of its own. It is possible that there is logic in distinguishing, for the purpose of paying for fire extinguishing services, between fire extinguishing services that relate to land (such as extinguishing a fire in a building) and fire extinguishing services that are provided for a certain event (such as services for a demonstration), so that the payment for fire extinguishing services that relate to land should be imposed on the owner of the land, whereas the payment for fire extinguishing services for events should be imposed on the organizers of the events. But the language of the law does not allow this interpretation. It can be seen from the clear language of the law that the liability for the fire extinguishing services is payable by the owner of the property in which the fire extinguishing services were provided or by the person who received the service to save his life. An interpretation that is inconsistent with the language of the law should not be adopted unless every other interpretation leads to absurd and illogical conclusions. It cannot be said that the interpretation proposed by the petitioners, which is consistent with the language of the law, is illogical. No one denies, for example, that the Tel-Aviv Municipality would be liable for the cost of extinguishing a fire if it broke out in Rabin Square in Tel-Aviv. This conclusion derives from the fact that the local authority is responsible for maintaining the public areas within its boundaries. *Inter alia* it is liable to make these areas fit for the use of the

public and ensure their repair and safety. There is nothing illogical, therefore, in the conclusion that this duty should be imposed on the local authority even if the fire broke out when a demonstration or procession took place in the same public area. Of course, an outcome in which this liability would be payable by the organizers of the demonstration is also not illogical. But that is not the outcome that is implied by the language of r. 1 of the Fire Extinguishing Services (Payments for Services) Regulations. This regulation provides that the recipient of the service is the owner or occupier of the property in which (or for whose protection) the fire extinguishing operation was carried out. My conclusion therefore is that the fourth respondent is the party that should pay the cost of the fire extinguishing services that were provided in this case.

22. Moreover, even were I to accept the position of the third and fourth respondents that the liability for the fire extinguishing services should be imposed on the persons who benefited from receiving them, this would not necessarily lead to the conclusion that the organizers of the demonstration are the persons who should pay the cost of the fire extinguishing services. This is because the beneficiaries of the fire extinguishing services that are provided for the safety of processions and demonstrations are the whole group of people who participate in the procession or demonstration. It is not self-evident, therefore, that it is possible to impose this payment on the organizers of the demonstration. But in view of my aforesaid conclusion, I do not need to decide this question.

If my opinion is accepted, we will grant the petitions and make the order *nisi* absolute against all the respondents.

Justice M. Naor

I agree.

Justice E. Rubinstein

1. I agree with the opinion of my colleague the president emeritus in this case. The principle underlying his opinion is the freedom of demonstration, as one of the facets of the freedom of speech. There is, of course, no dispute as to the importance of this principle. My colleague, in his usual way, paints a broad legal and ethical picture of the importance of the freedom of demonstration in a democracy; on this approach, in the many years of case law on this subject, see E. Salzberger and F. Oz-Saltzberger, 'The Tradition of Freedom of Speech in Israel,' *Be Quiet, They're Talking: the Legal Culture*

of Freedom of Speech in Israel (M. Birnhack, ed., 2006) 27, at p. 52 *et seq*.. Naturally I accept his fundamental approach. When I considered it, I was not thinking specifically of the huge demonstrations of political organizations of one kind or another, which, were we to take a strict approach, would be able to finance what was required by the police. I was thinking of a demonstration of disabled persons, most of whom earn little but whose needs and difficulties are many; see also Report of the Public Commission for Examining Matters concerning Disabled People and for Promoting their Integration in the Community (2005), chaired by the late President E. Laron, at p. 9. As President Barak says, determining a 'price tag' for them will prejudice their right to demonstrate, since they will not be able to cover the cost. Therefore I very much support my colleague's approach when he says that democracy has a price, including for the realization of its basic rights, and I accept his analysis and conclusion with regard to the duty of the police to ensure the safety of demonstrations. The authorities are also bound by the guidelines of the attorney-general concerning the freedom to demonstrate (guideline 3.1200 of 1983, which was revised in 2003), which ends with the following words:

> 'The freedom to hold demonstrations and processions is a central human right in Israel. The demonstration, within the framework of the law, is a main method of formulating and expressing public opinion, and as such it is also a basic institution of democracy, which should be guarded vigorously by public authorities.'

