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At the Magistrates Court in Jerusalem

CC 7580/05

In the matter of:

1. _____ **Atrash**
2. _____ **Atrash**

both residents of the city of Hebron

represented by attorneys Shirin Batshon (Lic. No. 32737) and/or Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or Yossi Wolfson (Lic. No. 26174) Hava Matras-Ivron (Lic. No. 35174) and/or Gil Gan-Mor (Lic. No. 37962) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Anat Kidron (Lic. No. 37665)
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. 03-6970222; Fax 03-6918541

The Defendant

Nature of the claim: **Bodily injury not pursuant to the Victims of Traffic Accidents Ordinance**

Amount of the claim: **Maximum jurisdiction of the Court**

Complaint

Preface

1. This claim deals with the extremely grave acts of *assault, false imprisonment, and abuse* by agents of the Defendant, the State of Israel, through abuse of authority and causing severe harm to the dignity, liberty, and well-being of the Plaintiffs.

The parties

2. Plaintiff 1, who was born in 1980, is single and lives in Hebron. Plaintiff 1 (hereinafter: **A.**) is employed as a truck driver by a family-owned transport company owned by him, his five brothers and his father (hereinafter: **the company**).

3. Plaintiff 2 was born in 1979, is married, and has two children. Plaintiff 2 (hereinafter: **M.**) is Plaintiff 1's brother and also works as a truck driver for the company.
4. The Defendant, the State of Israel, is and was at all times relevant to the statement of claim the operator and/or supervisor and/or liable and/or responsible for the acts and/or omissions of security forces acting on its behalf, including soldiers and/or Border Police officers and/or other security forces (hereinafter referred to as **the soldiers** and/or **IDF soldiers**), and is and was responsible for the acts and/or omissions of the investigative authorities acting on its behalf, including the Military Police investigation unit.
5. In addition, at all times relevant to the claim, the Defendant, the State of Israel, held control of the West Bank and was responsible for order and safety in the region, and for the lives, welfare, and property of the residents living there, including the Plaintiffs.

The incidents and the complaints made to the authorities

The incident of 3 August 2003

6. In the early morning hours of 3 August 2003, Plaintiffs A. and M. were driving their trucks, one behind the other, along the Hebron bypass road, known as Route 60 (hereinafter: **Route 60**), on their way to Bani Na'im.
7. Soldiers traveling in an IDF jeep on Route 60 saw the trucks and ordered A. to stop. The soldiers parked their jeep across the road. M. also stopped because he did not want to leave his brother alone.
8. The soldiers went over to M. and A. and mumbled in Hebrew. The soldiers identified A. from a previous incident that took place about a month earlier, in which they had stopped him on Route 60, detained him, assaulted him, damaged his truck, and held him unlawfully for several hours in a post situated at the Haggay settlement.
9. The soldiers asked M. to leave and continue on his way, but he refused because he feared for his brother's safety.
10. One of the soldiers took M. behind one of the trucks and assaulted him by kicking and punching him all over his body, particularly in his legs and face. M sustained injuries to his legs, face, and eye, and was struck in the back with the butt of a rifle.
11. Two other soldiers went to "handle" A. One of them beat him with a rifle butt to the back of his head. The soldiers attacked A. and brutally beat him. They kicked him all

over his body, particularly his face, back, chest, and legs. Also, they struck him with the butt of their rifles in his right shoulder and face.

12. As a result of the beating, particularly to his head, A. lost consciousness and only woke up in the hospital.
13. M., who finally managed to flee from his assailant, went to check on his brother, A. He found him lying unconscious on the ground. He immediately tried to summon an ambulance but the soldiers prevented him.
14. A crowd began to gather, and the soldiers left the area. Somebody summoned an ambulance, which took the wounded A. to Alia Hospital, in Hebron, where he was hospitalized for two days and received medical treatment
15. The Plaintiff turned to HaMoked: Center for the Defence of the Individual (hereinafter: **HaMoked**) and B'Tselem and complained about the incident. The Plaintiffs' counsel at HaMoked, Leena Abu-Mukh Zuabi, sent written notice to the Ministry of Defense about the damages sustained by the two Plaintiffs, and also wrote to the Central Command Judge Advocate demanding an immediate investigation of the incident.

