

E. Property Damage

Confiscation Without Compensation

The Damaging of Munzar Ahmad Al-Hamid Ayash's car

Summary

On February 6, 1989, at about 9:00 a.m., Munzar Ahmad Al-Hamid Ayash was driving on the Beit Omar-Hebron road. He was stopped by soldiers near the Halhoul municipality building. The soldiers claimed that they needed to take the car to check it in the Halhoul military camp. Ayash demanded a written confiscation order, but the soldiers said that he would receive such an order only after the car was returned. They told him to come back in the afternoon to get the car back. When he returned, he saw his car parked on the side of the road. The engine hood was open, one soldier was behind the steering wheel, and two others were busy under the hood. They told him that the car was not working. They gave him a report which they said was a list of the damages to the car, to be presented to the Civil Administration in Hebron.

Ayash was forced to have his car towed to a garage in Halhoul. In the end the car was repaired in Hebron, and Ayash paid for the damages to the engine, steering wheel, clutch, brakes, shock absorbers, the cap of the coolant tank, and the fan.

The testimonies

Following the instructions of the Civil Administration in Hebron, Ayash presented a written request for compensation for the damages the soldiers caused his car. He attached receipts for NIS 740, the cost of repairing the car, that he had paid from his own pocket. At a later stage, when the demand for compensation reached the Staff Officer for Compensation, he also gave the license plate number of the jeep the soldiers were driving when his car was taken.

The staff officer for compensation refuses to compensate

- On December 20, 1989, around ten months after the claim was made, HaMoked attorney wrote to the Staff Officer for Compensation in Beit El demanding that he respond to the claim.
- On January 2, 1990, the Staff Officer informed HaMoked that without an order for confiscating the car, no compensation would be paid. HaMoked attorney explained that in this case the soldiers refused to give one. She was told that the opinion of the Civil Administration Officer in Hebron would be sought.

- On February 11, 1990 HaMoked sent a reminder to the Staff Officer, and asked if he received an answer from the Civil Administration in Hebron.
- On March 7, 1990, the staff officer wrote that the Military Governor of Hebron did not receive any claim for compensation due to the confiscation of the car. He also repeated that in the absence of a confiscation order, no compensation will be paid.
- On July 18, 1990, HaMoked sent another reminder.
- On July 29, 1990, the Staff Officer wrote that the military jeep whose number was given did not belong to the Military Police, and that he would investigate whether it belonged to the Civil Administration.
- On September 7, 1990 HaMoked sent another reminder.
- On January 2, 1991 HaMoked attorney sent another reminder to the Staff Officer.
- On February 22, 1991 HaMoked sent another reminder.
- On March 5, 1991 the Staff Officer told HaMoked that there was no decision yet.
- On May 31, 1991 HaMoked attorney demanded that the matter be resolved without any further delay.
- On June 19, 1991, the Staff Officer wrote that since there was no proof that the car was actually confiscated by soldiers, it had been decided to reject the claim.

The staff officer sabotaged the chances for an investigation

The Staff Officer was in no hurry to examine the facts before him. It took him five months after receiving the jeep's license number to ascertain that it did not belong to the Military Police. His duty was then to find out who the jeep did belong to – but he failed even to check with the Civil Administration in Hebron. There is no mention in his letters of what was done to locate the jeep.

In any case, the Staff Officer had Ayash's affidavit before him – the equivalent of sworn testimony in court. He described what happened, and how the soldiers refused to give him a written confiscation order. Nonetheless, the Staff Officer repeated his original argument, that he had no proof that the car was confiscated, and without such proof, no compensation would be paid.

Ayash receives compensation

On September 15, 1991, after receiving the Staff Officer's rejection, HaMoked attorney appealed the decision before a board of appeals.

On January 13, 1992, at the preliminary hearing, the Staff Officer's representative agreed to pay NIS 600 to Ayash.

The Investigating Officer That Was Never Appointed

Burning Books in Mahmoud Al-Azrari's House

Summary

On October 30, 1989, around 14:00, soldiers entered Mahmoud Al-Azrari's house in Deheisheh Refugee Camp. They were looking for his son. After not finding him, they piled three textbooks they found in the center of one of the rooms and set fire to them using newspaper. Then they left.

The testimonies

The book burning occurred in the presence of Al-Azrari's wife and sister. His wife put the fire out after the soldiers left. The books did not burn completely, and their burnt remains are still with the family. In a complaint to HaMoked, Mahmoud's son A'ahed said that the soldiers wore red berets, apparently on the word of his mother who was a witness.

The CCAG does nothing

One week after the incident, on November 7, 1989, HaMoked sent the complaint to the CCAG Lt. Col. Dolev. HaMoked never received a reply to the complaint.

