[Emblem of the State of Israel]

The Courts

The Magistrates Court in Jerusalem **CC 7808/96**

Before the Honorable Justice Bilha Kahana

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In the matter of:
1. _____ **Butma**
2. _____ **Abu Harithiyya**
3. _____ **Al-Sha'mi**
4. _____ **Mu'ammar**

all represented by attorney Huri

The Plaintiffs

v.

The State of Israel

represented by attorney Amoray

The Defendant

Judgment

1. This action concerns the four Plaintiffs' claims that on the night of 22 May 1989, while IDF forces were searching houses in Kafr Battir in the District of Bethlehem, soldiers entered their homes and during the search (which is not claimed to have been illegal) stole various valuables from them.

   The four Plaintiffs filed separate complaints, and are represented in a joined action by an attorney on behalf of HaMoked: Center for the Defence of the Individual.

   It should already be stated that there is no dispute that IDF forces did indeed perform searches that night in Kafr Battir as part of their tasks, nor does there appear to be any genuine dispute that searches were performed also in the houses of the four Plaintiffs.

   The question is whether the Plaintiffs have proven that any of the soldiers had converted their property while performing the lawful act of searching their homes, and if so, should the State be held liable for such act.

2. At the outset, I should note that it is highly regrettable that the Investigating Military Police did not deem it fit to properly investigate the Plaintiffs' complaints, which were made in real time, in proximity to the date of the event. The phenomenon of

converting money from innocent and inculpable citizens by any of the security forces is very grievous, and the moral norms of the society in which we live clearly cannot allow a handful of people to blemish the integrity our country's best, who serve in the IDF; it is a pity that the Investigating Military Police paid no attention to the aforesaid, since if it had, it would probably have conducted a genuine investigation, thus allowing the truth to come out. However, it did not do so (and I shall expand on this matter below).

3. The Facts

This complaint encompasses the claims of four persons, among which there is no connection other than the fact that the events which are the subject matter thereof took place on the same night.

The fact that all of the complaints have found a single dwelling does not necessarily indicate that the outcome thereof shall be one and the same.

Each complaint stands on its own and the one does not necessarily need to impact the other; clearly, the testimony of one Plaintiff that something was stolen from him cannot support the testimony of another Plaintiff who too claims that items were stolen from him. The testimony of each Plaintiff constitutes a single litigant's testimony, and the court, pursuant to the provisions of Article 54(2) of Pequddat ha-Re'ayot (Nosah Hadash) [the Evidence Ordinance (New Version)], must explain why it deemed such single testimony of each one of the Plaintiffs sufficient.

The Defendant's counsel claims, in his summations, that there is no direct testimony that a soldier was seen stealing (Article 13 of the summations), and that the complaint should, on these grounds, be summarily dismissed. I do not understand the nature of this argument. Can only direct evidence that a person converted an object belonging to another constitute a basis for a complaint of the civil wrong of conversion (and even for the criminal offence of theft?). Can testimony on the fact that objects were at a certain place, that a stranger entered and that the objects disappeared immediately after his departure not be evidence enough?

4. The Plaintiffs' Testimonies

From here forth, the testimonies of each Plaintiff shall be examined separately.

4.1 Plaintiff 1's Testimony

According to her version, the soldiers entered her home and brought her son out. She and her husband were sleeping outside (since it was the day after her son's wedding, and it was customary for family members to vacate the house for the newlyweds). The soldiers conducted the search, and on the following morning she saw a state of disorder and that the jewelry that was hidden in the mattress was stolen.

I shall already state that I cannot say that I find her testimony, which was riddled with substantial inconsistencies, credible. Thus, for example, in her testimony in court she described how her son was arrested, in contrast to her statement at the police, where she testified that she did not feel well and that she was not even aware, until the morning, that her son had been arrested. The Plaintiff resolved this discrepancy in that she was so angry that she didn't know what she was saying at the police. However, this explanation is difficult to accept, since the statement at the police was given several weeks later (p. 8 of the transcript, line 18).

