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At the Supreme Court
Sitting as the High Court of Justice

HCJ 4198/08

- In the matter of:
1. **Mrs. _____ Al-Wardian, Identity No. _____,**
Resident of the Palestinian Authority
 2. **Mr. _____ Salameh, Identity No. _____,**
Resident of the Palestinian Authority
 3. **Mr. _____ Jandab, Identity No. _____,**
Resident of the Palestinian Authority
 4. **Mr. _____ Jandab, Identity No. _____,**
Resident of the Palestinian Authority
 5. **Mr. _____ Mheisen, Identity No. _____,**
Resident of the Palestinian Authority
 6. **Mr. _____ Jamus, Identity No. _____,**
Resident of the Palestinian Authority
 7. **Mr. _____ Al-Rajabi, Identity No. _____,**
Resident of the Palestinian Authority
 8. **Mr. _____ Sa'id, Identity No. _____,**
Resident of the Palestinian Authority
 9. **Mr. _____ Ta'aban, Identity No. _____,**
Resident of the Palestinian Authority
 10. **Mr. _____ Sabah, Identity No. _____,**
Resident of the Palestinian Authority
 11. **HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Saltzberger (R.A.)**

Represented by attorneys Abeer Jubran (Lic. No. 44346) and/or Yossi Wolfson (Lic. No. 26174) and/or Ido Blum (Lic. No. 44538) and/or Yotam Ben-Hillel (Lic. No. 35418) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Alon Margalit (Lic. No. 35932) and/or Yadin Elam (Lic. No. 35475)

of HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Saltzberger
4 Abu Obeidah St., Jerusalem 97200
Tel: 02-6283555; fax: 02-6276317

The Petitioners

1. **Commander of the Investigation Unit of the Military Police**
2. **The Military Advocate General**
3. **The Military Advocate of the Central Command**
4. **The Ministry of Defense**
5. **The State of Israel**

Represented by the office of the State Attorney
29 Salah El-Din, Jerusalem

The Respondents

A Petition for Order Nisi

A petition is hereby filed for an Order Nisi directed at the Respondents and ordering them to give reason:

- A. Why they do not enable Petitioners 1-5 and Petitioner 8 and their counsel to review and copy the materials from the files of the investigation carried out by the Investigation Unit of the Military Police (hereinafter: **IMP**) about the incidents in which Petitioners 1-5 were victims. The investigation of each of the incidents ended many months ago, and in some of the cases several years ago.
- B. Why they do not enable Petitioners 6-7 and 9-10 and their counsel to review and copy IMP's investigation material about the incidents in which Petitioners 6-7 and 9-10 were victims, regardless of whether there is a pending civil action with regards to the incident or whether the Petitioners intend to file a civil action in the future. IMP's investigations in the matter of the Petitioners have ended years ago.
- C. Why they do not point out the legal source for the policy according to which it is prohibited to transfer IMP's investigation material to victims of offenses or to the surviving relatives of a victim as long as a civil action is pending, or as long as the victim or his surviving relatives are considering filing a civil action or resorting to a civil proceeding.
- D. Why they do not disclose the prevailing procedure and/or practice between the IMP authorities and the Office of the Tel Aviv District Attorney, according to which there is cooperation between those two authorities, as well as the involvement of the Office of the Tel Aviv District Attorney in the prohibition of disclosing the investigation material to Petitioners 6-7 under the argument that there is a chance that in the future a civil proceeding will be held and to Petitioners 9-10 under the argument that a civil proceeding is being held.
- E. Why they do not formulate a procedure for the disclosure of materials from an IMP investigation to complainants and to victims of offenses the investigation in the matter of which has ended, within a reasonable time from the day of the end of the investigation, and considering the prescription period that was

determined for civil actions against the defense forces in the Territories, a period which has been shortened to two years in accordance with the Civil Torts Law (State liability), 5712-1952, regardless of the existence of a civil proceeding, or an intent to resort to a civil proceeding in the future.

Motion for Urgent Hearing

The court is moved to schedule an urgent hearing of the Petition in view of the long delay on the part of the Respondents in transferring the investigation material for the review of the Petitioners, and the impact of the time component on the Petitioners' rights, including their right to file an appeal with respect to closing the IMP investigation files without exercising any legal remedies whatsoever, and their right to file civil actions, in the case that grounds or justification for doing so is found in the investigation material.

This Petition, including both its sections, factual and legal, is an inseparable part of this Motion.

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The Subject Matter of the Petition in Brief

"The people have a right to the truth as they have a right to life, liberty and the pursuit of happiness." Epictetus (55-135). "Peace if possible, but truth at any rate." Martin Luther (1483-1546)

1. Much has been said about the quality of the military authorities' handling of Palestinian citizens' complaints with respect to prejudice to their life, to their person and to their property on the part of Israeli soldiers. This issue has even come before this Honorable Court more than once. We shall carefully say that the enforcement of the law on the soldiers of the Israeli army with respect to offenses committed against Palestinian citizens is tainted by a passive approach, by refusal to launch investigations, by the delay in the commencement thereof and by the superficial and unprofessional management once they have commenced. The result is defective enforcement and an atmosphere of *laissez-faire*. The weakness of the enforcement contributes to a forgiving and lenient atmosphere with respect to very severe harm to civilians.
2. This Petition concerns a single, relatively narrow, aspect of the manner in which Palestinians' complaints about harm inflicted by soldiers of the Israeli army are handled: the aspect of handing over the investigation material to the victim.
3. The victim's right to receive the material of the investigation carried out in the matter of his complaint is not controversial. Beyond the mere right to know what was the result of the victim's complaint and how it was handled, the victim of the offense needs the investigation material in order to file an appeal (if necessary) on the closing of the investigation file and in order to consider the filing of a civil action for damages. The receipt of the investigation material within reasonable time is an inseparable part of the right to receive information, and it is a cardinal matter with respect to filing an appeal or a civil action – particularly in view of the shortening of the prescription period in actions of this type to only two years.
4. Notwithstanding the aforesaid, and as we shall demonstrate below, the authorities delay the transfer of the investigation materials for many months and even for whole years.
5. Moreover, it transpires that the investigating authorities subject themselves to the office of the civilian district attorney, and refuse to transfer the investigation material in cases in which a civil action has been filed or the filing thereof is being considered. The investigating authorities argue, in such cases, that the victims will receive the documents *only* in the context of a civil discovery procedure. At the same time, the office of the civilian district attorney is delaying the discovery procedure in the context of the civil proceeding. As we shall argue below, the right to receive the documents from the state as a party to a civil proceeding does not prejudice the parallel right to receive the material from the authorities in their capacity as administrative authorities.

6. The identification of the investigating authorities with the state's interests as a defendant, and their compliance with the instructions of the office of the civilian district attorney handling these actions is cause for concern. There is also concern that with respect to the investigation actions themselves, the investigating authorities are not acting as servants of investigating the truth, but as servants of the state's interests in present or foreseeable civil proceedings. And this is not an insignificant concern, but a concern that is based on several cases that are under the care of the Center for the Defence of the Individual.
7. The delay in the transfer of the investigation material – whether it derives from instructions on behalf of the office of the civilian district attorney, and whether it derives from pure bureaucratic failures – leads to the transfer of the material to the victims many years after the incident. At this stage few are the cases in which an effective demand to complete the investigation can be posed. The passage of time also makes it difficult to manage a civil action, if such can still be filed in view of the prescription laws. The passage of time also dulls the sting with respect to correcting the conduct of the investigating authorities (whose true colors are repeatedly revealed every time we review those investigation files). The amazement and anger in view of superficial and negligent investigations may be expressed in writing via complaint letters, but at this stage they are absolutely worthless.
8. This Petition is being filed after a widespread and tiring correspondence by the Center for the Defence of the Individual, which applied to every possible address in an attempt to correct the situation – from the Office of the Military Advocate, to the State Comptroller to the Attorney General.
9. Even though no legal dispute remains with respect to most matters, in reality the dawdling continues, and the investigation materials are not timely transferred for review.
10. Below we will present the cases of Petitioners 1-10, offense victims that have not yet received the material in their matter. We will describe the correspondence between the Center for the Defence of the Individual and the authorities – with respect to the Petitioners' specific matters and with respect to the general issues. Insofar that these efforts have been Sisyphean and elaborative, so will the chapter which addresses them be long and somewhat difficult to go through. Finally, we will discuss the legal basis for the Petition.

The Parties

11. Petitioners 1-10 are Palestinians who were harmed by the Israeli defense forces in the Territories, and who applied through Petitioner 11, the Center for the Defence of the Individual, and requested from Respondents 2 and 3 to launch an investigation of the incidents in which they were the victims. As a result of Hamoked's application, and as shall be presented separately in each case, IMP investigations were launched. The investigations were carried out for many months and they all ended with the closing of the investigation files and without taking any legal measures.

For many months, and in most cases even for years, the Petitioners have been applying through the Center for the Defence of the Individual to Respondents 2 and 3, and have been asking to review the investigation material and to receive a copy thereof, but their requests have been falling on deaf ears.

12. Respondents 1 and 2 allege that with respect to the matter of Petitioners 9-10 civil actions are being managed and that the investigation material can be received in the context of a discovery procedure only in the framework of the civil action. With respect to Petitioner 6-7, the Respondents argue that it seems that these Petitioners are considering filing a civil proceeding due to the incident and that the investigation material may be received in the context of the discovery procedure in the future civil action!! It shall be noted that even after the civil action filed by Petitioner 8 ended in a compromise, the Respondents have not yet handed him the investigation material.
13. Petitioner 11 (hereinafter: the **Center for the Defence of the Individual or Hamoked**) is a human rights organization that acts vis-à-vis the state authorities to promote human rights in the Occupied Territories.
14. Respondent 1 is head of the Investigation Unit of the Military Police, which is responsible for investigating soldiers who are suspects in the performance of criminal offenses.
15. Respondent 2, the Military Advocate General (hereinafter: **MAG**), is head of the Military Advocate General Corps. He is the supervisor of the Military Advocate General Corps and is authorized to instruct the formulation of a procedure for the transfer of the investigation material for the review of the Petitioners in particular and offense victims in the Territories in general, within a reasonable timeframe.
16. Respondent 3, the Military Advocate of the Central Command, is head of the Office of the Military Advocate of the Central Command, and is authorized to permit the review of IMP investigation files in which the investigation has ended.
17. Respondent 4, the Ministry of Defence, is managing, on behalf of Respondent 5, tort actions of Palestinians, who are residents of the Territories, and whose rights were violated by the Israeli army in the Territories.
18. Respondent 5, the State of Israel, holds the West Bank in a belligerent occupation.

Chapter 1 – The Description of the Incidents and the Applications of the Center for the Defence of the Individual

1. A. Petitioner 1 – Mrs. _____ Al-Wardian [Hamoked Case 22206; IMP Jerusalem Case 276/04]

19. **The description of the incident:** On the morning of April 7, 2002 an Israeli army force came to Petitioner 1's house in Handaza village in the Bethlehem district. The soldiers entered the Petitioner's house, took her and her children out of the house and carried out a search in the house.
20. After about an hour the family members were brought into the house. The soldiers yelled at the children (who were then 4-17 years old) and asked them about the whereabouts of their brother, Achmed. Additionally, the soldiers hit the children and broke and destroyed a lot of valuable equipment in the house. After about 5 hours, the soldiers left the house.
21. After several days a bulldozer came to Petitioner 1's house and hit part thereof, while people were in it. One of the children that were in the house at the time was hurt.
22. **Hamoked's application to launch an IMP investigation:** on September 2, 2002, the Center for the Defence of the Individual applied to Respondent 3, the Military Advocate of the Central Command, and to the Legal Advisor to the Military Commander in the West Bank, and requested to launch an investigation of the abovementioned incident and to indict the parties that are responsible for the damage caused to the Petitioner and her family.

A copy of the letter dated September 2, 2002 addressed to Respondent 2 and to the Legal Advisor to the Military Commander in the West Bank is attached hereto and marked **p/1**.

23. **On January 20, 2004, approx. two years after the incident, and approx. a year and four months from the day that the Center for the Defence of the Individual made a request to launch an investigation, and after several reminders sent by Hamoked to the Military Advocate of the Central Command,** the Center for the Defence of the Individual's office received a letter on behalf of the Military Advocate of the Central Command notifying that "an order was given to launch an IMP investigation".

A copy of the letter received at Hamoked's office on January 20, 2004 from Respondent 3's office is attached hereto and marked **p/2**.

24. A phone clarification by Hamoked's representative carried out with the Office of the Military Advocate of the Central Command's on October 25, 2004 indicated that the investigation file was transferred to the Military Advocate of the Central Command for the purpose of receipt of an opinion.
25. **Closing the investigation file and Hamoked's requests to receive the investigation material: after the passage of two and a half years from the date of launching the investigation,** and after several verbal and written

reminders by Hamoked's representatives to the Office of the Military Advocate of the Central Command, on August 8, 2006, a letter was received from the Deputy Military Advocate of the Central Command, Major Inbal Eini De Paz, in which she notified about the **closing of the investigation file** arguing that **"the attempts to locate documentation of this act or another in the family's house on that date were unsuccessful. This is the case, even though that the documentation with respect to demolition of houses from that year does exist, however as aforesaid not with respect to the complainants' house."**

A copy of the letter received at Hamoked's office on August 8, 2006 from the office of Respondent 3 is attached hereto and marked **p/3**.

26. On September 5, 2006, Hamoked's representative, Mr. Tom Mehager, applied to First Lieutenant Tom Giladi, Commander of the Monitoring and Reporting Unit at IMP Headquarters, in which he requested to review the investigation material and receive a copy thereof.

A copy of the letter dated September 5, 2006 is attached hereto and marked **p/4**.

27. Notwithstanding the reminders, whether written or verbally, review of the investigation material has not yet been enabled and a copy thereof has yet to have been received. (With respect to Hamoked's group, in-principle requests for the purpose of receipt of the investigation material, see detail in Chapter 2).