On September 26, 1990, HaMoked sent the new CCAG, Lt. Col. Politis, a reminder. The case was discussed in a meeting with him on December 24, 1990. Another reminder was sent on January 31, 1991, and after two and a half months, on March 12, 1991, yet another one.

On September 3, 1991 the CCAG informed HaMoked that after checking the matter, he discovered that his predecessor had asked for an investigating officer from the proper authorities, but an investigation was not opened. Nonetheless he decided not to open an investigation, since, according to him, the chances of producing any results were too slim.

Other possibilities for investigating the incident

The worst aspect of the CCAG's handling of this case, is her failure to ensure that an investigating officer was appointed. If she had, perhaps an investigation would have been opened soon after the event, when the witnesses were available and there was a chance to locate the soldiers. Since no steps were taken to ensure that an investigation was taking place, the CCAG is responsible for preventing the only chance to investigate the book burning in Al-Azrari's house.

The Soldiers Weren't Identified, the Occupation Order Wasn't Legal, Compensation Was Paid

Damage Caused to Abd Al-Rahim Ashatieh's House After an Observation Post was Erected on His Roof

Summary

Beginning in June 1990, the IDF erected an observation post on the roof of Abd Al-Rahim Ashatieh's house in Salfit village, Tulkarm District. Sometime in October 1990, soldiers manning the observation post drove stakes into the roof to secure a tent they erected. The holes in the roof caused by the stakes led to water leaking into the house during the winter. Between June 1990 and May 1991 soldiers shattered the solar reflectors on the hot-water boiler three times. After the second time that the reflectors were broken, Ashatieh covered the glass with a wire screen – but it was broken again for the third time. In addition, the soldiers posted on the roof used a barrel for collecting water for various uses, and lit fires. Beyond the property damage, the soldiers abused members of the family: they beat Ashatieh's son, who suffers from mental retardation, and at night they made a lot of noise and bothered the residents of the house.

The property damage and harassment continued even after May 1991.

The observation post was illegal

Ashatieh complained about the observation post on May 15, 1991. After receiving the complaint, HaMoked attorney asked for a copy of the occupation order allowing the observation post to be erected. After it arrived, HaMoked discovered that the order was valid only from May 23, 1991. In other words, during the entire period mentioned in the complaint, the observation post was illegal, since there was no occupation order in force.

After HaMoked pointed this out to the Judea and Samaria legal advisor, he was told that the observation post was erected only in March 1991, not in June 1990. Even if one accepts that version, it is clear that the post was illegal – at least for two and a half months.

Although the order that was issued was valid for nine months, the observation post was removed in September 1991.

Compensation was paid – eventually

Along with his complaint detailing the damages to his house, Ashatieh specified what needed to be fixed or replaced: the water barrel on the roof, rendered unusable after being misused by the soldiers; repair of the solar reflectors; replacement of the window panes in the stairwell; sealing the holes in the roof caused by the tent stakes; painting the house to cover up the water damage caused by water leaking in from the roof; erecting a fence around the yard to keep the soldiers out; and fixing the door to the roof. The costs of all the repairs

reached 5,200 Jordanian Dinars, a sum that was worth more than NIS 20,000 at the time. An appraiser from the Staff Officer for Compensation estimated the damages at only NIS 5,700. After lengthy negotiations lasting many months, the SOC agreed to pay NIS 8,860, of which NIS 8,140 was for repairing the damage, and NIS 720 as “rent” for using the roof. The money was paid in February 1993, nearly two years after the complaint was filed, and three years after the damages to the roof began.

Eighteen months to investigate the complaint

HaMoked was not satisfied with the payment of compensation, and demanded that an investigation be conducted so that the soldiers who caused the damages would be found and brought to trial.

- On August 27, 1991 HaMoked asked the assistant to the Judea and Samaria legal advisor, Captain Adrian Agasi, to investigate the behavior of the soldiers who used the observation post. This request was never answered.
- On December 3, 1991 HaMoked sent a reminder.
- On December 12, 1991 the CCAG, Lt. Col. Politis replied that he had not yet received the investigation findings.
- On December 17, 1991 Agasi informed HaMoked that an investigating officer had been appointed to deal with the complaint.
- On June 25, 1992 CCAG told HaMoked that the investigation was not yet complete.
- On September 10, 1992 HaMoked sent a reminder. No answer was received.
- On October 8, 1992 HaMoked sent another reminder. No answer was received.
- On November 22, 1992 HaMoked sent another reminder. No answer was received.
- On December 18, 1992 HaMoked attorney wrote to the CCAG that more than a year had passed since he told her that “he had not received the investigation findings yet.” She asked for his response without further delay.
- On December 28, 1992 HaMoked received a letter from the CCAG: “The investigation of the matter under discussion is not yet complete.”
- On March 19, 1993 HaMoked sent another reminder to the CCAG.
- On March 23, 1993 the CCAG wrote HaMoked that he decided to close the file, since it was not possible to locate the soldiers. As for the damages, he wrote, “I drew the conclusion that, based on all of the circumstances, the possibility that damages were caused as a result of stones thrown at the soldiers on the observation post cannot be excluded.”

