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### **Jerusalem Magistrate Court**

- In the matter of:
1. \_\_\_\_\_ Bakale, ID No. \_\_\_\_\_  
Herod's (Flowers) Gate, East Jerusalem
  2. \_\_\_\_\_ Bakale, ID No. \_\_\_\_\_  
Herod's (Flowers) Gate, East Jerusalem
  3. \_\_\_\_\_ Bakale, ID No. \_\_\_\_\_  
Bab a-Zahara Street, East Jerusalem 95907
  4. \_\_\_\_\_ Bakale, ID No. \_\_\_\_\_  
Bab a-Zahara Street, East Jerusalem 95907
  5. \_\_\_\_\_ Bakale (minor)
  6. \_\_\_\_\_ Bakale (minor)

Plaintiffs 5 and 6 by their mother and natural guardian  
Plaintiff No. 2

All represented by counsel Adv. Michal Pinchuk (Lic. No. 21600) and/or Eliahu Abram (Lic. No. 11851) and/or Hisham Shabaita (Lic. No. 17362) and/or Yossi Wolfson (Lic. No. 26174) of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – R.A.

4 Abu Obeida St., Jerusalem

Tel: 02-6283555 Fax: 02-6276317

### **The Plaintiffs**

**v.**

1. State of Israel – Ministry of Defense  
Represented by Tel Aviv District Attorney's Office

(Civil)

1 Henrietta Szold St., 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**

**The Parties**

1. a. Plaintiff 1, borne in 1964, is a travel agent.  
b. Plaintiff 2, borne in 1963, is an administrative secretary in the Augusta Victoria Hospital.  
c. plaintiff 3 borne in 1929 and plaintiff 4 borne in 1936.  
Plaintiffs 3 and 4, retirees, are the parents of plaintiffs 1 and 2.  
d. Plaintiff 5, borne in 1991 ad plaintiff 6, borne in 1993 are minors, the children of plaintiff No. 2.
2. The defendant, the State of Israel, was responsible at all times relevant to the claim, for the actions of the security forces in the Judea and Samaria, including their actions on February 13, 1994, as described herein below.
3. On February 13, 1994, around 18:00, plaintiff 1 was driving an Opel Ascona [*sic*] from Jerusalem to Ramallah. Together with her in the car were her parents, her sister and her sister's children.
4. Near Alon base the plaintiffs were stopped at an IDF checkpoint. The security forces at the checkpoint examined the passengers and when they saw that these were family members, elderly people and children, they let them drive away.
5. The plaintiffs drove on, when suddenly, about half a kilometer from the checkpoint, they heard a shot and immediately thereafter a barrage of gun shots was fired at their car. Plaintiff 1 immediately stopped the car on the side road, but a number of additional shots were fired at them.
6. The plaintiffs noticed a large group of soldiers approaching them, escorted by a military Jeep.  
When the soldiers reached the car's whereabouts, they ordered the plaintiffs to

leave the car and demanded that they take out with them the weapons and the "Shabab" hidden in the car.

The soldiers ordered the plaintiffs to open the baggage compartment and searched the car.

7. When they realized that there was a mistake in the identification of the car, the security forces ordered the plaintiffs to drive on and left the place.
8. As a result of the shooting the back tire and the car's chassis were damaged. Miraculously no family member was injured. The plaintiffs replaced the back wheel tire and drove on to Ramallah. It should be noted that about one kilometer away from the place of the incident, the plaintiffs passed by another military checkpoint but they were not requested to stop for any examination.
9. The plaintiffs were appalled at the horrifying incident which they have experienced but they were mainly concerned with plaintiff 2 who was at the time of the incident eight weeks pregnant. Following the incident plaintiff 2 was not feeling well and even started to bleed vaginally.
10. The family members decided to turn around and go back to the Augusta Victoria Hospital located in East Jerusalem. When they arrived to the hospital they received tranquilizers and were discharged and sent back home, whereas plaintiff 2 was examined by her personal physician who found that as a result of the incident she has lost her baby. Plaintiff 2 was treated in the hospital and on the following day was discharged from the hospital.