A copy of the last reminder letter dated August 7, 2007 is attached hereto and marked **p/5**.

28. **To Summarize:** approx. two years after the incident, and as a result of the applications of the Center for the Defence of the Individual, a military investigation was launched with respect to the incident described above.
29. **After two and a half years** from the day of launching the investigation, in other words four and half years from the day of the incident, the Deputy Military Advocate at IMP of the Central Command notified that the investigation file was closed without taking any legal measures.
30. And thus, **a year and a half** from the day on which Hamoked requested to receive and review the investigation material, its request has yet to have been answered.

1. B. Petitioner 2 – Mr. _____ Salameh [Hamoked Case 17883; IMP Jerusalem Case 351/2002]

31. **Description of the incident:** At noon on April 18, 2002, while Petitioner 2 was at his work in the Al Jazeera Station, two military APCs stopped at the entrance of the Petitioner's building in the Almasian neighborhood of Ramallah. The soldiers entered the building and carried out a search in four apartments.

32. The soldiers broke into the Petitioner's apartment and stayed in it for about an hour. The soldiers were seen carrying black bags out of the apartment.

When Petitioner 2 heard about the break-in he came to his apartment and discovered that the entrance door was broken, and that the apartment was empty and in a complete mess. In addition there were sums of money missing as well as a Canon camera.

33. **Hamoked's application to launch an IMP investigation:** following the Center for the Defence of the Individual's application dated July 8, 2002 addressed to the Legal Advisor to the Commander of the Military Forces in the West Bank and to Respondent 3, the Military Advocate of the Central Command, an IMP investigation was launched. Hamoked found out about the launching of the investigation only in November 2002, following the request of the IMP investigator from the Jerusalem IMP base to coordinate a date for the investigation of Petitioner 2 and for giving a testimony.

A copy of the letter dated July 8, 2002 is attached hereto and marked **p/6**;
A copy of the letter from IMP Central to Hamoked dated November 17, 2002 is attached hereto and marked **p/7**.

34. **Closing the investigation file and Hamoked's applications for receipt of the investigation material:** Following reminders by the Center for the Defence of the Individual, both in writing and verbally, for approximately a year and three months, on February 10, 2004 a letter arrived at Hamoked's office sent by the Military Prosecutor, Captain Adi Avraham, on behalf of the Military Advocate of Central Command, and the letter stated that the Office of the Military Advocate ordered that the investigation file be closed due to "absence of documentation of the alleged incident, and since no military forces that allegedly took part in the incident were located".

A copy of the letter received at Hamoked's office on February 10, 2004 is attached hereto and marked **p/8**.

35. On February 19, 2004 an additional letter arrived at Hamoked's office from the Military Prosecutor, Captain Avraham, in which she notified that "the investigation of the incident discovered that the army's records have no documentation of the alleged incident, and thus, the military forces involved in the incident were not even located. **Even the commander of the brigade that was stationed in the Ramallah region at the relevant time noted that he is unaware of the incident, and that there is no possibility to locate the forces that took part in the activity in accordance with the marking of the house. In light of the aforesaid, the Substitute Central Military Advocate at the time instructed to close the investigation file.**" (emphasis added, A.J.).

A copy of the letter dated January 26, 2004 is attached hereto and marked **p/9**.

36. On April 13, 2004 Hamoked approached the IDF Spokesman and requested to receive a copy of the investigation material. Hamoked emphasized that the prompt receipt of the material was essential since the prescription period for

filing a tort action had been shortened to two years, in accordance with Section 5a(a)(3) of the Civil Torts (State Liability) Law 5712-1952. Reminders with respect to this matter were sent on May 2, 2004 and on June 2, 2004.

A copy of the letter dated April 13, 2004 is attached hereto and marked **p/10**; Copies of the reminders dated May 2, 2004 and June 2, 2004 are attached hereto and marked **p/11, p/12** respectively.

37. On June 15, 2004 a letter arrived at Hamoked's office from Sergeant Berdinski, Department of Productions and Public Communications of the IDF Spokesman Brigade, according to which "these files [including Petitioner 2's file] were transferred to us. At this time the files are going through final approval procedures at the end of which the files will be transferred to you".

A copy of the letter received at Hamoked's office on June 15, 2004 is attached hereto and marked **p/13**.

38. On August 10, 2004 and October 27, 2004 Hamoked sent reminders to the IDF Spokesman and requested that the investigation material be transferred thereto.

Copies of Hamoked's reminders dated August 10, 2004 and October 27, 2004 are attached hereto and marked **p/14, p/15**.

39. On February 28, 2005, and following a notice that Hamoked received, according to which requests for the receipt of IMP investigation material should be addressed to the Commander of the Monitoring and Reporting unit at the IMP Headquarters, Hamoked approached Second Lieutenant Tom Giladi, Commander of the Monitoring and Reporting unit at the IMP Headquarters, and requested to review the IMP investigation material in various files, and to transfer copies thereof, including Petitioner 2's investigation file.

A copy of the letter dated February 28, 2005 is attached hereto and marked **p/16**. A copy of the group reminder dated April 4, 2005 is attached hereto and marked **p/17**.

40. On April 18, 2005 Hamoked's office received a group letter from the Commander of the Monitoring and Reporting unit at IMP Headquarters, according to which the **file in the matter of Petitioner 2 was not located "despite an extensive search in IMP's database"**, and that **"a review of the unit's records finds that the incidents [including Petitioner 2's incident] were not handled by IMP"**.

A copy of the letter dated April 18, 2005 is attached hereto and marked **p/18**.

41. On April 11, 2006 Hamoked approached the Commander of the Monitoring and Reporting unit at IMP with an additional request to transfer the investigation material for its review. The request was attached with the letter notifying of the launching of the IMP investigation in the matter of Petitioner

2's incident. (With respect to Hamoked's group, in-principle requests for the purpose of the receipt of the investigation material, see detail in Chapter 2).

A copy of the letter dated April 11, 2006 (excluding the exhibits) is attached hereto and marked **p/19**. A copy of the reminder letter dated May 15, 2006 is attached hereto and marked **p/20**.

42. **In summary: Approx. six years** have passed since the incident **and over four years** have passed since the notice by the Military Advocate of the Central Command that the investigation file is being closed without taking any measures whatsoever, and since Hamoked's first application with respect to the investigation material and the receipt of a copy thereof, and Hamoked's request has not yet been answered.

1. C. Petitioners 3 and 4 – Mr. _____ Jandab and his son _____ Jandab [Hamoked Case 27776; IMP West Bank Case 48/05]

43. **The description of the incident:** On June 4, 2002, in the afternoon hours, Petitioner 3 was driving his car together with his son - Petitioner 4 - who at the time was a minor, and stopped near the "Galilee Bakery", in the northern part of Tul Karem. Petitioner 4, stepped out of the car. Just as Petitioner 3 was about to step out of the car, a gun shot was suddenly heard, and he noticed his son falling to the ground. The Petitioner hurried over to his son and was then hit in his right leg. Several seconds later, the Petitioner noticed a jeep driving through Shweika square, which is the north entrance of Tul Karem. Petitioners 3 and 4 went to the hospital in order to receive treatment, and there it transpired that they had been wounded by live fire.
44. **Hamoked's request to launch an IMP investigation:** On July 27, 2003 the Center for the Defence of the Individual applied to Respondent 3, the Military Advocate of the Central Command, and requested to investigate the incident.

A copy of Hamoked's letter dated July 27, 2003 is attached hereto and marked **p/21**.

45. **For over a year** Hamoked continued to remind, in writing and verbally, with respect to its request dated July 27, 2003. Only on October 20, 2004, **more than two years from the day of the incident**, Hamoked received a letter from the Military Prosecutor, Captain Orli Goz, on behalf of the Military Advocate of the Central Command, according to which "**the Military Advocate of the Central Command instructed to launch an IMP investigation to clarify the alleged in the complaint**".

A copy of the letter received at Hamoked's office on October 20, 2004 is attached hereto and marked **p/22**.

46. After several reminders by the Center for the Defence of the Individual, on August 8, 2005 a letter was received from Lieutenant Colonel Ehud Ben Eliezer, the Military Advocate of the Central Command, according to which the investigation file is under their care and awaiting the opinion of the Office of the Military Advocate.

A copy of the letter received on August 8, 2005 is attached hereto and marked p/23.

47. **The closing of the investigation file and Hamoked's applications for the purpose of receipt of the investigation material:** Only on December 5, 2005, approx. three and a half years after the incident, and more than a year since the day the investigation was launched, did Hamoked receive a letter from the Military Advocate of the Central Command, according to which the file was closed “**after the unit that carried out the shooting mentioned in the complaint was not located**”. A similar letter notifying of the closing of the file was received on December 27, 2005 in which the writers added that “**the passage of time probably also made it difficult to clarify the circumstances of the shooting**”.

Copies of the letters received at Hamoked's office on December 5, 2005 and on December 27, 2005 are attached hereto and marked p/24, p/25.

48. On December 7, 2005 Hamoked applied in writing to the Commander of the Monitoring and Reporting Unit at IMP Headquarters, and requested to review and copy the investigation material, in order “to consider an appeal from the authority's decision to close the case, or to weigh its legal steps in the civil aspect”. Notwithstanding the many reminders sent since, a copy of the investigation material has not yet been received. The last group written reminder was sent on August 7, 2007 (see p/5) (With respect to Hamoked's group, in-principle requests for the purpose of receipt of the investigation material, see detail in Chapter 2).

A copy of the letter dated December 7, 2005 is attached hereto and marked p/26.

49. **In conclusion: Over two years have passed since** the incident described above, and as a result of the application of the Center for the Defence of the Individual, a military investigation was launched thereon.
50. **Over a year from the day the investigation launched,** in other words approx. three and a half years from the day of the incident, the Military Advocate of the Central Command notified that the investigation file was closed without taking any legal measures whatsoever.
51. **Despite Hamoked's application more than two and a half years ago for review of the IMP material and for the receipt of a copy thereof, and despite the many reminders sent with respect to the matter, Hamoked's request has not yet been answered.**

1. D. Petitioner 5 – Mr. _____ Mheisen [T.S. 30130; IMP West Bank Case 139/05]

52. **The description of the incident:** On April 10, 2003 Israeli soldiers entered Petitioner 5's house in Ramallah and carried out a search therein. In the course of the search, one of the soldiers aimed his weapon at the Petitioner's head. During the search in the Petitioner's room, one of the

soldiers found a sum of NIS 3000 and gave the money to the Petitioner so he will put it in his coat.

53. During the search a black case which had documents in it was taken from the Petitioner. The file and documents were not returned to the Petitioner.
54. The Petitioner was put on a truck handcuffed and blindfolded. During the ride, one of the soldiers hit the Petitioner and searched his person.
55. The soldier removed the contents of the Petitioner's pockets, and allegedly returned it later.
56. At the Ofer Detention Facility, when his deposits were taken from him, the Petitioner discovered that instead of the money were folded pieces of paper.
57. **Hamoked's request to launch an IMP investigation:** On January 7, 2004 Hamoked applied to the Military Advocate of the Central Command, and requested to launch an IMP investigation, and to indict the culpable parties in the incident.

A copy of the complaint letter dated January 7, 2004 is attached hereto and marked **p/27**.

58. For **approximately a year and a half** the Center for the Defence of the Individual continued to send reminders regarding its letter dated January 7, 2004 to the Office of the Military Advocate of the Central Command, in writing and verbally, and the answer it received was that the case was being clarified and no decision has been received in its respect.
59. Only on July 3, 2005, in a phone conversation between Hamoked's representative and the Central Command office, it was verbally disclosed that an investigation has been launched with respect to the case.
60. **The closing of the investigation file and Hamoked's applications for the receipt of the investigation material:** Approx. a year and two months after the investigation launched, and after during that period the Center for the Defence of the Individual sent several letters to the Office of the Military Advocate of the Central Command in order to be updated with regard to the status of the investigation, on September 5, 2006 a letter was received at Hamoked's office from the Deputy Military Advocate of the Central Command, Captain Inbal Eini De Paz, in which she notifies that:

In view of the passage of time since the incidents, the complainant's personal and medical file can no longer be located and it is impossible to check who brought him to the detention facility, who performed the reception process, and whether the examination discovered evidence of injuries. Under these circumstances, after the passage of more than four years from the incidents contemplated in the complaint, due to the delay in filing the complaint, and the

contradiction found in the complainant's testimony with respect to the statements made in the detention hearing, I instructed to close the investigation file [emphasis added, A.J.].

A copy of the letter received at Hamoked's office on September 5, 2006 from the Office of the Military Advocate of the Central command notifying about the closing of the case is attached hereto and marked **p/28**.

61. On that same day, in other words September 5, 2006, the Center for the Defence of the Individual applied to First Lieutenant Tom Giladi, the Commander of the Monitoring and Reporting Unit at IMP Headquarters, and requested to review and copy the material of the IMP investigation about the Petitioner's incident.

A copy of the letter dated September 5, 2006 is attached hereto and marked **p/29**.

62. For approximately a year and a half Hamoked continued to send reminders regarding its letter dated September 5, 2006, but its request has not yet been answered. (With respect to Hamoked's group, in-principle requests for the purpose of receipt of the investigation material, see detail in Chapter 2).
63. **In conclusion: After a year and a half** from the Center for the Defence of the Individual's application, a military investigation was launched with respect to the incident described above.
64. **After a year and two months from the day the investigation launched**, the Deputy of the Military Advocate of the Central Command disclosed that the investigation file was closed without taking any legal measures whatsoever.
65. **Despite Hamoked's application over a year and a half ago, in a request to review the IMP material and to receive copies thereof, and despite the many reminders sent in the matter, its request has yet to have been answered.**

1. E. Petitioner 6 – Mr. _____ Jamus [Hamoked Case 30565; IMP Jerusalem Case 196/04]

66. **The description of the incident:** On November 20, 2003, when Petitioner 6 was together with Mr. Ismail and Mr. Davikat in Nablus, two Israeli security forces personnel dressed in civilian clothing got out of a Ford Transit car with a yellow license plate. The two men grabbed the Petitioner and his friend and put a gun to Mr. Davikat's head.
67. Afterwards several Israeli soldiers got out of the car and began beating up the Petitioner and his friend. They hit the Petitioner on his back, his head and on various body parts with the butts of their weapons.

