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At the Magistrates Court in Jerusalem

CC 7808/96

In the matter of:

1. _____ **Butma**
2. _____ **Abu Harithiyya**
3. _____ **Al-Sha'mi**
4. _____ **Mu'ammam**

represented by attorneys Hala Huri and/or Badrah Huri
of HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem
Tel. 02-283555; Fax 02-276317

The Plaintiffs

v.

1. _____ **Kellermann**
2. _____ **Nadan**
3. _____ **Kremer**
4. _____ **Reqem**
5. **The State of Israel**

represented by the Jerusalem District Attorney's Office
4 Yedidya Street, Jerusalem

The Defendants

Nature of the claim: **Monetary**

Amount of the claim: **NIS 57,120**

Complaint

1. Plaintiff 1 was born in 1930 and is a resident of Kafr Battir, District of Bethlehem.
2. Plaintiff 2 was born in 1960 and is a resident of Kafr Battir, District of Bethlehem.
3. Plaintiff 3 was born in 1961 and is a resident of Kafr Battir, District of Bethlehem.
4. Plaintiff 4 was born in 1957 and is a resident of Kafr Battir, District of Bethlehem.
5. Defendant 1 was, on 22-23 May 1989 (hereinafter: the timeframe relevant to the complaint) in charge of three military forces which carried out incursions in Kafr Battir within the framework of operation Bi'ur Hamez.

6. Defendant 2 was, in the timeframe relevant to the complaint, in command of one of the three military forces which raided and searched houses in Kafr Battir.
7. Defendant 3 was, in the timeframe relevant to the complaint, in command of one of the three military forces which raided and searched houses in Kafr Battir.
8. Defendant 4 was, in the timeframe relevant to the complaint, in command of one of the three military forces which raided and searched houses in Kafr Battir.
9. Defendant 5 was, in the timeframe relevant to the complaint, in charge of the actions of IDF soldiers in the area of Kafr Battir in the District of Bethlehem.

The Incidents

10. On the night of 22 May 1989 and the morning of 23 May 1989, three military forces under the command of Defendant 1 entered Kafr Battir, and raided and searched residents' houses, including those of the Plaintiffs.
11. At around 02:00 on 23 May 1989, a military force numbering approximately 10 soldiers arrived at the house of Plaintiff 1. The soldiers woke up her entire family and stood her husband and son facing one of the walls of the house. Some of the soldiers surrounded the house while others entered and searched inside the house, breaking glass and objects for approximately one hour, while prohibiting Plaintiff 1 from entering her home.
12. Due to Plaintiff 1's health condition, she was only able to take care of the disorder left by the soldiers at her home in the morning hours, at which time she discovered that her jewelry was gone from the plastic box that she found discarded on the floor, among the rest of the household articles.

This incident shall be referred to as Incident No. 1.

13. Plaintiff 1's children filed a complaint on the aforementioned incident with the Civil Administration in Bethlehem.

On 16 June 1989 a detailed statement was taken from Plaintiff 1 at the Bethlehem Police with regard to Incident No. 1.

14. At around 02:30, a military force arrived at the house of Plaintiff 2 and the soldiers asked to come in in order to perform a search.

Approximately ten soldiers entered Plaintiff 2's house, and split up into groups. They started searching all the rooms of the house, while breaking cabinet locks and emptying out their content.

15. Before the soldiers entered Plaintiff 2's room, she went inside and took the money that was placed in her wardrobe. However, Plaintiff 2 forgot to take the nylon bag holding her gold jewelry. Hearing the sound of a wardrobe shatter in the other room – her mother-in-law's room – she went to that room and stayed there until the search was over. While she was with the soldiers who searched her mother-in-law's room, other soldiers continued searching her own room.
16. When the soldiers left Plaintiff 2's house, she started putting all the objects back in their place, since the soldiers left the house in great disarray. Plaintiff 2 then found that all of the jewelry was stolen from the nylon bag holding her gold jewelry, except for her wedding ring.

This incident shall be referred to as Incident No. 2.

17. On the morning of 23 May 1989, Plaintiff 2 turned to the representatives of the Civil Administration, located near the railroad tracks in Bethlehem, and filed a complaint for Incident No. 2 with Captain Mufid, a Civil Administration worker. Captain Mufid wrote down the complaint and promised Plaintiff 2 to look into it.

At the Civil Administration, Plaintiff 2 met Plaintiffs 3 and 4's relatives, who also came to file a complaint similar to her own.

It should be noted that Plaintiff 2 told the soldiers who worked at the Civil Administration that she could identify with certainty the officer and soldiers who came to her home.

