P.D., vol. 38(2),393

H.C.J 153/83

ALAN LEVI AND YAHELI AMIT

v.

SOUTHERN DISTRICT POLICE COMMANDER

In the Supreme Court sitting as the High Court of Justice
[May 13, 1984]
Before: Barak J., D. Levin J. and Netanyahu J.

Police Ordinance (New Version), 1971, sections 83, 84

Press Ordinance, Laws of Palestine (Drayton), vol. II, p. 1214

The Petition centred on the Respondent's refusal to permit the Petitioners - who petitioned the Court on behalf of the "Committee Against the War in Lebanon" - to hold a demonstration and procession to mark the thirtieth day of the death of the late Emil Greenzweig, who had been killed in the course of a demonstration held by the "Peace Now" movement. The Police Commissioner's reasons for his refusal were his apprehension, that what had happened before in the demonstration held by "Peace Now" was likely to happen again, and that if it did, the police would be unable to provide the demonstrators with absolute protection against a hostile crowd.

Held by the court:

A (1) The right of demonstration and procession is a fundamental human right in Israel. It is recognized along with free speech, or emanating therefrom - as belonging to the freedoms that characterize Israel as a democratic state.

(2) The basic freedoms - among them assembly and procession - constitute rules of law which, on the one hand, serve to guide us in the absence of statutory law, and, on the other hand, rules of interpretation according to which every statutory provision is to be construed. The court acts on the premise that the legislator desired neither to abrogate nor to restrict these basic freedoms.

B (1) The right of demonstration and procession, although a basic right, is not an absolute one. It is relative, being limited by other basic human rights, such as the right of private ownership of property and freedom of movement. It is also limited by the need to preserve public order and security, as well as

to protect the fabric of democratic life. The relative nature of this right obligates us to strike a balance between it and the other rights.

(2) The balancing process must find expression on two levels: One is the concrete level, where the actual circumstances of the controversial event are taken into account; the other is the level of principle, where the typical interests are taken into account and general criteria are determined for balancing conflicting interests and rights.

(3) The need for a principled balancing calls for a judicial determination which in the absence of statutory guidance as to the relative grading of the different interests, will ensure resolution of the question whether these interests rank equally in importance or whether one takes preference over the other. Likewise, in the case of interests of equal standing, this balancing process calls for a judicial determination as to the measure of deference to be shown to one interest at the expense of the other. Thus a judicial pronouncement is required as to "the limits of sufferance" of the various rights.

(4) In seeking the point of equilibrium, there is, on the one hand, the consideration that a situation should not be allowed to arise in which hostile bystanders would be able to prevent people from demonstrating, and it is the task of the police, in this situation, to keep the crowd from disturbing the demonstrators rather than prevent the demonstrators from exercising their right. At the other hand of the scale is the consideration that a hostile crowd may be dangerous, and that rioting may cause bodily injury and loss of life.

(5) Both considerations are worthy of protection, but they cannot both be upheld at one and the same time. The required balancing is to be done in the framework of the authority conferred on the District Police Commander, under the Police Ordinance (New Version), 1971, to safeguard the public security or the public order. The balancing is to be effected at two levels, both of which are tied to the District Commander's authority. The first level relates to the physical steps to be taken by the police in order to prevent a hostile crowd from harming participants in the demonstration and procession. At the second level the concern is with the normative measures to be adopted by the police with respect to the grant or denial of a permit for holding the demonstration and procession, having regard to the anticipated consequences of the physical measures the police will adopt.

C (1) At the first level of balancing it will be the duty of the police to take all reasonable steps towards preventing any threats to or disturbance of the procession or demonstration. Enjoinder of the demonstration or procession is to be imposed as the last, not the first step. Only after the police have exhausted all the physical means at their disposal, consonantly with the anticipated situation, does the normative question of granting or withholding the licence have to be dealt with.

(2) The reasonableness of the police measures will depend on the available forces, their skill and equipment, the size of the demonstrating as well as the bystanding public, and similar considerations. Also to be taken into account are all the other duties of the police. Although extending proper protection to the demonstrators is a duty of the police, it is not their only duty, and their forces have to be allocated in a manner that will ensure reasonable discharge of all police duties.

D (1) At the second level of balancing the "rational principle" by which to balance between free speech and the public security, is the "probability" test. This test or formula is applicable also in construing the District Commander's authority under sections 83 and 84 of the police Ordinance (New Version).

(2) The "probability" test does not necessitate a clear or immediate certainty, but neither will a theoretical possibility suffice. Substantial evidence is required. Conjectures, speculations and apprehensions are not enough.

(3) The ideology which the demonstration or procession seeks to express, is not *per se* of concern to the authorities, but how the message is conveyed, the possibilities of it influencing the spectators, and the measure of hostility it is calculated to arouse in the crowd, are all considerations to be duly weighed, for they have a direct bearing on the probability that public security will be breached.

E (1) If, after the adoption of all reasonable police measures, there is still a substantial probability of harm to public security, the District Commander has the power to forbid the demonstration or procession. Before this power is exercised, the use of less drastic measures must be considered. These may enable the procession or demonstration to be held, even if not as originally planned, but with changes as regards its place, time and scope.

F (1) When exercising judicial review the court will not assume the role of a super police commander, but neither will it put the discretion of the police above all else. The court scrutinizes administrative discretion according to criteria of fairness, reasonableness, bias, discrimination, relevance of considerations and the like factors.

(2) The court will ask itself whether the facts as known to the District police Commander, would entitle a reasonable police commander to infer the existence of a probable danger to public security. This examination is no different from any other made by the court using the test of reasonableness.

(3) In the present case the only facts advanced by the respondent as a reason for not permitting the demonstration, were the events of the past. These create an apprehension, but no more; they do not establish any probability. Upon a reasonable evaluation made with prudent foresight those facts cannot be said to establish any substantial likelihood of danger, and they do not go beyond mere conjecture and speculation. These do not suffice. A reasonable police commander could not have inferred on the facts as they were known to him, that there existed any substantial possibility or probability of harm to public security.

Petition for an order *nisi.* The petition, which was heard as if the order had already been given, was granted and the order made absolute.

Israel cases referred to:

[1] *H. C.* 148/79, *Sa'ar et al. v. Minister of interior and police,* 34(2) *P.D.* 169.