Petitioner 6 was taken to an army base and from there he was taken to be interrogated. He was held during the entire night at Havarrah and released on the next day.

Many possessions were taken from the Petitioner, and the majority of which were returned to him, to the exclusion of a sum of \$800 dollars that he kept in his identification certificate. It shall be noted that the Petitioner's identification certificate was returned to him, but without the money.

68. **Hamoked's application to launch an IMP investigation:** On January 18, 2004 Petitioner 6 filed, through the Center for the Defence of the Individual, a written notice with respect to damage to the Claims and Insurance Department at the Ministry of Defence.

A copy of the notice on damage dated January 18, 2004 is attached hereto and marked **p/30**.

69. In addition, on January 18, 2004, the Petitioner applied, through Hamoked, to the Military Advocate of the Central Command and requested to launch an investigation of the incident.

A copy of Hamoked's letter dated January 18, 2004 is attached hereto and marked **p/31**.

70. On February 22, 2004 the office of the Center for the Defence of the Individual received a reply letter from the Military Prosecutor, Captain Orli Goz, on behalf of the Military Advocate of the Central Command, notifying with respect to the launching of an IMP investigation regarding the incident.

A copy of the letter received at Hamoked's office on February 22, 2004 is attached hereto and marked **p/32**.

71. **The closing of the investigation file and Hamoked's applications to receive the investigation material:** Approx. a year after the launching of the IMP investigation, during which the Center for the Defence of the Individual applied several times in writing to the Office of the Military Advocate of the Central Command in order to be updated vis-à-vis the status of the investigation, on January 27, 2005 a letter was received at Hamoked's office from Lieutenant Colonel Ehud Ben Eliezer, the Military Advocate of the Central Command, in which he notified that:

After the evidence material in the file was examined, we have deemed it appropriate to instruct that the investigation file be closed. It does not arise from the evidence material that the detention of the complainant was carried out with the use of excessive force or without authority, taking into consideration the complainant's resistance to his detention and the place of performance of the detention. Further, no support was found to the complainant's claim that money was stolen from him.

A copy of the letter received at Hamoked's office on January 27, 2005 is attached hereto and marked **p/33**.

72. On March 7, 2005 the Center for the Defence of the Individual applied to Second Lieutenant Giladi, Commander of the Monitoring and Reporting Unit at IMP Headquarters, and requested to review the investigation material and receive a copy thereof. In its application, Hamoked emphasized the importance of disclosing the material promptly, in light of the amendment to Section 5a(a)(3) of the Civil Torts Law (State Liability), 5712-1952), with respect to a shortened prescription period of two years for the matter of filing a tort claim.

A copy of the letter dated March 7, 2005 is attached hereto and marked **p/34**.

73. On April 18, 2005 Hamoked received a letter from Second Lieutenant Giladi, Commander of the Monitoring and Reporting Unit at IMP Headquarters, addressing several cases under the care of the Center for the Defence of the Individual. In the matter of the investigation of Petitioner 6's incident, the commander noted that:

In all these cases [including Petitioner 6's case] IMP investigations were carried out, and the findings of which were transferred for the review and opinion of the Office of the Military Advocate. However, since the Freedom of Information Law does not apply to this kind of information [see the exception in the law itself], I shall request to present full reasoning to me with respect to each and every request, in order for it to be considered and examined in accordance with the instructions of the Office of the State Attorney. **I shall request to note in each of the cases whether a claim has been filed or a claim is about to be filed**" [emphasis added, A.J.].

See **p/18**.

74. On May 8, 2005 the Center for the Defence of the Individual sent a reply letter to the Commander of the Monitoring and Reporting Unit at IMP Headquarters, and therein noted, *inter alia*, that:

Considering the continued handling of the complaint from the civil aspect is an appropriate and legally-satisfactory reason for our request [to review the investigation material and to receive a copy thereof]. In the event that this reason does not meet your requirement, I ask that you refresh your memory with the instructions of the Office of the State Attorney. From our interest in considering the continued handling from the civil aspect it necessarily follows that we cannot know whether claims will be filed in these cases. It is irrelevant to our right to receive the investigation material from you, and your question would have been better never to have been asked.

A copy of the letter dated May 8, 2005 is attached hereto and marked **p/35**.

75. In a telephone conversation between the representative of the Center for the Defence of the Individual and a representative of the Office of the Military Advocate of the Central Command dated July 24, 2005 it was verbally notified that there is no problem in receiving the material of the military investigation which was carried out in the matter of Petitioner 6.
76. On July 25, 2006 the office of the Central Command verbally notified Hamoked's representative that the IMP investigation file with respect to Petitioner 6 was sent to Censorship, and that a notice will be sent to Hamoked upon completion of the censorship with respect to the copying of the file. In the meantime Hamoked continued to send reminders with respect to its application, in writing and verbally. (With respect to Hamoked's group, in-principle requests for the purpose of receipt of the investigation material, see detail in Chapter 2.)
77. In light of the reduction in the prescription period in the Civil Torts Law (State Liability) to a period of two years, the cause of action for filing a civil action with respect to the incident was supposed to expire on November 20, 2005. Since the decision with respect to the filing of a civil action was supposed to be mostly based on the quality of the material in the IMP investigation file and in the findings thereof, but these were not transferred to Petitioner 6 and to the Center for the Defence of the Individual, on November 1, 2005 Hamoked's representative applied to the Claims Department at the Ministry of Defence and requested to extend the prescription period in view of the delay in the disclosure of the file's investigation material. Hamoked noted, *inter alia*, that:

Without the investigation findings we are unable to make a sound decision with respect to filing a claim. Therefore, and in order to avoid troubling both parties with the filing of an unfounded claim, I shall request your cordial agreement to avoid raising a prescription argument if a claim is filed in this case, at the end of a reasonable time from the receipt of the investigation file to our hands.

A copy of the letter dated November 1, 2005 is attached hereto and marked **p/36**.

78. On November 24, 2005 the Claims Department at the Ministry of Defence notified Hamoked that they agree to extend the prescription period till May 1, 2006. It shall be noted that due to the non-disclosure of IMP's investigation material, Hamoked continued to request extensions of the prescription period. The last extension for the prescription of the case was given until June 15, 2006 (With respect to Hamoked's group, in-principle requests for the purpose of receipt of the investigation material, see detail in Chapter 2).

A copy of the Center for the Defence of the Individual's letter dated November 2, 2005 is attached hereto and marked **p/37**;

A copy of the letter from the Insurance and Claims Department of the Ministry of Defence dated November 24, 2005 is attached hereto and marked **p/38**.

79. **In conclusion: After the passage of a year from the day on which the investigation launched**, the Military Prosecutor of the Military Advocate of the Central Command notified that the investigation file was closed without taking any legal measures whatsoever.
80. **Notwithstanding Hamoked's application approx. three years ago for the review of IMP's investigation material and the copy thereof, and despite the many reminders sent on this matter, its request has yet to have been answered.**

1. F. Petitioner 7 – Mr. _____ Al-Rajabi [Hamoked Case 39613; IMP Jerusalem Case 284/05]

81. **The description of the incident:** On September 1, 2005, in the early morning hours, Israeli soldiers came to Petitioner 7's house in El-Chalil (Hebron) and took up a position there. The house's tenants were forced to leave it, apart from a few people that were held as a human shield (in contradiction with H CJ 3799/02 **Adallah et al. v. the IDF Commander of the Central Command et al.**, which prohibits holding Palestinians as a human shield).

On that same day the Center for the Defence of the Individual applied, through Adv. Labib Habib, and requested to release the three Palestinians being held, the youngest of which is thirteen years old, and emphasized that **"they are being held as hostages, as a "human shield". The act is clearly illegal, and constitutes severe prejudice to my clients' rights, and to the remainder of their dignity left after they have been removed from the house"**.

A copy of Adv. Habib's letter dated September 1, 2005 is attached hereto and marked **p/39**;

A copy of Haaretz Newspaper's article "IDF used Palestinians in Hebron as a Human Shield" dated September 4, 2005 is attached hereto and marked **p/40**;

A copy of Haaretz Newspaper's article "IDF: We will investigate the use of civilians as a human shield" dated September 5, 2005 is attached hereto and marked **p/41**.

82. **Hamoked's application to launch an IMP investigation:** On October 31, 2005, the Center for the Defence of the Individual filed a damage notice to the Claims and Insurance Department of the Ministry of Defence.

A copy of the damage notice dated October 31, 2005 is attached hereto and marked **p/42**.

83. On November 16, 2005 and following Sergeant Sagi Weitz's letter, the Jerusalem Base IMP investigator, the matter of which is summoning the persons involved in the incident to give testimony, Hamoked discovered that an IMP investigation was launched.

A copy of the Jerusalem IMP investigator's letter dated November 16, 2005 is attached hereto and marked **p/43**.

84. On June 18, 2006 and after a clarification of the Center for the Defence of the Individual with the IMP Jerusalem Unit, it was disclosed that on June 11, 2006 the file was transferred to the Office of the Military Advocate of the Central Command.
85. On June 25, 2006 the Center for the Defence of the Individual applied to the Military Advocacy and requested to receive an update with respect to the status of the handling of the case.
86. On August 10, 2006, September 26, 2006, November 7, 2006, January 3, 2006 and February 21, 2007 written reminders were sent to the Office of the Military Advocate of the Central command. On February 21, 2007 the Office of the Military Advocate of the Central Command notified that the file was transferred to the Office of the Military Advocate of the Northern Command in June 2006. On February 28, 2007, the Center for the Defence of the Individual applied in writing to the Office of the Military Advocate of the Northern Command, and requested to be updated on the status of the case; further, written reminders were sent to the Office of the Military Advocate of the Northern Command.
87. On April 11, 2007, after a clarification of the representative of the Center for the Defence of the Individual with the Office of the Military Advocate of the Northern Command, it was disclosed, verbally, that the Office of the Advocate's opinion was distributed to the various parties.
88. **The closing of the investigation file and Hamoked's applications for the purpose of receipt of the investigation material:** On April 22, 2007, approx. a year after the end of the IMP investigation and the transfer of the case to the Office of the Military Advocate, it was verbally disclosed by the Office of the Military Advocate to the Center for the Defence of the Individual that it was decided to close the investigation file without filing indictments.
89. On May 3, 2007 the representative of the Center for the Defence of the Individual applied to Lieutenant Tom Giladi, Commander of the Monitoring and Reporting Unit at IMP Headquarters, and requested to review the investigation material and to receive a copy thereof.

A copy of the letter dated May 3, 2007 is attached hereto and marked **p/44**.

90. On June 21, 2007 Hamoked received a written response from Major Tali Fried, the Deputy of the Military Advocate of the Northern Command, in which she notified that:

On April 10, 2007 we gave our opinion with respect to the closing of the investigation file in this matter, without taking legal measures.

[...] Among the conclusions of our opinion we noted that the soldiers of the military force that took part

in the seizure of the house did not have a clear understanding of the regulations and guidelines regarding seizing houses in the Hebron area, and with respect to the comprehensive prohibition regarding keeping people in the house in the event that they wish to leave. Furthermore, we had the impression from the soldiers' testimonies **that they acted in the spirit of the regulations that were known to them from their activity in the Gaza region**, shortly before this incident, while implementing significant relief due to the transfer to the Hebron region.

The DCO officer disclosed in his testimony with IMP, that he delivered the appropriate guidelines to the unit with respect to the methods of operation in the Hebron region. However, the unit's soldiers were not in agreement with respect to this matter. It seems that in the context of the guidelines he delivered, the DCO officer did not adequately clarify on the matter or that the guidelines he delivered were not appropriately understood, according to all the testimonies of the unit's soldiers and its commander, as given in the context of the investigation file. **It is also possible that this is a misunderstanding due to the swift transfer between the regions and the tendency to interpret the guidelines according to what is known and customary in operations until that time.**

The opinion was distributed to the relevant sources, **despite the passage of a long period of time since the incident**, in order to learn the required lessons, out of hope of preventing the reoccurrence of similar cases. [Emphasis added, A.J.]

A copy of the letter received at Hamoked's office on June 21, 2007 is attached hereto and marked **p/45**.

91. Despite written and verbal reminders by the representatives of the Center for the Defence of the Individual, for the past ten months, the investigation material has not yet been received. (With respect to Hamoked's group, in-principle requests for the purpose of receipt of the investigation material, see detail in Chapter 2).
92. **In this case as well, Hamoked applied to the Department of Claims in the Ministry of Defence and received an extension of the prescription period. The last extension given is valid until June 15, 2008.**

A copy of Hamoked's letter dated July 9, 2007 is attached hereto and marked **p/46**;

A copy of the letter dated July 16, 2007 from the Claims and Insurance Department of the Ministry of Defence is attached hereto and marked **p/47**;

A copy of the letter dated December 11, 2007 from the Claims and Insurance Department of the Ministry of Defence is attached hereto and marked **p/48**.

