Summary

On the evening of March 3, 1989, Rouhi Rashid Abdallah, a resident of Tubas (a village near Nablus) was traveling in a car near Mechura Junction. Nine or ten soldiers, including one female soldier, were standing at the intersection while waiting for a lift. As the vehicle approached the intersection, one of the soldiers raised his rifle and shot at the car. Abdallah was injured by the gunfire. The driver continued driving until reaching an adjacent military base, where soldiers gave Abdallah first aid for his wounds.
Shortly afterwards he was rushed in a military ambulance to the Civil Administration in Nablus. From there he was evacuated by the Red Cross to Al-Itihad Hospital, also in Nablus. Abdallah was hospitalized for 90 days and was operated on three times. His physicians instructed him to rest at home in bed for six months. The medical report, written by an orthopedics specialist, stated that Abdallah's left thigh bone was shattered, and would never completely heal. He was assessed as suffering from fifteen percent permanent disability.

The testimonies

The details of the incident were given by the victim and two others in the car when it was fired upon. All three witnesses described the place and time of the shooting, the number of soldiers at the hitchhiking point, and the approximate age (20) of the soldier who fired his rifle.
While waiting in the Civil Administration in Nablus, testimonies were collected from the driver of the car and Abdallah. They also said that soldiers photographed their car.

No-one investigates

- A month after the incident, on April 6, 1989, HaMoked attorney wrote to the MAG, listing the details of the case, and noting that the Civil Administration in Nablus collected testimonies from the passengers of the car that was shot at. HaMoked Attorney asked if there had been an investigation, and if so what the conclusions were.
- Four months later, on August 2, 1989, CCAG Dolev replied that "Unfortunately, because of the time that passed from the date of the incident and the opening of an investigation, and because the shooting was anonymous and at a lift station, it was impossible to conduct a serious investigation and clarify the details, or identify the anonymous shooter."

The opportunity for a thorough investigation was missed

As stated above, Abdallah was taken to a military base immediately after the shooting, and

from there to the Civil Administration. The military authorities knew then, that a shooting incident took place only a short time before. Even so, nothing was done to locate the shooter. At that time he may still have been standing at the Mechura junction lift station, waiting to be given a lift.
The information collected by Civil Administration personnel from the car passengers was never used either. If indeed the car was photographed, they could have helped pinpoint the angle of the gunfire and the distance between the vehicle and the weapon when the shots were fired, helping to authenticate or disprove the complaint. A ballistics test would further assist in identifying the weapon used – assuming of course that efforts were made to locate the shooter, who was after all surrounded by eight or nine witnesses.

The Ministry of Defense denies compensation on the grounds of "lack of proof"

- In her letter dated August 2, 1989 the CCAG stated that it was impossible to validate the facts of the incident. She did however suggest that the injured party turn to the Staff Officer for Claims in Judea and Samaria, and promised that when the CCAG office was consulted, she would recommend compensation.
- On November 16, 1990, HaMoked attorney filed a compensation claim on behalf of Abdallah. The claim was submitted to the staff officer for claims in Judea and Samaria.
- When HaMoked attorney asked about the claims status, he learned that the staff officer for claims was trying to get information from the Military Police. After two months of delays, the claim was rejected on July 25, 1991.
- On August 8, 1991, HaMoked attorney met with the deputy MAG, Colonel David Yahav.
- On August 14, 1991, the relevant material for the case was sent to Colonel Yahav. There was no reply.
- On November 4, 1991, HaMoked attorney sent Colonel Yahav another letter, asking for a reply to the previous one.
- An answer was finally received on December 11, 1991 from Ahaz Ben-Ari, then Head of the International Law Branch of the MAG. In his letter, Ben-Ari stated that the Ministry of Defense decided against compensating Abdallah. "This is a case in which there is no proof or documentation. The plaintiff himself never reported the incident."

The only truth in this assertion is that there is no proof, and this is hardly surprising since no one bothered to investigate the incident. As for documentation, this was collected by the Civil Administration in Nablus where the car passengers were interrogated. As for the plaintiff not reporting his injury, this is plainly untrue: the injured man, who was brought immediately to the Civil Administration after being shot, was himself incontrovertible proof that a shooting had occurred, aside from the fact that testimonies were then collected.