[2] *H. C.* 243/62, *Israel Film Studios Ltd. v. Levi Geri et al.,* 16(4) *P.D.* 2407; *S.J.* vol. IV, 208.

[3] *H. C.* - 73,87/53, *"Kol Ha'am" Co. Ltd. v. Minister of Interior,* 7 *P.D.* 871*;* 13 *P.E.* 422; S.J. vol. I, 90.

[4] *F.H.* 9/77, *Israel Electric Corporation Ltd. et al. v. Ha'aretz Newspaper Ltd.,* 32(3) *P.D.* 337.

[5] *Cr.A.* 126/62, *Dissenchick et al. v. Attorney-General,* 17 *P.D.* 169; *S.J.* vol. V, 152.

[6] *Cr.A.* 696/81, *Azulai v. State of Israel,* 37(2) *P.D.* 565.

[7] *Cr.A.* 100/51, *Dershovitz v. Attorney-General,* 6 *P.D.* 278.

[8] *Cr.A.* 255/68, *State of Israel v. Ben-Moshe,* 22(2) *P.D.* 427.

[9] *H. C.* 253/64, *Jeris v. Haifa District Officer,* 18(4) *P. D.* 673.

[10] Election Appeal 1/65, *Yeridor v. Chairman of Central Committee for Elections to the Sixth Knesset,* 19(3) *P.D.* 365.

[11] *H. C.* 243/82, *Zichroni v. Broadcast Authority Managing Committee,* 37(1) *P.D.* 757.

[12] *H. C.* 166/71, *Helon v. Usefiah Local Council,* 25(2) *P. D.* 591.

[13] *H. C.* 230/73, *S.Z.M. Ltd. v. Mayor of Jerusalem,* 28(2) *P. D.* 113.

[14] *H.C.* 155/60, *Elazar v. Mayor of Bat Yam,* 14 *P.D.* 1511.

[15] *H. C.* 531/77, *Baruch et al. v. Tel Aviv Traffic Superintendent,* 32(2) *P.D.* 160.

[16] *H. C.* 222/68, *Hugim Leumiyim et al. v. Minister of Police,* 24(2) *P.D.* 141.

[17] *H. C.* 807/78, *Ein Gal v. Film and Theatre Censorship Board,* 33(1) *P.D.* 274.

[18] *H.C.* 644/81, *Omar International Inc. New York v. Minister of Interior et al.,* 36(1) *P.D.* 227.

[19] *H.C.* 329/81, (S.P. 217/82; 376,670/83) *Nof v. Attorney-General et al.,* 37(4) *P.D.* 326.

[20] *H. C.* 389/80, *Golden Pages Ltd. v. Broadcast Authority,* 35(1) *P.D.* 421.

[21] *H. C.* 1/81, *Shiran v. Broadcast Authority,* 35(3) *P.D.* 365.

English cases referred to:

[22] *Harrison v. Duke of Ruthland* (1893) 1 *Q.B.* 142; 68 L.T. 35.

[23] *Hubbard v. Pitt* (1975) 3 *W.L.R.* 201 (C.A.).

[24] *Beatty v. Gillbanks* (1882) 9 *Q.B.* 308.

Irish case referred to:

[25] *R. v. Londonderry* (1891) 28 *L.R.* Ir. 440.

American cases referred to:

[26] *De Jonge v. State of Oregon* 299 *U.S.* 353; 57 *S.Ct.* 255 (1937).

[27] *Bachellar v. Maryland* 397 *U.S.* 564; 90 *S.Ct.* 1312 (1970).

[28] *Watson v. City of Memphis, Tenn.* 373 *U.S.* 526; 83 *S.Ct.* 1314 (1963).

[29] *Hague v. Committee for Industrial Organization* 307 *U. S.* 496; 59 *S.Ct.* 954 (1939).

[30] *Feiner v. People of the State of New York* 340 *U.S.* 315; 71 *S.Ct.* 303 (1950).

[31] *Schenck v. United States* 249 *U.S.* 47; 39 *S.Ct.* 247 (1919).

[32] *Whitney v. People of the State of California* 274 *U.S.* 357; 47 *S.Ct.* 641 (1927).

[33] *Dennis v. United States* 341 *U. S.* 494; 71 *S.Ct.* 857 (1951).

[34] *Terminiello v. City of Chicago* 337 *U.S.* 1*;* 69 *S.Ct.* 894 (1949).

D. Cheshin for the Petitioners.

R. Jarach, Director of High Court Matters, State Attorney's Office, for the Respondent.

Barak J., giving the judgment of the Court.

The Facts:

1. On 10.2.83, in the afternoon, the "Peace Now" movement held a demonstration and procession in Jerusalem. Starting at Zion Square, the procession passed along the Ben Yehuda Mall, Bezalel Street, Ben Zvi Boulevard and Ruppin Street to Kiryat Ben Gurion. In the course of the procession the demonstrators encountered hostility. The procession ended with a demonstration at the square facing the Prime Minister's office. The end was a bitter one, since a hand-grenade was thrown which led to the injury and subsequent death of a demonstrator, Emil Greenzweig.

To mark the thirtieth day of the death of the late Emil Greenzweig, the "Committee Against the War in Lebanon" sought to hold a procession on 10.3.83. This procession was scheduled to follow the very same route taken on the previous occasion, at the end of which Emil Greenzweig met his death. The purpose of the procession was to protest against "the violence and the lack of freedom of expression." On 2.3.83, the petitioners applied on behalf of the "Committee Against the War in Lebanon" for a licence to hold the procession and demonstration, but the application was refused by the respondent on 6.3.83. Giving reasons for his refusal, the respondent wrote: "The proximity of the events to each other and the atmosphere created after the holding of Peace Now's demonstration, give rise to serious apprehension that the holding of the demonstration which forms the subject of this application, its projected timing, routing and size will create a grave threat to the public order and security." The respondent noted that he was prepared to approve a meeting at the Rose Garden opposite the Prime Minister's office. On 7.3.83 the petition was lodged against the respondent, calling upon the latter to show cause why he should not accede to the application. On 9.3.83 we convened to hear arguments, Mr. Jarach having been invited to appear as a representative of the Attorney-General. Due to the urgency of the matter, Mr. Jarach had insufficient time to prepare a written reply, but it was agreed that he should put forward verbally representations of the respondent as to the facts, and that we would treat the petition as if an order *nisi* had already been issued in the matter. It was further agreed that we should accept Mr. Jarach's representations as a substitute for a replying affidavit. In his reply Mr. Jarach noted the respondent's awareness of the symbolism attaching to the date of the proposed procession and its route. Nevertheless, the respondent also had to reckon with the public safety; and while he agreed that the demonstrators themselves would not jeopardize the public safety, it was to be feared that members of the crowd might do the demonstrators violent injury. The respondent hardly advocated a reward for hooliganism, but feared the recurrence, in the course of the procession and demonstration, of incidents of violence similar to or even graver than those that had taken place thirty days earlier. We inquired of Mr. Jarach as to the grounds for the fear, and whether it was founded on any specific information about what was likely to transpire. He replied that the respondent had no special information and that his apprehension was founded on the belief that the events of the past were likely to repeat