18. On 16 June 1989 a statement was taken from Plaintiff 2 at the Bethlehem Police with regard to Incident No. 2. There, Plaintiff 2 repeated and reiterated to the police investigator that she could identify the officer and the soldiers who were in her home.
19. At around 04:00 on the morning of 23 May 1989, a military force numbering approximately six soldiers arrived at the house of Plaintiff 3 and performed a search throughout the house. The soldiers went up to Plaintiff 3's room and searched both his body and his room. Thereafter, they removed Plaintiff 3 from his room and several soldiers re-entered the room to search it.
20. The soldiers left Plaintiff 3's house, taking him with them, after enabling him to close his room. Plaintiff 3 was detained until the morning hours, and thereafter returned to his home. He went up to his room and found that the envelope in which he kept 1,000 Jordanian Dinars was discarded on the floor, and the money in it gone.

This incident shall be referred to as Incident No. 3.

21. Immediately upon learning of the disappearance of the money, Plaintiff 3 and his sister went to the school near the railroad tracks, approached the Civil Administration officer who was there, and reported Incident No. 3 to him. The officer said that it was impossible that soldiers would steal money. Plaintiff 3 said that he wanted to see the soldiers and that he could identify the paratroopers officer who was in command of them. The Civil Administration officer replied that there were no paratroopers in Battir.

On 16 June 1989 Plaintiff 3's sister gave a detailed statement at the Bethlehem Police.

On 31 July 1989 a detailed statement was taken from Plaintiff 3 by an investigator of the Investigating Military Police with regard to Incident No. 3.

A detailed statement was also taken by the Investigating Military Police investigator from Plaintiff 3's sister with regard to Incident No. 3.

22. In the early hours on the morning of 23 May 1989, a military force arrived at the house of Plaintiff 4. The soldiers took Plaintiff 4's husband out of the house and arrested him.
23. Plaintiff 4 followed her husband into the courtyard, and then the soldiers prevented her from re-entering the house, while some of them performed a search inside the house.

The soldiers remained inside the house for approximately fifteen minutes and then left. Only on the following day, when Plaintiff 4 heard about the jewelry theft committed at her neighbor's, Plaintiff 2, did Plaintiff 4 look for her jewelry and discover that it was stolen.

Plaintiff 4 filed a complaint with the Civil Administration at Bethlehem.

This incident shall be referred to as Incident No. 4.

24. On 20 June 1989, my predecessor filed a complaint on the aforementioned incidents with the Advocate General of Central Command, and asked the Advocate General to open an investigation file. It was further stated in the complaint to the Advocate General that some of the Plaintiffs could identify the soldiers who entered their homes.

The letter from HaMoked's attorney was received by the Advocate General of Central Command on 27 June 1989, but was forwarded by the Advocate General to the Investigating Military Police only on 9 July 1989. The Advocate General's letter,

with which the complaint was enclosed, was received by the Investigating Military Police on 13 July 1989.

The statements given by Plaintiffs 1 and 2 and by Plaintiff 3's sister at the Bethlehem Police were not received by the Investigating Military Police until 21 July 1989, after being sent to the Investigating Military Police by the Advocate General of Central Command on 18 July 1989.

25. Following the said letter from HaMoked, a file was opened at the Jerusalem Investigating Military Police, and some of the Plaintiffs were questioned.

On 5 December 1989 a notice was received at the offices of HaMoked: Center for the Defence of the Individual from the Advocate General of Central Command, with regard to the decision to close the investigation file and to archive the complaint on the aforementioned incidents. The reason given was that after Defendants 1-4 were questioned, it transpired that they had witnessed no irregular incident of any kind, received no report of any such incident, nor any complaint on the spot of any irregular occurrence.

26. It should be emphasized that both in the Plaintiffs' initial complaint to the Civil Administration in Bethlehem shortly after the incidents which are the subject matter of this Complaint, and in their questioning at the Bethlehem Police, some of the Plaintiffs explicitly mentioned their ability to identify the soldiers involved in the said incidents.
27. Furthermore, in the statement given on 5 September 1989 to the police by Defendant 1, who commanded the three military forces which operated on the night of 22-23 May 1989, he mentioned that he could state in which house each military force had operated, if given an aerial photograph.
28. The investigating authorities, namely the Investigating Military Police, however, took no effective measures in order to find out in which house each force operated at the timeframe relevant to the complaint, and consequently, no sincere and genuine effort was undertaken to locate the soldiers who were involved in the said incidents and/or to conduct a lineup.

The Liability of Defendants 1-4

29. Plaintiffs 1-4 (hereinafter: the Plaintiffs) shall claim that Defendants 1-4 committed the civil wrong of conversion, within the meaning of this term in Article 52 of Pequddat ha-Neziqin (Nosah Hadash) [the Torts Ordinance (New Version)], 5728-1968 (hereinafter: the Ordinance), by appropriating the jewelry and the money which

the Plaintiffs are entitled to hold, after taking them and/or retaining them and otherwise denying them of the Plaintiffs, and, *inter alia*, by enabling the soldier and/or soldiers under their command to convert the jewelry and the money belonging to the Plaintiffs and/or failing to arrange for their return, when doing so was both their lawful duty and feasible.

