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At the Magistrates Court in Jerusalem

CC 11714/04

In the matter of

1. _____ **Quq**

2. _____ **Quq**

both from Turmus'ayya, Ramallah District

both represented by attorneys Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or Yossi Wolfson (Lic. No. 26174) and/or Adi Landau (Lic. No. 29189) and/or Manal Hazzan (Lic. No. 28878) and/or Shirin Batshon (Lic. No. 32737) and/or Hava Matras-Ivron (Lic. No. 35174) and/or Gil Gan-Mor (Lic. No. 37962) and/or Sigi Ben-Ari (Lic. No. 37566) of HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (Reg. Assoc.) 4 Abu Obeidah Street, Jerusalem 97200 Tel. 02-6283555; Fax 02-6276317

The Plaintiffs

v.

The State of Israel

represented by the Tel Aviv District Attorney's Office (Civil Department) 1 Henrietta Szold Street, Tel Aviv 64921 Tel. 03-6970282; Fax 03-6918541

The Defendant

Nature of the claim: **Monetary, Damages**

Amount of the claim: **NIS 102,686**

Complaint

General

- A. This claim deals with a phenomenon that appears every olive-picking season: settlers attacking and endangering the lives of groups of Palestinian farmers, destroying their property, stealing their crops, and preventing them from harvesting their olives.
- B. With the start of the olive-picking season in the Occupied Territories, the settlers run wild, both by physically attacking and threatening injury, at times

making their threats with weapons, and by damaging the property and crops of the Palestinians. The settlers' abuse has prevented and continues to prevent the farmers from picking their olives, causing the crops and yield to decline year after year.

- C. Notwithstanding the above, and notwithstanding the awareness of the defence establishment and the law enforcement authorities in the Occupied Territories of the said problem and of the repeated abuse of Palestinians by settlers, the state authorities delay in enforcing the law, in investigating Palestinian complaints against settlers, and in providing proper protection for the Palestinians and their property.

The parties

1. Plaintiff 1 is a married male who lives in the village Turmus'ayya, Ramallah District. At all times relevant to this claim, he was the owner of a truck – a 1999 Mercedes, model 412, registration number _____ (hereinafter: the truck), and worked as a welder in the metal-works workshop in his village. A copy of the truck's registration is attached hereto as Appendix A.
2. Plaintiff 2, the brother of Plaintiff 1 and a resident of Turmus'ayya, was at all times relevant to this claim in possession of the truck of Plaintiff 1. He also was the owner and operator of an aluminum-works workshop in his village.
3. The Defendant, the State of Israel, is and was at all times relevant to this claim, responsible and/or the employer and/or the supervisor and/or the operator and/or the long arm of all the police and military forces (hereinafter: the security forces) in the Occupied Territories, in general, and in the area of Turmus'ayya, in which the incident described below occurred, in particular.

The incident

4. On 21 October 2002, at 10:00 A.M. or thereabouts, Plaintiff 2 was driving in the truck belonging to his brother Plaintiff 1 on his way to the olive orchards in the area of Ath Thahrat, farmland located within the municipal jurisdiction of Turmus'ayya and situated about three kilometers from the village. He was going to the farmland to assist his fellow villagers in the olive-picking.
5. The said Ath Thahrat area is situated about 300 meters from the Shevut Rahel settlement.

A map of the Ramallah area, in which Turmus'ayya and the Shevut Rahel settlement appear, is attached hereto as Appendix B.