themselves at this time as well. We went on to inquire whether, having regard to the general duties of the police, they had at their disposal sufficient manpower to safeguard the demonstration and procession. Mr. Jarach's reply was that, despite the difficulties involved, the police would be able to muster the required forces, that the respondent was motivated not by the lack of man-power but by his inability to afford the demonstrators "hermetical protection" - hence his apprehension. Much of our time was devoted to seeking a compromise acceptable to the parties, but to no avail. At the conclusion of the hearing we decided to make the order *nisi* absolute. Our reasons for so doing are given below.

The Right of Assembly and Demonstration

2. The right of assembly and demonstration is a fundamental human right in Israel (H.C. 148/77[1]). It is recognized - along with free speech, or emanating therefrom - as belonging to the freedoms that shape the democratic character of Israel. Some hold the ideological basis for this freedom to be the wish to ensure freedom of expression, which for its part contributes to the discovery of truth. Others believe that underlying the stated right is the maintenance and proper functioning of democratic government, which for its part is founded on freedom of information and freedom of protest. A further opinion is that the freedom to demonstrate and form a procession is a vital component in man's general right of self-expression and autonomous thought (See F. Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge, 1982) 3). It seems that the right of demonstration and assembly has a broad ideological foundation, at the centre of which is a recognition of the value and dignity of man, of the freedom granted him to develop his personality, and of the wish to maintain a democratic form of government. By virtue of this freedom, means of expression are afforded to those to whom the national and commercial media of expression are not available. Hence it is accepted in our law, as in the law of other enlightened democratic countries, that the right of demonstration and assembly be ensured a place of honour in the citadel of fundamental human rights. In the words of Hughes J. in *De Jonge v. State of Oregon* (1937) [26], at 364:

> "The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental."

(See also: V. Blasi, *"Prior Restraints on Demonstrations,"*68 Mich. L. Rev. 1969-70 (1481) 1483; D.G. Barnum, *"Freedom of Assembly and Hostile Audience in Anglo-American Law,"*29 Am. J. Comp. L. (1981) 59).

3. In Israel this right has yet to find formal expression in a Basic Law. Yet the decisions of this court have effectively transformed it into one of those fundamental but unwritten rights which derive directly from the democratic, freedom-loving character of our State (per Landau J. in H.C. 243/62 [2], at 2415). The result is that "in its decisions these fundamental rights serve this court as a guiding light in construing the law and reviewing the acts of the state authorities. Clearly the Executive too must conduct itself with a proper concern for these rights" (*ibid.*, based on H.C. 73,87/53, [3], at p. 884). "The recognition of *the fundamental freedoms* as a substantive part of the law in Israel also entails the conclusion that these freedoms form a part of the law, *in word and in deed, i.e.*, as basic rules serving to guide and fashion patterns of legal thinking and interpretation, which these freedoms influence by their spirit and their goal" (per Shamgar J. in F.H. 9/77 [4], at 359). We find that the basic freedoms - among them assembly and procession - constitute on the one hand rules of law which serve as guidelines in the absence of statutory law, and on the other hand, rules of interpretation according to which every statutory provision is to be construed.

The court acts on the premise that the legislator desired neither to abrogate nor to restrict these basic freedoms.

The Balance between the Right to Demonstrate and Conflicting Rights and Interests.

4. The right of demonstration and procession, although a basic right, is not an absolute one. It is relative, being limited by other basic human rights, such as the right of private property and freedom of movement or passage. It is also limited by the need to preserve public order and security, as well as to protect the fabric of democratic life. The relative nature of this right obligates us to strike a balance between it and the other rights. Thus Lord Scarman remarked in his Report on the Red Lion Square Disorders (Cmnd. 5919), 1-2:

> "Amongst our fundamental human rights there are, without doubt, the rights of peaceful assembly and public protest, and the right to public order and tranquillity... but the problem is more complex than a choice between the two extremes - one, a right to protest whenever and wherever you will and the other, a right to continuous calm upon our streets unruffled by the noise and obstructive pressure of protesting procession. A balance has to be struck, a compromise to be found that will accommodate the exercise of the right to protest within a framework of public order which enables ordinary citizens who are not protesting, to go about their business and pleasure without obstruction or inconvenience."

In discussing the need to create a balance between the various rights, we stated as follows in H.C. 148/79 [1] at 172, 178:

> "The freedoms of assembly and procession are not unlimited. They are relative and not absolute freedoms. My right to hold an assembly and procession does not mean that I have the right to enter my neighbor's property without his consent, or that I may cause violence and a disturbance of the public peace. As with other freedoms, here too it is necessary to balance the desire of the individual - and the desires of individuals - to express their views by way of an assembly and procession, against the desire of the individual to protect his welfare and property and the desire of the public to preserve public order and security. Without order, there is no liberty. The freedom of assembly does not mean a throwing-off of all public order, nor does the freedom of procession mean freedom to riot... In organized social life, there is no 'all or nothing,' but there is 'give and take,' and a balancing of the different interests."

It is necessary that this balancing process find expression on two levels: one is the *concrete* level, where the actual circumstances of the controversial event are taken into

account, the other is the level of *principle*, where the typical interests are taken into account, and general criteria are determined for balancing conflicting interests and rights. The concrete examination is essential, but is not sufficient in itself. It is not enough for the courts to state that the various interests must be balanced against each other. But the court - in the absence of statutory guidance - has to determine the balancing formula, the relative weight to be attached to the conflicting interests, and the criteria for ascertaining the point of equilibrium. This aspect was touched upon by Agranat J. in the Kol Ha'am case [3], in the following terms (at p. 881):

> "... The question must necessarily arise - particularly because that approach does not embody any precise and narrow formula - as to what is the rational principle that must serve the executive authority when it is engaged in the stated process, in order to determine the issue in favor of one or the other of the two stated interests."