93. **In conclusion: Approx. a month** after the incident described above and as a result of the application of the Center for the Defence of the Individual, a military investigation was launched in its respect.
94. **Two years after launching the investigation**, the Military Advocate of the Central Command notified that the investigation file was closed without taking any legal measures whatsoever.
95. **Despite Hamoked's application more than ten months ago for the review of the IMP material and for the receipt of a copy thereof, and despite the many reminders sent in this matter, its request is yet to have been answered.**

1. G. Petitioner 8 – Mr. _____ Sa'id [Hamoked Case 28628; IMP Jerusalem Case 155/05]

96. **The description of the incident:** On August 3, 2003 Petitioner 8 accompanied his friend who drove a truck loaded with watermelons to El-Chalil (Hebron). They arrived at an area called the "Kalakas Ruins" and at that place there was a line of trucks waiting to enter the city.
97. One of the soldiers addressed the Petitioner with a demand to unload merchandize from one of the trucks, but the Petitioner refused. The soldiers called the officer, and the officer violently attacked the Petitioner, and even knocked him down to the ground and handcuffed him, covered his head, loaded him onto a jeep, and led him to a military compound in the Hagai settlement. The Petitioner was held all night long handcuffed, with his face covered, without food and water, and under inhumane conditions.
98. After the Petitioner was released from the detention, he went to a hospital to receive medical treatment, and after then he went to the police station at the Russian Compound in order to file a complaint with respect to the incident. The police referred him to Internal Affairs, and Internal Affairs referred him to IMP. In the IMP Headquarters he was told that the matter is not under their care!
99. **Hamoked's application to launch an IMP investigation:** On September 23, 2003 Petitioner 9 [sic] filed, through the Center for the Defence of the Individual, a damage notice to the Department of Claims in the Ministry of Defence. In addition, Hamoked applied on that same day to the Military Advocate of the Central Command and requested to launch an investigation with respect to the incident.

A copy of the damage notice dated September 23, 2009 [sic] is attached hereto and marked **p/49**;

A copy of Hamoked's letter dated September 23, 2009 [sic] is attached hereto and marked **p/50**.

100. On February 2, 2005, **approx. a year and a half after the incident**, and after several of Hamoked's reminders on the matter, the Military Prosecutor Captain Goz notified, on behalf of the Military Advocate of the Central Command, that an IMP investigation has been launched. On March 21, 2005, Captain Goz notified that the investigation is being carried out in the Jerusalem IMP base.

Copies of the letters received at Hamoked's office dated February 2, 2005 and March 21, 2005 are attached hereto and marked **p/51, p/52**.

101. On July 27, 2005 the Petitioner filed, through Hamoked, a claim in the Magistrate Court in Jerusalem (C.C. 7579/05) against the State of Israel due to the incident. In Section 37 of the Statement of Claim it was written that:

The Plaintiff will argue that... the great delay in the performance of the investigation and in taking testimony from the Plaintiff may cause evidential damage to the Plaintiff, which is reflected in his inability to request a remedy from the soldiers who are responsible for the attack and false imprisonment acts and/or in the evidential difficulty to prove his claim, and which amounts to, under the circumstances of the matter, all the Plaintiff's damage. [...] The Plaintiff will argue that since he has not yet received the results of the investigation and/or the investigation material, he cannot know which steps were carried out by IMP and/or the performance omissions which led to the alleged evidential damage.

A copy of the Statement of Claim's relevant pages is attached hereto and marked **p/53**.

102. **The closing of the investigation file and Hamoked's applications for the receipt of the investigation material:** On September 5, 2006, **approx. three years after the incident, and approx. a year and a half after the notice with respect to launching an IMP investigation**, Hamoked's office received a notice from the Deputy of the Military Advocate of the Central Command with respect to the closing of the investigation file:

Despite the investigation of soldiers who manned the place and an attempt to locate additional soldiers according to the names which the complainant gave in his testimony, no soldiers involved in the alleged incident were located.

[...]

In light of the aforesaid, since the performers of the alleged incident were not found, **and due to the time passed since the occurrence of the incident, I did not deem it appropriate to instruct the performance of**

additional investigation actions, and I instructed the closing of the case. [Emphasis added, A.J.]

A copy of the letter received at Hamoked's office on September 5, 2006 is attached hereto and marked **p/54**.

103. On September 5, 2006 Hamoked applied to First Lieutenant Giladi, Commander of the Monitoring and Reporting Unit at IMP Headquarters, and requested to review the investigation material and to receive a copy thereof. Since then reminders were sent repeatedly, but the requested material have not yet been received. (With respect to Hamoked's group, in-principle requests for the purpose of receipt of the investigation material, see detail in Chapter 2).

See: **p/4**.

104. On April 12, 2007 the court decided to issue a discovery order, after the applications of the Petitioner's counsel, Adv. Mi'ari, for the discovery procedure had not been answered. The Defendant, the Israel Police – the State of Israel, did not follow the order.

A copy of the decision of the Magistrate Court dated April 12, 2007 is attached hereto and marked **p/55**.

105. Eventually the claim ended in a settlement agreement which was executed between the parties in December 2007, and before receiving discovery of documents from the Defendant.
106. **In this case it can clearly be seen that even when the case reaches the discovery procedure stage, the policy with respect to the transfer of the investigation material is unanimous, and the foot-dragging continues.**
107. **In conclusion: After the passage of a year and a half** from the incident described above, a military investigation in its respect was launched.
108. **After a year and a half from the day the investigation launched**, in other words approx. three years from the day of the incident, the Military Advocate of the Central Command notified that the investigation file was closed without taking any legal measures whatsoever.
109. **Despite Hamoked's applications over a year and half ago for the review of the IMP material and for the receipt of a copy thereof, and despite the many reminders sent with respect to the matter, its request has yet to have been answered.**

1. H. Petitioner 9 – Mr. _____ Ta'aban [Hamoked Case 31036; IMP Urim Case 99/05]

110. **The description of the incident:** On December 27, 2003 when the Petitioner was working in a construction site located on the Abu-Arif Rd. in Dir Al-Balach in Gaza, suddenly live rounds were shot at him from a soldier's weapon (probably a sniper) from the direction of the military post in the Kfar Darom settlement. The Petitioner was wounded in his right leg from the

shooting. Since an ambulance could not reach that area, his colleagues evacuated him to Al Aqsa hospital in Gaza.

111. On February 19, 2004 the Petitioner filed, through the Center for the Defence of the Individual, a damage notice to the Department of Claims in the Ministry of Defence.

A copy of the damage notice letter dated February 19, 2004 is attached hereto and marked **p/56**.

112. **Hamoked's application to launch an IMP investigation:** on April 4, 2004 Hamoked applied to the Military Prosecutor in the Office of the Military Advocate of the Southern Command, and requested to investigate the incident, and to indict the persons responsible, if necessary.

A copy of the letter dated April 4, 2004 is attached hereto and marked **p/57**.

113. On May 2, 2005, after repeated reminders, **and approx. a year and a month after** Hamoked's application to launch an investigation, Captain Cohen, the Military Prosecutor in the Office of the Military Advocate of the Southern Command, notified that a decision was made to launch an IMP investigation.

A copy of the letter dated May 2, 2005 is attached hereto and marked **p/58**.

114. On August 4, 2005, the Petitioner filed, through the Center for the Defence of the Individual, a civil action for the bodily injuries caused to him as a result of the incident against the State of Israel in the Jerusalem Magistrate Court (C.C. 7812/05).

115. **The closing of the investigation file and Hamoked's application for receipt of the investigation material:** on June 17, 2007, approx. two years after the commencement of the IMP investigation, it was verbally notified by the Office of the Advocate of the Southern Command that the IMP investigation file was closed. Hamoked requested to receive a written reply.

116. On June 24, 2007 Hamoked applied to the Commander of the Monitoring and Reporting Unit at IMP Headquarters and requested to review and copy the investigation file, in order to consider an appeal from the authority's decision to close the investigation file.

A copy of Hamoked's application dated June 24, 2007 is attached hereto and marked **p/59**.

117. After repeated requests by Hamoked dated June 26, 2007 and July 22, 2007 to the Office of the Advocate of the Southern Command for the receipt of a written notice about the closing of the investigation file, on July 23, 2007 a letter was received at Hamoked's office from Major Shor, the Deputy of the Military Advocate of the Southern Command, according to which:

The evidence in this case indicates that around noon on December 27, 2003, **the IDF soldiers in the post in Kfar Darom settlement identified two people on the**

roof of a building that is under construction, as one of them is standing and the other is sitting down and taking notes. Due to the suspicion of their involvement in a hostile destructive activity, deterring shooting was carried out towards the suspects, and after that did not have an effect – shooting was carried out towards the legs of one of them.

From the evidence material, it is impossible to determine which military force held the post, the identity of the soldier who carried out the shooting and the identity of the source that approved the performance of the shooting. On the other hand, there aren't even objective findings (such as a bullet) which can indicate the existence of a sufficient evidential correlation between the aforesaid shooting and the shooting from which the complainant was wounded, and whether it was the other shooting that caused his wound.

Under the aforesaid circumstances, at the absence of a correlation, on the one hand, of the complaint to the incident reported in the operations journal; and at the absence of findings, on the other hand, with respect to the identity of the unit that carried out the alleged shooting; and also in view of the long time that has passed – I instructed to close the case without taking legal measures against anyone [emphasis added, A.J].

A copy of the letter dated July 23, 2007 is attached hereto and marked **p/60**.

From the aforesaid notice with respect to the closing of the investigation file, serious questions arise regarding the management of the investigation. On the one hand there is an explicit admission that there was indeed a shooting carried out by the army's soldiers in an incident similar to the one described by the Petitioner. On the other hand, the Office of the Advocate claims that it cannot locate the soldiers who carried out the shooting due to the passage of time! And that there is no evidence that it is in fact the same incident!

It shall be emphasized that Hamoked's application in a request to launch an investigation was at a date promptly after the incident, therefore had efforts been made and had there been an effective investigation it would have been possible to indict the culpable persons. Instead, the Respondents delayed the launch of the incident's investigation, and it only began a year later and was held for two years!

118. **In conclusion: A year and a month after** the Center for the Defence of the Individual's application, a military investigation was launched with respect to the incident described above.

119. **Two years from the day the IMP investigation commenced**, the Advocate of the Central Command notified that the investigation file was closed without taking any legal measures whatsoever.

120. **Despite Hamoked's application approx. nine months ago for the review of IMP's material and for the receipt of a copy thereof, as well as the many reminders sent in the matter, its request has yet to have been answered.**

1. I. Petitioner 10 – Mr. _____ Sabah [Hamoked Case 22257; IMP Haifa Case 218/04]

121. **The description of the incident:** On August 8, 2002, at about 3:00, an Israeli army unit arrived at the Petitioner's house. The unit included heavy vehicles and jeeps. The unit's soldiers surrounded the house. After a short time, and without any notice or warning, the soldiers starting shooting into the house with a heavy caliber gun. In total, several dozen shots were fired and Petitioner 10 was wounded as a result of the shooting.

122. Only after the shooting stopped, did a negotiation begin between the people in the house and the soldiers outside. The soldiers entered the house and carried out a search during which they caused a lot of damage.

123. The soldiers noticed the Petitioner's wounds, and evacuated him to Haemeq hospital in Afula, at first in a military ambulance and later in a civilian ambulance. After he was released from the hospital, the Petitioner was transferred to Salam prison where he was interrogated by a GSS person. In the interrogation, the GSS person threatened that he would harm the Petitioner's house and his family if the Petitioner does not turn in his brother. At the end of the interrogation the Petitioner was released to his home.

124. **Hamoked's application to the Military Advocate of the Central Command with a request to launch an IMP investigation:** On September 2, 2002 Hamoked filed a complaint to the Military Advocate of the Central Command and to the Legal Advisor to the Military Commander in the West Bank and requested to launch an investigation about the incident and to clarify the guidelines related to shooting at houses and civilians.

A copy of Hamoked's letter dated September 2, 2002 is attached hereto and marked **p/61**.

125. From a letter summoning the Petitioner to give testimony at IMP Haifa Base dated August 13, 2003, Hamoked was informed that an IMP investigation had in fact been launched.

A copy of the letter dated August 13, 2003 is attached hereto and marked **p/62**.

126. On August 8, 2004 Petitioner 10 and his wife filed, through Adv. Batshon from the Center for the Defence of the Individual, a tort claim to the Magistrate Court in Jerusalem (C.C. 9460/04), due to the bodily damage caused to the Petitioner in the incident as well as due to property damage.

127. On July 17, 2005 the Petitioner applied, through Adv. Batshon from Hamoked, to Adv. Yaron Sobel from the Office of the Tel Aviv District Attorney, and requested in the context of the civil action a specific discovery procedure in accordance with Regulation 113 of the Civil Procedure Regulations, and *inter alia*:

Any material collected and/or prepared by other sources following the care of the applications of the Plaintiff's counsel to the Attorney General office and to the Office of the Military Advocate with respect to the shooting incident and the Plaintiff's injury.

A copy of the letter dated July 17, 2005 is attached hereto and marked **p/63**.

128. **The closing of the investigation file and Hamoked's application to receive the investigation material:** On June 18, 2006, approx. three years from the day the investigation commenced, Colonel Liron Libman, the Chief Military Prosecutor notified that:

The investigation file indicated that on August 8, 2002, during an operation to capture the complainant's brother, the complainant's house was surrounded by the IDF forces. During the activity, the force noticed a suspicious person who was seen escaping from the surrounded house, and fired shots at this person. The complainant was lightly wounded from the shrapnel of the shots.

At the end of an extensive interrogation, and due to the passage of time, there are two questions that remain unanswered: whether before the person exited from the house's back exit, the force called upon the people in the house to exit, and whether a warning shot was fired at the suspect, shots to the legs or other types of shooting. **However, in light of the material collected and the passage of time from the incident, it seems that the matter can no longer be clarified. Yet, the investigation raises the possibility that the shooting carried out in this case was improper.**

In view of the ensemble of circumstances of this matter, and in general, **the departure of the relevant parties from the applicability of the Military Jurisdiction Law, the doubts with respect to the circumstances of the performance of the shooting, and the extent of the injury, it was deemed appropriate to close the investigation file without taking legal measures.**

[Emphasis added, A.J.]

A copy of the letter received at Hamoked's office dated June 19, 2006 is attached hereto and marked **p/64**.