Copies of the two notices about the damages, and the letter to the Central Command Judge Advocate, which were sent on 24 September 2003, are attached hereto as Appendixes A, B, and C.

16. Confirmation was sent indicating that the Ministry of Defense received the two notices delivered on behalf of the Plaintiffs.

Copies of the two confirmations are attached hereto as Appendixes D and E.

17. On 12 November 2003, after having received no response from the Central Command Judge Advocate's Office regarding the letter of 24 September, Ms. Alva Kolan, of HaMoked, requested an update on the complaint that had been made.

A copy of Ms. Kolan's letter is attached hereto as Appendix F.

18. On 3 December 2003, HaMoked received the response of Captain Orly Goz, military prosecutor in the Central Command Judge Advocate's Office, indicating that the judge advocate had ordered a Military Police investigation.

A copy of Captain Goz's letter is attached hereto as Appendix G.

19. The Military Police investigated and none of the soldiers involved were prosecuted. For details on the Military Police investigation, see "The Military Police handling of the complaints" segment of the complaint, below.

The incident of 5 November 2003

20. On 5 November 2003, around 08:30 in the morning, M. was driving his truck on Route 60 from Hebron in the direction of Bani Na'im.
21. Soldiers in an IDF jeep driving on the road ordered him to stop. Another IDF jeep was summoned to the site.
22. Soldiers had M. get out of the truck, confiscated the keys to the truck, ordered him to take off his shirt, handcuffed him, blindfolded him with the shirt, put him into the jeep, and took him to a nearby place, where he was kept handcuffed and blindfolded in a closed room (hereinafter: **the room**) until about 18:30.
23. During the period he was held, M. was not questioned or taken to a police station, but was used by the soldiers "to pass their time," apparently because they were bored. So explained one of the soldiers to M. when he asked why they were treating him the way they did.
24. While being held in the room, the soldiers assaulted M., kicking him all over his body. Also, they sat him down in the middle of a yard and kicked a ball at him (as if they were kicking a soccer ball at the goal or a target), and tried to force him to drink water even though he had told them that he was in the midst of the Id al-Fitr fast (the fast of Ramadan).
25. Ultimately, after the soldiers "finished their work," they put M. back into the jeep, his hands cuffed, and threw him off on the road near the Adh Dhahiriya junction, in Hebron, about 18:30.
26. Another of M.'s brothers, _____ Atrash, whom M. had called at the beginning of the incident, arrived at the scene and saw the soldiers taking his brother on the jeep. He immediately called HaMoked and asked them to check where his brother was being taken.
27. A member of HaMoked's staff, Ms. Nehaya Magdoub, contacted the humanitarian section in the Civil Administration, referred to as Hotline 109, and asked them to locate M. and release him.
28. The humanitarian hotline informed Ms Magdoub a few phone calls later that soldiers had taken the keys to M.'s truck, but that they were not holding him.
29. Despite Ms. Magdoub's attempts to find out where M. was, both through the humanitarian section and the assistance section of the IDF Spokesperson's office,

from the morning until six in the evening, she did not succeed in obtaining an answer to the question of where he was.

A copy of Ms. Magdoub's letter of 5 November 2003 to the IDF Spokesperson is attached hereto as Appendix H.

30. Ultimately, M. was, as stated, released by the soldiers, and he managed to get home. He gave a detailed complaint to HaMoked, and the undersigned subsequently sent a notice of damages to the Ministry of Defense, and wrote to the Central Command Judge Advocate demanding that the incident be investigated.