Compensation claim in civil court

Following the denial of Abdallah's compensation claim by the Ministry of Defense, HaMoked filed a suit on Abdallah's behalf with the Jerusalem Magistrate Court on February

28, 1996. The defendant is the State of Israel, which is called upon to pay NIS 532,000 for pain and suffering, past and future lost earnings, and medical expenses.
The suit is still pending.

Summary

Munir Karaja, a 64 year old resident of Halhoul village (near Hebron) was wounded on November 7, 1989. At 11:00 a.m., Karaja was walking on a street in Hebron on his way to the taxi stand for Halhoul, on his way home. He was carrying parcels with food in them. The street was quiet at the time, and there were no disturbances or stone-throwing incidents. Karaja was then shot with a burst of gunfire that hit his leg. He turned around and saw a soldier pointing his rifle at him. The soldier, who was threatening to shoot him again, was part of a small force of 5-6 soldiers on a foot patrol.
Karaja fell down onto a traffic island in the street. A passing car stopped and its driver helped him to enter the vehicle. The car was fired at with another burst of gunfire that hit the car. Fortunately, those shots did not hit anyone. Karaja was then evacuated to Alia Hospital in Hebron.

The testimonies

The description of the incident comes from the wounded man, Munir Karaja. In his testimony to HaMoked he said that the soldiers were wearing green berets. His testimony is corroborated by the driver who took him to the hospital, Rasmi Abd Al-Rahim Mesalem Jaber, a resident of Hebron. He did not see who shot Karaja, but he heard the gunfire. He did not remember how many shots were fired exactly, but he reported that there were many. He also saw Karaja fall down on the traffic island. When he came over to help Karaja into his car, another 4-5 shots were fired, hitting the car in the rear.

No-one investigates

- On December 7, 1989, Karaja filed a complaint with HaMoked. The same day HaMoked attorney wrote to the Central Command Attorney General Lt. Colonel Rachel Dolev and asked for the incident to be investigated.
- On December 19, 1989 Lt. Colonel asked for more details and clarifications regarding the shooting incident: "After further elaboration of the above mentioned points I will be able to consider if and how the complaint should be investigated."
- On February 23, 1990 HaMoked sent Lt. Colonel Dolev the information she requested, an affidavit signed by Karaja, a medical report on his condition, and additional documents.
- On November 21, 1990 HaMoked sent a reminder to Lt. Colonel Shlomo Politis, who succeeded Lt. Colonel Dolev as Central Command Attorney General.
- On December 24, 1990 a meeting was held between HaMoked and Lt. Colonel Politis, in which he promised that the matter would be checked.

• On January 31, 1991 HaMoked wrote a letter asking if any progress had been made with the case. No reply was received.
• On March 19, 1991 HaMoked wrote another letter to Lt. Colonel Politis, which was never answered.
• On May 9, 1991 HaMoked again reminded Lt. Colonel Politis that his predecessor Lt. Dolev had promised to consider "if and how the complaint should be investigated" after receiving the information she requested.
• In August 1991, following telephone calls from the Central Command Military Advocate General's Office, HaMoked sent the relevant documentation again.
• On September 4, 1991, Lt. Colonel Politis decided to close the investigation of the wounding of Munir Karaja. In his decision he wrote: "...Despite all of our efforts, I have not been successful in discovering what happened to the complaint. At this stage, because of the passage of so much time since the incident, I have decided not to order an investigation since the chances of locating those involved in the incident are minuscule and an investigation would not be effective anyway." He did however add, that "I have decided to try and see if it is possible to discover if there were any disturbances at the scene of the incident, and if is possible to identify any forces present in the field on the day of the incident. If I am able to get details that will present me with a thread for opening an investigation, then I will reconsider my position."
• On December 6, 1991 Lt. Politis wrote to HaMoked: "...My investigation did not result in the hoped-for thread. In your original complaint dated December 7, 1989 you mentioned soldiers with green berets. However, according to records from that period it turns out that only soldiers with black berets were present in the field. In such a situation there is no way to identify the soldiers who did what your complaint alleges. If soldiers did in fact do this thing, the possibility that the firing was done by forces not on active duty at the time cannot be discounted. For example: soldiers just passing through and so on." For this reason, continued Lt. Politis, "I am not ordering the opening of an investigation into the complaint under discussion. As far as I am concerned, the matter is closed."
• Attorney Andre Rosenthal from HaMoked refused to accept Lt. Politis' decision, and in a series of letters demanded that the case be opened again for investigation. Attached to one of the letters was the testimony collected from the driver of the car.
• On May 28, 1992, Lt. Colonel Politis informed HaMoked that his decision not to investigate was unchanged.
• On August 5, 1992 attorney Badra Khouri from HaMoked demanded that the incident be investigated.
• On November 23, 1992, Lt. Colonel Politis informed HaMoked that he had not changed his position on the matter.