The “investigation” consisted of questioning one soldier

After four months of additional correspondence, HaMoked was finally told that the investigation file was available to be looked at and photocopied. It turns out that the investigation consisted of the testimony of an officer with the rank of captain named Mansour Muadi, who was serving as the deputy intelligence officer for the Tulkarm Civil Administration during the period under discussion. He was questioned on May 14, 1992,

eight months after HaMoked requested that the complaint be investigated. In his testimony Muadi claimed that Ashatieh only came to him once with a complaint about the soldiers' use of the water barrel on the roof. When he checked the complaint, he saw that the water was "open water," a reference to the fact that the soldiers removed the barrel's lid and the water was uncovered.

In response to a leading question asked by the investigating officer ("Were stones thrown at the house and the observation post?"), Muadi said yes, "that's probably what caused the damages."

HaMoked attorney responded to this conclusion with a letter to the CCAG on January 20, 1994. "It is clear that only one soldier was questioned," she wrote. "No other soldiers were questioned who could have been located through existing records or the Salfit Civil Administration."

On March 6, 1994, the CCAG replied that the investigating officer made efforts to locate the soldiers in the observation post, but was not successful. As a result, he ordered the investigation closed.

HaMoked insisted on understanding why the investigating officer was unable to locate the soldiers. The CCAG replied that, "the investigating officer was unable to locate the soldiers stationed on the roof. IDF troops engaged in this sort of activity are replaced often, and therefore the investigating officer was unable to locate the soldiers in question." He added that "the plaintiff did not mention specific dates in which the damage mentioned in the complaint was caused, and did not give any detail that might help in identifying them." Therefore, he concluded, "the claims made by the plaintiff against the conduct of IDF soldiers were not verified."

The investigation is glossed over, an agreed version of events is concocted, and the case can then be closed

As stated above, the only soldier approached for the investigation was questioned in mid-May 1992, even though the complaint was filed by August 1991. Moreover, the investigating officer asked the soldier to offer his opinion on a possible version that no one had raised until this stage, and to suggest that the damages might have been caused by stones thrown at the soldiers on the observation post. The CCAG relied on that exchange in his answer to HaMoked. Interestingly, as he was presenting his conclusion, the SOC was paying Ashatieh compensation for the damages incurred by the soldiers. In other words, even the SOC recognized that during the presence of soldiers manning the observation post, they caused damage. If he had not accepted this fact, he would not have compensated for the damages – certainly not by 55% more than his original offer, which was based on the estimate made by a professional appraiser.

Regarding the criminal aspect of the case, it seems that no real attempt was made to locate the soldiers who caused the damages. Even if there is rapid turnover, it is known which unit was responsible for the post, and the unit's diary would allow investigators to reach the

specific soldiers on the roof at any given point. The CCAG, instead of returning the investigation to the investigation officer to complete it, preferred to raise arguments against the victim in this case.

The House Was Damaged – The Staff Officer Offered NIS 500

The Damaging of Hassan Awad Abu Kabita's Home

Summary

On June 3, 1991, IDF troops under the command of "Captain Fuad" destroyed the home of Nabil Diab Abu Kabita in Yatta village in the Hebron district. During and after the demolition, part of the house fell on Hassan Awad Abu Kabita's house next door, causing serious damage. An appraiser estimated the cost of repairing the damages at NIS 14,050.

The staff officer plays for time

- On August 28, 1991, the Staff Officer for Claims at the Ministry of Defense forwarded HaMoked's complaint on to the Staff Officer for Claims – Judea & Samaria District for treatment.
- On September 11, 1991, HaMoked wrote to the SOC Judea & Samaria District asking for a quick resolution to the complaint due to the urgency of repairing the house before the approaching winter.
- On November 22, 1991, HaMoked sent a reminder to the SOC.
- On February 28, 1992, HaMoked sent another reminder to the SOC.
- On March 10, 1992, the SOC wrote to HaMoked that the matter was being processed.
- On June 25, 1992, HaMoked sent another reminder to the SOC.
- On July 5, 1992, the SOC told HaMoked that he hoped to have the issue resolved within ten days.
- On July 19, 1992, the SOC wrote to HaMoked that according to an estimate that he received from an appraiser, the damages were worth only NIS 500, and that he was willing to pay that amount.
- On August 2, 1992, HaMoked attorney Badra Khouri informed the SOC that since she had an estimate for NIS 14,050, she suggested that he reconsider.
- On August 16, 1992 the SOC wrote that he was firm on his original offer of NIS 500.