Nor did the Plaintiff have any explanation why she waited three weeks before filing a complaint with the police, which complaint was filed on 16 June 1998, and as may be recalled, the incident took place on 23 May 1989. The Plaintiff further testified that she had previously approached neither the Red Cross on the matter, nor the Investigating Military Police, not did her children (p. 11 of the transcript) (it should be noted that she said at the police that she did turn to the Red Cross three days later). As for the items stolen, in the complaint she claimed that her son's wedding band had been stolen from her, in her testimonial affidavit she omitted this detail, and in response to the question regarding this omission, she said that it was out of anger that she forgot (p. 4, line 11 of the transcript). It is hard to accept that so many years later, approximately 10 years after the incident, she was still angry.

I fear that the Plaintiff believes that her son _____, who was arrested that night, the night following his nuptials, had suffered an unpardonable injustice – and it is not inconceivable that it was a desire for revenge that drove her to file this complaint.

The Plaintiffs' counsel is aware of the "*prima facie*" discrepancies in her testimony, but explained them with her old age – the Plaintiff is 68 years old.

I do not believe that this is an old age, and I do not believe that age itself can affect a person's reasoning. However, either way I have before me a single testimony, of which I can certainly not say that I find trustworthy. Therefore, her complaint is dismissed.

4.2 **Plaintiff 2's Testimony**

On the night in question, this Plaintiff's husband slept at his sister's in Jerusalem. The soldiers entered and searched the two rooms of the house. She remained in the house with the soldiers while they performed the search, but she could not be in the two rooms at the same time. During the course of the search she went to the closet to take out the money that was hidden and that she kept in her possession. She meant to remove the hidden jewelry too, but at the sound of a closet shatter in the other room, she went over there and there she remained. When the soldiers left, she started tidying up, and saw on the floor a picture of hers that was kept in the bag with the jewelry. She immediately checked and found that her jewelry had been taken. First thing in the morning, she went to where the soldiers and the detained residents were, and complained to Captain Mufid, the Red Cross representative in the village. On the way, she met Plaintiff 4 and P.W. 4 and told them what had happened.

My impression of this Plaintiff is entirely different than my impression of Plaintiff 1. Her testimony was credible, and it was my impression that she did indeed "experience" what she had testified. In addition, this Plaintiff had no interest in revenge or in libel. Her husband was not home that night, and was only arrested later, after she had already filed a complaint. The "discrepancies" pointed out by the Defendant's counsel on p. 7 of his summations, are not such that can undermine her testimony, but rather immaterial matters which a person can conceivably not remember eight years after the occurrence thereof.

The Defendant's counsel indicated that in court, she testified that an old sword had disappeared, but that this matter was mentioned neither in the complaint nor in the answers to the questionnaire. The Plaintiff explained that she had said so, but that her statement was not taken down. It is likely, therefore, as may be understood, that this was a valueless item. Nor did the

witness try to overstate or exaggerate, and even when asked "directed" questions, she replied in the negative, thus with respect to the question of whether the soldiers were violent towards her, thus with respect to the question of whether the soldiers caused damage in the house. It transpired from what she said that the soldiers acted fairly towards her, and that she had no grievance. Had her entire complaint been false (as the Defendant claims), it is conceivable that she would have answered differently.

Plaintiff 2's testimony, as aforesaid, was credible to me, and I can rely, in light of the great faith that I place in her, on her single testimony, and determine that the jewelry of which she declared in her testimonial affidavit, namely, two bracelets, a necklace, gold rings and a "gold pound" assessed by her at NIS 3,700, were indeed stolen from her that night.

4.3 **Plaintiff 3's Testimony**

Plaintiff 3 lives alone in a room outside his parents' apartment. He stated that after the soldiers entered the house they stood him facing the wall and beat him up, while performing the search at the same time. Later, they removed him from the house and more soldiers entered the house and searched it while he was outside the house. He was later taken and detained for questioning in the center of the village, and upon his return, saw that the envelope that was in the drawer was taken, and the 1,000 Dinars he had saved for his fiancée – gone.

The testimony of this witness too is credible in my eyes, and with regard to him too I shall state that the discrepancies and inconsistencies pointed out by the Defendant's counsel are not such as can undermine his testimony and indicate that the entire story is a fabrication. This witness sent his sister, Plaintiffs' witness no. 4, to file a complaint with the police; all of the arguments against this act are unacceptable to me. The witness testified that he had started a new job with an Israeli contractor, did not want to lose this job and go to the police, and therefore sent his sister (p. 22 of the transcript), after he himself had complained to Captain Mufid on the morning of the incident. His statements are sensible and I was convinced by them.