Further legal possibilities

A cursory investigation into the facts of the incident could have revealed what happened in Hebron on November 7, 1989, and the identity of the soldier who shot Munir Karaja. Despite

this, it is evident that no one in the Central Command Attorney General's office made any attempt to investigate and learn what happened. HaMoked's complaint was passed on to the CCAG's office a month after the incident, and by the end of February 1990, three and a half months after the incident, the CCAG had all of the findings supplied by HaMoked. At that stage, because only a short time had passed, it was still possible to locate which forces were in the city that day. The facts however, speak for themselves: by November of that year, some nine months after material was forwarded to the CCAG, nothing had been checked. We see that even in August 1991, one year and nine months after the incident, the AG's office was still asking for documents from HaMoked, a step revealing that nothing had been done.
On September 4, 1991 the CCAG Lt. Politis did promise that he would find out if it was possible to identify the units operating in Hebron at the time of the incident, despite the time that had passed. The blame for the passage of time lies with the AG's office, and it cannot therefore use it as an excuse for closing the investigation.
Lt. Colonel Politis argued that while the soldiers in HaMoked's original complaint had green berets, the reports from the field indicated only units wearing black berets. Because of this discrepancy, he said, there was no chance of identifying the soldiers. This argument must be rejected. Even if we suppose that the soldiers all had black berets – and after all it is entirely possible that an injured old man might fail to distinguish, or remember the exact color – the question is, why did not the investigation try to identify which units were in Hebron that day, whatever the color of their berets. But such an investigation was never opened.
Lt. Colonel Politis writes that "the possibility that the firing was done by forces not on active duty at the time cannot be discounted. For example: soldiers just passing through and so on." While that may be the case, no attempt was made to discover which units were in Hebron that day, and whether they were on active patrol duty.

Demand for compensation

After repeated demands by HaMoked to investigate the incident and identify the shooter were rejected, HaMoked attorney wrote to the Ministry of Defense on July 8, 1993 demanding NIS 25,000 as compensation for the injuries Karaja sustained following the shooting, for pain and suffering, and for medical expenses incurred at various hospitals in the West Bank and Jordan.
The Ministry of Defense denied that its soldiers were responsible, and on August 21, 1994 attorney Lauren Itzkovitz wrote to HaMoked attorney that the medical documents presented with the claim did not show that the damage was the result of being shot. "Perhaps he was injured by a stone?" he added. Eventually an offer of NIS 2,000 was made.
After lengthy negotiations, a settlement was reached in June 1996. The Ministry of Defense paid Munir Karaja NIS 12,000.

The Shooter Violated Orders, Injured a Woman and Was Acquitted

The wounding of Sabah Sabatin

Summary

On September 7, 1989, Sergeant David Ben-Gigi was on patrol with three other soldiers in Husan village. A stone barricade had been erected in the center of the village. The soldiers stopped passing motorists and ordered them to get out of their cars and help to clear the stones from the road. One of the cars carried the Sabatin family. The driver, Mohammed Sabatin, disobeyed Sergeant Ben-Gigi's order and instead of getting out as instructed, he put the car in reverse and began to drive away slowly. Ben-Gigi ran after the car, calling for it to stop. Then he crouched on one knee, aimed his rifle, and fired at wheels of the retreating car. The car was hit and it stopped. Inside, Sabah Sabatin, Mohammed's wife, had been hit by the gunfire. She was hit in the spine, right kidney, right lung, and intestines. She remains paralyzed from the waist down and is unable to control her bodily functions. Her medical situation is irreversible.

The trial

HaMoked does not have the investigation file, however certain facts are known. The Deputy Central Command Military Advocate General told HaMoked that the investigation file reached their office on March 19, 1990. Sergeant Ben-Gigi was charged with illegal use of a weapon on May 20, 1990. He could have been charged with more severe offenses applicable under the Criminal Code, a fact conceded by the Deputy Attorney General. For example, wounding, or wounding and bodily harm in serious circumstances, a charge punishable by up to six years imprisonment. The maximum punishment for the military offense, on the other hand, is only three years.

