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At the Magistrates Court in Jerusalem

CC 21134/95

In the matter of:

1. _____ ‘Ulyan
2. _____ **Abu Hummus**
both from 'Isawiya, Jerusalem
represented by attorneys Badrah G. Huri and/or Hala Huri
of HaMoked: Center for the Defence of the Individual
4 Abu Obeidah Street, Jerusalem
Tel. 02-283555; Fax 02-276317

The Plaintiffs

v.

1. _____ **Sirhan**
2. _____ **Sirhan**

The Defendants

Nature of the claim: **Bodily Injuries**

Amount of the claim: **NIS 100,910**

Complaint

1. Plaintiff 1 was born in 1966 and is a resident of 'Isawiya, Jerusalem.
2. Plaintiff 2 was born in 1970 and is a resident of 'Isawiya, Jerusalem.
3. Defendant 1 was born in 1966 and is a resident of the village Hurfeish. At all times relevant to this complaint, Defendant 1 served as a policeman at the Border Guard.
4. Defendant 2 was born in 1966 and is a resident of the village Hurfeish. At all times relevant to this complaint, Defendant 2 served as a policeman at the Border Guard.
5. On the night of 18 June 1989, Defendants 1 and 2 (hereinafter: the Defendants) were working in a Border Guard team (hereinafter: the Team) of three Border Guard policemen, on patrol in the area of the Old City, and detained three persons for

examination, including Plaintiffs 1 and 2 (hereinafter: the Plaintiffs) in the neighborhood of Wadi Al Joz in East Jerusalem.

6. The Plaintiffs were required by Defendant 1, who was the Team commander, and by Defendant 2, to strip for a search. When the Plaintiffs refused this demand, they were beaten by the Defendants with kicks, slaps and shoves.
7. The Plaintiffs were subsequently stripped of their clothing, and while still naked were required by the Defendants to sit, to rise and to turn around.
8. After the Plaintiffs dressed, Defendant 1 again kicked and slapped Plaintiff 1. Plaintiff 1 was beaten on his right leg, on which he was operated.
9. On 19 June 1989, the Plaintiffs filed a complaint with the Jerusalem Region Ombudsman, for use of force, against the Team that included the Defendants.
10. Following the filing of the complaint by the Plaintiffs, the Defendants were indicted, and convicted by the Hon. Justice Procaccia on 30 March 1993 at the Jerusalem Magistrates Court, of Aggravated Assault, pursuant to Article 382 of Hoq ha-Oneshin [the Penal Law], 5737-1977, and of Abuse of Authority, pursuant to Article 280 of the Penal Law. The judgment is attached to this complaint as an integral part hereof.

Assault

11. The Plaintiffs shall claim that their beating by kicks, slaps and shoves by the Defendants constitutes Assault, within the meaning of this term in Article 23 of Pequddat ha-Neziqin (Nosah Hadash) [the Torts Ordinance (New Version)], and that the Defendants are directly liable for the beating of the Plaintiffs without their consent.

Negligence

12. The Plaintiffs shall claim that the Defendants' act of assault amounts in itself to the tort of negligence.
13. Alternatively, the Plaintiffs shall claim that the Defendants were negligent, and that the Defendants' negligence is expressed in the following acts and/or omissions, in that they:
 - a. Exceeded their authority and acted against the instructions of the Border Guard Command and/or the orders and/or guidelines of the Inspector General of Police and/or

- b. Behaved recklessly and/or contemptuously and/or apathetically towards the integrity of the Plaintiffs' body and/or
- c. Failed to do everything that reasonable Border Guard personnel are able to do in order to prevent the occurrence of the damage and/or
- d. Used wrongful means to maintain public order [and/or]
- e. Abused their authority by taking the law into their own hands and using force against the Plaintiffs without any lawful justification and/or reasonable cause.

Negligence Per Se

- 14.
 - a. Alternatively to the alternative, the Plaintiffs shall claim that the Defendants were negligent per se by violating statutory duties which are designed, according to their rightful meaning, to protect the type of persons in which the Plaintiffs are included, and that the assault and its resultant damage were caused owing to the violation of such duties.
 - b. The Plaintiffs shall claim that, *inter alia*, the Defendants violated the duties set forth in the Penal Law, 5737-1977 (hereinafter: the Law), in Hoq Yesod: Kevod ha-Adam we-Heruto [Basic Law: Human Dignity and Liberty], 5752-1992 (hereinafter: the Basic Law) and in Pequddat ha-Mishtara (Nosah Hadash) [the Police Ordinance (New Version)], 5731-1971 (hereinafter: the Ordinance).
- 15. For the sake of further specification, and without derogating from the generality of the aforesaid, the Plaintiffs shall claim that the Defendants violated the following duties:
 - a. Article 280(1) of the Law, which provides that a civil servant who, while abusing his authority, performs or orders the performance of an arbitrary act which infringes the right of another, is liable for three years imprisonment and/or
 - b. Articles 378, 379, 380 and 382 of the Law which discuss ordinary assault, assault causing material injury and aggravated assault and/or
 - c. Article 2 of the Basic Law which provides that "there shall be no violation of the life, body or dignity of any person as such".
 - d. Article 3 of the Ordinance regarding the duties of a policeman in maintaining public order and personal safety.

16. As a result of the assault, the Plaintiffs suffered the following damages:

- a.1. Plaintiff 1 was absent from work for a week, having felt unwell as a result of the kicking and beating he had received to his right leg, on which he had been operated.

Plaintiff 1 shall therefore claim that he is entitled to lost earnings in the sum of NIS 450, in addition to differences of indexation and interest from the day of the assault until the date of filing of the complaint, which amounts to the total sum of NIS 910.

- a.2. Plaintiff 1 shall further claim that he is entitled to compensation for the mental injuries and the distress caused to him as a result of the beatings, the kicking, the slapping and the humiliation he experienced as a result of having been stripped of his clothing, as specified in Article 7 above, and fixes his claim due to such damages at the sum of NIS 50,000.

- b. Plaintiff 2 shall claim that he is entitled to compensation for the mental injuries and the distress caused to him as a result of the beatings, the kicking, the slapping and the humiliation he experienced as a result of having been stripped of his clothing, as specified in Article 7 above, and fixes his claim due to such damages at the sum of NIS 50,000.

17. The Honorable Court has the territorial and the subject matter jurisdiction to hear the complaint.

The Honorable Court is therefore moved to summon the Defendants and to charge them with payment of the Plaintiffs' damages as specified in the complaint, in addition to differences of indexation and interest as set out in the law from the date of filing of the complaint until actual payment, in addition to trial expenses.

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Hala Huri, Att.

Counsel for the Plaintiffs

Encl.: Judgment

Jerusalem, today 4 December 1995

[Opening date: 5 December 1995]