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At the Magistrates Court in Jerusalem

CC 13054/04

In the matter of:

1. **Hallaq**
from Anata ha-Hadasha, Jerusalem

represented by attorneys Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or Yossi Wolfson (Lic. No. 26174) and/or Adi Landau (Lic. No. 29189) and/or Manal Hazzan (Lic. No. 28878) and/or Shirin Batshon (Lic. No. 32737) and/or Hava Matras-Ivron (Lic. No. 35174) and/or Gil Gan-Mor (Lic. No. 37962) and/or Sigi Ben-Ari (Lic. No. 37566)
of HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Salzberger – Reg. Assoc.
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax 02-6276317

The Plaintiff

v.

1. **Schoenberg**
28 Burla Street, Tel Aviv 69364
2. **The State of Israel**

both represented by the Tel Aviv District Attorney's
Office (Civil Department)
1 Henrietta Szold Street, Tel Aviv 64921
Tel. 03-6970282; Fax 03-6918541

The Defendants

Nature of the claim: **Bodily Injuries**

Amount of the claim: **Maximum jurisdiction of the Court**

Complaint

The parties

1. The Plaintiff, a young man who was born on 17 January 1981, resides in Anata ha-Hadasha, Jerusalem. At all times relevant to this claim, the Plaintiff was employed as a mechanic by Ha-Haverim Automobile Repair Shop, in 'Atarot.
2. Defendant 1 served, at all times relevant to the claim, as commander of the Qalandiya checkpoint, where three or four soldiers were under his command.

3. Defendant 2, the State of Israel, is and was at all times relevant to the claim, the responsible body and/or operator and/or long arm and/or employer and/or entity in charge of the acts of IDF soldiers in the Occupied Territories, in general, and at the Qalandiya checkpoint and its surrounding areas, the place at which the incident that is the subject of this complaint occurred, in particular.

The incident

4. On 23 July 2002, at about 14:00, the Plaintiff arrived at the Qalandiya checkpoint, heading in the direction of Ramallah. He was on his way to Kafr 'Aqab to sleep at his cousin's house. He had undergone surgery on his left hand at Hadassah Hospital, Mt. Scopus, on 21 July 2002. His left hand was in a cast as a result of the surgery.
5. There was a long line of people ahead of the Plaintiff waiting to cross the checkpoint. Primarily because of the surgery, the Plaintiff did not feel well, and he bypassed the line and walked toward the checkpoint.
6. A soldier at the checkpoint went over to the Plaintiff and ordered him to return to his place and wait in line (hereinafter: the soldier). The Plaintiff, who had not long before been discharged from the hospital, handed the soldier the letter of discharge from the hospital.
7. The soldier assaulted the Plaintiff, beating him with his hands, legs, and weapon. The blows struck every part of the Plaintiff's body, in particular his legs, hands, and chest. The soldier was not satisfied with what he had done, and threatened to cause the Plaintiff further injury. "I'll break your other hand," he said.
8. Persons who were waiting in line went over and rescued the Plaintiff from the hands of the soldier. The other soldiers at the checkpoint fired into the air.
9. Defendant 1, the commander of the checkpoint, who was called "Moshiko" by the soldiers, appeared. The soldier who assaulted the Plaintiff told Defendant 1 that the Plaintiff had struck him.
10. The Plaintiff showed Defendant 1 the letter of discharge and the latter read it. Defendant 1 asked the Plaintiff why he was causing problems. The Plaintiff replied that he was unable to stand in the sun because of his condition.
11. Defendant 1 told the Plaintiff that the letter of discharge did not say it was forbidden for him to stand in the sun, and that he intended to keep the Plaintiff at the checkpoint until 19:00.

12. Defendant 1 took the Plaintiff's identity card. The Plaintiff asked for it back, but Defendant 1 refused. The Plaintiff, realizing that his request had been denied, decided to cross the checkpoint without his identity card.
13. The Plaintiff met his father on the other side of the checkpoint and told him what happened. The Plaintiff and his father went to the checkpoint. The father asked a soldier at the checkpoint to return the identity card to his son, but the soldier refused and pushed the Plaintiff's father.
14. When he saw his father being pushed, the Plaintiff told the soldier who had pushed his father, "You should be ashamed, [shoving an older] he is an elderly man." Another soldier at the checkpoint went over to the Plaintiff and hit him on the right side of his chest with the butt of his weapon.
15. The Plaintiff and his father left the Qalandiya checkpoint in the direction of the Ar Ram checkpoint. On their way, they called to the police in Newe Ya'aqov to complain and request help. The official who answered the phone said that the Police were not in contact with the army, and that they could not assist.
16. At the Ar Ram checkpoint, the Plaintiff met with an activist from the organization Machsom Watch, a woman named Dina. The Plaintiff told her what happened, and she went to the Qalandiya checkpoint and attempted to get the Plaintiff's identity card, but to no avail.
17. Dina told the Plaintiff that an officer at the checkpoint, whose name was Ofer, told her that the Plaintiff hit soldiers and that the soldiers did not retaliate.
18. The incident described above will be referred to below as the Incident.