The judgment

The sentence was handed down by the Central District Military Court on September 26, 1990. During the trial, the court heard conflicting testimony from the parties: Mohammed Sabatin claimed that he drove away from the stone barricade slowly, whereas the defendant reported that Sabatin drove quickly. Sabatin's version was corroborated by the testimony of another soldier. The court then focused on another question that emerged from the results of the investigation: while the soldiers in the unit received the regulations for opening fire in writing – regulations that forbid opening fire in a situation as occurred in Husan – the soldiers also received verbal orders from their commanding officers that contradicted the written orders. Ben-Gigi and other soldiers from the unit testified that the written orders only permitted opening fire on "suspicious vehicles," i.e. when there is a reasonable suspicion that one or more occupants of the vehicle was involved in a terrorist incident or other serious

crime, or that the occupants are intending to commit such actions. But in the briefing given by the commanding officers, the soldiers were told to open fire on any vehicle that refused to stop. Ben-Gigi argued that since he was operating in compliance with the orders he was given, he was innocent.

The conviction

The court did not accept the argument, and ruled that Ben-Gigi violated the regulations for opening fire that explicitly forbid opening fire on anyone who is not a "suspect" in connection with a terrorist incident or other serious crime, and who then refuses to stop and tries to escape. Regarding the verbal orders received in the field, the District Court ruled that they were "forbidden guidelines without any basis in law" and consequently rejected Ben-Gigi's defense. That defense argued that he should not be punished because the illegal action was committed following an order received from his commanders.

Ben-Gigi was therefore convicted on two counts of illegal use of a weapon. When the court deliberated the sentence, it took into account the obfuscation regarding the regulations for opening fire, a result of his officers contradicting the written orders in their briefing. It also counted in Ben-Gigi's favor the fact that he served as a reservist for decades. The court sentenced him to three months imprisonment, suspended. The sentence would be activated if he committed the same offense within two years.

Acquittal

The prosecution and the defense appealed the verdict. The Military Appeals Court ruled for the defendant, and on March 7, 1991 acquitted Ben-Gigi. The Appeals Court's commentary on the acquittal reflects a tendency to legitimize unacceptable norms and practices once these have become established in the field. Two lines of argument were used: First, that while the orders given in the field were probably illegal, they were not expressly illegal, and therefore Ben-Gigi had no choice but to obey. Secondly, that the commanding officers made it clear that if the soldiers did not follow their verbal instructions, disciplinary actions would be taken against them (this was repeated in numerous testimonies). The court saw this as a reason to accept Ben-Gigi's defense.

In other words, the Military Appeals Court agreed with the Central District Military Court that Ben-Gigi was a victim of a confusing situation. However, it went further by declaring him innocent of any charge.

The Military Appeals Court criticizes the Military Advocate General's Office

In the margins of the Appeals Court's decision the judges made two critical comments to the MAG's office. The first was regarding the incomplete and negligent investigation that MPI carried out, and the fact that the MAG's office did not find any reason to demand a deeper investigation. The judges comments speak for themselves:

"...Upon examining the evidence presented to the lower court... we are astonished at the negligent manner in which the investigation was conducted. No investigation was carried out at the hospital where Sabatin was treated, for the purpose of finding the bullet that hit her. This is despite the fact that the medical report explicitly states that there was an entry wound for the bullet, but no exit wound. This means that the bullet remained in her body and was, in all likelihood, removed during the operation. If the bullet had been found, it would have been possible to conduct a ballistic test and compare it to the weapon that was used. No attempt was made to examine the vehicle that was damaged, to determine the trajectories of the bullets, and from there to arrive at the necessary conclusions. There was no diagram of the scene of the incident. Such a diagram – if it had been made – would include the location of the stone-throwers and the location of the hit vehicle. Examination of the diagram may have helped in determining which of the soldiers, if any, could have hit the vehicle but not its sides. The military prosecution did not ask for the investigation to be completed in the above-mentioned areas. Lessons should be drawn from that. We direct the attention of the Head of the Military Police, the Head of the Investigating Military Police, and the Military Advocate General to these matters."