129. And here is another case in which it was decided to close the investigation file without taking any legal measures whatsoever, despite the explicit notice of the Chief Military Prosecutor according to which the shooting was improper! The reasoning for closing the file, which they are using this time is well, **is the extended time that passed from the day of the incident and the claim that it is no longer possible to locate the soldiers who committed the offense.**

It shall be noted that the Petitioner applied, through Hamoked, to Respondent 3 with a request to launch an investigation of the incident promptly after the date of the incident. It is not clear why the investigation commenced approx. a year after the incident and why it lasted three years, when at its end it transpires, at least this is what the notice on the closing of the file suggests, that no effective investigation measures were carried out for the purpose of indicting the responsible persons.

130. On June 25, 2006 Hamoked applied to the Commander of the Monitoring and Reporting Unit at IMP Headquarters, and requested to review the investigation material and to receive a copy thereof. This was in order to consider an appeal from the authority's decision to close the case.

A copy of the letter dated June 25, 2006 is attached hereto and marked **p/65**.

131. After Adv. Kidron from Hamoked applied to the Military Advocate General on April 23, 2006 and on June 25, 2006 (for details about the correspondence see Chapter 2), on August 7, 2006 a letter was received at Hamoked's office on behalf of the MAG according to which in the event that a civil action is filed, then the request for receipt of investigation material is to be carried out in the context of the civil proceeding.

A copy of the letter received at Hamoked's office on August 7, 2006 is attached hereto and marked **p/66**.

132. On August 9, 2006 Hamoked replied to the MAG that in accordance with the State Attorney Guidelines it is required to permit the complainant to review the investigation material; this is legitimate merely from the fact that the complainant is the victim; this is a public interest and that under proper management of the IMP and the Office of the Military Advocate, the investigation material should have been in the possession of the complainants even before the filing of a claim.

A copy of the letter dated August 9, 2006 is attached hereto and marked **p/67**.

The Summary of the Chapter

133. In conclusion and as it can be clearly seen in the table below, Hamoked's applications to receive IMP material are being delayed for a very long time even in cases on which there is no disagreement!

The Respondents refuse to disclose Petitioners 6-7's investigations materials claiming that the latter are considering filing a civil action! It shall be noted that the investigation material in these cases is not required only for

considering the filing of a civil action, but also for the purpose of filing an appeal from the decision to close the investigation file without taking any legal measures whatsoever. It is important to the Petitioners to know which investigation measures were used, and what efforts were made in order to indict the responsible persons.

The Respondents are refusing to disclose Petitioners 9-10's investigation materials claiming that a civil action is being carried out and that those materials can only be obtained in the context of the civil proceeding. The Respondents are disregarding the Petitioners' right to file appeals from the decisions to close investigation files without taking any legal measures whatsoever. This right is an independent right which cannot be conditioned upon the development of the civil proceeding.

Furthermore, and as can be seen in the case of Petitioner 8, when the parties reached the discovery procedure stage, the transfer of the investigation material is not automatic and even there the State dragged its feet.

Chapter 1 Summary Table

Petitioner	Last Name	Date of Incident	Date of Hamoked's application to Respondent 2 with request to launch an IMP investigation	Date of Respondent 2's notice to Hamoked with respect to the commencement of an investigation	Date of receipt of notice about closing of investigation file at Hamoked's office	Date of Hamoked's request to review the material	Time passed since Hamoked applied to receive the investigation material
1	Al-Wardian	April 7, 2002	September 2, 2002	January 20, 2004	August 8, 2006	September 5, 2006	Approx. a year and a half
2	Salameh	April 18, 2002	July 8, 2002	November 7, 2002	February 10, 2004	April 13, 2004	Approx. four years
3+4	Jandab	June 4, 2002	July 27, 2003	October 20, 2004	December 5, 2005	December 7, 2005	Approx. two years and three months
5	Mheisen	April 10, 2003	January 7, 2004	July 3, 2005	September 5, 2006	September 5, 2006	Approx. a year and a half
6	Jamus	November 20, 2003	January 18, 2004	February 22, 2004	January 27, 2005	March 7, 2005	Approx. three years
7	Al-Rajabi	September 1, 2005	September 1, 2005	November 16, 2005	April 22, 2007	May 3, 2007	Approx. ten months
8	Sa'id	August 3, 2003	September 23, 2003	February 2, 2005	September 5, 2006	September 5, 2006	Approx. a year and a half
9	Ta'aban	December 27, 2003	April 4, 2004	May 2, 2005	June 17, 2007	June 24, 2007	Approx. nine months
10	Sabah	August 8, 2002	September 2, 2002	August 13, 2003	June 19, 2006	June 25, 2006	A year and ten months

Chapter 2 – the basic applications of the Center for the Defence of the Individual to the Respondents with respect to the unreasonable delay in the receipt of the investigation material

2. A. Introduction

134. As can be seen above, in cases in which there is no disagreement between the parties with respect to the matter of the transfer of the investigation material, the Respondents are dragging their feet and are dawdling without any justified reason, with respect to the transfer of the investigation material. This is not a delay of a few days or weeks, but a delay of years.
135. In cases in which Hamoked filed applications for the extension of the prescription period, and in which the Petitioner and Hamoked are considering filing a civil action (in addition to the appeal from the decision to close the investigation file) and are waiting to receive the investigation material in order to consider their legal moves – as in the cases of Petitioner 6-7 – the Respondents are firmly refusing to transfer the investigation material. The Respondents are not providing legal basis for their refusal and are claiming that the material can be obtained in the discovery procedure when the civil action is filed!
136. The Respondents are using the same approach when there is a pending civil action in court, such as in the cases of Petitioners 9 and 10. In these cases, the Respondents are claiming that the investigation material is required to be obtained in only one way – in the context of the civil proceeding by a discovery procedure order. This is a stage which the parties to the claim may reach after a long while from the day of filing the civil action. The Respondents do not indicate the source of the authority according to which the receipt of the investigation material is to be made in only one way – by a discovery procedure – and are disregarding the right of Petitioners 9 and 10 to file an appeal from the decision to close the investigation file and to review the investigation actions that were carried out.
137. Thus in the response of Second Lieutenant Giladi, Commander of the Monitoring and Reporting Unit, dated April 18, 2005, to Hamoked's applications to review the investigation material of several files and to copy the material, a reply was given which is relevant to the cases mentioned in the letter and to the cases contemplated in this Petition. According to this reply, complete reasoning is to be given for each and every request to review investigation material, in order for it to be considered and examined according to the State Attorney provisions. In addition, it should be noted in each application "whether a claim was filed or whether a claim will be filed in the future." See **p/18**.
138. On May 8, 2005 Adv. Wolfson from Hamoked replied to the letter of Second Lieutenant Giladi, Commander of the Monitoring and Reporting Unit:

Considering the continued handling of the complaint from the civil aspect is an appropriate and legally-satisfactory reason [...] from our interest in considering

the continued handling from the civil aspect it necessarily follows that we cannot know whether claims will be filed in these cases. It is also **irrelevant** to our right to receive the investigation material from you, and your question would have been better never to have been asked. See **p/35**.

2. B. Hamoked's Applications to the Military Advocate General – Respondent 1

139. In addition to the specific applications in each and every case made to the Commander of the Monitoring and Reporting Unit, and to its requests to receive the investigation material in the incidents described above, and after it seemed that there would be no end to the foot-dragging carried out by the Respondents, on April 23, 2006 Hamoked applied, through Adv. Anat Kidron, to Brigadier-General Avichai Mandelblit, the Military Advocate General, and complained about the long and unreasonable delay in the receipt of the IMP investigations materials, and wrote as follows:

In all the cases [under Hamoked's care and described in the letter] it was decided by the Office of the Military Advocate at the end of the investigation to close the investigation file for various reasons. Following these decisions, requests were sent by Hamoked's representatives to the IDF spokesmen and alternatively to IMP Headquarters, to copy the investigation files, in order to enable the complainants in these cases to lawfully exhaust their rights. **Till this day, approx. half a year and even more after the filing of the requests, the investigation files have not yet been delivered for the review of the complainants' counsel. When the investigation files were given to Hamoked, it was done only after repeated applications, and after a nine month time period, at least.** This was done without any justified reason and while breaching the material and procedural rights of the complainants. **As a result of this improper behavior, the complainants were denied, *inter alia*, the possibility of appealing the closing decision, and having the responsible persons brought to justice, for example by way of having the investigation completed.**

[...]

The average time for receiving investigation material to this day is 405 days.

The offense victim's right to receive the investigation material for his review is an integral part of his right of due process, including the performance of an

exhausting investigation of the offense allegedly carried out against him.

Needless to state, the right of a victim of an offense perpetrated by IDF soldiers, is not inferior to the right of a person injured by a civilian or a policeman. Both are equally entitled, *inter alia*, to appeal the relevant investigation authority's decision to close the investigation file in their matter. The receipt of the investigation material for this purpose has been recognized as a considerable interest, and see Section 3 of State Attorney Guidelines No. 14.8.

[...]

Delay in the receipt of the investigation material critically prejudices, and in fact negates, the exercise of the right of appeal granted to the complainants by law. It is clear, even if the appeal is granted in principle, that additional investigation actions are required to be carried out, since after the passage of months and years, investigation actions that are taken will not be effective, if they can be implemented at all.

[...]

Furthermore, the investigation material may be the basis of a civil action of the complainant against the suspects or against the army. **The delay in the disclosure of the material to the complainant delays the filing of the claim, and makes it hard to manage the same.** Moreover, in the current legal situation, after Amendment No. 4 of the Civil Torts Law (State Liability), 5712-1952, the plaintiff has only two years to file a claim against the state and its agents, including soldiers. **Without the investigation material, the complainants cannot make an educated decision with respect to filing a civil action.** This is an unwanted result for both parties: the complainant may, on the one hand, invest resources in filing a claim which stands no chance due to lack of information, and on the other hand, may waive, due to a mistake deriving from lack of information, his right to file such a claim. The state also needs to invest resources in confronting unfounded claims which were filed in good faith, and the filing of which could have been prevented.

A copy of the letter dated April 23, 2006 is attached hereto and marked **p/68**.

140. On May 23, 2006 a letter was received at Hamoked's office from the Commander of the Monitoring and Reporting Unit in which it was notified that:

A process of locating all the required material and the transfer thereof for a legal and security examination has begun. [...].

A copy of the letter dated May 23, 2006 is attached hereto and marked p/69.

141. From the aforesaid, a lesson can be learned with respect to the Respondents' policy, according to which the IMP applies to the Office of the Tel Aviv District Attorney in order to receive an approval for the transfer of the investigation files for the applicants' review. **In a case in which a civil action is being managed, the Office of the District Attorney prohibits IMP, without any clear legal source, from transferring a copy of the investigation file to the complainant.**

In the event that a civil action is not being managed, but there is an intention or a chance of filing such a claim, IMP refuses to deliver the investigation material under the argument that the material may be received in the civil action in the future!

142. On June 25, 2006 Hamoked applied through Adv. Kidron to the MAG following IMP's improper refusal to disclose investigation materials while a civil action is being managed, and due to the refusal of the Office of the Tel Aviv District Attorney to do so under the pretext that there is a civil action pending or that there is a chance that a civil action will be filed in the future. Copies of the letter were sent to the IMP Commander, the Office of the Tel Aviv District Attorney (Civilian), the IDF Spokesman and the manager of the HCJ Department.

Adv. Kidron requested to know, *inter alia*, what is the legal basis supporting the refusal to disclose the investigation material, and what is the nature of the relationship between the Office of the Tel Aviv District Attorney and between IMP, and further emphasized that:

First-Lieutenant Giladi's aforesaid argument is the continuation of attempts to unlawfully prevent complainants from receiving investigation material even before the filing of a claim, out of what seems like an attempt to make the management of the civil proceeding difficult.

The statements in both the aforesaid letters [the letters dated April 18, 2005 and May 23, 2006, see Exhibits p/18 and p/69] indicate a phenomenon of improper collaboration between the Office of the Tel Aviv District Attorney and IMP, the purpose of which is on the one hand to make it difficult for complainants to file a civil action and to "punish" them with foot-dragging and deny them of information if they filed such a claim. It would not be superfluous to recall that this was done after the lagging of the investigation and the Central Command's decision prevented any option of exhausting criminal proceedings.

When a civil action is filed, IMP is supposed to provide the investigation material to the Office of the Tel Aviv District Attorney at its request, and that is also the case with respect to the Claims Department in the Ministry of Defence. This should exhaust the relationship between those parties. It is not IMP's concern whether a civil action will be filed in the future or not based on the material, or whether such an action has already been filed.

These facts, and the peculiar claims with respect to the non-disclosure of investigation material due to the existence of a claim, cannot be seen as a mere coincidence. A deep concern arises from this that an improper collaboration is present between the Office of the Tel Aviv District Attorney and IMP. Instead of the latter focusing its efforts on efficient and exhaustive investigations the purpose of which is the collection of evidence for the purpose of indicting persons suspected of offenses, it appears that the focus of IMP's work in such cases is diverted to the manufacturing of evidence material for the use of the State in its defense against civil actions, and for layering difficulties on the plaintiffs in the management of these claims.

[...]

The fact that after filing a claim, the plaintiffs are supposed to receive the investigation material in the context of a discovery procedure, does not amount to damaging the complainants' early and separate right to receive the investigation material directly from the investigating authority. As I mentioned in my previous letter, the receipt of the investigation material is a condition for the exercise of the complainant's right of appeal in the criminal aspect, and for the supervision of a fulfillment of an exhaustive investigation with respect to his matter. It is unnecessary to note that this right is also reserved for whoever filed a civil action against the State of Israel.

A copy of Hamoked's letter to the MAG dated June 25, 2006 is attached hereto and marked **p/70**.

143. On July 10, 2006 a letter was received at Hamoked's office from Major Cohen, Senior Assistant to the CMP, in which he apologized for the delay in the care for the requests with respect to the transfer of the investigation material to Hamoked, and argued that "this delay derives from the fact that the policy regarding the transfer of the requested material, and similar material in the future is in stages of formulation." And that "once the policy is solidified in the near future" the Center for the Defence of the Individual will be updated.