These guidelines, which were not mentioned in the respondents' reply, also deal specifically with a case like this one, and they state that the need to deploy forces and the difficulties caused by this are insufficient grounds, in themselves, for refusing a licence for a demonstration, unless there are special circumstances that give rise to more urgent needs, and even then from the viewpoint that the right to demonstrate is a major consideration. See also HCJ 6658/93 *Am Kelavi v. Jerusalem Police Commissioner* [21] (Vice-President Barak). I would add that even in the world of Jewish law the right to demonstrate is discussed. Rabbi Y. Zilberstein, in his article 'The Duty to Demonstrate Against Desecration of the Sabbath,' 7 *Tehumin* (1986) 117 [30], entitles one of the chapters of his article 'A person is not liable to waive his rights in order not to transgress the commandment "Before a blind person (you shall not place a stumbling block)" (Leviticus 19, 14),' which is the case even it leads to desecration of the Sabbath, from the viewpoint that the duty to demonstrate is a need of the *person demonstrating*, so that he does not

'close his eyes to seeing evil' (Isaiah 33, 15 [31]); see also the remarks of Rabbi Y.S. Eliashiv, *ibid.*, at p. 120.

2. My colleague the president admittedly states that —

> 'The right to freedom of expression and demonstration, like all rights, is not an absolute right. It is possible to impose restrictions on its realization. When he makes a decision with regard to an application to hold a demonstration, the police commission is entitled to take into account, *inter alia*, the question of the forces and resources that are available to the police for the purpose of providing security at the event, the other operations that the police are liable to carry out at that time, and the police's order of priorities in carrying out its duties.'

Later he also says that 'In extreme circumstances, in the absence of a less harmful possibility,' it is even possible to refuse to give a licence for a demonstration. But my colleague did not refer this time to the circumstances in which a restriction may be imposed on the freedom of speech, which, like every right, and even a constitutional right, is not an absolute right, nor did he give details of reasons that may lead in certain cases either to refuse a licence or to make it conditional. Since we are not dealing with a theoretical matter but with a recurring phenomenon, it should be remembered that since the right to demonstrate is a right derived from the freedom of expression, and the latter is derived in many respects from the constitutional right of human dignity, there will be cases in which the freedom to demonstrate will yield, like the freedom of speech. This may happen not only for 'technical' reasons, such as an unusual burden on the police, but also when a demonstration may involve criminal offences, or one that may conflict with values such as the security of the state by almost certainly endangering public safety, or a demonstration that is intended to promote racism or support terrorism (cf. s. 7A of the Basic Law: the Knesset), or one that very seriously injures public feelings, etc.. The freedom to demonstrate is intended of course for opinions that are not widely accepted, including harsh criticism of the policy of public authorities or protests against them. But it has its limits. Indeed, my colleague said — and no one disputes this — that 'Determining the scope of the right to freedom of speech as a constitutional right derived from human dignity should be done in accordance with the meaning that should be given to the concept of human dignity' (and see HCJ 153/83 *Levy v. Southern District Commissioner of Police* [4], at pp. 408-412 {123-127} (Justice Barak)). The

restrictions should also be measured; but values such as those listed above may in certain cases override even the freedom to demonstrate, just as in the ranking of human dignity in its 'pure' sense, i.e., the reputation of a person and the prohibition against humiliating him and ruining his life, against the freedom of speech, the former should, in my opinion, usually override the latter (see the recent case of LCA 10520/03 *Ben-Gvir v. Dankner* [10]; LCA 10962/03 *Harar v. State of Israel* [23]). This court has also approved in the past a prohibition against going up to the Temple Mount, for reasons of public security (see HCJ 2725/03 *Salomon v. Jerusalem District Commissioner of Police* [24] (in the majority opinion of President Barak and Justice Or, against the minority opinion of Justice E. Goldberg); in that case there was a danger to public safety, because of 'the fierce opposition and very great sensitivity of the Moslem public to the petitioner and his movement.' In HCJ 6897/95 *Kahane v. Brigadier-General Kroizer* [25], the issue was the right of assembly, which concerned a memorial assembly which the petitioner wished to hold in memory of his father Rabbi Meir Kahane, who was murdered by an assassin in the United States (later the petitioner was himself murdered in a terrorist attack). The court approved the refusal to allow the assembly to be held on the ground that it was associated with a terrorist organization. In that case Justice Zamir said that 'defensive democracy opposes the government, if it seeks to violate human rights unlawfully, but at the same time it also supports the government when it seeks to protect human rights against subversive and violent groups that do not respect the basic rules of democracy' (at p. 860). In HCJ 1928/96 *YESHA Council v. Jerusalem District Commissioner of Police* [17], the court (*per* President Barak) reiterated the importance of the right to demonstrate, while saying that 'it is possible to limit it when there is an almost certain likelihood of danger that will lead to serious harm'; in that case the court approved the refusal to allow a certain demonstration when the president of the United States was in Israel, because of the difficulty of deploying sufficient forces in view of the threats. It was said there that 'consideration should be given to the manpower available to the police, the other tasks that it has to carry out at that time and the nature of the risks' (at p. 544). In HCJ 2979/05 *YESHA Council v. Minister of Public Security* [26] it was said that the freedom to demonstrate as a basic right with a constitutional status was opposed by interests such as the freedom of movement, property rights, the right of privacy, public order, public safety and security (and see the references cited there), and therefore a petition to hold a prolonged demonstration against the disengagement plan was denied. Thus we see that these examples indicate