Attached are documents from the Augusta Victoria Hospital marked A.

11. Plaintiff 2 will claim that her miscarriage was caused by the shooting of the security forces at the car in which she was driving and as a result of the dreadful fear that she experienced. At this stage the plaintiff has some difficulties in locating medical records attesting to the medical treatment that she received prior to the incident and medical records which document the miscarriage and the medical treatments she needed afterwards.

Therefore, the honorable court is hereby requested to exercise its authority under section 127 of the Civil Procedure Regulations 5748-1984, and allow plaintiff 2 to attach a medical opinion on her behalf at a later stage.

12. a. Immediately on the following day plaintiff 1 filed a complaint regarding the incident with the police. On that day plaintiff's brother took pictures of the bullets' penetration marks into the car's chassis.

Attached are copies of the pictures which were transferred during the investigation to the Military Police Investigations Unit (MIU), marked B.

- b. On March 1, 1994 plaintiffs' legal counsel wrote to the legal advisor for the central command and requested him to order that an investigation of the incident be conducted.
13. Plaintiff's complaint was transferred to the Ramallah police station and only on July 17, 1994, it was transferred to the MIU. Thus, despite plaintiff 1's immediate complaint of the incident, the MIU investigation of the matter commenced almost five months following the incident.
14. On April 29, 1996 the legal advisor for the central command notified plaintiffs' legal counsel that he ordered to close the file since the complaint has not been substantiated as far as IDF soldiers were concerned. Nonetheless, the legal advisor notified that he has transferred the investigation material to the Public Complaints Officer of the Israel Border Police since the area in which the alleged incident has occurred was under the responsibility of Israel Border Police.

Attached is the letter of Captain Gitai Rolel dated April 29, 1996, marked C.

15. In response to a letter of plaintiffs' legal counsel, the legal advisor for Israel Border Police advised that he has decided to archive the material due to lack of evidence concerning the involvement of Israel Border Policemen in the incident.

Attached is the letter of the legal advisor for the Israel Border Police dated June 3, 1996, marked D.

16. An additional letter sent by plaintiffs' legal counsel to the IDF and the Israel Border Police in an attempt to find out the identity of the security forces that were involved in the incident, bore no fruit.

### **The Burden of Proof**

17. a. The plaintiffs will claim that the defendant was negligent in that it failed to keep records indicating who were the security forces which were stationed during the relevant time in the area of the incident, although it should have done so.

In addition the plaintiffs will claim that the defendant was negligent in that it failed to commence to investigate the incident immediately upon the filing of the complaint but commenced the investigation almost five months later, thus frustrating the chances to locate the forces which were involved in the incident.

- b. Defendant's above omissions caused the plaintiffs evidentiary damage which is manifested in their having no knowledge of the identity of the security forces which were involved in the incident and plaintiffs' inability to bring full evidence concerning the circumstances of their actions.

The evidentiary damage caused to the plaintiffs by the defendant shifts the burden of proof and entrusts it on the defendant to show that the incident did not occur as a result of its negligence and/or the negligence of its agents.

18. In addition the plaintiffs will claim that their damages were caused as a result of the negligence of defendant's soldiers, which was manifested in the following acts and/or omissions:

- a. They shot at their car without confirming beforehand who were the passengers in the car.
- b. They shot at their car without making a prior attempt to stop them by an unexpected barrier and/or any other alternative measure.
- c. They shot at their car without having previously ordered them to stop on the side way.
- d. They acted contrary to the military instructions and directives which were in effect at that time, according to which stopping a moving car requires the taking of a series of actions before fire is opened.
- e. They shot at the car in a negligent manner which puts human life at risk.
- f. When they realized that they have mistakenly identified the wrong car they refrained from assisting the plaintiffs and left the place of the incident, leaving the plaintiffs over there.
- g. They have refrained from warning the plaintiffs that they should not drive through the area of the incident, although they could have done it

when they stopped their car for a routine examination at the checkpoint shortly before the incident.