30. The Plaintiffs shall further claim that the foregoing incidents and the damage thereof were caused due to the negligence and/or indifference and/or per se negligence of Defendants 1-4, who entered the Plaintiffs' houses, which is expressed in the following acts and/or omissions, cumulatively and/or complementarily and/or alternatively, and, *inter alia*, in that they:
 - a. Overstepped their authority and acted in violation of general staff orders and/or IDF orders and/or guidelines.
 - b. Behaved recklessly and/or contemptuously and/or indifferently towards the Plaintiffs' property.
 - c. Failed to do everything that reasonable soldiers and/or forces are able to do in order to prevent the occurrence of the damage.
 - d. Failed to enter with the Plaintiffs into their homes, with the Plaintiffs performing the search, opening doors and searching in closets.
 - e. Failed to adequately instruct and/or provide detailed instruction to the soldiers under their command on the manner of entry into and search of the Plaintiffs' homes.
 - f. Failed to adequately supervise the soldiers who searched the Plaintiffs' homes.
 - g. Failed to instruct and/or order the soldiers who entered the Plaintiffs' homes not to touch and/or confiscate property.
 - h. Failed to undertake genuine efforts to look into the Plaintiffs' complaint on the conversion of their property, in proximity to the incidents which are the subject matter of the complaint.
 - i. Failed to question and/or debrief the soldiers who were under their command in proximity to the incidents which are the subject matter of the complaint.
 - j. Did nothing to promote and assist the investigation conducted by the Investigating Military Police.

Defendant 5's Liability

31. The Plaintiffs shall claim that Defendant 5 committed the civil wrong of conversion, within the meaning of this term in Article 52 of the Ordinance, by otherwise denying the Plaintiffs the jewelry and the money which the Plaintiffs are entitled to hold, and, *inter alia*, by:
 - a. Enabling the soldier and/or soldiers to convert the jewelry and the money belonging to the Plaintiffs while the soldiers were acting on its behalf and subject to its command and supervision, and/or
 - b. Failing to arrange for the return of the money and the jewelry, when doing so was both its lawful duty and feasible.
32. Defendant 5 is liable for the civil wrongs committed by Defendants 1-4 as detailed above, in their capacity as its agents and/or as acting on its behalf.
33. Defendant 5 is liable for the damage caused owing to the negligence of the Civil Administration officers (who are its agents and/or employees who act on its behalf) who took down the complaints of Plaintiff 2 and of Plaintiff 3 and his sister, as early as the morning of 23 May 1989, which negligence is expressed, *inter alia*, in the following acts and/or omissions, namely that they:
 - a. Failed to act promptly to question and search the soldiers of the military force which conducted the searches in Kafr Battir.
 - b. Failed to report the complaints to the persons in charge of the force.
 - c. Failed to forward the complaint to the investigating authorities, and mainly to the Investigating Military Police, and failed to investigate the complaint.
 - d. Discouraged the Plaintiffs with false arguments, whereby there were no paratroopers in the village.
34. Had the Civil Administration officers acted as reasonable officers would have acted in their place, it is likely that efficient and immediate investigative action could have been taken, and that the stolen property would have been found on the very same day and promptly returned to the Plaintiffs.
35. Defendant 5 is liable for the damages caused due to the negligence and/or negligence per se of the investigative authorities (which are its agents and/or employees who act on its behalf) which conducted an abortive investigation into Incidents 1-4 which are the subject matter of the Complaint, which are expressed, *inter alia*, in the following acts and/or omissions, namely that:

- a. The Bethlehem Police failed to forward the complaints of Plaintiffs 1 and 2 and the complaint of Plaintiff 3's sister to the Investigating Military Police immediately upon receipt thereof. The complaints were only received by the Investigating Military Police more than a month after the receipt thereof.

Thus, the policemen of the Bethlehem police station breached the duty imposed on them in Article F(1)(a)(1) of Pequddat ha-Mishtara [Police Order] No. 14.01.01, which reads as follows:

Another Authority is Authorized to Investigate. In such a case, a copy of the complaint shall be sent to the other authority.