From the day that the complaint was filed until the first offer of NIS 500 in compensation, 11 months had passed. This is a manifestly undue length of time for the estimation of this kind of compensation claim. Firstly, an appraisal of damages of the kind caused to Abu Kabita's house must be undertaken as close as possible to the date of the incident, since leaving the house with cracks in the walls and pillars can result in more severe damages at a later stage, as well as distorting the nature and extent of the original damage. Secondly, there is no shortage of appraisers in this field, so that the SOC could have dispatched one to the scene of the damage on the same day as HaMoked's complaint was received. Thirdly, it does not take very long for an appraiser to complete the task of estimating damages in a case like this. The appraiser whose opinion was accepted by the court in the end reported that it took him a total of 15 hours, or two days work, to study documents, travel back and forth to the

damaged house, examine the damages, and analyze the findings. There was therefore, no justified reason for the SOC to avoid presenting a qualified appraisal on his behalf in the days after receiving the original complaint.

The SOC appeals committee approved realistic compensation

After the SOC offered to pay NIS 500 in compensation, HaMoked appealed before the appeals committee. With the agreement of the SOC's representative, an expert was appointed to estimate the damages. His estimate was NIS 13,700 – just NIS 350 less than the estimate prepared by the appraiser retained by Abu Kabita. This sum was approved by the appeals committee to be paid as compensation.

What Kind of Damage is Unavoidable During a Search?

Property Damage in Abd Al-Wahhad Abd Al-Aziz Fakiya's House

First Incident

Summary

The first incident was on January 14, 1993, around 17:00. The Fakiya family was in the yard, when four men in civilian clothes and kafiyyas¹ arrived. They appeared to be soldiers from an undercover unit. They entered the house, but prevented any family members from going inside with them. Shortly afterwards, 35 more soldiers in uniform arrived, surrounded the house, and broke the doors down to get inside. Fakiya offered to open the doors, but one of the soldiers punched him in the nose, breaking a tooth, and then hit him with a stick. The soldiers stayed in the house for an hour and a half. When the family members entered, they were shocked to discover the extent of the damages: three closets, a desk, a bookshelf, two radios, and two beds were all broken. One of the soldiers kicked a goat, killing it. Before leaving, the soldiers arrested Fakiya's seventeen year old son, Mahmoud. He was released two days later.

The testimonies

The break-in was witnessed by Fakiya, his wife, daughters, and son who was arrested as the soldiers left. Fakiya detailed the soldiers' actions, including the beating by the soldier, property damage, and killing the goat, in an affidavit. It was sent to the CCAG Lt. Col. Politis together with the complaint submitted to HaMoked. HaMoked attorney demanded that the incident be investigated. Fakiya repeated his description when the MPI investigated him on March 10, 1993. His wife was also questioned that day, and her testimony corroborates her husband's version.

CCAG: "No military force was found."

After receiving HaMoked's complaint and subsequent reminders, Lt. Col. Politis replied that "despite the MPI investigation, no military force was found to be involved in the incident claimed by your client."

What the CCAG and the MPI did not investigate

As stated above, the Fakiya family testified that the people who reached the house before the soldiers in uniform wore civilian clothes and Kafiyyas. This was more than just a hint as to their identity, and the MPI should have checked if they were from an undercover unit or not.

¹ Traditional Arab scarves.

Also, after the incident Fakiya's son was arrested. The records of his arrest and detention could have led to the unit that searched Fakiya's house that day.

However, none of the leads were followed. The MPI only checked with certain units, and accepted that none of them had unit records showing an operation on the relevant date, January 14, 1993. The MPI investigators never bothered to check if soldiers from these units were involved, but chose not to leave written records of the operation.

Second Incident

Summary

The second incident occurred on July 16, 1993. Soldiers came to Fakiya's house around 8:00 in the morning. They were searching for Fakiya's son, even though he had not lived in his father's house for a long time. The soldiers entered the house, but not before detonating four concussion grenades and firing weapons inside the house. When the family was allowed to enter their house, they once again witnessed a scene of destruction: one room was severely damaged from the explosion of a concussion grenade; both refrigerators were shot by nine bullets; two closets were broken; five mattresses were cut open with knives; nine blankets were torn apart with knives; clothes pulled out of the closets were ripped; sugar, rice, and olive oil were spilled on the floor and mixed together. The damage was documented by Fakiya with a video camera.

The testimonies

The family was witness to the second incident. The damage, in any case, was captured on film, which was later given to the MPI for investigation.

A number of soldiers were questioned on the incident, and their stories match those of the Fakiya family. The soldiers confirmed that they arrived at the house in civilian clothes. Then they were replaced and the house was surrounded with uniformed soldiers. After that, the undercover soldiers broke into the house to search for Fakiya's son, who was wanted, and for weapons. The detonation of the concussion grenades was justified as a precautionary measure, in case the wanted suspect was armed. The shooting within the house was explained as firing into potential hiding places. The cutting of the mattresses, blankets, and sacks of food was part of the search for weapons. The soldiers denied that any of the damage was intentional.