19. The plaintiffs will further claim that defendant's soldiers have breached the statutory duties specified below, which are intended to protect the category of people that the plaintiffs are members of, and that the breach thereof has caused plaintiffs' damages:

- a. Section 1 of the second addendum to the Police Ordinance [New Version] 5731-1971 (hereinafter: the "**addendum**") concerning the failure to carry out any of the provisions of the Israel Police Ordinance.
- b. Section 2 of the addendum concerning negligence while performing a duty.
- c. Section 13 of the addendum concerning the activation of a firearm not in the required level of care.
- d. Section 72 of the Military Justice Act concerning a situation in which authority is exceeded to an extent which puts a person's life or health at risk.
- e. Section 85 of the Military Justice Act concerning unlawful use of weapons.
- f. Section 124 of the Military Justice Act concerning negligence.
- g. Section 332 of the Penal Law (1977) concerning the malicious endangerment of people on a traffic route.

20. The defendant is vicariously liable for the negligence of the security forces and their breach of statutory duties, acting as its agents and/or on its behalf.

21. The defendant is also responsible for plaintiffs' damages due to its own negligence and the negligence of the investigation bodies subordinate to it, as manifested in the following omissions:

- a. It failed to brief the security forces how to stop a moving car and/or failed to properly brief and/or failed to verify that its brief was followed.
- b. It failed to keep records concerning the identity of the security forces which were stationed in the place of the incident at the relevant times.

- c. It did not commence investigation immediately upon the filing of the complaint by plaintiff 1 but only about five months later. By so doing it has frustrated the chances to locate the involved security force.
- d. It failed to take the required investigation actions to locate the involved security forces – actions which a reasonable investigation authority should have taken.
- e. It failed to properly supervise the conduct of the security forces in general and at the time of the incident, in particular.

## 22. **Plaintiffs' Damages**

- a. Following the incident damage was caused to the wheel and to the car's chassis. The car's repair costs are estimated by the plaintiffs at about 1,000 ILS.
  - b. As aforesaid, following the incident the plaintiffs went to the Augusta Victoria Hospital where they received tranquilizers and were sent home to rest. Plaintiff 2, who was at the time of the incident eight weeks pregnant, was examined by her personal physician who found that she lost her baby as a result of the incident. Plaintiff 2 was hospitalized and discharged on the following day.
  - c. The defendant should compensate plaintiff 2 for the great distress suffered by her due to the loss of her baby.
  - d. The plaintiffs were inches away from death. The sense of fear which they have experienced when a barrage of bullets was fired at their car will not loosen its grip on them until their last day. For a long period of time the plaintiffs have suffered side effects such as stress and sleeping disorders. The plaintiffs suffered great distress and agony as a result of this severe incident coupled by a feeling of anger and humiliation when they found out that despite their immediate complaint, the defendant has commenced investigation proceedings only about five months after the incident.
23. The plaintiffs will claim that the defendants should compensate them, jointly and severally, as follows:
- a. For the repair of plaintiff 1's car – 1,000 ILS.

- b. Non monetary damage to plaintiff 2.
- c. Non monetary damage to plaintiffs 1,3,4,5,6.

24. Local and subject matter jurisdiction is vested with this honorable court to preside over this claim.

25. Therefore, the honorable court is hereby requested to summon the defendant and order it to pay the plaintiffs compensation as specified above, in addition to costs of trial, and interest at the maximum rate and linkage differentials for this compensation from the date of its grant as the case may be and until the date of actual payment in full.

Jerusalem, today, April 10, 2000.

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Michal Pinchuk, Advocate

Counsel to Plaintiffs

(File No. 5555)