that the court will not intervene in the decisions of the police, if it is presented with weighty considerations of danger to public security and even a serious injury to public feelings that may lead to violent confrontations, and these may constitute a ground for refusing to grant a licence for a demonstration. But the principle is the right and its realization, from which exceptions are derived, and not, of course, the other way round.

3. In view of all of the aforesaid, there is a basis in my opinion for the attorney-general and the state attorney's office to communicate to the police, on a frequent basis and with greater emphasis, both the principle of the freedom to demonstrate and the circumstances in which the police commander may impose restrictions on the freedom to demonstration, including the conditions that they may determine. In my opinion, relatively detailed criteria can be found in the attorney-general's aforementioned guidelines. These guidelines consider the various balances set out above, by subjecting them to the near certainty test. Moreover, I think that the dimensions of place and time have great importance (see HCJ 2481/93 *Dayan v. Wilk* [7], at p. 482 {355-356}, *per* Vice-President Barak). The place of the demonstration has significance with regard to the forces that need to be deployed, and in this respect a demonstration that takes place in an open area cannot be compared to one that takes place in a closed place; a demonstration in the city centre, with the traffic disruptions that it entails, cannot be compared to a demonstration in a suburban area; a demonstration opposite the office of a public official cannot be compared to a demonstration next to his private home (see *Dayan v. Wilk* [7]); a demonstration opposite the official residence of a public official cannot be compared to a demonstration opposite his private residence, and even at his official residence this freedom should be balanced against the rights of the neighbours (see *Am Kelavi v. Jerusalem Police Commissioner* [21]). A demonstration against an elected official cannot be compared to a demonstration against a civil servant; a demonstration outside the home of a senior public official cannot be compared to a demonstration outside the home of a mid-level or junior public official, for which the criterion should be very strict, etc.. The dimension of time also has importance, with regard to the days and time when a demonstration is held, with regard to other events that are taking place at the same time and that affect the capabilities of the police, and with regard to the duration, which should be taken into account when a demonstration continues for days, weeks and even longer (see AAA 3829/04 *Twito v. Jerusalem Municipality* [27], and the criticism of the late Y. Twito in the book *Be Quiet, They're Talking: the Legal Culture of Freedom of Speech in Israel*, *supra*, at pp. 479-482). I should add that in my opinion the aforesaid guidelines of the attorney-general should, first, be communicated on a regular basis to police officials and, second, they should be examined every few years in order to consider developments in the realities of life and case law that may affect them.

4. With regard to the services of Magen David Adom, as the president said, there is a legal difficulty, namely the lack of authorization in the law to collect the payment under dispute. This difficulty does indeed prevent the possibility of allowing the demand for payment in this petition; but the authorities do, of course, have the power to enact the necessary regulations in order to ensure that cases of this kind do not recur.

5. Even with regard to the fire extinguishing services I agree with my colleague's conclusion. And if this result is unsatisfactory, it too should be addressed by enacting regulations.

6. In conclusion, my colleague the president is retiring after he has most beneficially laid important foundations in the struggle for freedom of speech, including the freedom to demonstrate. I am sure that he too is aware that the implementation of the principle is not simple and has not always been consistent, even in case law. But perhaps this is the nature of a democracy, that its internal paths are paved with difficulties, obstacles, strivings and actions, according to the extent of the social divide and the diversity of the public. The court is a part of the people. The principle is a compass and a north star in the skies; its implementation is like clearing a path through the rocky mountains of Judaea, but even if the work is hard, it will be done. As the first century Mishnaic scholar Rabbi Tarfon said (Mishnah, *Avot (Ethics of the Fathers)*, 2, 16 [32]): 'It is not for you to complete the task, but you are not at liberty to abandon it.'

Petition granted.

21 Kislev 5767.

12 December 2006.