

ordered to go back to their village. Internal Affairs recommended serving a criminal indictment against the border policeman, one of his two subordinates and his friend. HaMoked coordinated the arrival of the three victims and their witnesses to the court hearings. At the end of 1999, the court found only the border policeman guilty, and sentenced him to a 10- months suspended sentence, a NIS 5,000 fine and 300 hours of community service. In 2001 HaMoked filed a damage claim against the border policeman. The court ordered NIS 12,000 to be paid to each of the victims. **(Case 10637)**

On May 9, 1996, G.Z., a resident of the Old City of Jerusalem, was walking toward Damascus Gate. After passing by three

border policemen, he heard a shot, felt intense pain in his forehead, and started bleeding. The attempts of one of the policemen to stop the bleeding failed, and G.Z. was evacuated to Hadassah Hospital, where a bullet fragment was removed from his forehead. After he was discharged from the hospital and testified before Internal Affairs, G.Z. contacted HaMoked, which followed up on the investigation. The policeman who fired the shot was brought up for disciplinary action, convicted and sentenced to a NIS 150 fine, and a serious reprimand was entered in his file. In September 1998, HaMoked filed for damages, on behalf of G.Z., against the officer and the Israel Police. On September 29, 2002, the court ordered NIS 10,265 to be paid to the victim. **(Case 9887)**

Access to Justice

In the past year, the only avenue that Palestinians from the Territories still had of securing justice – compensation in Israeli courts – has been blocked almost completely. The impact that the sweeping prohibition on entry of Palestinians to Israel has had on the preparation and conducting of such claims, as well as the influence that July's amendment to the Torts Law regarding State liability has had on the chances of such claims being heard by the courts, was discussed at length in the previous activity report.⁴² This amendment has already influenced HaMoked attempts to turn to the courts. The State has been

trying to apply the expanded definition of acts of war, as defined in the amendment, retroactively, in order to hold itself harmless against suits connected with violations that took place before the amendment was passed and which are the subject of pending court cases. These attempts are in violation of Israeli law and case law, and unacceptable in any legal system in general. The court has not yet ruled on the matter, but a decision handed down in one of the cases presented by HaMoked, indicates that the law cannot be applied retroactively. However, indirect implications of the amendment are evident in that same decision: while the court did

not refer to the sweeping definition of acts of war provided in the amendment, it broadened the one provided earlier by the Supreme Court.⁴³



Civil

On September 4, 1990, in his village of Ya'bad, K.A. noticed a military jeep with six soldiers approaching him from behind. He was shot in the head with a rubber-coated bullet and lost consciousness. When he came to, he was in the facility of the Civil Administration in Ya'bad, where he was being treated by a military personnel. Since it appeared his skull might have been fractured, K.A. was transferred to Hadassah Ein Karem Hospital in Jerusalem. Although the IDF was aware of the incident, no inquiry ever took place. In June 1997 HaMoked filed for damages against the State of Israel on K.A.'s behalf. In its summation, the State argued that the broad definition of 'acts of war' provided in the amendment to the Torts Law, applies to this incident too, even though it had occurred 12 years before. HaMoked applied for and received permission from the court to respond to this argument, and laid down the legal arguments against it. The fact that in his ruling the judge did not address the argument put forth by the State implies that the new definition cannot be applied retroactively. However, the claim was denied. One of the rationales behind the denial was a definition of 'acts of war' that stretched beyond the one the courts have endorsed until then. Under the expanded definition, the fact that stones were being thrown in the area of the incident prior to the shooting, made the encounter between

the soldiers and K.A. an act of war. (Case no. 9630)

The amendment imposes a long list of demands with which Palestinians must comply when filing suit in Israel. One of the requirements is that the victim or a family member fill out and send a special form within 60 days of the injury. The proposed form – which is in the Hebrew language – requires complainants to provide the minutest details, including witnesses' names and ID numbers. Failure to provide any of the required information, including details unknown to the claimants, could cause the entire form to be rejected. Another requirement is that the form must be delivered by registered mail to the Defense Ministry's Claims and Insurance Department in Tel Aviv. Apart from the fact that to date registered mail services are not available in any Palestinian town, to HaMoked's knowledge, the authority to which the form is addressed has so far consistently declined compensation to Palestinians in connection with the current intifada. ACRI and HaMoked are currently compiling a position paper on the subject. Even in cases in which the amended Torts Law has no impact on the hearing, the State tries to make it difficult for victims to substantiate their arguments.



HCI

In 1996, when M.S. was 16 months old, he was diagnosed with leukemia. He was treated successfully at Hadassah Hospital. When he was

42 HaMoked, *Semi-Annual Report: January-June 2002*, pp. 19-22.

43 *Ibid.*, p. 21.

discharged, his parents, who are residents of Beit Ula, were instructed to rush him to the hospital if he ever develops a fever, since the treatment he had received weakened him and any infection was likely to kill him. On September 28 that same year, the baby's temperature went up, and his parents tried to get him to the hospital. Despite their entreaties and the medical documentation they showed the soldiers, they were detained for a long time at the roadblock in Beit Jubrin. Finally, the mother and baby were allowed through, but about 15 minutes before they reached the hospital, the baby stopped breathing, and all the attempts to resuscitate him failed. The IDF closed the investigation about a year later, without taking any legal action against any of soldiers at the roadblock. In August 1999, HaMoked sued the State of Israel for damages in connection with the roadblock detention and M.S.'s death. As part of the proceedings, HaMoked submitted an opinion by a pediatric hematologist and oncological expert from

Yale, who wrote that according to all the medical records available, had the child been brought to the hospital without delay, his life likely might have been saved. Under Israeli law, opinions presented by foreign experts must first be confirmed by a representative of the Israeli consulate before they can be admitted as evidence. The confirmation attests to the authenticity of the signature and to the criminal liability of the expert in his country of origin, in case his or her opinion is fallacious. The Israeli consulate in New York does not have a standing procedure by which to provide such confirmations, and the Consul refused to handle HaMoked's request to approve the opinion. In Israel, a government committee denied HaMoked's request to submit the opinion without such confirmation. In order to find a way out of this dead end, in which one authority was unwilling to follow the law, while another refused to make concessions, on October 30, 2002, HaMoked petitioned the HCJ. **(Case 10638)**