This "rational principle" is needed in order to guide the public as to what is permitted and what is forbidden. Its existence is vital in order that the governmental authority be armed with the criteria and yardsticks necessary for its decision-making. This "rational principle" serves as an important guide for the judiciary, which ought not to give expression to its subjective perception but should fashion its interpretation according to objective criteria. The significance of this "rational principle" was elucidated by Shamgar J. in A.H. 9/77 [4], (at 361):

> "The process of weighing competing values denotes the interpretative starting point, but it cannot act to establish standards or a graded value scale according to which the interpretative function is to be discharged. I suspect, moreover, that the result of setting up values one alongside the other, without at the same time formulating also guidelines for assessment of their relative weight, can only be that for lack of legal criteria the court will in each case employ according to its best understanding of what is most expedient - whatever criterion seems proper to it in the circumstances. In other words a criterion embodying

> a guiding value standard, and tending towards the upholding of a fundamental freedom, is converted into and exchanged for a casual paternalistic criterion, the direction and nature of which will be incapable of advance assessment. With all due respect, this is quite unsatisfactory and it will not, I am sure, contribute to the clarity of the law or to its uniformity."

This need for a principled balancing calls for a judicial determination which, in the absence of statutory guidance as to the relative grading of the different interests, will ensure resolution of the question whether these interests rank equally in importance or whether one takes preference over the other. Likewise, in the case of interests of equal standing, this balancing process calls for a judicial determination as to the measure of deference to be shown to one interest at the expense of the other. Thus a judicial pronouncement has to be made with respect to the "limits of sufferance" of the various rights - if I may borrow a term employed by Mr. Justice Witkon [see A. Witkon, *"Reflection and some Youthful Memories of Freedom of the Press,"* Human Rights in Israel (Human Rights Association in Israel, ed. R. Gabison, 1942, in Hebrew), 153, 160].

5. The right of demonstration and procession may clash with other rights and interests of various kinds. It may clash, for instance, with an individual's proprietary right, as may happen when it is sought to hold a demonstration and procession on his property. Exercise of the right of demonstration and procession may likewise conflict with a public property right, as when the procession is sought to be held in a city street. Public and private property alike have a vested ownership, yet a desirable balance between the right of demonstration and procession and a private proprietary right is by no means the same as the desirable balance when a "public" ownership right is at stake. The right of demonstration and procession may clash with the freedom of movement, since my neighbour's right to demonstrate in a city main street inhibits my right to use this street for my own purposes. These two interests have to be balanced against each other in a manner giving recognition to one without negating the other. The right of demonstration may clash with a person's right to personal security and bodily integrity, and also with the public interest in maintaining security and democratic administrative procedures. This clash may

well occur since demonstration may bring with it violence, whether on the part of the demonstrators or on the part of a hostile crowd, and a balance must be struck between the right to demonstrate and the public security. The right of demonstration and procession may conflict with the public interest in the integrity of the judicial process, as may happen when a demonstration or procession is likely to influence the outcome of a judicial matter which is pending - and a balance has to be found between these two conflicting interests.

The Need for Diverse Criteria

6. The centrality of the right of demonstration and procession inevitably brings it into conflict with various other rights and interests, and this renders imperative a determination of standards wherewith to gauge the desirable point of balance in each case. The diversity of the different possible situations requires a matching diversity of points of balance. No single criterion will avail to solve all the problems, since the conflicting interests are not always on the same normative level, while the problematics of the conflict may be of different kinds. For instance, in case of conflict between the right of demonstration and a property right, the conflict when the latter is that of an individual is not the same as when it vests in the public. When vested in an individual the property right takes precedence, and an act of trespass cannot be justified by the right of demonstration (see *Harrison v. Duke of Ruthland* (1893) [22]). In the second case the property right takes no precedence, since public property - and I refer here to highways, squares and streets (and not, for example, to government offices) - is meant also for processions, parades and funerals (H. C. 148/79 [1], at 178; Lord Denning, in *Hubbard v. Pitt* [23]; see also S.A. de Smith, *Constitutional and Administrative Law*, (London, 4th ed. by Street and R. Brazaier, 1981) 497). Here, unlike the private property situation, the right has to be balanced against other interests, in a process of reciprocal waiver and tolerance. As we have seen, the possibility of conflict may arise also between the right of demonstration and procession and the freedom of movement or, between the former and maintaining the integrity of the judicial process. These conflicts may raise problems of a varying character. The conflict between the freedom of demonstration and procession and the freedom of movement is between two rights of equal normative value, and what is needed, therefore, is to balance them in a manner enabling substantial realization of the one without substantial infringement of the other: "The inhabitants of a city ... have to take upon themselves the inconvenience

resulting from national and public events, and these cannot serve to restrict the citizen's right to demonstrate. In organized social life there is no 'all or nothing' " (H.C. 148/79 [1], 178), and once the desirable point of equilibrium has been established, it will regulate the conduct of the public and of the authorities. The apprehension, or possibility or even certainty of impairment of one interest or another may not be relevant at all. On the contrary: the envisaged equilibrium entails the certainty of an impairment of some kind, yet the entailed risk has to be undertaken for the sake of maintaining a desirable balance between the competing interests. The second conflict, between the freedom of demonstration and procession and the integrity of the judicial process, raises a different problem. Here the question generally is the degree of likelihood that the exercise of the one right (demonstration and procession) will prejudice the other interest (integrity of the judicial process). If this likelihood is high, the interest of the integrity of the judicial process will have the upper hand, whereas the freedom of demonstration and procession will prevail when there is little such likelihood. The purpose of a principled balance in this type of situation is to establish guidelines for evaluating the prejudicial likelihood. Thus, for instance, it has been laid down in our case law that the desirable guideline is neither a "probable" nor a "remote" danger, but one of "a reasonable possibility." "The risk of a remote effect on the judicial process will not suffice, but a possible effect will, since it is much the same whether the publication did in fact operate to influence the trial, or it merely was capable of so doing. This possibility of influencing the outcome of the trial suffices if it be a reasonable possibility, and there is no need that it be probable or imminent" (per Sussman J. in Cr.A. 126/62 [5] at 181).