The second criticism relates to the tendency to put all the blame on the junior echelons. The judges direct this comment at the MAG, noting that the soldier acted according to the instructions he received, and in the preliminary investigation after the incident he was even praised by his officers. For this reason, wrote the judges, the "primary responsibility" should not have fallen on him, and "the decision to demand justice only of him (Ben-Gigi) does not serve the principle of equality before the law." In other words, the MAG is almost being told explicitly that it would have been appropriate to bring the officers to trial for giving illegal orders to their subordinates. To the best of HaMoked's knowledge, no officer was brought to trial for issuing the illegal orders.

Summary

On September 8, 1993 in the afternoon, an IDF jeep with soldiers entered Bidya village in the Tulkarm district, looking for masked men reportedly painting slogans on the walls of houses. The masked men were surrounded by many little children. When the masked men saw the soldiers, they started to flee. The soldiers gave chase, and during the pursuit live bullets were fired. Two girls were injured from the gunfire, who were in their house's courtyard: Aya Abd Al-Rahman, age 5 1/2, and Ilham Salameh, age 6 1/2.
Aya was injured in her thighs from the bullets, and arrived at Al-Ittihad Hospital in Nablus after losing much blood. She underwent an operation to mend an arterial tear, and was subsequently hospitalized for a month. As a result of the injuries, her thighs suffered a lot of scarring. An orthopedic physician determined that the girl would suffer from a ten percent permanent disability.
Ilham was also shot in the thigh. She was treated and hospitalized for one week.

The testimonies

The two soldiers in the jeep that entered the village were First Sergeant David, a medic, and Lt. Ro'i Gutman. Staff Sergeant David fired the shots that injured the two girls, according to his own testimony and that of Lt. Gutman. They also testified that the shots were fired while in hot pursuit of the masked men.
The shots fired by Staff Sergeant David that wounded the girls were fired into an alley, as Lt. Gutman stated: "I don't remember David doing the procedure for arresting a suspect at the intersection (where the two were standing when the shots were fired) before he fired... I don't remember exactly if I even saw the masked men that were in the alley or not. The place was a mess... I think that the girls were hit by David's shooting by mistake, when he fired into the alley. David had no intention of hitting them."
This testimony shows that Staff Sergeant David fired into the alley without first checking who was in it. Considering that at the beginning of the incident there were many children in the street (Staff Sergeant David and Lt. Gutman both testified to this), the shooter should have taken into account that aside from any masked men there may be others in the alley, including children. The shooting was therefore in violation of the regulations then in effect, according to which "it must be considered responsibly and carefully if it is appropriate to use the weapon, taking into consideration all of the circumstances of the incident... Opening fire is permissible only toward attackers or identified suspects. There is to be no indiscriminate shooting." (our emphasis – HaMoked).
Such shooting was also in violation of other orders. Here is the testimony of the brigade commander, a colonel, who investigated the events at Bidya the day of the incident: "The

soldiers' fire at the masked men, who were the reason why the soldiers were in Bidya, was quite proper, except for the problem of the wall, which the shooter did not see, and from which the bullets ricocheted and continued on to hit the girls. During shooting intended to stop masked men care must be taken that there is no possibility of bullets ricocheting. There should be no shooting when there are other objects, even if there is threat to life." This implies that the brigade commander also reached the conclusion that Staff Sergeant David did not follow the regulations for opening fire.

MPI is slow to investigate

Staff Sergeant David and Lt. Gutman testified that they first heard of the girls' injuries half an hour after the shooting. The company commander, an officer with the rank of lt. colonel, and the brigade commander, with the rank of colonel, investigated the incident. Despite being aware that the soldiers violated the guidelines, both officers determined that the two soldiers behaved without fault. That MPI was not obliged to accept this conclusion.

The MPI investigation began only after HaMoked's complaint was sent to the CCAG, Lt. Colonel Shlomo Politis on November 15, 1993. Attached to HaMoked's complaint was an affidavit signed by Ilham's father in which he testified that on the day of the incident soldiers from the Civil Administration arrived at his house and apologized for the shooting incident. Only during January, about four months after the incident, were the two soldiers involved questioned, FS David on January 6, 1994 and Lt. Ro'i Gutman on January 17. Aya's father was questioned on February 2, 1994, and Ilham's father on February 3, 1994, about five months after the incident. The company commander was questioned on March 2, 1994, and the brigade commander on March 29, 1994 – seven months after the incident. The physician who treated the girls was questioned only on March 24, 1994.