None of the soldiers questioned testified that weapons were found as a result of the search.

Eighteen month to obtain the file

- On October 17, 1993 HaMoked attorney sent a complaint to CCAG Politis regarding the second break-in at Fakiya's home. She requested that he order an investigation.
- On November 29, 1993 Politis told HaMoked that he ordered an investigation into the break-in.

- On January 24, 1994 HaMoked sent a reminder regarding the incident.
- On March 13, 1994 Politis announced that he had received partial findings, and that he ordered the investigation to be completed.
- On June 30, 1994 HaMoked gave the video cassette shot by Fakiya to the MPI.
- On February 12, 1995 HaMoked sent a reminder to the new CCAG, Lt. Col. Aviram Nir.
- On April 2, 1995 Captain Udi Ben-Eliezer informed HaMoked on behalf of the CCAG that “the search on July 16, 1993 was carried out for the purpose of finding a dangerous fugitive. According to previous information, he was hiding in the plaintiff’s house. The search was also for locating weapons which were suspected to have been hidden in various places in the house. Within the framework of this kind of search, property damage was unavoidable. No evidence has surfaced indicating that soldiers damaged or vandalized property on purpose or needlessly.” Therefore, the CCAG ordered the case closed.

The investigation findings reached HaMoked a year and a half after the investigation, and more than seven months after the last person was questioned by the MPI.

Fifteen months to receive the investigation file

- On April 16, 1995 HaMoked asked to copy the investigation file. The CCAG (Nir) did not respond.
- On July 10, 1995 HaMoked again requested to copy the file.
- On July 31, 1995 Ben-Eliezer replied on behalf of the CCAG that after the file was returned from the censor, HaMoked would be notified.
- On May 13, 1996 HaMoked complained about the CCAG’s delay in handing over the investigation file to Uzi Fogelman, Director of the High Court Petitions Department of the AG’s office.
- On June 4, 1996 Ben-Eliezer told HaMoked that the file was held up on its way to the censor for reasons that were unclear to the CCAG. A telephone call to the appropriate authority had established that the censorship would be carried out soon.
- On July 14, 1996 HaMoked copied the file. Fifteen months passed from the date of HaMoked’s original request, and until the file was actually copied.

Compensation

On August 26, 1996 HaMoked attorney Hisham Shabaita demanded NIS 5,000 in compensation for the damages to the Fakiya home, from Adrian Agasi of the Unit for Insurance and Lawsuits within the Ministry of Defense. The State of Israel and the Fakiya family reached a settlement on March 2, 1997, for NIS 2,000.

Unidentified Units Protected by Secrecy

Property Damage in the Homes of the Awlad Issa Family

Summary

On July 17, 1993, at 5:00 a.m. when the Awlad Issa family were asleep, their three houses were surrounded by a few dozen soldiers. The houses were in the Al-Arub refugee camp, near Hebron. Some of the soldiers wore green-yellow berets, while others wore the dark green uniforms of the border police. The soldiers used a megaphone to order the family out of the houses.

While the family was standing outside, soldiers detonated concussion grenades in Yussuf Awlad Issa's house. Afterwards the soldiers entered the house and spent about 90 minutes inside. After they left, Issa saw that they had taken some of his children's note books. He also saw an officer with a sledge hammer on the roof of his mother's house next door. The officer hammered the metal roof for about fifteen minutes.

When the family was allowed back into their houses, they saw the severely damaged contents of their homes. The inside of Issa's house was in complete chaos. All of the kitchenware was smashed, the refrigerator was broken, the washing machine was destroyed, and the closet doors in one of the rooms were damaged. In addition, the bathroom sink was broken, and living room furniture was damaged, the cushions were ripped, and armrests and handles were broken.

Later Issa found that in addition to his children's notebooks, the soldiers took video and audio cassettes, computer disks, and the building permit for his house.

In an affidavit prepared by HaMoked attorney Tigrid Jahshan on December 12, 1993, the mother testified that she suffered from IDF troops almost continuously during a four month period. Soldiers in uniform or civilian clothes arrived at her home around 25 times to conduct searches. During their visits, the soldiers physically assaulted family members, vandalized and destroyed the contents of the entire house, and damaged the house itself.

Even more severe damages were caused to Jamila Hasouna Hassan Awlad Issa's house. The hammer blows of the officer on her roof caused it to collapse, which led to the walls collapsing as well. The house's entire contents were damaged beyond repair. She also complained that despite being a religious woman, the soldiers forced her into the street wearing only her nightgown, without a head scarf. This deeply offended her.

She also mentioned that during the soldiers' visits the family was forced to spend hours outside their house, in the heat of the noon sun or in the cold night, without being able to eat or drink, with the soldiers forbidding them to receive help from their neighbors even for relieving themselves.