7. As we have seen, the desirable point of equilibrium is sometimes found in a determination of the demarcation line between two rights pressing for recognition on the same normative level (the right of demonstration and procession as opposed to the right of passage). At other times, finding the point of equilibrium entails the establishment of a criterion for evaluating the likelihood of a breach of right. Just as the point of balance in the first case varies according to the substance of the rights concerned, so by the same token will it vary in the latter case. In neither case is a general and universal standard to be established. This question arose in connection with the relationship between the freedom of expression and the integrity of the judicial process. The argument that the proper point

of balance between the two interests coincided with the point where the interests of free expression and public security were properly balanced against each other (*i. e.*, a situation of "clear and present danger"), was rejected by the Supreme Court, Sussman J. holding as follows:

> "I am of the opinion that this test is inappropriate in the instant case. There the question was the restriction of a right in deference to the public need, here the issue is the reconciliation with each other of two worthy but conflicting public interests. An encroachment upon the freedom of speech because of the danger of a breach of the public peace - a sore evil, for the prevention of which the freedom of speech should be curtailed only as far as essential - is not the same as delimiting that freedom for the sake of doing justice. For the public interest in the doing of justice is no less a value than the public interest in the maintenance of free speech, and in balancing the two against each other it would be as wrong to neglect the one as it would the other." (Cr.A. 126/62 [5], at 177).

Accordingly, we held that

> "The Supreme Court was not prepared to follow the American case law, nor to adopt the test of a clear and imminent danger. It was also not ready to adhere to the 'probability' test laid down by the Supreme Court in the *Kol Haam* case (H.C. 73/53 [3], 87). In rejecting these tests Sussman J. noted that 'the doing of justice is of no less importance than the freedom of expression...' In place of these tests the Supreme Court established another, putting the point of balance elsewhere on the spectrum of possibilities, namely, the test of a 'reasonable possibility' of a forbidden influence." (Cr.A. 696/81 [6], at 575).

8. In the petition before us no question of the freedom of movement or of the integrity of the judicial process was at stake. The consideration by which the District Commander was

guided was "a serious apprehension of a grave threat to the public order and safety." The issue was deliberated by this Court in H. C. 148/ 79 [1], where it was held that the right of assembly, procession and demonstration was not an absolute but a relative one, which could be restricted because of considerations of public safety. In the above case danger to the public safety was feared because of violent behaviour on the part of the demonstrators themselves, whereas in the case before us the apprehension was linked to possible violence coming from a hostile crowd. The Police Ordinance (New Version), 1971, provides for denial or restriction of the right of demonstration and procession on grounds of public security (sec. 84). Hence, if the risk of harm to life or body threatened by a hostile crowd is a matter of certainty, there is no doubt that the right of demonstration and procession must bow to these individual and public interests. However, does the occurrence of the harm have to be an absolute certainty for the instant purpose? To answer, it is necessary to establish a standard for gauging the likelihood that a disturbance of the public security as a result of the reaction of a hostile crowd to the demonstrators will erupt. What is the appropriate point of balance?

The Freedom of Demonstration and Procession and the need for Public Security in the Face of a Hostile Crowd.

9. This question requires us to analyze the different considerations that have to be taken into account. One is that a situation should not be allowed to arise in which hostile bystanders will be able to prevent people from demonstrating. It was so held by the U.S. Supreme Court in *Bachellar v. Maryland* (1970) [27], at 567:

> " 'The public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers'... or simply because bystanders object to peaceful and orderly demonstrations."

A person's freedom is not to be infringed merely because of violent objection to its exercise (see *Watson v. City of Memphis*, Tenn. (1963) [28]). It is the task of the police, in this situation, to keep the crowd from disturbing demonstrators, and not to prevent the demonstrators from exercising their right (Cr.A. 100/51 [7], at 280; see also E. C. S. Wade,

"The Law of Public Meeting," 2 Modern L. Rev. (1938), 177). This was clearly stated by the court in *R. v. Londonderry* (1891) [25] as follows (at 449):

> "If danger arises from the exercise of lawful rights resulting in the breach of the peace, the remedy is the presence of sufficient force to prevent the result, not the legal condemnation of those who exercise those rights."

Showing deference to crowd hostility is like entrusting the key to exercise of the right of demonstration and procession to those who oppose it. This has to be avoided and the mob is not to be given a power of veto, nor violence a reward. The danger of such deference is noted by Kalvin:

> "If the police can silence the speaker, the law in effect acknowledges a veto power in hecklers who can, by being hostile enough, get the law to silence any speaker of whom they do not approve" (Kalvin, *The Negro and the First Amendment* (1965) 140).

Indeed, we should be careful not to convert the mob's power of veto into a constitutional principle that would permit denial of the right of demonstration and procession. "Every act done outside the framework of law and calculated to prejudice another's freedom of expression - an act of violence all the more so - strikes at the very heart of democracy" (Agranat J., in Cr.A. 255/68 [8], at 435). The heart of democracy has to be protected by all the means at democracy's disposal.

10. At the other end of the scale is the consideration that a hostile crowd may be dangerous, and that rioting may cause bodily injury and loss of life. The supreme value we attach to human life compels us to reckon with its endangerment, from whatever quarter the threat may come. The freedom of demonstration must not be permitted to degenerate into a blood-bath. Moreover, a violent disruption of the public order may unravel the social fabric and the very institutions of democratic government. It is not unknown for the enemies of democracy to have availed themselves of its legal processes in order to bring

about its downfall. "More than once in the history of democratic countries has it happened that an orderly democratic administration was overcome by fascist and totalitarian movements of one kind or another, these making use of all the rights of free speech, freedom of association and of a free press, accorded them by the state, in order to conduct their destructive activities. Those who saw this happen at the time of the Weimar Republic will not forget the lesson" (Witkon J. , in H.C. 253/ 64 [9], at 679; see also E.A. 1/65 [10]), nor, indeed, will those who lived through the events of the Third Reich (see Witkon's above-mentioned article, at p. 161). The freedom of procession must not be allowed to escort the state to the "abyss" (a phrase used by my learned brother, Levin J., in H.C. 243/82 [11], at 770).

