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**At the Jerusalem Magistrate Court**

Jerusalem Magistrate Court  
A 13088/99  
Sarahin v. State of Israel  
Filing date: August 1, 1999  
matter: 202 legal procedure: regular

In the matter of:

1. **The Estate of the deceased \_\_\_\_\_ Sarahin**  
**By his legal heirs:**
  - a. \_\_\_\_\_ **Sarahin**  
**ID No. \_\_\_\_\_**
  - b. \_\_\_\_\_ **Sarahin**  
**ID No. \_\_\_\_\_**

Both from the village of Beit Ula, Hebron District

Represented by counsel, Adv. Michal Pinchuk (Lic. No. 21600) and/or Eliahu Abram (Lic. No. 11851) and/or Hisham Shabaita (Lic. No. 17362) of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger  
4 Abu Obeida St., Jerusalem  
Tel: 02-6283555; Fax: 02-6276317

**The Plaintiffs**

v.

**State of Israel – Ministry of Defense**  
Represented by the Tel Aviv District Attorney's Office (Civil)  
1 Henrietta Szold Street, Tel Aviv 64924  
Tel: 03-6970222; Fax: 03-6918541

**The Defendant**

Nature of Claim: Torts – Personal Injury

Amount of Claim: the maximum amount under the court's jurisdiction

## **Statement of Claim**

1. A. The plaintiff is the estate of the deceased, the late \_\_\_\_\_ Sarahin who passed away on September 28, 1996, after having been detained for over an hour in an IDF checkpoint in Beit Jibrin while he was on his way to Hadassah Ein Kerem Hospital in Jerusalem.  
  
The deceased was one year and five months old when he passed away (hereinafter: the "infant").
- B. The estate files this claim by the infant's parents and legal heirs for the detention of the infant while he was on his way to receive medical treatment and for the causation of his death.
2. The defendant, the State of Israel, was responsible at all times relevant to the claim, for the actions of the IDF soldiers in the Judea and Samaria area, including their actions on September 28, 1996, in the Beit Jibrin area, as will be described below.

### **Background**

3. A. About a month before the incident the infant was diagnosed with Leukemia and commencing from August 22, 1996 he was under the treatment and care of the Hadassah Ein Kerem hospital in Jerusalem.
- B. On September 25, 1996 and September 26, 1996 the infant received chemotherapy treatments in the hospital and was thereafter discharged from the hospital and sent back to his home.
- C. Upon his discharge from the hospital, the doctors made it clear to his parents that should the body temperature of the infant rise beyond 37 degrees celsius, he should be immediately brought to the hospital.

### **The Incident**

4. On the morning of September 28, 1996 the infant's mother noticed that his body temperature was higher than 37 degrees.
5. At the same time a closure was imposed on the entire Area following the opening of the Western Wall Tunnels. The infant's parents rushed to the 'Aaliya hospital in Hebron to get an ambulance, hoping that this would enable them, notwithstanding the closure, to arrive quickly to the hospital in Jerusalem.

To their disappointment there were no available ambulances on that day due to the severe events.

6. The parents returned to the village where they have located a car with an Israeli license plate, which took them towards Jerusalem.

The parents chose to go to Jerusalem through Beit Jibrin since the regular route from Hebron through Bethlehem to Jerusalem was supposed to be blocked by many IDF check points, due to the closure.

7. A. On or about 09:45 the family reached the Beit Jibrin check point. The driver of the car spoke with the soldiers and explained that he was carrying in his car a sick infant, in a critical condition, who should be brought to the hospital immediately

The soldiers of the check point ordered the passengers to get out of the car and searched it.

- B. When they have realized that the family was living in Beit Ula, the soldiers said that they would not let the parents cross the checkpoint and that only the driver and the infant could go through.

This unreasonable proposition, which separates the dying infant from his parents, leaving him in the hands of a strange driver, who is busy driving, was fiercely rejected by the parents and the driver of the car.

8. The infant's father, who was extremely upset, explained the urgency of the matter to the soldiers and presented them with medical records concerning the infant.

His pleadings convinced the soldiers to turn to the officer in charge, who was at that time in the tent encampment, near the check point.