6. Shortly after arriving at the orchards, a white Subaru station wagon with a front door painted yellow, bearing yellow license plates, approached from the direction of the Shevut Rahel settlement. Two settlers were in the vehicle, one of whom was Boaz, who was known to the villagers. The vehicle passed by the pickers and continued on for about 200 meters and then returned to the settlement.
7. The vehicle raised suspicions among the Palestinian olive-pickers, including Plaintiff 2, because of the many cases in which settlers from Shevut Rahel and Shilo had run wild, harassed, and bothered Palestinians during the olive-picking. One such instance took place on 18 October 2002, in which a number of settlers from Shevut Rahel attacked a few farmers in the Ath Thahrat area, stole fourteen full sacks of olives, damaged the vehicle of one of the farmers, N. G., and threatened to shoot farmers in order to expel them from the area.
8. According to what Plaintiff 2 was told, one of the Palestinian farmers present in the orchards had called the Israeli District Coordinating Office in the morning, before Plaintiff 2 arrived at the orchards, and spoke with an investigator named Haggai. He informed Haggai that the settlers were doing suspicious things and that no soldiers were at the site despite the prior coordination between villages, the Palestinian DCL, and the Israeli DCL. Haggai was surprised that the army had not yet arrived at the site, and added that he would send the army immediately.
9. Plaintiff 2 also contacted the police in Bet El and spoke with an investigator named Eyal. Plaintiff 2 mentioned that settlers from Shevut Rahel were acting suspiciously and asked why the army had not yet arrived, despite the coordination in safeguarding the pickers. The investigator promised to send the army. For whatever reason, the army did not arrive.
10. A while later, a group of armed settlers, coming from the direction of Shevut Rahel, arrived at the orchards. They spread out among the pickers.
11. Then Plaintiff 2 again called the Police in Bet El and excitedly asked to talk with the investigator Eyal because settlers were attacking the pickers. The policeman who answered the phone yelled at Plaintiff 2 and slammed down the phone.

12. The settlers physically attacked some of the pickers. In addition, one settler went over to the truck of Plaintiff 1, which was parked near the other vehicles of the pickers, and threw a stone at the front windshield. Another settler threw a grenade into the truck, causing it to go up in flames. Settlers did the same thing to seven other vehicles, while another group of settlers threatened to shoot the terrified farmers if they made a move toward the settlers.
13. Villagers who heard about what was happening came to the site, and a large group gathered.
14. Two and a half hours passed from the time that contact was first made with the Israeli DCL to the time that the soldiers arrived. Additional army and police forces came and positioned themselves around the Shevut Rahel settlement.
15. The soldiers asked the Palestinian farmers to leave the site within five minutes, threatening to take action against them if they did not obey.
16. The Palestinians' whose vehicles had been torched, among them Plaintiff 2, went with the police officers to file a complaint.
17. While going with the police to file the complaint, as they passed the Shevut Rahel settlement, Plaintiff 2 saw some of the belligerent settlers and the white Subaru in which the belligerent settlers had driven, and informed the police officer who was sitting with him in the back seat, but the officer told him to keep silent.
18. The scenario described above will be referred to below as the incident.
19. The owners of the vehicles that had been torched, among them Plaintiff 1, went to the Police Station in Bet El and filed complaints regarding the said incident.

Correspondence with the authorities

20. As stated, the Plaintiff filed a complaint and gave a statement the day of the incident at the Bet El Police Station relating to the attack by the settlers and to the torching of the truck.

A copy of the confirmation of filing of the complaint is attached hereto as Appendix C.

21. The Plaintiff saw that no progress was being made in the investigation of the incident, and he received no updates on the status of his complaint, so he turned to HaMoked: Center for the Defence of the Individual.

22. On 6 March 2003, the Plaintiff's counsel, from HaMoked: Center for the Defence of the Individual, wrote to the Binyamin Police Station and requested an update on the file.

A copy of the said letter is attached hereto as Appendix D.

23. On 20 March 2003, HaMoked: Center for the Defence of the Individual received the reply of the Binyamin Police Station, which indicated that an investigation had been opened and the file had been forwarded to the Claims Division of the *SHAI* [Samaria and Judea] District for subsequent handling.

A copy of the said reply is attached hereto as Appendix E.

24. In accordance with the reply of the Binyamin Police Station, the Plaintiff's counsel wrote, on 20 March 2003, to the Claims Division, *SHAI* District, and requested an update on the file.

25. On 18 June 2003, the Claims Division of *SHAI* District replied, stating that the file against all the suspects had been closed because of lack of evidence.