A copy of the letter received at Hamoked's office on July 10, 2006 is attached hereto and marked **p/71**.

144. On August 7, 2006 a letter was received at Hamoked's office from Captain Belen, the legal assistant to the MAG, on behalf of the MAG in which it was stated:

At the outset we shall request to note that there is no disagreement on the principle, as it is expressed in case law and in State Attorney Guideline No. 14.8, according to which, as a rule, a complainant, a victim or the surviving relatives of a victim are entitled to review the investigation material in order to examine the circumstances of the injury incident. The military's authorities recognize the aforesaid principle and there is no desire or motive (concealed or known) to prevent anyone who has a legitimate interest as aforesaid in the investigation material, to review the material.

Unfortunately, taking care of the issue of the requests to review the investigation files was not handled by one body and the procedures for handling such requests were not sufficiently clear. This fact made it difficult to handle the requests and occasionally led to insufficient treatment and to delays in the transfer of the investigation material to the parties that hold the right to review the material.

After a comprehensive review [...] an internal procedure regulating the handling of such requests was determined.

[..] As for the issue of the existence of a civil action against the Ministry of Defence and IDF. [...] Once a civil action is filed against the Ministry of Defence and the IDF, the request to receive the investigation material which certainly can be used as evidence in the context of the civil proceeding, is required to be carried out in the context of the civil proceeding and in accordance with the procedures determined therein. (See the statements made by the Honorable Justice Kling in Adm. Pet. (T.A. Jaffa) 1256/01 **Bilstozki v. Kfar Malal**). Moreover, it seems that is shall be agreed **that an application to the military authorities carried out in bad faith, and which may amount to an indecent attempt to try and exploit information gaps between different bodies within the same authority.**

As for the pending applications, I shall request to update you that we instructed the head of the supervision and investigations department to make an effort to locate the investigation files in regards to

which you have applied, and to haste the handling of their transfer to you. [Emphasis added, A.J.]

See p/66.

145. And at this time it is over a year and a half from the day of the MAG's notice, and the investigation material of the incidents described above have not yet been transferred to Hamoked, not even in cases in which there is no disagreement between the parties with respect to the right to receive the investigation material.
146. On August 9, 2006 Adv. Kidron from the Center for the Defence of the Individual sent a letter to the MAG in which she stressed that his position with respect to not disclosing the investigation material to complainants due to the existence of a civil action or an intention to file a civil action in the future is unacceptable and lacks legal basis. In addition, she raised a question with regards to the right to receive the investigation material after the civil case concluded in settlement (such as in the case of Petitioner 8).

The complainants have an interest in receiving the investigation material **separately and irrespective** of the existence of a civil action. Had the civil action concluded in a settlement before the discovery procedure, would that deny the complainant's right to receive the investigation material?!

147. As for the MAG's argument that non disclosure of the investigation material while there is a pending claim is coincident with the Bilostozki Judgment, Adv. Kidron replied that:

I did not find that the Bilostozki Petition mentioned in your letter has any relevance to our matter. First, that petition was dismissed due to the Freedom of Information Law not applying to the respondent. Second, the petitioner there had no additional interest with respect to the information, apart from the filing thereof as evidence in the civil action she was carrying out against the respondent, as opposed to a situation in which the requested information is part of a criminal investigation.

[...] The rule determined in the State Attorney Guidelines is that it is required to enable the complainant to review the investigation material. This is the case since the complainant has a legitimate interest in the investigation merely due to him being the complainant and the victim of the offense.

[...]

I disagree with your determination that not mentioning the existence of a civil action in the application to receive the investigation material is an act in bad faith, which amounts to an "attempt to exploit information

gaps between parties". I am absolutely certain that neither IMP nor the Office of the Tel Aviv District Attorney will transfer confidential information to complainants (and it shall be commented that this was not the same authority), and if it was information the review of which is permitted – then the existence of a civil action has no impact on the material delivered to the complainant, and I did not find any legal basis whatsoever in your letter for a contrary argument.

See: **p/67**.

148. Adv. Kidron repeatedly stressed in her letter that if the prescription period for Palestinian claims had not been shortened to only two years, the requests for review of the investigation material would have been received before the filing of the claim. Finally, Hamoked requested, through Adv. Kidron, to guide the relevant parties to disclose the investigation material to the complainants regardless of the management of a civil action in the matter. Copies of the letter were sent to the IMP Commander, to IMP Headquarters, to the IDF spokesman and to the manager of the HCJ department in the Office of the State Attorney.

2. C. Hamoked's Applications to the State Comptroller

149. On October 16, 2006 Hamoked applied, through Adv. Kidron, to the State Comptroller Justice (Ret.) Micha Lindenstrauss, and described to him the unreasonable delay in the receipt of the IMP investigations materials, and the severe harm caused to the complainants due to the non disclosure of the investigation material within a reasonable time after the notice of closing the investigation file. Hamoked requested, *inter alia*, to monitor the transfer of the investigation material and to ascertain that the persons entrusted with the examination of the material and the transfer thereof are aware of the fact that the transfer of the material in a reasonable period of time is an integral part of the complainants' basic right of due process.

A copy of the letter dated October 16, 2006 from Hamoked to the State Comptroller is attached hereto and marked **p/72**.

150. On October 22, 2006 the State Comptroller sent a letter to Adv. Kidron from Hamoked in which he confirmed the receipt of her letter dated October 16, 2006, and notified her that the letter was transferred for the review of the Defence Department in the State Comptroller's office, which confronts issues that are related to the IDF. However, the State Comptroller suggested applying to the Attorney General with respect to this matter.

A copy of the State Comptroller's letter to Hamoked dated October 22, 2006 is attached hereto and marked **p/73**.

151. On October 31, 2006 Adv. Kidron responded to the State Comptroller's letter and noted that in the past Hamoked applied to the Military Advocate General and to additional parties that have the operative authority in the matter.

However, despite the applications no actual progress was made in the handling of the files. Adv. Kidron mentioned that nonetheless, due to the Comptroller's suggestion, Hamoked would consider applying to the Attorney General.

A copy of Hamoked's letter to the State Comptroller dated October 31, 2006 is attached hereto and marked **p/74**.

2. D. Hamoked's Applications to the Attorney General

152. Following the State Comptroller's recommendation, on November 5, 2006, Hamoked applied to the Attorney General and presented to him the facts with respect to the conduct of the military authorities and the unreasonable delay in the receipt of the investigation material. Hamoked requested from the Attorney General to intervene and activate his authority in order to end the military authorities' grave omission, and to instruct that the investigation material is transferred immediately to the complainants.

A copy of the letter dated November 5, 2006 is attached hereto and marked **p/75**.

153. On November 14, 2006, the chief assistant to the Attorney General sent a letter to Adv. Kidron from Hamoked, in which he notified that Hamoked's application dated November 5, 2006 was transferred for the treatment of the relevant sources, and once the handling of the application is concluded, a reply will be sent.

A copy of the letter dated November 14, 2006 is attached hereto and marked **p/76**.

2. D. The continuation of Hamoked's correspondence with the MAG, the Attorney General and the State Comptroller

154. On December 14, 2006 the MAG's office notified again to the Center for the Defence of the Individual that a procedure was formulated for the transfer of the investigation material, in accordance with State Attorney Guideline No. 14.8 dated August 1, 2002. With respect to investigation files in cases in which a civil action is being managed, it was written:

The material shall be transferred, through coordination with the Ministry of Defence and the Office of the Tel Aviv District Attorney (Civilian), in accordance with the Civil Procedure Regulations and according to the circumstances of the matter. This shall be done in order to guarantee that the material held by the authority and which is relevant to the legal proceeding carried out between the parties, shall be transferred in the context of the legal proceedings and the rules prevailing therein and not in an indirect manner.

[...] In the cases in which the plaintiff will point out a legitimate matter which is separate from his civil action and which justifies the transfer of the material even before decisions were made with respect to the discovery procedure in the civil proceeding, the request will be examined according to its circumstances [...] In addition, in cases in which the civil action will end before the discovery procedure, whether by settlement and whether in another way, it is clear that the existence of a civil proceeding will not suffice to impact the disclosure of the material to the applicant.

A copy of the letter received at Hamoked's office on December 17, 2006 from the MAG's office is attached hereto and marked **p/77**.

155. On December 31, 2006 Adv. Nizri, the chief assistant to the Attorney General replied to the Center for the Defence of the Individual that the Office of the Military Advocate is working in accordance with the principle according to which a complainant, a victim or the surviving relatives of a victim are entitled to review the investigation material, and that:

Delays in the transfer of the investigation files were caused in the past [...] and this was because the handling of the matter was not centralized by one body in the military, and the regulations in the matter were not sufficiently clear. However, IDF and the Ministry of Defence conducted administrative work on this issue, in the context of which they also determined a procedure for the handling of requests to review the investigation material.

A similar reply was sent to Hamoked on November 21, 2006 on behalf of the State Comptroller.

A copy of the letter from the chief assistant to the Attorney General to Hamoked dated December 31, 2006 is attached hereto and marked **p/78**;

A copy of the letter from the State Comptroller's office to Hamoked dated December 21, 2006 is attached hereto and marked **p/79**.

156. On January 30, 2007 the Center for the Defence of the Individual sent to Captain Timor Belen, the legal assistant to the MAG, the list of cases in which a request to receive the investigation material was made, and this was done according to the request of the latter.

A copy of Hamoked's letter to the MAG's assistant dated January 30, 2007 is attached hereto and marked **p/80**.

157. On February 5, 2007 Hamoked applied, through Adv. Kidron, to the State Comptroller with respect to the refusal to disclose the investigation material, under the argument that there is a pending civil action, something which creates a prohibited collaboration between IMP and the Claims Department in

the Ministry of Defence. In its letter, Hamoked emphasized that following Amendment No. 4 of the Civil Torts Law and the reduction of the prescription period for Palestinians' claims against the defense forces to a period of two years, a situation is created in which claims are filed even before the plaintiffs receive the investigation material, and in some cases the investigation has not even concluded.

We are witnessing a serious phenomenon which, on its face, indicates that IMP is making unlawful use of its investigation authorities. This is related to the fact that sometimes IMP investigations commence **only after a civil action or a claim to the Claims Officer is filed**. Furthermore: according to the complainants who are summoned to give their notice at IMP it is apparent that the investigation focuses on the issue of **damage** caused to them and to their property, and even on their link to the damaged property – items which the connection between them and the possibility of locating the offenders is weak to say the least.

[..]

In fact, in its capacity as a defendant, the Ministry of Defence has an inherent interest in **avoiding** the collection and the creation of evidence which will strengthen the plaintiff's version. When IMP acts as an agent for **the Claims Officer**, the presumption is that it acts for the benefit of its principal and therefore will harm [sic] to weaken and destabilize the evidence on behalf of the plaintiff-complainant [...] and not to discover the truth – in absolute contradiction to its role.

[Emphasis in original]

A copy of Hamoked's letter to the State Comptroller dated February 5, 2007 is attached hereto and marked **p/81**.

158. On February 15, 2007 a letter was sent from Ms. Yekutieli, the manager of the State Comptroller's office, to Hamoked, according to which Hamoked's application dated February 5, 2007 was transferred to the department that handles the matter at the State Comptroller's Office.

A copy of the letter from the manager of the State Comptroller office to Hamoked dated February 15, 2007 is attached hereto and marked **p/82**.

159. On July 22, 2007 Hamoked applied to the manager of the State Comptroller's office and requested to know whether any progress was made in the handling of its application dated February 5, 2007.

A copy of Hamoked's letter to the manager of the State Comptroller Office dated July 22, 2007 is attached hereto and marked **p/83**.

160. On August 7, 2007 Hamoked applied again to the Commander of the Monitoring and Reporting Unit at IMP Headquarters, and requested to receive

a copy of IMP material in cases in which such a request was submitted many months ago.

See **p/5**.

161. On August 13, 2007 Adv. Herpaz, the assistant to the State Comptroller and to the Ombudsman, notified that the State Comptroller Office receives thousands of applications and suggestions for inspection each year, and naturally it is not able to carry out an inspection in each of the thousands of applications, and therefore it has been decided not to integrate Hamoked's complaint in the Office's yearly work plan.

A copy of the assistant to the State Comptroller's letter to Hamoked dated August 13, 2007 is attached hereto and marked **p/84**.

162. And thus, despite the MAG's last notice from **over a year ago** that a procedure for the transfer of the investigation material to the complainants has been formulated, no action whatsoever has yet to have been performed for the transfer of the investigation material to the Petitioners, even to those in the matter of which there is no civil action and there is no disagreement with respect to their right to receive the investigation material.
163. In the meantime, time is passing by, and the Petitioners' rights to appeal the decision to close the investigation file and to request a completion of the investigation, as well as their right to access the courts, are being violated. As the time goes by, the chance of indicting the responsible parties and of reopening the completion of an investigation, if necessary, weakens.

The Legal Argumentation

Introduction

164. There is no disagreement between the parties, and there cannot be any disagreement between the same with respect to the right of a complainant, a victim or the surviving relatives of a victim to review the investigation material in order to examine the circumstances of the incident in question, and the investigation measures used, as long as there is no pending civil action or that the petitioner does not intend to consider the filing of a civil action, or when there is a pending civil.
165. Despite the Respondents' statements for a whole year with respect to their intention to transfer the investigation material in the investigation files of Petitioners 1-5 and Petitioner 8 (the civil action in the matter of which concluded in a settlement, and no IMP material were received in its context), they continue to drag their feet, and disregard the Petitioners' repeated requests to receive the investigation material!
166. The essence of the disagreement between the parties is about the Petitioners' right, including Petitioners 6 and 7 and Petitioners 9 and 10, who are victims of offenses carried out by the defense forces, to receive the IMP investigations

materials, regardless of the existence of a civil action or if the Petitioners are considering filing a civil action.