9. The officer's response was delayed. While waiting, the parents requested some ice to cool down the infant's body, but it has not been provided.
10. Eventually, after a long wait which lasted for about an hour the officer informed the family that he approved the passage of the mother and infant only. The agitated father was required to go back to the village.

The father's pleadings and persistent requests to let him join, because his wife was not speaking Hebrew and would not be able to manage alone, fell on deaf ears and the father was forced to stay behind.

11. Before they went ahead, the officer ordered the soldiers to search the car again. The soldiers told the officer that they have also searched the car but the officer persisted that the car be searched once again. As a result of the search additional valuable time was unnecessarily wasted.
12. On or about 12:00, the mother and the infant reached the hospital. About 10-15 minutes earlier, while they were still driving, the mother noticed that the infant has stopped breathing.
13. Immediately upon their arrival to the hospital, the infant was taken to the children's ward where attempts to resuscitate him were made, however, to no avail.

The infant was pronounced dead on 13:00.

Attached is a death certificate and a summary of illness marked **A** and **B** respectively which constitute an integral part of this statement of claim.

The infant was buried on that same day.

14. A. Following the publication of the infant's death in the Palestinian press, his father was summoned to the Civil Administration and his testimony was taken.
- B. On August, 27, 1997 the legal advisor for the Central Command ordered to close the investigation file. No legal measures were taken against any one in the military.

### **Burden of Proof**

15. The soldiers at the check point did not write down, in the operations log, the details of the plaintiffs and the hour on which they left the place. Thus, the soldiers acted contrary to the directives given to them by the shift officer of the Judea territorial brigade in a briefing, before they have manned the check point.

The plaintiffs will claim that in their above omission the soldiers caused them an evidentiary damage which is manifested in difficulties to prove when they reached the check point and when they left it.

This evidentiary damage shifts onto defendant's shoulders the burden to prove that the soldiers at the check point were not negligent and did not detain the infant and his parents on their way to the hospital beyond a reasonable period of time, taking into consideration the medical emergency state of the infant.

### **The right to receive medical treatment and breach of statutory duty**

16. The right of every person to receive medical treatment in a state of medical emergency, including the right of the infant, is entrenched in Israeli law and in international law. The provisions of the law set forth below obligate the defendant and its agents – in medical emergencies - to enable access to a hospital unconditionally and without delay:
- A. Articles 2, 4, and 11 of the **Basic Law: Human Dignity and Liberty**, which obligate every government authority, including the IDF and its soldiers, to protect the life, body, and dignity of a person, and to refrain from violating these fundamental rights. From this obligation stems the duty to enable medical treatment in a state of medical emergency, which poses a threat to the life or body of a person – an obligation which is presently also specified in sections 3(b) and 11 of the Patients Rights Law, 5756 – 1996.
  - B. Article 46 of the Regulations Attached to the **Hague Convention** Regarding the Laws and Customs of War on Land, 1907, which constitutes part of the international customary law that has been incorporated into the Israeli law, obligates the state to respect human life in a territory which is under belligerent occupation.
  - C. Articles 16 and 21 of the **Fourth Geneva Convention** Relative to the Protection of Civilian Persons in Time of War, 1949 (ratified by the State of Israel on July 6, 1951), obligate the state to provide special protection to sick citizens and to enable the passage of vehicles carrying sick persons, to protect and respect them. Article 50 to this convention obligates the state not to hinder the rendering of medical care to expectant women and children.
  - D. Article 6 of the **Convention on the Rights of the Child**, 1989 (ratified by the State of Israel on August 4, 1991), obligates the state to ensure to the maximum extent possible the survival and development of the child.
  - E. Article 12(2) of the **International Covenant on Economic, Social and Cultural Rights**, 1966 (ratified by the State of Israel on August 3, 1991), obligates the state to create proper

conditions which would assure to all medical service and medical attention in the event of sickness.

17. A. Delaying the passage of the infant to the hospital, despite his grave medical condition, severely violates his right that his access to medical care shall not be deprived or delayed beyond a reasonable period of time.
- B. The plaintiffs will claim that in delaying the infant's passage to the hospital for an unreasonable period of time, the defendant and its agents, the soldiers, breached the statutory duties, set forth in paragraph 16 above, which are intended to protect states of medical emergency and that the breach thereof caused injury to the infant and brought about his death.