It should also be noted that this witness was not arrested by the security forces, neither on the said evening nor at any other time, nor has he any "past", either security-related or criminal.

His testimony is supported also by that of his sister, P.W. 4, who, although not an eyewitness, testified that a search had been conducted, that her brother was taken away for questioning and that, upon his return, had said that his 1,000 Dinars were stolen and asked her to file a complaint. She also testified that she knew that her brother was saving money for his fiancée.

To my eyes, her testimony too is trustworthy. It should be emphasized that when the witness was asked if anything was stolen from her house she said no, nor did she complain of any violence or anything else on the soldiers' part, and from her testimony too it appears that the soldiers treated her fairly. Reiterating what I stated above, if the entire story was a fabrication and a false charge, she would undoubtedly have tried to present the soldiers in an unfavorable light.

In conclusion, I believe that the testimony of witness [sic] no. 3 was credible, it is supported by the testimony of Plaintiffs' witness no. 4, and I accept his version that the sum of 1,000 Dinars was stolen from his house that night.

4.4 **Plaintiff 4**

According to her version, the soldiers arrived at her home, took her husband out, she followed him outside and was then barred from re-entering. She waited outside and the soldiers searched the house. On the following day, she heard from Plaintiff 2 that jewelry was stolen from her, upon which she went home, looked for the jewelry she had hidden on the top shelf of the wardrobe, and found that it was stolen.

The Plaintiff testified that she turned to Captain Mufid, but did not deem to give a statement at the police and at the Investigating Military Police, and made do with having Plaintiffs' witness no. 4 complain on her behalf.

This behavior is puzzling, since, if jewelry was indeed stolen from her, why would she not trouble herself to file a proper complaint? Moreover, the letter of complaint sent by HaMoked: Center for the Defence of the Individual of 20 June 1989, Annex C to her affidavit, reads as follows:

> **_____ was home when the soldiers searched in clothes and pockets. When _____ asked them what they were looking for, they said that they were not looking for men or young guys but for gold, and pointed to _____'s necklace and earnings. _____ said that money was stolen from her neighbors, and the soldier answered her that he had stolen the money, and that he would continue returning to their houses until they had no money or gold left…**

This version is peculiar in itself, and in any case is entirely inconsistent with her version whereby the jewelry was stolen from the closet, and whereby she was not even aware of it until she had checked the same, following the conversion with Plaintiff 2. The Plaintiff did not try to resolve the conspicuous discrepancies between the two versions, and it is difficult for me to say that her testimony is reasonable. I can certainly not determine that her testimony is credible to me and that I can rely upon it alone.

4.5 From the aforesaid it appears that the complaint of Plaintiffs 1 and 4 should be dismissed in the absence of sufficient evidence that anything was stolen from them.

Before concluding this chapter, I shall add that the Defendant's counsel, in his long summations which are spread out over 50 pages and more, did point to various "discrepancies" and "inconsistencies", including the drawing of various conclusions. I do not find it necessary to go into all of those details, conclusions and claims, such that the Plaintiffs had teamed up and concocted a story. To put it mildly, I shall state that this was not the case. The testimonies of Plaintiff 2, Plaintiff 3 and his sister were credible to me, and I am convinced far beyond any reasonable doubt that the items testified by them were indeed stolen from their homes.

5. Defence Witnesses' Testimony:

5.1 The Testimony of the Company Commander _____ Kellermann

I should state already that I saw his testimony as trustworthy; however, he was unable to provide specific details, and his testimony referred to procedures and guidelines generally, as well as to conclusions which I am certain he believes to be true, such as "**I know my soldiers and the force of**

the company, and I rule out any possibility that a soldier had stolen money from these places[1]…" (his statement before the Investigating Military Police). His belief in these facts cannot obviate the fact that the soldiers themselves were not questioned, and that his belief could not be verified (this issue shall be expanded on below).

The argument (on p. 16 of the Defendant's summations) that Mr. Kellermann is unaware of any theft, and that therefore none took place, is puzzling, since how would he know? Would the locals tell him? The ones that are supposed to tell him are the Investigating Military Police who receive complaints; they did say so, but he is not prepared to accept this statement.