11. These, then, are the two considerations to be taken into account and to be balanced against each other. Both are worthy of protection, but they cannot both be upheld at one and the same time. Mr. Justice Fortas depicted the situation thus:

> "The Constitution seems to accommodate two conflicting values, each of which is fundamental; the need for freedom to speak freely, to protest effectively, to organize, and to demonstrate, and the necessity of maintaining order so that other people's rights and the peace and security of the State, will not be impaired" (A. Fortas, *Concerning Dissent and Civil Disobedience* (New York, 1968) 30).

The required balancing is to be done in the framework of the authority conferred on the District Police Commander, under the Police Ordinance (New Version), to safeguard the public security or the public order. It seems to me that the balancing is to be effected at two levels, both of which are tied to the District Commander's authority. The first level relates to the physical steps to be taken by the police in order to prevent a hostile crowd from harming participants in demonstrations and processions. At the second level, the concern is with the normative measures to be adopted by the police with respect to the grant or denial of permission for the holding of a demonstration and procession, having

regard to the anticipated consequences of the physical measures the police will adopt. I shall deal with each of these levels in turn.

Balance Level One: Police Action to Prevent a Disturbance.

12. We have seen that our point of departure is the principle that an individual has a recognized right to take part in a demonstration or procession. Anyone threatening the exercise of this right and forcefully interfering with its enjoyment is acting unlawfully. There is a constitutional right to demonstrate and a constitutional duty to refrain from disturbing the demonstration by the use of threats and violence (see *"Protecting Demonstrators from Hostile Audiences,"* 19 Kan. L. Rev. 524). Hence, the police must use all reasonable means at their disposal in order to prevent these threats and to protect the demonstrators from harm. This duty of protection is stated by Professor Chafee thus:

> "The sound constitutional doctrine is that the public authorities have the obligation to provide police protection against threatened disorder at lawful public meetings in all reasonable circumstances" (Z. Chafee, *Free Speech in the United States* (New York, 1969) 245).

The initial police action should be directed not against the demonstrators , but those threatening them with acts of violence. In the words of U.S. Supreme Court Justice Roberts:

> "Uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right" *(Hague v. Committee for Industrial Organization* (1939) [29], at 516).

This principle has been adopted in our law too. For instance, the Supreme Court has held as follows:

> "The maintenance of order does not mean surrendering to those who threaten its disturbance, but the contrary: giving shelter and protection to the victims of such" (per Berinson J. in H.C. 166/71 [12], at 594; see also H.C. 230/73 [13]; H.C. 155/60 [14], at 1512).

In the same spirit it was held that "the response to the unlawful resort to violence must be firm initial police action and subsequent enforcement of the criminal law" (Landau J. in H.C. 531/77 [15], at 165). It is therefore the duty of the police to take all reasonable steps towards preventing any threats to, or disturbance of, the procession or demonstration (*Cf.* H.C. 222/68 [16], at 166). The enjoinder of the demonstration or the procession is to be imposed as the last, not the first step. Only after exhausting all the physical means at the disposal of the police, in whatever manner required to meet the anticipated situation, does the normative question of granting or withholding the licence have to be dealt with. If, in the name of preserving order, the police "ever can interfere with a lawful public speaker, they first must make all reasonable efforts to protect him" (Black J., in *Feiner v. People of the State of New York*, (1950) [30], at 326).

The reasonableness of the police measures will depend on the available forces, their skill and equipment, the size of the demonstrating as well as the bystanding public, and similar considerations. Also to be taken into account are all the other duties of the police (see H.C. 222/68, [15], at 167). Although extending proper protection to the demonstrators is a duty of the police, it is not their only duty, and they have to allocate their forces in a manner that will ensure reasonable discharge of all their duties (see Note, *"Hostile Audience Confrontations: Police Conduct and First Amendment Rights,"* 5 Mich. L. Rev. (1976-77), 180)

Balance Level Two: Police Action to Prevent a Demonstration.

13. It is possible that the reasonable efforts made by the police to prevent interference with a demonstration will succeed in eliminating the danger threatened by a hostile crowd, but it may also happen that the danger remains. The police may not have sufficient forces available, or those available may not be adequately trained or equipped, or the surrounding physical circumstances may perhaps preclude effective control of the situation. For these and other reasons, a threat to public safety may persist even after the envisaged police

action. In this predicament the second question poses itself, namely: does the risk of harm to body and life justify repression of the right of demonstration and procession? Should the police efforts be directed solely against the hostile crowd, or are there also circumstances which justify police action against the demonstrators themselves? Shall the procession march at any price? We have already discussed the relevant considerations at this level of inquiry, noting that here too a balance must be struck. An infringement of the right of demonstration and procession has to be justified when its exercise entails a risk of bodily injury and loss of life. A democratic society which is anxious to preserve human dignity, life and bodily integrity, which is concerned with maintaining democratic government procedures, must sometimes deny or curtail the freedom of expression and the freedom of demonstration and procession, even if the practical implication of so doing is to grant a hostile audience *de facto veto power*. In this connection Professor Barnum writes as follows:

> "It is doubtful that constitutional policy can prevent a hostile audience from abridging the freedom of speech when public disorder is either so unexpected or so persistent that it threatens to overwhelm the law enforcement resources of the society... when violent clashes between opposing groups become a regular occurrence, the law enforcement capacity of the society may be worn so thin that general restrictions on the right to demonstrate will have to be imposed. Under these circumstances, the constitutional right of freedom of speech may have to be subordinated, at least temporarily, to the imperatives of law enforcement and the need to restore public order" (Barnum, *supra*, at 94).

But the real question that underlies this petition is this: what is the measure of likelihood of loss of life or bodily harm resulting from the holding of a demonstration that would justify the ultimate step of enjoining exercise of the stated right. This is a matter for prior and not retrospective assessment. The procession has yet to march, the demonstration yet to be held and the events yet to unfold. But the danger exists, the threat is there. By what standard shall the situation be gauged? As we have seen, certainty is by no means to

be required. One does not await the patient's death before calling the doctor. What then is the requisite degree of likelihood - short of certainty - in this context? Does apprehension suffice? Is reasonable apprehension required, or perhaps a possibility, proximate or remote, suffices? Perhaps a substantial danger has to be shown, or shall the test be one of probability or of a clear and present danger? These and other tests we shall now examine in seeking the proper criterion to be applied when balancing the right of procession and demonstration against individual and public safety.

The Proper Standard: The "Probability" Test.