Seeking relief from the authorities

19. On 24 July 2004, the Plaintiff went to the Zion Police Station, in the Russian Compound [in Jerusalem], and filed a complaint about the Incident.

A copy of the confirmation of the filing of the complaint is attached hereto as Appendix A.
20. The Plaintiff sought the assistance of HaMoked: Center for the Defence of the Individual, and, on 28 July 2003, the Plaintiff's counsel sent a letter of complaint to the Central Command's judge advocate and to the legal advisor for the West Bank, in which he requested the return of the Plaintiff's identity card. He also requested that the assault of the Plaintiff be investigated and the persons responsible be found.

A copy of the letter of complaint is attached hereto as Appendix B.

21. On 30 July 2002, the Plaintiff's counsel sent a letter to the Central Command's judge advocate and to the legal advisor for the West Bank, in which he stated that, on 27 July 2002, an officer at the Qalandiya checkpoint, Ofer, had returned the identity card to the Plaintiff following coordination with the Emergency Hotline of HaMoked: Center for the Defence of the Individual.
22. On 22 December 2002, the Plaintiff's counsel sent a reminder regarding his letter of 28 July.

A copy of the said letter is attached hereto as Appendix C.
23. On 2 January 2003, the legal advisor for the West Bank sent a letter to HaMoked indicating that the subject of the correspondence was not within his area of authority, but within the authority of the Central Command's judge advocate.
24. On 9 January 2003 a letter was received from the Central Command's judge advocate, indicating that following receipt of the letter, an order had been given to open a Military Police investigation of the allegations.

A copy of the said letter is attached hereto as Appendix D.
25. On 3 April 2003, a letter dated 30 March 2003 was received from the Central Command's judge advocate, indicating that a decision had been made to close the investigation file. The grounds for the decision were that no evidence had been found to support the Plaintiff's claim that he had been beaten, and, as regards the Plaintiff's identity card, it was taken from him to check it, and he left the area without waiting to have his identity card returned to him.

A copy of the said response is attached hereto as Appendix E.
26. On 6 April 2003, the Plaintiff's counsel contacted the Central Command's judge advocate and requested to photocopy the investigation file regarding the Plaintiff.
27. It was not until 29 February 2004, in a telephone conversation between a staff member of HaMoked, Ms. Alva Kolan, and Ms. Sal'it, of the Public Complaints Division in the IDF Spokesperson's Office, that permission had been granted to photocopy the file. On 17 March 2004, the censored investigation material was received from the head of the Public Complaints Division of the IDF Spokesperson's Office.

The Defendants' liability

Assault

28. The Plaintiff shall claim that Defendant 1 and other soldiers, agents of Defendant 2, committed an assault within the meaning of this term in Pequddat ha-Neziqin (Nosah Hadash) [the Torts Ordinance (New Version)], 5728 – 1968.
29. The Plaintiff shall claim that Defendant 2 is responsible, pursuant to the laws of vicarious liability, for this wrongdoing committed by its agents.
30. The Plaintiff shall claim that Defendant 2 ratified the acts of the soldiers who took part in the assault and violence against the Plaintiff, by closing the investigation file without prosecuting those involved, a decision that conveyed a message to other soldiers that assaulting Palestinians is permissible.