A copy of the said reply is attached hereto as Appendix F.

26. On 30 June 2003, a request was sent to the Records Division, Binyamin Police Station, for permission to photocopy the investigation file, to enable the Plaintiff to plan the handling of the matter.

27. The investigations coordinator at Binyamin Police Station replied, on 2 July 2003, that the investigation file had been forwarded to the Jerusalem District Attorney's Office on 12 June to be closed, and that the request to photocopy the file should be directed to the District Attorney's Office.

A copy of the said reply is attached hereto as Appendix G.

28. On 23 July 2003, a staff member of HaMoked: Center for the Defence of the Individual, Ms. Alva Kolan, wrote to the Jerusalem District Attorney's Office and requested permission to photocopy the investigation file.

29. In a telephone conversation held on 6 August 2003, the Jerusalem District Attorney's office said that the investigation file had been returned to the Claims Division at the *SHAI* District. However, an official from the *SHAI* Claims Division said in a telephone conversation that the file had been

transferred to the Binyamin Police Station. Ms. Kolan again contacted the *SHAI* Investigations Division to seek the file and obtain an update on its handling.

30. An official at the *SHAI* Investigations Division stated that, because there was a suspect, the file had been transferred, on 20 July 2003, from the Binyamin Police Station to the Jerusalem District Attorney's office for further handling, and that a request to photocopy the file should be directed to that office.

A copy of the said reply is attached hereto as Appendix H.

31. On 14 September 2003, request was made to the Jerusalem District Attorney's office to photocopy the investigation file.

A copy of the said request is attached hereto as Appendix I.

32. From telephone conversations held with the Jerusalem District Attorney's office, following clarifications, it was learned, on 14 September 2003, that Attorney Shulamit Ben Yitzhak was handling the file, and that request should be made to Attorney Ben Yitzhak to obtain an update on the file.

33. Several contacts were made with Attorney Ben Yitzhak, and on 25 March 2004, the latter stated that she had not yet completed her handling on the file, and that she would update HaMoked about the status of the file.

34. In a conversation held on 8 September 2004 with Attorney Ben Yitzhak, Ms. Kolan, of HaMoked: Center for the Defence of the Individual, was informed that the handling of the file had not yet ended. Ms. Kolan requested that she be allowed to photocopy the file. Attorney Ben Yitzhak reported that a written request was necessary.

35. On 9 September 2004, Attorney Yossi Wolfson, of HaMoked: Center for the Defence of the Individual sent to Attorney Ben Yitzhak a written request to photocopy the investigation file.

A copy of the said request is attached hereto as Appendix J.

36. On 12 October 2004, HaMoked received the response of Attorney Ben Yitzhak, whereby photocopying of the file was not permissible at this stage because the file had not yet been closed, and that effort was being made to file an indictment against a suspect.

A copy of the said response is attached hereto as Appendix K.

37. As described above, no conclusions and/or decisions regarding the Plaintiffs' complaint have yet been received. Thus, the Plaintiffs reserve their right to amend their complaint based on the conclusions, results, and investigative material, when they are received.

Responsibility of the Defendant and its agents

38. As mentioned above, Plaintiff 2 filed a complaint regarding the incident the day that it occurred. Despite requests made by the Plaintiffs and HaMoked: Center for the Defence of the Individual to obtain an update on the complaint and notification of the decision reached, the handling of the investigation, for some reason or other, took a long time, the Police closed the file on grounds of lack of evidence, and when it was forwarded to the District Attorney's office to complete the investigation, a suspect "blossomed," and final decision on the file remains unclear.
39. The Torts (State Liability) Law, 5712 – 1952, places a burden on the Plaintiffs and compels them to file their complaint although the criminal investigation against the settlers has not been completed – apparently because of unnecessary foot-dragging in the handling of the file. Therefore, the Plaintiffs reserve the right to amend the statement of claim to reflect the facts arising from the criminal proceedings.