The testimonies

HaMoked sent the complaint to CCAG Politis on December 29, 1993. The affidavits of Issa

and his mother were attached, so that the facts of the case were known to the MPI, to which the complaint was forwarded for investigation.

From the investigation file it is clear that there was no serious effort to locate the forces involved in the operations that caused the destruction to the Issa house, even though the MPI investigators had more than enough facts to do so. The activity report of a MPI investigator of July 5, 1994 mentions the operations diary of the Hebron Brigade, but apparently nothing was done with it. In addition, the activity report for July 7, 1994 of another MPI investigator mentions three units who were present in the Al-Arub refugee camp on the day of the incident under investigation, as part of an IDF operation. In the material given to HaMoked, the names of the units were deleted, but it is clear that the MPI investigator knew which units they were. This information was more than enough to begin the search for the soldiers. Additional information was in the testimonies of the Issa family: they mentioned that some of the soldiers had green-yellow berets. This means that they were probably from the Nahal infantry brigade. Nevertheless, the MPI investigators never tried to follow up on these leads, and instead withdrew from the case.

Additional information was not collected, because of the refusal of a GSS agent to cooperate with the MPI investigators. In an activity report from July 5, 1994, the MPI investigator wrote that he visited the GSS offices in Hebron and met with an agent who refused to identify himself. The investigator showed him an operations diary from July 17, 1993, and asked to check if there was someone named “Noam” in the unit. The investigator summarized the GSS agent’s answer: “beyond verifying that there was no one named “Noam” in the unit, he refused to make any comment.” The investigator accepted the refusal, and avoided further research on information that he suspected was relevant to the investigation.

During part of the investigation the Issa family was in Saudi Arabia. In early September 1994, the mother arrived at HaMoked and expressed her willingness to be questioned by the MPI. HaMoked attempted to locate the MPI file, via letters and phone calls, without success. HaMoked also tried to locate the MPI investigators to let them know that the mother was waiting to be questioned. In the end no testimony was collected from her beyond what she said in her affidavit.

The CCAG closes the file

On November 20, 1994, the CCAG Aviram Nir announced that because of the time that passed since the complaint was filed, the chances of locating the unit responsible were very small. Another problem was that the plaintiffs were abroad and it was not possible to get any additional details that would assist in locating the unit. The plaintiffs were abroad during part of the investigation, but in September – two months before the CCAG’s decision to close the file – they were at home, waiting to be questioned.

The CCAG addressed the fact that the searches were after a relative who belonged to Hamas. “In those circumstances,” he wrote, “of searching for a dangerous fugitive, a thorough and comprehensive search is required in the wanted person’s home, in an effort to locate documents, objects, or weaponry. In such a search, property damage may, unfortunately,

occur.” In his answer the CCAG ignored the surface nature of the investigation conducted by the MPI, and tried to place the responsibility for the failed investigation on the plaintiffs.

After receiving the CCAG’s decision to close the case, HaMoked attorney asked him to reconsider, emphasizing that Issa and his mother were willing to give their testimonies to the MPI investigators.

Captain Ben-Eliezer wrote back that “at this stage – given the passage of time and the inability to locate the specific unit that searched the Issa family’s residence – there is no point in opening the investigation again, in the absence of any additional detail that could assist in locating the soldiers involved.” In a previous letter he complained that the plaintiffs did not come in for questioning, so the investigators couldn’t get any more details on the unit; yet when they expressed willingness to be questioned in order to provide these missing details, Ben-Eliezer used the argument that there is no “additional detail that could assist in locating the soldiers involved” as justification for closing the case.

Eighteen months to obtain the investigation file

- On January 23, 1995 HaMoked asked to copy the investigation material.
- On May 14, 1995 HaMoked sent a reminder to the CCAG. CCAG did not reply.
- On June 7, 1995 HaMoked sent a reminder to the CCAG.
- On August 1, 1995 Lt. Col. Nir replied that the forces operating in Al-Arub refugee camp that day were not located. Since the operation was legal, “we do not believe that the file you have requested will help your client’s case. If you nonetheless insist on viewing the file, please let us know.”
- On November 12, 1995 HaMoked repeated its request for the investigation file. CCAG did not reply.
- On April 3, 1996 HaMoked sent a reminder to the CCAG.
- On April 23, 1996 Captain Ben-Eliezer informed HaMoked that the material had not yet arrived yet.
- On May 13, 1996 HaMoked complained to Fogelman, Director of the High Court Petitions Department in the AG’s office, about the delay in receiving the file.
- On June 4, 1996 Ben-Eliezer told HaMoked that the file is on the way.
- On July 14, 1996 the file was copied.