Copies of the notice sent to the Ministry of Defense and of the letter to the Central Command Judge Advocate are attached hereto as Appendixes I and J, respectively.

31. The facts described above will be referred to below as **the incidents**.

The Military Police handling of the complaints

32. The letter of Captain Orly Goz, of 3 December 2003, Appendix G herein, stated that, in light of the complaints that had been received, the Central Command Judge Advocate had ordered the Military Police investigation unit to investigate the circumstances of the incident.

33. On 10 December 2003, after being summoned by an investigator from the southern division of the Military Police, the Plaintiffs gave testimonies to the Military Police investigation unit.

34. Following the Military Police investigation unit's letter to HaMoked requesting additional particulars, a letter was sent on 6 January 2004 that provided further details to assist in the investigation. Also, during January 2004, M. was summoned again to give further testimony to the Military Police.

A copy of the letter of 6 January 2004 is attached hereto as Appendix K.

35. The Military Police organized a *photo* line-up, but the Plaintiffs were unable to identify, from the photos shown to them, the soldiers who had beaten them.
36. Later, Ms. Alva Kolan, of HaMoked, sent a reminder letter to Captain Goz, of the Judge Advocate's Office, requesting the results of the investigation and/or an update of some kind, but it was not before *27 January 2005* that a response was received. The response indicated that the judge advocate had ordered the file closed because the investigation material did not provide sufficient proof to substantiate the allegations against any of the soldiers.

A copy of Captain Goz's letter is attached hereto as Appendix L.

37. The Plaintiffs shall claim that the Military Police investigation unit was negligent in investigating the incidents, in part because of the delay in conducting the investigation, the delay in informing the Plaintiffs that the file had been closed, and the failure to conduct a live line-up, rather than conducting a photo line-up for the Plaintiffs.
38. There is no need to discuss at length the severity of the soldiers' acts, who assaulted the Plaintiffs, detained the Plaintiffs and held them unlawfully, maltreated them, beat and abused them, and lied, all while abusing their authority and being drawn by wrongful motives.
39. The Plaintiffs' counsel has not yet received the Military Police investigation file, and the Plaintiffs therefore reserve the right to amend – after studying the Military Police investigation file – their contentions and argue that the Military Police failed and/or was negligent in investigating and handling the complaints.
40. Also, the Plaintiffs reserve the right to argue – after studying the Military Police investigation file – that they suffered damages resulting from the loss of evidence as a consequence of the failures and/or negligence of the Military Police in carrying out its investigation.
41. Without derogating from the aforesaid, the Plaintiffs reserve the right to add and/or amend any contention or argument raised in the statement of claim, including the addition of defendants, after they have a chance to study the Military Police investigation material.

The Legal Argument

Responsibility of the soldiers involved

Assault

42. The Plaintiffs shall claim that the acts of the soldiers involved in the incidents, who are the Defendants' agents, constitute the tort of assault within the meaning of this term in Article 23 of Pequddat ha-Neziqin (Nosah Hadash) [the Torts Ordinance (New Version)], 5728 – 1968 (hereinafter: **the Torts Ordinance**).
43. The Plaintiffs shall claim that the negligence of the Military Police investigation unit in investigating and/or the failure to prosecute and/or the failure to take any other immediate investigation measures constitute ratification of the act of assault and imposes vicarious liability on the Defendant for the soldiers' acts.

False imprisonment

44. The Plaintiffs shall claim that the acts of the soldiers involved in the incidents, who are the Defendant's agents, including the incident in which M. was held on 5 November 2003, constitute the tort of false imprisonment within the meaning of this term in Article 26 of the Torts Ordinance.
45. The Plaintiffs shall claim that the negligence of the Military Police investigation unit in investigating and/or the failure to prosecute and/or the failure to take any other immediate investigation measures constitute ratification of the act of false imprisonment and imposes vicarious liability on the Defendant for the soldiers' acts.