Negligence

40. The Plaintiffs will argue that acts of the police officers and IDF soldiers, who were acting as agents of the Defendant, in the incident described above constitute negligence within the meaning of the term in Article 35 of the Ordinance, in that:
- A. The soldiers have the abstract duty of caution to the Plaintiffs, in that they are responsible for safety and well-being of the general public, including the Plaintiffs, and in the circumstances of the incident were also obligated to act with actual caution;
 - B. The police officers and soldiers acted irresponsibly and with disregard toward the Plaintiffs' property;
 - C. The police officers and the soldiers did not do everything within their capability to prevent the events that are the subject of the complaint;

- D. The police officers and/or the soldiers did not go to the orchards to safeguard the Palestinian pickers as had been previously arranged;
 - E. The police officers and/or the soldiers did not arrive in time, although notification had been given prior to the occurrence of the incident that there was fear the settlers who were wandering about the site would attack the pickers;
 - F. The police officers and/or the soldiers did not do and/or did not do enough to prevent the incident that is the subject of the complaint and the damages that are set forth below, even though acts of this kind had taken place shortly before the time that the incident occurred;
 - G. They refused to respond at the crucial time to the Palestinian residents' request for assistance;
 - H. They were negligent in carrying out their function by failing to protect the residents' property;
 - I. The police officers who accompanied Plaintiff 2 and the other persons whose vehicles had been torched did not arrest and/or detain for questioning the assailant settlers, even though they were identified at the site, and eyewitnesses existed. They also failed to bring in for purposes of investigation the vehicle that Plaintiff 2 pointed out was the one used by the settlers when the Plaintiffs and other pickers were attacked.
41. The Plaintiffs will argue that the Defendant is responsible to the Plaintiffs for its agents' acts in that persons acting under its supervision and/or control and/or command, in that they were ordered to carry out these acts and/or did not take the acts necessary to ensure that these acts would not be done.
42. The Plaintiffs will further argue that the Defendant is directly responsible for the Plaintiffs' damages in that, *inter alia*, it performed and/or failed to perform the following acts:
- A. Did not instruct or did not properly train the security forces who were charged with the responsibility for the property of the civilian population in the Occupied Territories, including that of the Plaintiffs, although it was necessary to do so;
 - B. Acted negligently in transmitting instructions to the security forces operating on its behalf as regards protecting the pickers, enabling the

settlers to harm the Palestinian pickers, in general, and the Plaintiffs, in particular;

- C. Did not properly supervise the persons acting as their agents;
- D. Refrained from expending the expenses necessary to prevent the damages, the amount of which expenses was substantially less than the anticipated damages;
- E. Did not take the measures which by their nature and/or magnitude were necessary under the circumstances to safeguard the bodies and property of the pickers, in general, and the Plaintiffs, in particular;
- F. Did not take action and/or sufficient action to investigate the Plaintiff's complaint in due time and as required;
- G. Did not anticipate, although it should have anticipated, the incident and the damages resulting therefrom, because events of this kind occurred yearly, particularly during the picking season and on farmland near the settlements;
- H. Ignored previous complaints relating to settlers' attacks on Palestinians during the picking season, did not learn the obvious lessons, and failed to take vigorous measures to prevent such cases from recurring;
- I. Together with its agents, maintained loose control over the settlers, who committed repeated acts of vandalism and attacks against Palestinians and their property, in general, and against the Plaintiffs, in particular.
- J. Breached the fundamental principle of equality in protecting civilians and in enforcing the law;
- K. In its acts or omissions, failed to act as an authority and/or principal and/or employer and/or state in occupied territory should have acted in the circumstances herein relevant;
- L. Was negligent in choosing the soldiers and/or police officers serving in the various authorities in the Occupied Territories to provide the protection and carry out the investigation;
- M. Both it and its branches of government lingered in investigating the complaint of the Plaintiffs, and did not take the immediate actions

that would enable the rapid capture of all the persons directly responsible for the Plaintiffs' damages, even though requests for assistance were made at the time, which could have prevented the resultant damages.