14. Determination of the proper standard was the central issue in the *Kol Ha'am* case ([3] 87). Charged with determining the "rational principle" by which to find the balance between free speech and the public security, the Court decided on "probability" of danger as the balancing formula or "test." This test will ensure that:

> "On the one hand the viewpoints of others are not suppressed merely because they are opposed to those held by the people in authority and, on the other hand, that there is also attained the legislator's objective of preventing danger to the public peace" (*ibid.* at *888).*

Justice Agranat arrived at this test on the basis of the fundamental perception of the State of Israel as a country built on democratic foundations, within which prior restraints on the freedom of expression ought not to be imposed save in situations where the occurrence of a harmful result is a "substantial probability." It seems to me that the stated test is appropriate also in the matter now before us. We might also therefore properly apply the "probability" test in construing the District Commander's authority under sections 83 and 84 of the Police Ordinance (New Version). This can be justified on four grounds: *First,* the issues in this case and in *Kol Ha'am* [3] are very closely related. In both cases the principle of free speech (in its wide sense) clashes with the public security interest, and the need arises for a standard by which to gauge the likelihood of harm occurring. The general considerations pertaining to the democratic nature of the state and the need to confine "preventive measures" to situations in which there is a substantial probability that danger will erupt, apply in both cases. *Second,* the decision in *Kol Ha'am* has come to be accepted

by the courts as establishing a general guideline for the balancing of freedom of speech with public safety. The ruling in *Kol Ha'am* is not limited in application to the specific provision of the Press Ordinance in issue there, but "was formulated on a broad theoretical basis" (per Landau J. in H.C. 243/62 [2] at 2411).

The ruling in *Kol Ha'am* "has become a cornerstone in our legal edifice, and the principles embodied in it have been accepted by all and are beyond challenge today" (Levin J., in H.C. 243/82 [11], at 765). Our courts have in the past applied the stated test in all situations requiring a balance of freedom of speech with public safety (see *e.g.* H.C. 243/63 [2]; H.C. 807/78 [17] at 278; H.C. 148/79 [1]; H.C. 644/81 [18]; H.C. 243/82 [11]; see also P. Lahav, *"Freedom of Expression in the Decisions of the Supreme Court, "* 7 *Mishpatim* (1977) p. 375). It is fitting that we continue following this route, along which processions and demonstrations shall be free to march as long as there is no probability of prejudice to public security.

A *third* reason for following the *Kol Ha'am* guideline is that it puts us in the company of modern democratic states which also face similar predicaments and, despite differences in constitutional structure, arrive at solutions similar to our own (see D. G. Barnum, *The Constitutional Status of Public Protest Activity in Britain and the United States* (1977) Pub. L. 310). Thus, a similar approach is taken in the United States (see L. H. Tribe, *American Constitutional Law* (Mineola, New York)), and likewise in West Germany. The latter country's constitution ensures freedom of assembly, with provision made for lawful restriction of the same. A special law empowers the police to prohibit demonstrations, provided that the circumstances known at the time of the decision constitute "an immediate danger to public order or public security" (see *Gesetz uber Versammlungen* und *Aufzuge* (Versammlungsgesetz) of 24 July, [Dietel and Kintzel, *Demonstrations und Versammlungsfreiheit* (1935), 120]).

Fourth, the stated test strikes a proper balance among the various considerations which are competing for primacy. The test, on the one side, pays full regard to the need to ensure freedom of demonstration and procession, and also fully recognizes that only exceptional circumstances indicating a causal connection which is clear and manifest, justifies the infringement of this freedom. On the other side, the test pays full regard to the need for protecting life and limb, acknowledging that the maintenance of democratic administrative procedures and the public safety justify infringement of the freedom of

demonstration and procession. It is accordingly a rational and principled test, and provides a proper and flexible guideline for the resolution of difficult and exceptional situations.

15. Already in *Kol Ha'am* Agranat J. pointed out ([3] at p. 888) that the "probability" test was "not a precise formula that could be adapted easily or certainly to every single case." The use of kindred expressions, such as "a proximate possibility" (Agranat J., *ibid.*), "a tangible danger" (Sa'ar decision [1]), "a natural consequence" (see *Beatty v. Gillibanks* [24]), throw little additional light on the content of this elusive test. It may be noted that in the United States the standard of a "clear and a present danger" is sometimes applied in the present context. This test was enunciated by Justice Holmes in *Schenck v. United States* [31]:

> "The question in every case is whether the words used are used in circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent" (at p. 52).

It was further shaped by Justice Brandeis, with the concurrence of Justice Holmes, in *Whitney v. People of the State of California* [32]:

> "... no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose the evil by the process of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression" (at p. 377).

Some reservations about the test were expressed in later decisions (see Strong, *"Fifty Years of 'CIear and Present Danger':* From Schenck to Brandenbrug and Beyond," *Free Speech and Association* (ed. Kurland, 1975) 302; *Dennis v. United States* [33]).

Justice Agranat himself rejected this test in *Kol Ha'am* ([3] at 891), mainly because the element of immediacy demands proximity in time. In later Supreme Court decisions no

clear distinction was maintained between the "probability" test enunciated by Justice Agranat and the "clear and present danger" test rejected by him, the two being treated as identical (see *e.g.* Sussman J. in Cr.A. 126/62 [5] at 171; Cohn J. in E.A. 1/61 [10] and Bach J. in H.C. 243/82 [11], at 779). Indeed, there appears to be no great difference between these two tests (see Lahav's above-mentioned article at 420), and some regard them as being but different versions of one and the same test (see T. L. Emerson, *The System of Freedom of Expression* (N.Y.. 1970) 113). In the *Dennis* case [33], in which the American Supreme Court expressed reservations concerning the "clear and present danger" test, Jackson J. nevertheless felt that there was room for its continued use in procession and demonstration cases (*ibid.* at 568).