Negligence

46. The Plaintiffs shall claim that the soldiers' acts constitute the tort of negligence toward the Plaintiffs, as this term is understood in Article 35 of the Torts Ordinance, as appears from the following acts and/or omissions:
47. The acts of assault and false imprisonment themselves also constitute the tort of negligence;
48. The soldiers showed complete disregard for the Plaintiffs, their well-being, their liberty and their human dignity
 - A. Breached and violated to an extent greater than necessary the Plaintiffs' constitutional rights in particular, especially their right to dignity, liberty and well-being;
 - B. Abused their authority and the power of their position for improper purposes;
 - C. Acted in a manner that a reasonable soldier would not have acted in the circumstances of the case;
 - D. Breached both domestic and international law regarding the prohibition on assault and/or restricting a person's liberty and/or causing injury to person or property of protected persons.

Breach of statutory duty

49. The Plaintiffs shall claim that the soldiers' acts constitute the tort of breach of statutory duty within the meaning of this term in Article 63 of the Torts Ordinance. The soldiers breached, *inter alia*, statutory duties set forth in the following statutes:
 - A. Hoq Yesod: Kevod ha-Adam we-Heruto [Basic Law: Human Dignity and Liberty], which safeguards human dignity and liberty;

- B. Articles 378, 380-382 of Hoq ha-Oneshin [the Penal Law], 5737 – 1977 (hereinafter: **the Penal Law**), which deal with assault that causes injury and with assault in aggravated circumstances;
- C. Article 280 of the Penal Law, which prohibits the abuse of authority;
- D. Article 377 of the Penal Law, which prohibits false imprisonment;
- E. Article 27 of the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War, of 1949 (hereinafter: **the Geneva Convention**) which states, *inter alia*, that "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity";
- F. Article 68 of Hoq ha-Shippit ha-Zeva'i [the Court-Martial Law], 5715 – 1955 (hereinafter: **the Court-Martial Law**), which prohibits unauthorized action;
- G. Article 114 of the Court-Martial Law, which prohibits unlawful arrest;
- H. Article 124 of the Court-Martial Law, which prohibits negligence in the discharge of duty.

Responsibility of the Defendant

- 50. The Plaintiffs shall claim that the Defendant is *vicariously* liable for the negligence and/or lack of caution and/or haste and/or recklessness and/or breach of statutory duty by the soldiers who were involved in the incidents described above and did the acts described above, while they were agents and/or employees on its behalf.
- 51. The Plaintiffs will further argue that the Defendant is *directly* liable for the damages sustained by the Plaintiffs following the negligence and/or lack of caution and/or breach of statutory duty by the soldiers, as expressed, *inter alia*, in the following acts and/or omissions:
 - A. Failed to supervise and/or failed to properly supervise the acts and/or omissions of the soldiers operating on its behalf, its agents, and/or acted without caution and care and/or failed to oversee the persons under its responsibility;

- B. Did not instruct and/or define for its agents their duty to safeguard the rights of the civilian population in the West Bank, including the protection of the life, well-being and property of the Palestinians, and the prohibition on infringing their said rights;
- C. Placed the execution of its actions in the hands of untrained persons and/or persons who were not suitable for the tasks;
- D. Did not properly train its agents in safeguarding fundamental human rights in the course of performing their tasks and/or failed to provide any safety instructions and/or sufficient instructions and/or did not make sure that its agents knew or acted pursuant thereto;
- E. Did not do everything within its ability and/or that it should have done and/or was right and/or necessary to do to prevent the assault and false imprisonment, and/or acted recklessly and without caution or care and/or did not supervise the persons under its responsibility;
- F. Failed to explain and/or clarify and/or inform the security forces acting on its behalf, its agents, about the orders and/or directives and/or procedures for detaining and arresting;
- G. Failed to explain and/or clarify and/or inform the security forces acting on its behalf, its agents, about the orders and/or directives and/or procedures for stopping and searching vehicles;
- H. Did not act as a responsible, cautious, and wise authority would have acted under the circumstances to prevent the incidents and the damages;
- I. Did not conduct a reasonable and/or proper investigation as a responsible, cautious, and wise authority would have done to prosecute the soldiers responsible and to eliminate the phenomena of assault, abuse, and false imprisonment by soldiers and/or security forces toward the Palestinian population in the West Bank;
- J. Expected and/or should have expected that its failures would result in the damages sustained by the Plaintiffs.