- N. Expected, or should have expected, that its failures would result in the Plaintiffs' damages.
- O. Conducted a policy in the IDF and the Police Force not to enforce the law on settlers, and, as part thereof, to punish the Palestinians who complained about the offenses committed by the settlers.
- P. Along with its law enforcement authorities, failed to properly prepare for the olive-picking season, which is known to be problematic because of the repeated attacks by settlers, so that the Palestinian farmers would not suffer bodily injury, loss of life and loss of property and crops.
- Q. Did not issue to the law enforcement authorities in the Occupied Territories and to the troops operating in the field the instructions and orders necessary to ensure the safety of Palestinians in the Occupied Territories during the olive-picking season.
- R. Has ignored, for many years and to this very day, reports and criticism that have been regularly made relating to the lack of law enforcement on settlers in the Occupied Territories, or, in any event, did very little to learn from these reports and criticism and to rectify the deficiencies.
- S. These (and other) acts and omissions gave a green light to its citizens in the Occupied Territories to disregard the law and treat the Palestinians and their property as they wished, benefiting from almost complete immunity for their actions.
- T. Breached its obligations as set forth in Israeli and international law, as delineated below.

Breach of statutory obligations

- 43. The Plaintiffs will argue that the Defendant and its agents, by their acts and omission, breached their statutory obligations as delineated below, which are

intended to protect the group within which the Plaintiffs are included, and that the Plaintiffs suffered damages as a result of the said breach, as follows:

- A. Articles 2 and 3 of the Basic Law: Human Dignity and Liberty, which prohibit violation of the life, body or dignity, and the property of a person, Article 4 of the said Basic Law, regarding the right to protection of the individual's life, dignity, and body, and Article 11 of the Law, which requires governmental authorities to respect the rights under that Basic Law.
- B. Article 43 of the Regulations Attached to the Hague Convention Respecting the Laws and Customs of War on Land (1907), which requires the Defendant to take all the measures in its power to ensure normal life in the territory under its control, unless absolutely prevented from doing so.
- C. Article 46 of the Regulations Attached to the Hague Convention Respecting the Laws and Customs of War on Land (1907), which requires the occupant to respect family honor and the lives and private property of residents of the occupied territory.
- D. Article 27 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (hereinafter: the Fourth Geneva Convention), states that protected persons are entitled to respect and protection against all acts of violence or threats of violence, and states that protected persons shall be treated without prejudice.
- E. Article 280(1) of the Penal Law, 5737 – 1977 (hereinafter: the Penal Law), which forbids every public official, including soldiers, to refrain from misusing the official's authority and from doing any arbitrary act that violates a person's rights.
- F. Article 124 of the Military Justice Law, 5715 – 1955 (hereinafter: the Military Justice Law), which deals with negligence.
- G. Article 70 of the Military Justice Law, which prohibits the exceeding of authority in a manner that results in property damage.
- H. Article 3 of the Police Ordinance [New Version], 5731 – 1971 (hereinafter: the Ordinance) on the duty of every police officer to maintain public order and safety.

- I. Article 1 of the Second Annex to the Ordinance, which relates to the failure to carry out a directive set forth in the Israel Police Force Regulations.
 - J. Article 2 of the Second Annex to the Ordinance, which relates to negligence in carrying out duties.
 - K. Article 3 of the Second Annex to the Ordinance, which prohibits conduct unbecoming a police officer or conduct that is liable to harm the image of the Police Force.
 - L. Article 4 of the Second Annex to the Ordinance, which prohibits the misuse of authority pursuant to [the police officer's] position.
44. The Plaintiffs will argue that the Defendant also bears responsibility in agency for the wrong committed by its agents and/or persons operating on its behalf and/or persons under its command and supervision, in that it failed to train them to carry out these obligations, and did not ensure that these obligations were brought to the attention of the persons acting under its auspices, and that they act in accordance therewith.