- b. Plaintiff 4 was not questioned, even though she was mentioned in the 20 June 1989 letter from the attorney of HaMoked: the Center for the Defence of the Individual.
 - c. The soldiers who searched the Plaintiffs' homes were not located, even though Defendant 1 stated that he could tell in which house each force had operated, if presented with an aerial photo.
 - d. No questioning was conducted of all, or even a significant number, of the soldiers of the force involved in Incidents 1-4 which are the subject matter of the Complaint.
 - e. Neither a lineup nor, even, a photo lineup, was conducted to locate the theft suspects.
36. Had the Bethlehem Police and the Investigating Military Police investigators acted in accordance with the guidelines and as a reasonable investigating authority would have acted, it is likely that they would have located those responsible for the theft, found the stolen property and enabled the return of the stolen property to the Plaintiffs 1-4.
37. Defendant 5 is responsible for the safety and for the protection of the property of the residents of the region, including the Plaintiffs.
- a. Maintaining safety and protecting property are among the chief missions of the state army, to which Defendants 1-4 belong.
 - b. Taking care of the welfare of the population is among the main missions of the Civil Administration, to which the officers approached by the Plaintiffs on the morning of 23 May 1989 belong.

- c. The investigative authorities, the Israel Police and the Investigating Military Police too are entrusted with the protection of property, including the protection of the Plaintiffs' property.
- d. Throughout the entire course of the incidents, all of the foregoing authorities exhibited severe contempt, indifference and apathy for and to the protection of the Plaintiffs' property and their complaint on the theft thereof.
- e. It is both lawful and just that they should bear liability of this negligence.

The Plaintiffs' Damage

38. As a result of the incident which is the subject matter of the complaint, the Plaintiffs suffered the following damages:

- a. The following jewelry was stolen from Plaintiff 1's house:

4 gold rings worth	NIS 800
Her son's wedding ring worth	NIS 250
A gold brooch to which 4 coins were attached, worth	NIS 500
A gold ornament worth	NIS 400
An Aleppian gold chain worth	NIS 2,000
A gold bracelet worth	<u>NIS 400</u>
Total	NIS 4,350

- a.1. Plaintiff 1 shall claim that she is entitled to have the aforementioned jewelry returned to her possession or, alternatively, to monetary compensation at the value thereof as on the date of filing of the Complaint, in the total sum of NIS 4,350.
- a.2. Furthermore, Plaintiff 1 is entitled to compensation for the considerable sorrow and distress which she suffered as a result of the loss of her jewelry, which carried substantial emotional value to her, and is fixing her complaint due to this damage at the sum of NIS 10,000.

- b. The following jewelry was stolen from Plaintiff 2's house:

2 gold bracelets worth	NIS 800
A gold pound worth	NIS 300
An Aleppian gold chain worth	NIS 2,000

Two gold rings worth	NIS 500
Two broken gold rings worth	<u>NIS 100</u>
Total	NIS 3,700

- b.1. Plaintiff 2 shall claim that she is entitled to have the aforementioned jewelry returned to her possession or, alternatively, to monetary compensation at the value thereof as on the date of filing of the Complaint, in the total sum of NIS 3,700.
- b.2. Furthermore, Plaintiff 2 is entitled to compensation for the considerable sorrow and distress which she suffered as a result of the loss of her jewelry, which carried substantial emotional value to her, and is fixing her complaint due to this damage at the sum of NIS 10,000.
- c. The sum of 1,000 Jordanian Dinars, then worth NIS 3,100, was stolen from Plaintiff 3's house. Plaintiff 3 shall claim that he is entitled to compensation in the sum of NIS 3,100. This sum, revaluated from the date of Incident No. 3 until the date of filing of the Complaint, amounts to the sum of NIS 11,070.
- c.1. In addition, Plaintiff 3 is entitled to compensation for the considerable sorrow and distress which he suffered as a result of the theft of his money, which Plaintiff 3 had labored hard to earn and was saving for his wedding, and is fixing his complaint due to this damage at the sum of NIS 5,000.
- d. The following jewelry was stolen from Plaintiff 4's house:
- | | |
|--|------------------|
| An Aleppian gold chain worth | NIS 2,000 |
| A gold ornament worth | NIS 300 |
| A gold ornament for her daughter worth | NIS 200 |
| Gold earrings worth | NIS 250 |
| A gold ring worth | <u>NIS 250</u> |
| Total | NIS 3,000 |
- d.1. Plaintiff 4 shall claim that she is entitled to have the aforementioned jewelry returned to her possession or, alternatively, to monetary compensation at the value thereof as on the date of filing of the Complaint, in the total sum of NIS 3,000.

d.2. Furthermore, Plaintiff 4 is entitled to compensation for the considerable sorrow and distress which she suffered as a result of the loss of her jewelry, which carried substantial emotional value to her, and is fixing her complaint due to this damage at the sum of NIS 10,000.

39. 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 returning Plaintiffs 1, 2 and 4's property to them, and with compensating them for the distress caused to them as aforesaid. Alternatively, if restitution is impossible, to charge them with payment of damages as aforesaid.

The Honorable Court is further moved to charge the Defendants with payment to Plaintiff 3 of his damages as specified above, and all 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, in addition to trial expenses and VAT as set out in the law.

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Hala Huri, Att.

Counsel for the Plaintiffs

Jerusalem, 20 May 1996

[Opening date: 21 May 1996]