167. The Respondents argue that if there is a civil action, such as in the cases of Petitioners 9-10, or if the victim is considering filing a civil action, such as in the cases of Petitioners 6-7, then the only way available to them in order to receive the investigation material, is through the discovery procedure in the existing civil proceeding, or in the one that shall be carried out, if any. The Respondents do not provide any reasoning whatsoever for the refusal policy with respect to the transfer of the material, and do not even justify their policy. Thus, for example, the Respondents do not indicate any repercussions, as a result of the transfer of the investigation material to offense victims, which amount to constituting a consideration that justifies avoiding the transfer of the material.
168. The Petitioners argue that a complainant is entitled to receive the IMP investigation material with respect to the incident in which he was a victim, regardless of the question of the existence of a civil action.
169. An offense victim has two separate rights, neither of which is to be conditioned upon the results of the other.

First, an offense victim's right, which the investigation file in his matter was closed without taking any legal measures whatsoever, to examine whether all the efforts to perform an effective investigation were in fact made and to file an appeal if necessary (See and compare Sections 64 and 65 of the Criminal Procedure Law, 5744-1982). The right here is two-fold: the right to know how his complaint was handled, which stands on its own, and the right to file an appeal based on the material, and to demand the completion of the investigation.

The second right is to apply via a civil proceeding, in the context of which the victim may receive the investigation material (not in every civil proceeding will the result be the exercise of the right of a discovery procedure and the receipt of the investigation material; some of the cases end in settlement, or in the preliminary proceedings). It shall be noted here that had the Respondents acted within a reasonable time and investigated the incident promptly after it occurred, and had the duration of the investigation been reasonable, and had it not exceeded several weeks or months, as opposed to several years, the investigation material should have been held by the victims/Petitioners long before the filing of the civil proceeding.

The Respondents here are trying to condition an offense victim's right to file an appeal and to review the investigation material upon the results of a lengthy civil proceeding against the State, or a civil proceeding which may be carried out in the future.

170. In addition to the aforesaid, the aspect of time has considerable importance with respect to the filing of an appeal – the longer it is from the date of the incident, so are the chances of the appeal being effective reduced, and so it

becomes more difficult to perform a completion of investigation if necessary or to locate the parties that were involved in that incident.

171. The Respondents' policy which is an indication of a prohibited collaboration between IMP and the Office of the State Attorney, since it is the nature of an investigating authority's duty to use independent discretion with respect to the manner in which it conducts its investigation as well as with respect to the matter of the transfer of the investigation material to offense victims.

Chapter 3

3. A. The obligation to respond and to handle an application within a reasonable time

172. There is no disagreement between the parties with respect to the right of a complainant or of his surviving relatives to receive the investigation material in cases in which the cause of action for the civil claim has prescribed, or when the civil proceeding has ended and the investigation material is not received in the context thereof. However, the Respondents have been tarrying for many months and have not been transferring the material in the matter of Petitioners 1-5 and Petitioner 8. In these cases the Respondents are dragging their feet and the routine reply that Hamoked has received to its applications is that the matter is being taken care of!
173. As early as thirty years ago Justice Shamgar (as was his title then) indicated this improper phenomenon of the authorities disregarding civilians' applications and not providing replies, while he determined that there must be strict action carried out against public officials that do not respond on time:

The failure to provide answers to a citizen who applies to the authority is a common plague in our reality, which can apparently not be rooted out unless steps are taken which are more decisive and effective than those prevailing at the moment, including instituting disciplinary proceedings against public officials who failed to timely respond to a citizen's application [...] There is reason to believe that responses as aforesaid, accompanied with proper guidance and explanation will amount to increasing the awareness to the obligation of providing a response, which is established by law, and which is also called for by proper human relations. (HCJ 153/77 **Farg v. the Petach Tikva Municipality**, Piskei Din 31(3), 427, 432).

Unfortunately, this is true today as well. These words receive extra validation when it is in the matter of an application which has outreaching repercussions with respect to the very basic rights of the applicants.

174. The Honorable Justice Levy's statements are also appropriate for our case. These statements express, in a manner which is clear cut, the great severity

related to foot-dragging, delays and lack of providing a relevant response on the part of the authority:

The respondent is not entitled to treat the petitioners – which are as any other applicant – in the way he is acting; the respondent is not entitled to leave their matter pending without providing a relevant response... the respondent is not entitled to pointlessly exhaust the petitioners, to cause them unnecessary expenses and to delay, by the way, the clarification of their case on the merits. And if the respondent forgot the nature of the obligations in which he is indebted, then it is the duty of the court to once again review these for him. (HCJ 10399/04 **Ben Avdekol v. the Ministry of the Interior, the Population Administration**, Takdin Elyon 2005(3), 1608 1609).

Chapter 4 – State Attorney Guideline No. 14.8

4. A. An application on behalf of various parties to review the investigation material

175. State Attorney Guideline No. 14.8, the title of which is “An application on behalf of various parties to review the investigation material in a police file” (hereinafter: the State Attorney Guideline or the Guideline), determines guiding principles (which are also relevant in cases in which the investigating authority is IMP), according to which a public authority, including the police or the prosecution, is required to act in accordance with those principles when it is about to discuss the applications for review of investigation material filed by a suspect, a complainant, an offense victim or another interested party.

A copy of State Attorney Guideline No. 14.8 is attached hereto and marked **p/85**.

176. Since the current law does not include a granted right for the complainant or for the offense victim to review the investigation material, as opposed to an accused (see and compare: Section 74 of the Criminal Procedure Law (Consolidated Version), 5742-1982). The decision whether to permit the review of the investigation material is required to be made in accordance with the administrative law principles, and to be carried out “in good faith, decently, equally and reasonably” (see Section 3 of the Guideline).
177. The rule is that if the party requesting to review the investigation material indicates an interest of great importance which supports his request, he should be permitted to review the material, unless there is a significant interest:

which precludes the review in the confines of discretion, the authority is required to balance between a person’s right to review the investigation material regarding his matter and his right to exhaust the rights he has under the law (for example the right to file an

appeal or to file a civil action), and between public and private interests which may be prejudiced as a result of permitting the review. For example, the public interest in maintaining the trust of the public by not having material disclosed to police reaching the review of the general public, something that will guarantee the public's willingness to cooperate with the police in the future; the public interest of protecting the police and the prosecution's systems and methods of operation; the public interest to not prejudice the performance of a specific investigation; and the interest of protecting the privacy of the parties who were involved in a police investigation. (Section F.3 of the State Attorney Guideline).

178. Furthermore, the main limitation on the possibility of reviewing an investigation file is “**possible prejudice to the functioning of the investigating body**” (see: Section C. (10) of the State Attorney Guideline), however as can be seen in the correspondence above, the Respondents did not indicate such a concern at all, and in any event these are closed investigation files, and therefore this consideration is not relevant to our case.
179. As it is known, before the transfer of IMP investigation material for the review of the complainant and his attorney, it is censored by the IMP unit. **Through the censorship process the Respondents prevent the transfer of sensitive material that address details about the witnesses or the various units or the investigation methods.**
180. The investigation material is of great importance to the Petitioners. Since the review of the investigation material amounts to proving whether all efforts to investigate the incidents were in fact made, or whether there is room to complete the investigation and to file an appeal or a petition to the HCJ against the decision to close the case without taking any legal measures whatsoever. In addition, based on the investigation material, a decision can be made whether there is a possibility of filing a civil action.

4. B. Review of the investigation material for the purpose of filing an appeal from the decisions to close the investigation files without taking any measures or resorting to a civil proceeding

181. In the State Attorney Guidelines, a specific reference was made with respect to the matter of a offense victim's right to receive the investigation material for the purpose of filing an appeal from the archiving of the investigation file, and so it was determined:

With respect to the disclosure of the investigation material to the complainant or to the offense victim, who needs the material for the purpose of filing an appeal or filing a petition to the HCJ with respect to a decision in the appeal to archive the file, **the civilian needs this material in order to enable him to exhaust**

a right, granted to him explicitly by the law. (Section B. (E). 14 of the State Attorney Guideline).

182. In addition to the aforesaid, the disclosure of the investigation material is essential for making the decision whether it is appropriate to file a civil proceeding and to claim damages due to the violation of the victims' rights, including due to the incidents of which Petitioners 6 and 7 were victims. Petitioners 6 and 7, as indicated above, are not interested in filing futile claims and in wasting valuable judicial time. The Petitioners request to first review the investigation material, and only if it is justified, will they resort to a civil proceeding.
183. The receipt of the investigation material for the purpose of resorting to a civil proceeding is a legitimate demand. From a review of the State Attorney Guidelines, we did not find a guideline which prohibits the transfer of the investigation material if there is a pending civil proceeding, or if the party requesting to receive the investigation material is considering applying to the court. On the contrary – it was determined in the State Attorney Guidelines that the prosecution authorities are required to help the offense victim in exploiting the civil proceeding and are required to make the necessary material available to him:

With respect to a request to review the investigation material, the purpose of which is to assist the offense victim **in the management of a civil proceeding**, it is possible to use interpretation which expands the definition of the police duties in a manner that determines that police duties also include the general duty of assistance in keeping the public order. By virtue of this duty the police and prosecution authorities are entitled to assist the offense victim in a variety of methods, including in a manner which may, occasionally, be expressed by providing accessibility to information that will enable the person reviewing the material to claim damages and other remedies in the civil aspect. (Section B. (E).16 of the State Attorney Guideline).

184. The Petitioners request to receive the investigation material, in order to consider filing an appeal from the decision to close the investigation file. Had IMP acted according to reasonable timetables in the cases in which civil actions were filed, the investigation material should have been in the Petitioners/Plaintiffs' hands before filing the civil proceeding. However, due to the delay, the bureaucracy and the foot-dragging by the Respondents, even after the filing of the civil proceeding, they are confronted with a refusal to transfer the material, due to arguments which have no legal basis and are contrary to the State Attorney Guidelines.

Chapter 5 – Is a discovery procedure the plaintiff’s only way of obtaining the investigation material?

185. As it was mentioned above, the Respondents are avoiding enabling Petitioners 9 and 10 to review the investigation material under the argument that there is a civil action in the context of which this material can be received. The Respondents are also claiming that since Petitioners 6 and 7 are considering filing a civil action, the Petitioners are required to wait until filing the claim, and until the discovery procedure. The Respondents prevented Petitioner 8 from reviewing the investigation material under the argument that there is a pending civil action, and even though the civil action has concluded in a settlement and the investigation material was not received in the framework of the same, they are still dragging their feet.

The question being asked is **what is the purpose of the discovery procedure?**

186. The purpose of a discovery procedure “is equating the parties, which is the heart and core of the law, and in the words of the Rambam: “what is the justice in law? It is equating two parties in all matters” (Rambam, Sanhedrin, 21, 1 [a]”, C.C. 1145/99 **Amad Jauni v. the State of Israel**, 62(1) 154, 159.
187. The discovery procedure is intended to equate the parties to a civil proceeding, and that “the parties should be enabled “to play” with open cards so that neither of them will surprise his opponent during the trial with an unexpected piece of evidence and thus defeat his opponent, who did not have the opportunity to examine it and prepare rebutting evidence material” (M.L.A. 4249/98 **Suisa v. Hachsharat Haishuv – Insurance Company**, Takdin Elyon 99(4), p. 118, Section 5).
188. And the question is asked: **does the discovery procedure block the plaintiff’s way from receiving the information in other ways?** The Honorable Justice Dr. Oded Mudrik replied to this question when he examined the relation between the obligation of disclosure of information according to the Freedom of Information Law and between the discovery procedure arrangements and information according to the Civil Procedure Regulations, and determined that:

The Regulations and the Law formulated two separate “routes” for obtaining information. Each route moves on its “own track” and there is no reciprocal mentioning or creation of any route condition in the provisions which formulate the routes. The normative purpose of the Regulations is different than that of the Law. The Regulations’ purpose is to serve the purpose of the judicial discussion, in other words “the investigation of truth” or the “making of justice”. The purpose of the Law is to enable a citizen to review public information. To review, just so, for no purpose or objective. Since the provisions of these laws are intended to serve different purposes, it necessarily follows that “one

kingdom does not touch the other”, and the exhaustion of one proceeding does not block the way to the other proceeding. The conclusion is made from simple logic. **The Civil Procedure Regulations are not the only tool in the context of which information possessed by one party of the trial can be transferred to the other party.** It is possible that this kind of information will “end up” in the hands of the party that desires it from a source that is not a party to the trial. It is possible that there is a reporting duty with respect to certain information, and that the report is available for the review of the public (for example reports to the Securities Authority) and it is possible that this is a public authority’s information which according to the law is required to be accessible. Information that ended up in the hands of a party to the trial in a manner which is not according to the Regulations is not “abominable” and is not flawed. (Adm. Pet (Tel Aviv Jaffa) 3089/04 **Yavne Municipality v. Clalit Health Services**, Takdin-Mehuzi 2006(3) 11071, p. 11075) (Emphasis added, A.J.).

189. Allegedly, after filing a claim, it does not matter from which source the investigation material is received (the State Attorney or IMP) and based on which legal basis. However, that is not the case!

First, it is not a desirable situation, as it has already been mentioned, that a civil action is filed without investigation material, while the plaintiff is in a state of uncertainty, and based on partial and lacking information.

Second, the possibility of reviewing investigation material is related to an offense victim’s material rights, and not to his procedural right as a party in a civil trial.

In order to illustrate the above, the sanction in the case that no discovery procedure is carried out is that the State cannot file the investigation material as evidence in the trial (Regulation 114a of the Civil Procedure Regulations, 5744-1984). Sometimes this is a calculated risk which is worth taking so the material is not revealed.

In some cases, as it was mentioned above, the State would rather reach a settlement at an early stage, even before the discovery procedures have been completed, solely so that it will not be forced to disclose the material.