From the date of the original request, and until it was made available, a year and a half passed. This delay is unreasonable. Nir’s comment regarding the inadvisability of turning the material over stands out even in the context of the foot-dragging and delays that HaMoked encountered in other cases. There had never been an attempt to get out of transferring the material on the grounds that “it wouldn’t help” the victim.

Other legal possibilities

Despite the long time that passed from the filing of the complaint to the opening of an

investigation, it was still possible to use the operations diaries of the units that the MPI was able to locate. The fact is, a MPI investigator reached the GSS, whose men were apparently involved in the operation. If the investigators had reached the units, there is a good chance that some of the soldiers involved would have been located for questioning. A serious investigation would have revealed why so much damage was caused in the two houses, when the goal of the search was to find a fugitive. Perhaps the necessity of detonating concussion grenades inside the house would also have been discussed.

The IDF Admits that the Soldiers Were Never Questioned

Property Damage in Amin Ma'ali's House

Summary

On August 20, 1993, around 12:00, six soldiers on foot patrol arrived at Ma'ali's house in Salfit village, in Tulkarm District. Ma'ali himself was at his shop, nearby. The door to the house was locked. When the soldiers arrived Ma'ali offered to open the door. One soldier, about 170 cm tall, with a dark complexion and a beard, forbade him from entering his house. Another soldier, tall and with a light complexion, kicked the door open, breaking the lock in the process. Two soldiers entered the yard and threw a concussion grenade into the yard. Then the soldiers entered the house. They were inside for about half an hour. After they left, the family saw the damage that the soldiers had caused: the doors to two closets were broken; drawers in the dining room were broken; the contents of the closets were on the floor; kitchenware was damaged, as well as the bathroom. Ma'ali's wife understood from one of the soldiers that they were looking for their son, Abd Al-Fatah, a fugitive.

In the affidavit given by Ma'ali, he stated that soldiers had been to his home numerous times in the past, but without causing damage. Soldiers also came to his home after the complaint was filed, in a late night "visit."

The testimonies

During the search, Ma'ali was in the yard with his wife, daughter, and daughter-in-law. In an affidavit given at HaMoked, he described the incident and described two of the soldiers in detail.

The Minister of Defense ordered the NCAG to investigate the plaintiff

- On September 7, 1993 HaMoked attorney Badra Khouri sent the first complaint to CCAG Politis.
- On October 12, 1993 a reminder was sent to Politis.
- On October 18, 1993, Major Rachel Toren-Cohen wrote to HaMoked that the complaint would be investigated. On that day she ordered the MPI to open an investigation.
- Between October 28-30, 1993 a MPI investigator talked to Lt. Col. Doron Maynard, commander of Battalion 71. He verified that his soldiers broke into the Ma'ali house. He also said that entering the house was based on information that the fugitive, Ma'ali's son, was violent and always armed. He was credited with a number of murders and terrorist attacks, and was planning to murder soldiers at the representative office [of the Civil Administration] and Captain Mansour in particular, and that he was seen entering his father's home on occasion. Maynard checked with the Battalion officers, and they told him that the searches at

the house were thorough, but denied breaking the lock, throwing the concussion grenade, and the other damages described in the complaint.

- On November 1, 1993 Major Yigal Shteif, commander of the MPI base for Jerusalem, Judea and Samaria, informed the CCAG that “in light of the above, every search after the fugitive was carried out without taking risks, but in the investigation with the officers of the Battalion who participated in the search, they denied breaking the lock, throwing a concussion grenade, or damaging the house in the fashion described in the complaint. I therefore recommend not opening a MPI investigation in this matter.”
- On November 18, 1993, Toren-Cohen transferred the case to the NCAG, Lt. Col. Lenny Alford, since Battalion 71 lies within her jurisdiction.
- On February 13, 1994 Captain Erez Raban, MPI commander in the Golan Heights, informed the NCAG that Maynard reported that “he does not have the possibility to identify the soldiers of the unit that participated in the search.”
- On March 23, 1994 Alford replied to Raban that she had examined the investigation file, and was of the opinion that “there is no avoiding a lengthy investigation on the matter, since it appears to be a serious complaint.” Moreover: “The Battalion commander should be asked for help in locating the company that was engaged in operations at the time, and take the soldiers’ testimonies regarding the suspicions raised in the complaint.” She added that in the letter from Shteif (MPI Commander for Jerusalem, Judea and Samaria), it was clear that the officers involved in the searches, and who denied causing the damages detailed in the complaint, had been located. She instructed him to collect testimonies from them as well.
- On June 1, 1994 Alford informed HaMoked that “the soldiers who were questioned denied causing the damages to the plaintiff or that a concussion grenade was thrown... In spite of an in-depth investigation, we did not locate any soldiers who supposedly caused the alleged damages.” She therefore ordered the investigation to be closed.
- On June 26, 1994 HaMoked sent a letter to Alford, raising the question of why Ma’ali had not been summoned for questioning; how did she reach the conclusion that the suspects had not been located, given that there was no line-up for Ma’ali and his family to try and identify the soldiers.
- On August 28, 1994 Alford answered that Ma’ali had not been questioned by the MPI because they had his affidavit. She mentioned that MPI had checked with the officers of the unit, and they denied Ma’ali’s claims, and that “the soldiers that were questioned” denied causing property damage or throwing a concussion grenade.
- On September 13, 1994 HaMoked wrote to Alford, noting that the investigation was superficial and no more than a general inquiry. HaMoked attorney asked to copy the investigation file. Alford did not reply.
- On November 2, 1994 HaMoked sent Alford a reminder. No reply was received.
- On January 8, 1995 HaMoked sent another reminder to Alford.
- On March 27, 1995 Alford replied. Her letter was a summary of her previous correspondence.
- On April 17, 1995 HaMoked attorney wrote to Alford that the investigation was