Breach of statutory duty

31. The Plaintiff shall further claim that Defendant 2 breached, either directly or indirectly, through Defendant 1 and/or other soldiers who are its agents, statutory duties that are intended, based on their proper reading, to protect the type of people to which the Plaintiff belongs, and caused the injury that the Plaintiff claims.
32. The Plaintiff shall claim in particular that Defendant 1 and/or other soldiers breached obligations set forth in Hoq ha-Oneshin [the Penal Law], 5737–1977 (hereinafter: the Law), Hoq ha-Shipput ha-Zeva'i [Military Justice Law], 5715–1955, and Hoq Yesod: Kevod ha-Adam we-Heruto [Basic Law: Human Dignity and Liberty] (hereinafter: the Basic Law).
33. In particular, and without derogating from the generality contended above, the Plaintiff shall claim that the soldiers breached the following duties and provisions of law:
 - a. Article 280(1) of the Law, which prohibits a public official from abusing his authority to do an arbitrary act that is prejudicial to the rights of another.
 - b. Articles 333, 334, and 335 of the Law, which prohibit the causing of grievous injury.
 - c. Articles 378, 379, and 382 of the Law, which deal with assault and aggravated assault.
 - d. Article 68 of the Military Justice Law, relating to exceeding authority.

- e. Article 72 of the Military Justice Law, regarding exceeding authority to the extent that endangers life or health.
- f. Article 79 [of the Military Justice Law], relating to the use of army property otherwise than for army purposes, and Article 85 of the same law, regarding the illegal use of arms.
- g. Article 124 [of the Military Justice Law], which deals with negligence in the discharge of duty.
- h. Article 128 and 129 [of the Military Justice Law], which relate to disorderly or disgraceful behaviour.
- i. Article 2 of the Basic Law, which prohibits violation of the body or dignity of any person as such, and Article 11, which requires governmental authorities, which includes the military, to respect these rights.

Negligence

- 34. The Plaintiff shall claim that the assault and/or violation of statutory duties by Defendant 1 and other soldiers constitute negligence.
- 35. The Plaintiff shall claim that the Incident occurred as a result of the negligence of Defendant 2 and/or its neglect and/or lack of caution and/or impulsiveness, either by itself directly or through its agents and/or persons carrying out its activity and/or its soldiers and/or its commanders and/or any other person on its behalf, that resulted, *inter alia*, in acts and/or omissions, as follows:
 - a. Failing to supervise and/or to supervise properly the acts and/or omissions of the soldiers, its agents, and/or failing to exercise caution and pay attention and/or failing to instruct the persons under its responsibility.
 - b. Failing to instruct and/or order the soldiers not to abuse their authority or act arbitrarily in a manner that infringes the rights of others, among them the Plaintiff.
 - c. Failing to instruct and/or define for its agents their duty in maintaining public order, public peace, and safety.
 - d. Failing to explain to the soldiers the orders of the high command and/or of the General Staff and/or General Staff commands and/or Command and/or regional orders of the IDF, and/or providing improper supervision and instruction regarding the existence of the said orders and/or failing to issue any orders regarding safety at all and/or failing to do so sufficiently and/or

failing to verify that the persons receiving the instruction knew or acted in accordance therewith.

- e. Failing to do everything within its capability and/or everything that it should have done and/or everything that was proper and/or required for it to do to prevent the assault and the resulting damages, and/or acting recklessly and carelessly and without paying due attention and/or failing to supervise the persons for who it was responsible.
- f. Stationing soldiers and commanders at IDF checkpoints although they were unskilled and/or careless and/or unsuited for the sensitive role entailed in contact with the local population.
- g. Refraining from ordering the commanders and/or soldiers at the checkpoint to record the soldiers serving at the checkpoints and/or the acts that are done at the checkpoints.
- h. Refraining from taking due caution that would prevent repetition of assaults against Palestinians at the checkpoints, in general, and Qalandiya checkpoint, in particular.
- i. The soldiers exceeded their authority and violated the orders of the high command and/or the orders of the General Staff and/or the commands of the General Staff and/or IDF orders at the Command and or regional level and/or the instructions given them by law and/or the statutory duties intended to protect the body, health, and liberty of persons such as the Plaintiff.
- j. The soldiers acted carelessly and/or recklessly and/or contemptuously and/or with no concern for the bodily integrity and health of the Plaintiff and/or his liberty, and acted contrary to the conduct of reasonable, skilled soldiers in a similar situation.
- k. The soldiers failed to do everything within the capability of reasonable security forces in acting to prevent the harm to the Plaintiff, or to reduce such harm.
- l. The soldiers abused their authority by taking the law into their hands and using force against the Plaintiff without legal justification and/or unreasonably and/or by means of excessive force.
- m. The soldiers abused their authority and/or were negligent in carrying out their duties by delaying the Plaintiff and/or detaining him, and unjustifiably denied the Plaintiff his liberty.