### **Negligence**

18. The plaintiffs will further claim that the injury inflicted upon the infant and his death were caused by the negligence of defendant's soldiers, which were manifested in the following acts and/or omissions:
  - A. They held up the infant for a long time when he was on his way to the hospital in Jerusalem, although they knew and/or should have known that this was a state of medical emergency.
  - B. They requested the approval of the battalion for the passage of the family, although they knew and/or should have known that in a state of medical emergency the officer in charge had the authority to allow the passage of the vehicle.
  - C. They refrained from recording in the check point's operations log plaintiffs' identity and the time on which they left the check point.
  - D. They acted contrary to military instructions and directives which were in force at that time, according to which, when a case of medical emergency reaches an IDF check point, the soldiers should conduct a security examination, make sure that this is indeed a case of medical emergency and allow the passage of the vehicle.
  - E. They examined plaintiffs' vehicle twice and by doing so they have excessively delayed the plaintiffs although they knew and/or should have known that this was a case of medical emergency.
19. The defendant is vicariously liable for the soldiers' negligence and for their breach of statutory duties as specified in paragraphs 16 and 18 above, due to the fact that they are its agents and/or act on its behalf.
20. The defendant is also directly liable for the infant's injuries and death, due to its own negligence which is manifested in the following omissions:
  - A. It imposed a closure on the Area in September 1996 without establishing clear, efficient and unequivocal directives, intended to ensure a quick passage of cases of medical emergency through IDF check points, although it knew or should have known, that in the absence of clear directives as aforesaid, essential medical care may be deprived in case of emergency, as a result of which irreversible damage may be caused.

- B. It failed to instruct the soldiers who were stationed in IDF check points at the time of the closure, that the commander of the check point on the scene had the authority to allow the passage of cases of medical emergency in private vehicles to hospitals, without the need to obtain the approval of other parties, and that in any event of doubt the passage of the vehicle should be allowed. Such directives were established by the IDF only about two years following the incident being the subject matter of this claim, although the defendant already knew or should have known at the time of the closure of September 1996, that they were required in order to instill with IDF soldiers a correct and serious attitude to cases of medical emergency, and in order to assure passage in the check points and the rendering of essential medical care to expectant women and babies.
  - C. It failed to properly brief the soldiers who were stationed in the check points how they should act in cases of emergency, although it knew and/or should have known that in the absence of a clear directive, irreversible damage may be caused to the persons who were in a state of medical emergency, including the infant.
  - D. It failed to reasonably supervise the conduct of the soldiers who were stationed in the check points at the time of the closure.
  - E. It failed to fulfill its duties and objectives in accordance with international law, as specified in paragraph 16 above, and to provide for the health of the residents of the Area, including the deceased infant.
21. A. Due to the delay in the rendering of medical treatment, the deceased infant suffered severe distress, pain and suffering and pains of death.
- B. Delaying the infant's access to medical care deprived him of the reasonable opportunity to be treated by experienced doctors, equipped with the hospital's medical machinery, who may have been able to save his life.

Therefore the defendant is responsible for his death.

22. The plaintiffs will claim that the defendant should compensate them as follows:

- |    |  |             |
|----|--|-------------|
| A. | For the costs associated with the burial, funeral, tombstone, travels and mourning meals     | 10,000 ILS  |
| B. | Non monetary damage<br>pain and suffering and pains of death, deprivation of life expectancy | 200,000 ILS |

23. The plaintiffs have difficulties in locating an expert for the purpose of rendering a medical opinion concerning the infant's death.

The honorable court is hereby requested to act pursuant to its authority under regulation 127 of the Civil Procedure Regulations and exempt the plaintiffs, at this stage, from attaching a medical opinion concerning the above matter.

The plaintiffs reserve their right to attach an opinion on this matter at a later stage.

24. The honorable court has the local and subject matter jurisdiction to adjudicate the claim.

25. Therefore, the honorable court is hereby requested to summon the defendant and order it to pay plaintiff's entire damages together with linkage differentials and interest from the filing date of the claim and until the date of actual payment and together with trial costs and legal fees.

Jerusalem, today August 1, 1999.

( signed )

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Michal Pinchuk, Advocate  
Counsel to Plaintiff

(File 10638, No. 23634)