superficial. She also wrote that this would be her last letter, since the soldiers could have been found.

- On May 17, 1995 Alford replied, and in her letter there was a different version than before: “Attempts were made to identify the soldiers operating in the place, but since there was no individual records of the soldiers, there was no possibility then, and certainly not today, to identify a particular soldier...” She mentioned that it was decided not to open a MPI investigation, and therefore there is no investigation file to be handed over.
- On May 31, 1995 HaMoked wrote to then Minister of Defense Yitzhak Rabin. In the letter HaMoked recounted the details of the incident and asked that he order an investigation.
- On July 10, 1995 Lt. Col. Dani Be’eri, the Chief Military Prosecutor, informed the NCAG that after examining HaMoked’s reservations, he is of the opinion that there is room to order the MPI to collect testimonies from the Ma’ali family.

The NCAG accepts MPI’s failure to follow its instructions

In the letter quoted above, Alford wrote to Raban on March 23, 1994 and instructed him to ask for the help of the Battalion Commander in locating the company that was on active duty and collect testimonies from soldiers regarding the suspicions raised in the complaint, and to take testimonies from the officers who participated in the searches and denied the damages. It was clear to her that none of the soldiers involved was questioned properly.

Nonetheless, in a letter to HaMoked dated June 1, 1994, she wrote that “...a MPI investigation has been conducted” and that “the soldiers who were questioned denied causing property damage to the plaintiff or that a concussion grenade was thrown.” However, it was the officers who denied throwing the grenade, not the soldiers. Moreover, she argued that “In spite of an in-depth investigation, we did not locate any soldiers who supposedly caused the alleged damages.”

Two issues are raised: First, Alford’s own instructions to the MPI were not obeyed – the soldiers and officers of Battalion 71 were never questioned by a MPI investigator. As she admits, the soldiers were never even located. The investigation file transferred to HaMoked does not mention any attempts to locate the soldiers. Secondly, although her precise instructions on who should be questioned were not obeyed, Alford accepted the inquiry conducted by the commander of Battalion 71 with his officers, in order to justify her decision to close the file.

It seems that at a later stage Alford recognized that her letter of June 1, 1994 to HaMoked did not rest on sufficient facts, and she therefore changed her line of argument. In her letter of May 17, 1995 she writes that: “Attempts were made to identify the soldiers operating in the place, but since there was no individual records of the soldiers, there was no possibility then, and certainly not today, to identify a particular soldier...”

That letter also claimed that she has no investigation material, since there was no MPI investigation. This is not accurate. While a formal MPI investigation may not have taken place, she did have the information collected from conversations with the Battalion commander and his officers, and a summary of the conversation he had with a MPI

investigator. She should have forwarded this material to HaMoked at an early stage, which might have facilitated investigating the incident and identifying the guilty soldiers.

The delays achieve their purpose

On August 23, 1995, following the intervention of the Minister of Defense and the Chief Military Prosecutor, Ma'ali was finally questioned by the MPI. This occurred precisely two years after his house was broken into, on August 20, 1993.

During the break-in, Ma'ali was 69 years old (born in 1924). When he was questioned, he was 71 years old. It is no wonder then that given the two year waiting period and his advanced age, contradictions existed between the affidavit given immediately after the incident and the testimony collected two years later. It is also no surprise that details of the incident became mixed up with the other 'visits' conducted in his home, which HaMoked made known.

Alford based her response on the contradictions: "The plaintiff's testimony changed and was full of contradictions compared to his original version, given in the affidavit." she wrote on January 30, 1996. "There was no possibility for the plaintiff to give identifying details that would have allowed the soldiers to be located. Therefore, it was decided to end the investigation without taking any legal action."

The delays then served their purpose: two and a half years after the incident, the contradictions stymied even the possibility of demanding compensation from the SOC to at least receive money for the damages caused to the Ma'ali family house and property by the soldiers.