The Plaintiffs' damages

45. As a result of the incident described above, the Plaintiffs suffered the following damages:
- A. As stated above, Plaintiff 1 was the owner of the truck that was set aflame. The truck's value (at the time of the incident) was **NIS 76,000**. Plaintiff 1 will argue that he is entitled to compensation for the truck's value together with interest and linkage differentials from the day of the incident to the time of the filing of the complaint, which amounts to **NIS 82,686**.
 - B. Plaintiffs 1 and 2 managed, as stated above, an aluminum-works workshop and welding workshop in their village, Turmus'ayya. The truck that was torched in the incident was used to transport merchandise that was produced in these workshops.
 - C. It should be mentioned that it was not until July 2004 that the Plaintiffs were able to buy a vehicle to replace the truck that had been torched, and that they first had to sell another vehicle that was used for the workshops, that vehicle being incapable of transporting

merchandise. The new vehicle, a 1997 Mercedes, model number D412, was worth NIS 90,000 as of July 2004.

- D. As a result of the incident, Plaintiffs 1 and 2 were compelled to hire truck drivers to transport the goods from place to place, from the day of the incident to July 2004. The costs entailed in hiring the truck drivers amounted to an estimated sum of at least NIS 20,000.
- E. Furthermore, the Plaintiffs are entitled to compensation for the harassment, hardship, and mental anguish they were caused to suffer as a result of the said incident, which reflect the helplessness of the security forces in coping with the settlers who attack, as they wish, Palestinians, particularly during the olive-picking season. Moreover, the Plaintiffs' expectation that their complaint, which they filed immediately after the incident, would be investigated, and that the persons directly responsible for the damages would be prosecuted, especially after Plaintiff 2 and others pointed out at the time the assailants and the vehicle the assailants used, added significantly to the Plaintiffs' mental anguish that resulted from the incident.
- F. Furthermore, the incident that is the subject of the complaint is an incident that follows an incident of a year earlier, in which settlers torched another vehicle of the Plaintiff. Repetition of the maltreatment of the settlers and the helplessness of the security forces added to the Plaintiffs' bitterness and frustration. The Plaintiffs leave the demand for this cause of action to the discretion of the court.

Punitive damages

- 46. The Plaintiffs will request the Honorable Court to exercise its discretion and grant them punitive damages in light of the grave conduct of the Defendant and its agents, which deserves condemnation of the harshest sort. The Plaintiffs request that the compensation have a deterrent and educational effect so as to prevent acts of the kind described herein. The compensation must reflect the need to strengthen the status of human rights, to which the Defendant and its agents failed to give suitable import. Alternatively, the Plaintiffs will argue that they are entitled to increased compensation for their damages, taking into account the conduct of the Defendant and its agents that are deserving of censure and condemnation, and taking into account the importance of the rights that were infringed.

Damages for loss of evidence

47. The Plaintiffs will argue that as a result , *inter alia*, of the faulty investigation and/or its lack of thoroughness and/or its lack of substance and/or its slow pace and/or the disregard for previous complaints and/or the failure to relate properly to the claim of the Plaintiff and other persons that they identify the assailants and the vehicle in which they were driving at the time of the incident, led to the failure to identify the persons directly involved in the wrongdoing, and thus caused the Plaintiffs damage in obtaining probative evidence.
48. The said damages caused to the Plaintiffs may be assessed: they are equal to the direct damages suffered by them, to the degree that the loss of the evidence prevented them from being compensated for their damages resulting from the wrongs committed against them.
49. The Plaintiffs will argue, in addition, that the damages for loss of probative evidence that they suffered as a result of the Defendant's fault entitles the Plaintiffs to shift the burden of proof from them to the Defendant.

General

50. The Honorable Court has the subject-matter and local jurisdiction to hear this claim.
51. In light of the above, the Honorable Court is requested to summon the Defendant to court and order it to compensate the Plaintiffs for the damages they suffered, including attorney's fees together with statutory VAT, and interest and linkage differentials from the day of filing of the Statement of Claim to the time of payment.

Jerusalem, today, 20 October 2004

_____ *[signed]* _____
Leena Abu-Mukh Zuabi, Attorney
Counsel for Plaintiffs