In other cases, the discovery procedure can be delayed by the filing of various motions, extensions for a hearing date or a disagreement with respect to the deposit of a guarantee by the plaintiff, or due to other preliminary matters.

It can be seen from the aforesaid that an absurd situation is created, according to which **the offense victim’s material right is conditioned by the manner in which the State manages the trial.**

190. The right to review the investigation material for the purpose of filing an appeal is independent and separate from the offense victim's rights in the civil proceeding. According to Section 30(a) of the **Administrative Courts Law, 5752-1992:**

A party that is entitled to file an appeal from the decision of an administrative authority is entitled to review the documents held by the authority and which are relevant to the decision (hereinafter – the File) and to copy documents from the File.

191. Therefore, the discovery procedure does not negate the plaintiff's right to apply to IMP, for the purpose of reviewing the investigation material in order to consider an appeal from the decision to close the investigation file.
192. We shall emphasize again that had the Respondents acted within a reasonable timeframe with respect to opening the investigation file and the investigation proceeding, the Petitioners would have had the investigation material long ago, even before filing the civil action. We shall also add that the discovery procedure could begin a long time after the decision to close the investigation file made by the Military Advocate at IMP Headquarters, something that prejudices the chances of the appeal from the decision to close the investigation file. If the appeal is granted, the ability to complete the investigation will be seriously prejudiced, in view of the long time that has passed since the incident (we will elaborate on this perspective in the following chapters).
193. The Respondent's policy described above indicates the presence of a prohibited collaboration between IMP and the Office of the Tel Aviv District Attorney. And indeed an investigating authority is supposed to be independent and to activate independent discretion with respect to an investigation it is carrying out.

Chapter 6

6. A. The Respondents are prejudicing the Petitioners' right of access to the courts and their right of due process

194. The right of access to the courts has been recognized as a basic and constitutional right in the Israeli law.

In the same matter see:

C.A. 3833/93 **Levin v. Levin**, Piskei Din 48(2) 862, 877;

C.A. 197/89 **The Israel Histadrut Association in Israel v. Schwartz**, Piskei Din 45(3) 320, 327.

195. The non-disclosure of investigation material to the victim is deemed as prejudice to the right of offense victims to access the courts. The Israeli law and case law relate importance to the right of access to the courts, and view it as the guarding and supervising eye with respect to the other basic rights:

The right of access to court is not a basic right in the ordinary sense of the basic right concept [...] its existence is a necessary and essential condition for the existence of the other basic rights. (C.A. 733/95 **Arpel Aluminum Ltd. v. Klil Industries Ltd.**, Piskei Din 51(3) 577, 595).

See in the same matter:

A. Barak, *Parshanut ba-mishpat* [Interpretation in Law], Vol. 3, *Parshanut Huqatit* [Constitutional Interpretation] (Jerusalem: Nevo, 1994), pp. 703-704.

196. Petitioners 1-10's right of access to courts is prejudiced. The Petitioners' right to file an appeal – in the event that there it is required and appropriate to file an appeal from the decision to close the investigation file – is dependent on the receipt of the investigation material and the review thereof. In addition to Petitioners 6-7's right to file a civil proceeding – in the event that it was appropriate to file a proceeding as aforesaid – is dependent on the review of the investigation material; especially since a private person does not have the right or the ability to investigate the incident in which he was a victim.
197. It is important to mention that in view of Amendment 4 of the Civil Torts Law (State Liability), 5712-1952, the prescription period for tort claims against the actions of the security forces in the Territories has been significantly shortened, and it is now two years instead of seven years. Therefore, the delay in the transfer of the investigation material creates a situation in which before the investigation ends and before the investigation material is received, the victim is forced to file a civil action, as in the cases of Petitioners 7-10.
198. From the experience of the Center for the Defence of the Individual, it may be stated, on a side note, that the claim with respect to incidents of the type described above, is usually filed without the plaintiff being able to point out the alleged tortfeasors, and without knowing the facts that may be critical for the statement of claim!
199. In addition and as we claimed previously, the filing of a civil proceeding does not amount to denying the victim's right of receiving the investigation material, whether for the purpose of the civil proceeding and whether for the purpose of filing an appeal against the decision to close the investigation file.

6. B. The effect of the delay in the disclosure of the investigation material on the chances of the appeal and on indicting the responsible parties

200. The Respondents are dragging their feet and are not disclosing the investigation material to the victims. The Respondents are well aware of the serious repercussions of the delay in disclosing the investigation material on the Petitioners' rights, including their right to file an appeal from the decision to close the investigation file, without taking legal measures, and to their right to access the courts.

201. The more time goes by, the harder it will be to go back and investigate the incident if it turns out that in fact it is necessary to complete the investigation, or that the investigation was carried out negligently.
202. Cases in which a civil action is being managed, are cases which may be managed for a long time in the courts. According to the Respondents' policy, in many cases such as in the cases of Petitioners 9-10 above, the plaintiffs are required to wait for months and even years in order to receive the investigation material via the civil proceeding. Even if the parties reach a discovery procedure, it can be clearly seen that the foot dragging policy by the Respondents is continuing (see for example the description of the cases of Petitioners 8 and 10).
203. As is known, the dimension of time in the matter of investigations is very important, and it is apparent that one of the reasons for closing the investigation file is that a long time has passed since the day of the incident, and that there it is no longer possible to locate the soldiers who were involved. It shall be stressed that the reason for the passage of the long time derives from IMP's conduct in the investigation of the incident, including the delay in launching the investigation and so forth.
204. This is not the appropriate petition to address the many flaws in IMP's investigations or the extent of effectiveness of those investigations. However, we shall indicate that the data sheet published by the "Yesh Din" organization in December 2007, describes a solemn picture according to which 90% of IMP investigations launched due to Israeli soldiers harming Palestinians and their property since the beginning of the Second Intifada, in 2000, and until 2007, have been closed without filing indictments.

A copy of Yesh Din Organization's data sheet dated December 2007 "The Investigation of Israeli Soldiers' Criminal Offenses against Palestinians and their Property", is attached hereto and marked **p/86**.

205. The Office of the Military Advocate itself is aware of the difficulties in the investigation of the incidents, in view of the extended operational debriefing. **Colonel (Ret.) Ilan Katz**, former Deputy MAG, who retired from the Office of the Military Advocate in March 2003, interviewed for an comprehensive investigative report on the IMP for the Maariv Weekend Supplement (dated January 1, 2005), and said as follows:

In practice, investigations usually start half a year late and even more than that, and therefore a delay of only two days after a shooting can be considered a good situation... Even if at the end of the operational debriefing a decision is made by the MAG to instruct an IMP investigation, **usually investigating at that stage is practically almost impossible**. The reason is that when the commanders perform an operational debriefing they destroy the scene of the incident and after several months it is difficult to find evidence in the field. Even the examination of a weapon from which

shots were fired is impossible since until the IMP investigation starts the same rifle already shoots many more bullets, or in some cases the weapon changes hands and it is very difficult to track it. (Emphasis added, A.J.).

A copy of the report “IMP Does Not Know the Job”, “Maariv”, January 1, 2005, is attached hereto and marked **p/87**.

206. Therefore, additional delay in the disclosure of the investigation material to an offense victim – in addition to the fact that in some of the cases the disclosure is conditioned by the results of an existing civil proceeding or a future one – hinders the offense victim’s chance of exercising his right and filing an appeal, and significantly reduces the appeal’s significance and its chances of being granted.

6. C. The Violation of the Public’s Trust is Exempt of Punishment - Impunity

207. It would not be superfluous to mention that the duty of the State, Respondent 5, as an occupying force, to guarantee the safety of the protected civilians and to preserve their rights (see: Regulations 43 and 46 of the Regulations annexed to the 1907 Hague Convention with respect to the Laws and Customs of War on Land, the Fourth Geneva Convention and the 1977 First Protocol).
208. Effective investigation of the kind of incidents in which the Petitioners were victims, and the indictment of the responsible parties, are essential for maintaining the public’s trust, for maintaining the order and for discovering the truth.
209. The right to review investigation material also derives from the right of due process and it is the State’s obligation in accordance with international law to efficiently investigate the type of incidents described in this Petition and to indict the culpable persons (see: Article 146 of the Fourth Geneva Convention).
210. Dawdling in disclosing the investigation material and in revealing the methods carried out during the investigation, and deliberately preventing Petitioners 1-10 from the possibility of filing an appeal from the decisions with respect to closing the investigation files of the incidents in which they were victims, creates an impression of a forgiving treatment vis-à-vis offending soldiers who violate the human rights and the rights of the protected civilian in the Occupied Territories, and even indicates a concern of concealing investigation failures.
211. Without the public’s trust in the military and in the law enforcement system, those will have a difficult time operating. Therefore it is a most important interest of the general public that the investigation material is transferred to the Petitioners:

The key to the existence of a public service that is worthy of its name is the public’s trust in the purity of

the public service... the public's trust is the back rest of the public authorities and it is what enables them to perform their duty (HCJ 6163/92 **Isenberg v. the Housing and Construction Minister**, Piskei Din 47(2) 229, 262).

212. All the cases contemplated in the Petition are cases that were closed without taking any measures whatsoever.
213. Effective investigations and the provision of accessibility to reviewing investigation material, in other words transparency of the investigation, have great impact and importance for the purpose of uncovering the truth, and for the purpose of fighting against impunity and the violation of human rights, including the rights of protected persons in the Occupied Territories.
214. The consequences of the forgiveness atmosphere and the absence of punishment, which are created as a result of cover-up investigations, are not easy to prove. However, we may learn from the experience of honorable courts in the world. Thus, for example, the Inter-American Court of Human Rights determined that the lack of effective investigation of forced disappearances and torture encourages the recurrence of these phenomena:

In this respect, the Court has understood that impunity is the overall lack of investigation, tracing, capture, prosecution and conviction of those responsible for violations of the rights protected by the American Convention, and that the State is obliged to combat this situation by all available legal means. **Impunity promotes the chronic repetition of the human rights violations** and the total defenselessness of the victims and their next of kin (**Maritza Urrutia v. Guatemala**, p. 45, 126, 27.11.03).

215. The European Court of Human Rights also determined that lack of effective investigation neuters, in practice, the rights granted in the European Convention, such as the right not to be exposed to torture, and it shall allow the persons entrusted with law enforcement to continue and violate the law with the understanding that they will not be punished:

There should be an effective official investigation. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (**Ozkan v. Turkey**, p. 88, 358, 6.4.04).

And the court added in that same matter that it is essential that the investigation is carried out as swiftly as possible, otherwise the public's trust in the system will be prejudiced and an impression of a forgiving treatment of the investigated activity will be created:

A requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (p. 77, 314).

Conclusion

216. In view of the aforesaid, it can be seen that the Respondents' conduct and the unreasonable and unjustified delay in the disclosure of the investigation material have become a policy.
217. The cases that have been presented in the Petition at bar are not the only cases in which Hamoked encountered this policy. The delay in the receipt of IMP material and the Respondents' promises to transfer the material or to handle the applications of the Center for the Defence of the Individual, have become routine.
218. There is no reason not to transfer the investigation material to Petitioners 1-5 and to Petitioner 8, and the Respondents themselves admit so. However, they are dragging their feet and are delaying the transfer of the investigation materials. In most cases it is a delay of years and thus the Respondents prevent those Petitioners from filing appeals from the decision to close the investigation file, and even prejudice the chances of the appeals being granted, since the more time passes from the day of the incident, so are the chances of indicting the persons responsible reduced.
219. The decision whether to file a civil action due to the incidents to which Petitioners 6-7 were exposed is dependent on the receipt of the investigation material and the review thereof. In those cases the Respondents decide not to disclose the investigation material and argue that the Petitioners intend to file a civil action and therefore will be able to obtain the material in the context of a discovery procedure! By this the Respondents are disregarding the Petitioners' right to access the courts, even though they know that the decision whether to apply via a civil action is dependent on the contents of the investigation material. In addition, the Respondents are disregarding the Petitioners' right to file appeals.
220. In the matter of Petitioners 9-10 the Respondents decide – without a clear legal source – that the investigation material is not to be disclosed to the Petitioners, while collaborating with the Office of the Tel Aviv District Attorney, under

the argument that a civil action is pending, without clear legal basis, as was presented above.

221. It shall be noted that even in the context of the civil proceeding, the receipt of the investigation material is not an automatic act, and sometimes many months and even more go by before the discovery procedure stage, and even then the Office of the Tel Aviv District Attorney does not always hurry to transfer the information. A good example of this can be seen in the development of the issues in the aforementioned description of Petitioner 8's incident.
222. To this day, and despite the Respondents' promises, a procedure or a mechanism for the transfer the investigation material within a reasonable time period after the end of the investigation has not yet been formulated.

The delay in the transfer of the investigation material severely prejudices the Petitioner's right to exercise his right to file an appeal from the decision to close the investigation file, and even prejudices the chances of the appeal from the decision to close the investigation file. The more years go by, the weaker the chances of reopening the investigation file become. Moreover, the complainant's right to consider applying via a civil proceeding or to manage a civil action due to the incident is also prejudiced because of not transferring the investigation material.

Since the material facts for the remedy sought in the Petition are not the facts pertaining to the actual offenses committed, but to the authorities' handling of the complaints referred thereto, and more precisely, the authorities' handling of the applications to receive the material of the investigation managed thereby, the Petition is supported by the affidavit of an employee of Petitioner 11, the Center for the Defence of the Individual, the body which managed the contacts with the authorities.

Furthermore, the Honorable Court is moved to receive Petitioner 1-10's powers of attorney given by facsimile, taking into consideration the objective difficulties with respect to an encounter between the Petitioners and their counsel.

In light of all the aforesaid, the Honorable Court is moved to issue an order nisi as requested, and after hearing the Respondents' reply, to render the order final. The court is also moved to charge the Respondent with payment of the Petitioners' costs and legal fees.

May 12, 2008

Adv. Abeer Jubran

[T.S. 55753]

Counsel for the Petitioners