16. The test of "probability" does not necessitate a clear or immediate certainty, but neither will a theoretical possibility suffice. What is required is "substantial" evidence (D. Libai, *"The Right to Assemble and Demonstrate in Israel, "Iyunei Mishpat.* Vol. B (1972/73) 54, 65). The estimation must be based on known facts, including past experience. Conjectures, speculations and apprehensions are not enough, nor is a plea of a substantial possibility of harm to public security. The actual circumstances must point to a substantial likelihood of danger, leaving a possibility of "setting off" the degree of likelihood against the measure of gravity of the apprehended harm. In this respect one should not seek to be wise after the event and judge according to *ex post facto* knowledge of the facts and events, but rather according to the reality confronting the authority at the time of making its decision. Nevertheless, not to be wise after the event is no justification for folly before the event. Since we are concerned here with the evaluation of a future happening, relevance attaches to the circumstances surrounding the holding of the demonstration and procession, to the message it is intended to convey, the manner of its conveyance, and to the possible reaction of the crowd. A demonstration is not something detached from reality, it is rather a phenomenon of life taking place at a particular place and time. It is true that the ideology which the demonstration or procession seeks to express is not *per se* of concern to the authorities "the police are not in charge of ideology" (H.C. 148/79 (1) at 179). But how the message is conveyed, the possibilities of its influencing the spectators and the measure of hostility it is calculated to arouse in the crowd are all considerations to be duly weighed, for they have a direct bearing on the threat to public-security. Accordingly, the views of

the demonstrators are not in themselves of interest to the authorities, but are important only for estimating the probability of the danger erupting.

Freedom of expression or demonstration does not mean freedom merely to say only what others want to hear. Freedom of procession is not the preserve of flower-garlanded children marching along a city street, but it also confers the right on people who do not hold the accepted views to march, and whose very marching arouses irritation and anger (see *Terminiello v. City of Chicago* (1949) [34], at 4). The right is available to marchers in both categories, and is not tied to the measure of approval or anger aroused. Yet importance does attach to such responses when one is evaluating the likelihood that the procession and demonstration will result in a breach of the public security.

17. If, despite the adoption of all reasonable police measures, there is still a "probability" of harm to public security, the District Commander has the authority to forbid the demonstration or procession. It is to be noted, however, that the enjoinder of a demonstration or procession is a measure of last resort, to be adopted in the face of anticipated danger. Before its adoption, the use of less drastic measures has to be considered. These may enable the demonstration or procession to be held, even if not as originally planned but with changes as regards its place, time and scope. In this manner it will be possible to maintain, if only in limited measure, the freedom of demonstration and procession, while at the same time protecting the public security interest. Indeed, when the lawful denial or curtailment of a basic human right is at stake, it is incumbent on the Executive to choose - from the range of means available for the protection of public security - such restrictive measures that least impair the basic right. Among the drastic measures, that which is the least drastic should be chosen. (See note: *"Less Drastic Means and the First Amendment*, "78 Yale L.J. (1969) 464). It is possible, of course, that any measure less than a total enjoinder may be ineffective in the face of a probable threat to public security. In such event there is no alternative but to adopt this stringent measure. But where other means may prove effective, they must be employed.

Judicial Review

18. I have so far confined myself to the normative framework within which the District Commander's discretion may be exercised. It is now necessary to examine the normative

discretionary framework for the exercise of judicial review. This framework is not peculiar to the law of demonstration and procession, but is rather the regular framework set by the doctrine of judicial review. This doctrine holds that "the court, when exercising judicial review, does not assume the identity of the functionary the lawfulness of whose conduct is being challenged, but each retains its own identity, and the court examines whether the functionary acted as one in his position should properly have done." (H.C. 329/81 [19], at 334). Accordingly, the court will not assume the role of a super-police commander, but neither will it put the discretion of the police above all else. The court scrutinizes administrative discretion according to criteria of fairness, reasonableness, bias, discrimination, relevancy of considerations and the like. Thus we have ruled as follows in the context of the Police Commander's discretion under sections 83 and 84 of the Police Ordinance (New Version): "If the second respondent's considerations are affected by lack of good faith, by arbitrariness, discrimination or unreasonableness - we shall not hesitate to intervene" (H.C. 148/79 [1], at 178).

19. In exercising judicial review, the court will examine the lawfulness of the police commander's decision in relation to the existence of a "probable" danger to the public security (see *Kol Ha'am* [3] at 823). The court will ask itself - as it has in other similar cases (*cf.* H.C. 389/80 [20]; H.C. 1/81 [21]; H.C. 243/82 [11] - whether the facts as known to the District Police Commander, would entitle a reasonable police commander to infer the existence of a "probable danger" to public security. This examination is no different from any other made by the court using the test of reasonableness. In this way, for instance in H.C. 644/81 [18], this court examined whether various articles published in a daily newspaper posed a probable danger to public security. A similar examination was made by this court in H.C. 243/82 [11], in the context of prohibiting the telecasting of certain material. The same test has to be used when ascertaining the "probability" of harm to public security in the context of the police commander's exercise of his discretion.

From the General to the Specific

20. The District Police Commander concluded, in the matter before us, that there was "serious apprehension over a grave threat to public order and security." This threat, in his

opinion, would continue to exist even after allocation of the forces necessary for safeguarding the demonstration and procession.

We enquired as to the grounds for such concern, and were informed that it resulted from an evaluation of the events that had transpired on the occasion of the first demonstration and procession, held a month earlier. Here the District Commander erred, in our opinion. Apprehension and estimations are not enough - unless they are founded on facts and point to a "probability." In the matter before us the only facts adduced were the events of the past. These create an apprehension, but no more, and do not establish any probability. Upon a reasonable evaluation made with prudent foresight, the above facts cannot be said to establish any substantial likelihood of danger, and do not go beyond mere conjecture and speculation. These do not suffice. A reasonable police commander could not have inferred, on the factual constellation known to him, that there existed any probability or substantial likelihood of harm to public security. Once we have reached this conclusion there is no longer need for us to consider whether the police commander had properly discharged his duty when he offered to licence a meeting at the Rose Garden, opposite the Prime Minister's office. That inquiry would only have been necessary had we thought that holding the procession along the original route entailed a probability of harm to public security. In any event, the need to consider alternative routes of procession falls away, once we have concluded that the planned procession poses no danger warranting its enjoinder. Yet I must add with regret that a number of suggestions which we made in the course of the hearing - relating to alternative routes promising a more effective deployment of the public forces and thus reducing the fear of possible violence on the part of the crowd - were not acceptable to the Respondent, despite the willingness of the Petitioners to accept them. It is difficult to fathom the Respondent's rejection of these alternative proposals, which could have reduced the risk of possible danger significantly, even on the premises and assumptions of the police themselves.

For the above reasons we have decided to make the order absolute in the sense that the Respondent is to give the Petitioners a licence to hold a demonstration as requested by them.

Judgment given on May 13, 1984.