Such a long delay in the investigation actually prevented any chance at finding out the truth. As stated above, the two soldiers involved knew of the injuries within half an hour of the shooting. If a proper investigation had been carried out on the spot, it is possible that the bullets that hit the girls would have been recovered. The girls' injuries had both entry and exit wounds. A ballistics test would have helped in determining who fired the weapon.

CCAG decides: no-one is guilty

On May 23, 1994 the CCAG Lt. Colonel Shlomo Politis wrote to HaMoked that "the results of the investigation found no clear causal connection between the firing actually done by the soldiers and the wounding of the girls. In any case, the soldier's firing conformed with the regulations for opening fire."

As for the lack of a causal connection between the firing and the girls' injuries, it is clear that Lt. Politis ignored the fact that the MPI investigation was incomplete, and accepted its findings without question. Even at this relatively late stage he could have demanded that MPI repeat its investigation of the participants, or locate additional witnesses from the village – but he did not.

As for the shooting in violation of the existing regulations, the testimonies of the participants

in the shooting, and their brigade commander both indicate that the soldiers did not follow the regulations for opening fire. The MPI findings on this point completely contradict Lt. Colonel Politis' conclusion, as presented to HaMoked.
When HaMoked attorney appealed the CCAG's decision, Lt. Colonel Politis rested on the claim made by the participants in the shooting that during the incident the alley was empty, and that they did not see the girls, and ignored other statements made during the investigation.
HaMoked attorney refused to accept this conclusion, and pointed out to Lt. Colonel Politis that Ilham Salameh's father affidavit mentions a visit from the Civil Administration the evening of the incident, apologizing for the shooting and its results.
The answer received from the deputy CCAG, Major Baruch Mani, speaks for cracks in Lt. Colonel Politis' version of events. "It is conceivable," he wrote to HaMoked attorney on August 1, 1994, "that the shots fired by the soldiers that were questioned is related to the injuries of the minors because of the nearness in time and place between the shooting and the wounding. However, the CCAG in his capacity as the person responsible for criminal prosecution must be convinced beyond any reasonable doubt that the specific shooting, performed by a specific soldier, brought about a specific wound. This was not possible to determine only because of the conceivable possibility I explained before... It is possible that the wounding was caused by the firing of IDF soldiers... and yet, along with that, the evidential framework has not been laid out that would justify any action by the CCAG on the criminal plane." After receiving the investigation material, HaMoked attorney asked that MPI question additional witnesses who were not questioned before the file reached Lt. Colonel Politis. Even after those witnesses were questioned, the conclusion that no one should be brought to trial for the shooting was not changed.

Additional legal possibilities

As stated above, the testimonies of the shooting participants and the brigade commander show that the firing was in violation of the regulations for opening fire. Even based on such partial investigation results it was possible to bring Staff Sergeant David to trial on Section 85 of the Law of Military Statutes, illegal use of a weapon. The maximum penalty for that offense is three years imprisonment.

The compensation claim in court

On July 3, 1997, HaMoked filed a compensation claim in the Jerusalem Magistrates Court on behalf of both girls. The sum of NIS 130,000 was demanded for Aya Ahmad, and NIS 40,000 for Ilham Salameh, for special damages. The claim was also for general damages.
The suit is pending.

B. Throwing Concussion Grenades

CCAG Fails to Determine if the Regulations Were Legal

The Wounding and Partial Blinding of Randa Natsheh

Summary

Around noon on January 22, 1990, (male) students were throwing stones at IDF troops next to the girls school Khalil Al-Namozgiyah. Around 12:30, after the end of the school day, the girls began to exit the school and congregate where the students were throwing stones. One of the girls was Randa Natsheh, then 14 years old. As they were leaving through the school gate, a reserve officer named Aryeh Ofek threw a concussion grenade at them. Randa Natsheh felt a "burning in her eye and on her face." She lost consciousness, and was evacuated to St. John's Ophthalmic Hospital in Jerusalem, where she was hospitalized for ten days. The explosion of the concussion grenade cost her the sight in one of her eyes. The physicians managed to save the other eye, but her vision is unstable. In addition, Randa began to suffer from psychological problems related to the event and her subsequent disability.