Damages resulting from loss of evidence

52. The Plaintiffs shall claim that the negligence of the Military Police investigation unit in investigating the incidents, described above, caused the Plaintiffs evidential damage as expressed in their inability to request relief from the soldiers responsible

for the assault and false imprisonment and/or in their difficulty in proving their claim as regards, under the circumstances herein, all the Plaintiffs' damages.

53. Despite this, and without derogating from the above, the Plaintiffs shall claim that, insofar as they have not yet been able to study the Military Police investigation file, they cannot know which measures the Military Police investigation unit took and/or which of its failures resulted in the alleged loss of evidence.
54. Therefore, and without derogating from any of the arguments raised above, the Plaintiffs reserve the right to amend their statement of claim and add contentions and arguments regarding the Military Police investigation and/or its negligence in conducting the investigation, and regarding the damage resulting from the loss of evidence.

The damages

55. The Plaintiffs shall claim that the damages set forth below were sustained as a result of the acts and/or omissions described above.
56. **Plaintiff 1:** A. was beaten with a rifle butt in the back of his head, on his shoulder, and on his face. As a result, he lost consciousness and was rushed to hospital for medical treatment. He remained hospitalized for two days. A. suffered hematomas and pain in his head, right shoulder, chest, and abdomen. His lips were cut when he was struck in the face by a rifle butt.

[A copy] Copies of two medical reports from Alia Government Hospital, in Hebron, are attached hereto as Appendixes M and N.
57. During the ten-day period that followed the incident, and as a result of the severity of the beating he received, A. continued to suffer excruciating pain all over his body, particularly his face, shoulder, and legs.
58. **Plaintiff 2:** As a result of the incident that took place on 3 August 2003, M. suffered pain and hematomas in his back and legs, and pain in the area of his eye, but he did not request medical treatment.
59. As a result of the incident that took place on 5 November 2003, M. suffered pain and hematomas in his legs and back. The pain continued for three days, but despite this fact, M. did not seek medical treatment, the reason being that the beating he had undergone had been "dry."
60. **Denial of constitutional rights:** The court is requested to give judgment compensating each of the Plaintiffs for general damages for violation of their

constitutional right to well-being and dignity, and for the great mental anguish they sustained.

61. The Honorable Court is further requested to give judgment compensating Plaintiff 2, M., for the grave violation of his constitutional right to liberty, for being falsely imprisoned for a number of hours without a warrant having been issued and/or for no lawful reason and/or without having been brought to a police station, and also for the harm to his human dignity, particularly the soldiers' attempt to force him to drink water during the [Ramadan] fast.
62. **Punitive damages:** The Honorable Court is also requested to order the payment of punitive damages to each of the Plaintiffs, which will express society's and the Honorable Court's abhorrence of the grave acts committed by the soldiers in the incidents described above.
63. In light of the above, the Honorable Court is requested to grant judgment compensating the Plaintiffs under the following headings:
 - For pain and suffering
 - For violation of their constitutional rights
 - For punitive damages

General

64. The Honorable Court has the subject-matter and local jurisdiction to hear this claim.
65. In light of the above, the Honorable Court is requested to summon the Defendant and order it to compensate the Plaintiffs for the damages they sustained, together with court costs and attorney's fees, in addition to differences of indexation and linkage as set out in the law from the date of filing of the Complaint until the date of actual payment.

Jerusalem, 27 July 2005

_____ *[signed]* _____

Shirin Batshon, Attorney

Counsel for Plaintiffs