- n. The soldiers failed to keep an orderly list of the soldiers serving at the checkpoints and/or keep an operations journal regarding the events that take place at the checkpoints, a failure that harms the local population and is liable to violate their rights when they file complaints against dangerous soldiers serving at checkpoints.

The Plaintiff's damages

36. Following the soldiers' assault of the Plaintiff, as described above, he went, on 24 July 2002, to Hadassah Hospital, Mount Scopus, Jerusalem.
37. At the hospital, he underwent the necessary tests. The examination revealed that the Plaintiff was suffering from sensitivity to most parts of his body, particularly the right side of his chest, and to his left hand, especially above the area of the old surgery. A haematoma remains on the right side of his chest.
38. The Plaintiff was hospitalized and discharged the same day, with a recommendation to rest and take pain killers.
- A copy of all the medical documents in Plaintiff's possession is attached hereto as Appendix F.
39. As a result of the Incident, the Plaintiff was unable to work for two weeks. The Plaintiff shall claim that he is entitled to compensation for loss of earnings for that period.
40. During and following the Incident, the Plaintiff felt extremely insulted, despised, humiliated and dejected – not to mention the physical pain he suffered, shouting out while the soldiers were beating him. The Plaintiff was helpless in the face of the soldiers, agents of Defendant 2, completely unable to defend himself against their arbitrariness and fierce violence. The conduct of the soldiers at the checkpoint humiliated the Plaintiff and caused him great distress.
41. The feeling of degradation, dejection, and derision grew when he received the results of the investigation, whereby the authorities found nothing to support his contention that he was beaten, and determined that he left the site without waiting for his card to be returned to him.
42. In light of the severity of the Incident, as described above, and the derisive and negligent attitude of Defendant 2 and its agents toward the rule of law and its provisions, the Honorable Court is requested to give a judgment against Defendant 2 for punitive and/or increased damages, in excess of the damages suffered by the Plaintiff, in an amount determined by the Honorable Court, that will express the

revulsion of society, in general, and the Honorable Court, in particular, for the acts committed by Defendant 2 and its agents.

43. Alternatively, the Plaintiff shall claim that he is entitled to compensation for the general damages caused to him, including pain and suffering and great mental anguish, as stated, in an amount to be determined by the Honorable Court.
44. The Honorable Court is requested to exercise its authority pursuant to Rule 127 of Taqqanot Seder ha-Din ha-Ezrahi [the Civil Rules of Procedure] and exempt the Plaintiff from the obligation to attach medical certification to prove medical injuries, for the reason that the Plaintiff does not claim permanent physical or mental disability as a result of the Incident.

Loss of probative evidence

45. The Plaintiff shall claim, *inter alia*, that, as a result of the failure to keep and/or preserve orderly records of the shifts at the Qalandiya checkpoint, and those of the day of the Incident in particular, it was impossible to determine the identity of all the soldiers who were serving at the checkpoint at the time of the Incident and assaulted him, and to identify those who assaulted him directly; and that this caused him loss of probative evidence.
46. The loss of probative evidence caused to the Plaintiff can be assessed: it is equal to the direct damages he suffered, to the degree that the loss of probative evidence prevented him from being compensated for damages resulting from the wrongs committed against him.
47. The Plaintiff shall claim, in addition, that the loss of probative evidence that he suffered as a result of the behaviour of Defendant 2 and its agents entitles the Plaintiff to shift the burden of proof from himself to Defendant 2.

General

48. All the contentions and arguments set forth in this Complaint are made alternatively or are complementary, depending on the matter and the context. Wherever this action relates to an act or omission, or where an argument relates to the burden of proof or omission, such contention or argument is made against Defendant 2 and also against its employees, representative, and agents, respectively, all according to the context.
49. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint in light of the amount claimed and the address of Defendant 2.

50. Therefore, the Honorable Court is requested to summon the Defendants to court and order them to compensate the Plaintiff for all the damages set forth above, and/or according to any description and other division as the Honorable Court deems proper and just under the circumstances of the case.
51. The Honorable Court is further requested to order the Defendants to pay court costs and attorney's fees in addition to differences of indexation and linkage as set out in the law from the date of filing of the Complaint until the date of actual payment.

Jerusalem, today, 22 November 2004.

[signed]

Leena Abu-Mukh Zuabi, Attorney

Counsel for the Plaintiff