The testimonies

The MPI investigation began on March 12, 1990, after HaMoked filed a complaint with the CCAG, Lt. Colonel Rachel Dolev. On May 14, 1990, the investigation file was completed.
The report states that there are no doubts as to the facts of the case. Randa testified that the soldiers stood about 20 meters away from the school. The girls exiting the gate were not participating in the stone throwing. The soldiers failed to warn the girls before taking action against them. Nonetheless, reserve officer Aryeh Ofek threw a concussion grenade at them, also according to his own testimony. The rationale behind throwing the grenade can be found in the testimony of another officer, the company commander Yerboam Segev. In his words, as quoted in the report, "the event happened during the dispersal of the crowd that formed when the girls exited the school, as the stone throwers hid behind them." The identity of the person who threw the grenade, and his motives, were therefore known.
There is a dispute regarding the question of what hit Randa. The report is based on the estimation of company commander Segev, that the pin of the grenade is what hit her. However, the medical reports show that it is far likelier that she was hurt by the close proximity of the exploding grenade.

The CCAG closes the file

On June 28, 1990, the CCAG Lt. Colonel Dolev decided to close the case without taking any legal steps against any of the soldiers involved in the incident. Her reasons were mainly based on the investigation report prepared by MPI, and on the testimony of an officer from the Judea Regional Brigade regarding the regulations pertaining to throwing concussion grenades. The officer, Dani Sasson, told the MPI investigators that "...as far as the concussion grenades are concerned, there are no restrictions on range and no need for special training to use one." Based on that Lt. Colonel Dolev determined that officer Aryeh Ofek "operated according to the instructions of the operations commander, who has it in his capacity and authority to use them." And so, she did not find any fault with his behavior and ordered the case to be closed.

Other legal possibilities

Why were the lives of the girls placed in danger?

The central question for this event is, why was a concussion grenade thrown into a group of school girls? As mentioned above, the girls stood between the soldiers and a group of stone-throwers. Throwing the concussion grenade was intended to scare the stone throwers and deter them from continuing. But in the circumstances – a group of school girls stood between the soldiers and the stone-throwers – it was clear that throwing the grenade would primarily endanger the girls. In spite of that, Aryeh Ofek threw the grenade. The legal question therefore, was whether Ofek was exercising bad judgment or not when he threw the grenade. But the CCAG did not address the question of endangering the lives of civilian bystanders. She accepted the soldiers explanations that they were in danger, without going any further. She never wondered why the grenade was thrown into the group of school girls, as opposed to a safe distance from them – an action which would have had a deterring effect, because of the loud noise the grenade makes as it explodes, without endangering anyone.

In this context the opinion of Dani Sasson on the regulations for using concussion grenades makes no difference. The circumstances of the event, which are undisputed, show that throwing the grenade into the group of female students was uncalled for in any event.

Such behavior constitutes a violation of standing orders and an illegal use of a weapon, since even if the soldiers were in danger, it remains forbidden to endanger non-combatants who merely happen to be in the area and are not endangering anyone else.

If Aryeh Ofek had been tried for illegal use of a weapon, not following regulations, or negligence, he would have faced prison sentences of 1-3 years.

What caused Randa Natsheh's injuries?

The CCAG's conclusion that Randa Natsheh was injured from the pin of the grenade is based entirely on the opinion of Yerboam Segev. However, the nature of her injury belies that claim. The pin of a grenade is a small piece of metal capable of causing a limited amount of damage. Yet Randa suffered from burns on her face and scalp, as well as damage to her eyes.

A large part of her head was injured, consistent with the typical results of close proximity to explosions.

The legality of the regulations

On the question of the legal regulations for using concussion grenades, the CCAG has turned normal procedure on its head. The lack of a minimum range and the absence of any necessary training, as expressed in the statements of Ofek's officer, cannot be the standard by which the CCAG determines legality. It is the AG's job to determine what the legal regulations are, and not that of any particular unit in the field. Dani Sasson's testimony indicates that the regulations for using a concussion grenade were issued by the Judea Regional Brigade, apparently the brigade commander.

This state of affairs demanded that the CCAG investigate if the brigade commander received permission from the MAG's office to issue those regulations. For if such an approval had not been received, then the regulations were illegal. The CCAG made use of Dani Sasson's opinion without checking to her own satisfaction whether the regulations were promulgated with the proper authority.

If she were to reach the conclusion that the instructions were issued without proper authority, she had to pursue the culpability of the Judea Regional Brigade commander's in the incident under investigation. By way of not pursuing the relevant legal questions, she excused herself from her duty to investigate any branching out of the investigation, leading perhaps to charges against additional people.