5.2 **The Regiment Commander's Testimony**

Similar things may be said with regard to the Regiment Commander's testimony. The Regiment Commander _____ did not testify; he gave a statement at the Investigating Military Police, which was submitted with the investigation file. He said that the soldiers had received detailed briefings. I accept this fact; however, it turns out that the briefings were not accurately carried out. On p. 1 of his statement, he says that:

> **The soldiers received detailed and orderly briefings with regard to both the task and the rules of conduct: The house is to be entered by a** force **with an officer; the residents are to exit the house, their details checked, and then a squad is to enter, under the command of an officer, with the proprietors. The proprietor will perform the search, open the doors by himself and search the closets.**
>
> **The soldiers were further** instructed **not to injure people, not to use force unless force is used against the soldiers or in the case of resistance to arrest, and even then to use it in a reasonable measure so as to succeed in arresting the suspect. In addition, not to damage property, and not to touch or confiscate**

[1] Translator's note: It is possible that a typo has occurred in this sentence, and that the intended meaning was "these locals".

> **property unless it is property which has to be confiscated pursuant to the instructions, such as explosives, means of warfare and incitement materials**".

There is apparently no dispute that the instruction whereby the house was to be entered with the accompaniment of an officer was not fulfilled. _____ Kremer and _____ Virov testified thereto explicitly (p. 72 and 46-47 of the transcript).

The Regiment Commander also stated that a search would never be carried out without being accompanied by the locals; apparently, this instruction too was not fulfilled, certainly not fully. Plaintiff 2, whose testimony was, as aforesaid, credible to me, testified that she had indeed accompanied the searchers, but that searches were performed in the two rooms simultaneity, and she could not be in both of them at the same time. Likewise the testimony of Plaintiff 3 – who was removed from the house during the search. As for the instruction that the search be performed by the proprietor of the house, that too was not fulfilled, as testified by Plaintiffs 2 and 3, as well as by _____ Kremer.

5.3 **_____ Virov's Testimony**

_____ was a Deputy Company Commander who commanded a force that entered one of the houses, which one is unknown (which issue shall be expanded on below). This witness testified that he remembered the details since he was injured in that incident. His testimony was credible to me, and I accept his testimony that in the house that was searched by the force under his command, the search was performed in the presence of the proprietor, with the opening of closets and every possible action being carried out by the proprietor, for safety reasons.

This witness categorically reiterated that never was a search performed in a local's house other than with the local's presence, and that never were closets opened, electricity switched on or the roof ascended without the locals, for fear of explosive charges and for reasons of safety only. I am convinced that such were the guidelines and that this is how ***he*** behaved, but apparently,

another witness, _____ Kremer, did not testify as did he, but rather that the searches were ***generally*** performed in the presence of the locals and that they were the ones who opened the closets. We did not hear from him that this was an unequivocal order, that the locals should be present and open the closets, and that this was how it was always done (p. 47-48 and 52 of the transcript).

5.4 **_____ Kremer's Testimony**

This witness reiterated that he did not remember the specific operation, and that he could testify to procedures, and rules of conduct. I have already referred above to his statements, whereby the locals were generally present at the search and it was generally they who opened the closets. However, as aforesaid, the witness did not explicitly say that it was clear and that that was what was actually done at all times; on the contrary, one could understand from his statements that this was a guideline with which they tried to comply, but not more than that.

Another comment on his testimony: The witness repeatedly testified that he knew the soldiers and their character and knew that there was not one who would stray – it was impossible. Such a determined and resolute statement is somewhat surprising, in light of the fact that he had commanded those soldiers for no more than one month (p. 48 of the transcript).

6. The State's Liability

It appears that it has been proven, beyond any doubt, that the State, through its officers and commanders, briefed the soldiers not to injure locals, not to damage their property and certainly not to take any of their property; there is no doubt that the State did not send the soldiers to commit this criminal act of property conversion, and I believe that the State should not be held liable under the Torts Ordinance for the civil wrong of conversion, in accordance with the provisions of Article 14 of Pequddat ha-Neziqin [the Torts Ordinance (New Version)], 5728-1968.

There is no doubt that the conversion was a deviation from the act of the agency, and, as aforesaid, the State should not be held liable for the actual act of conversion that was committed.

7. The Investigating Military Police's Investigation

At the outset of the judgment, I already commented on this investigation, and I cannot refrain from further stating under these circumstances, when it is clear that the Investigating Military Police conducted a negligent investigation, that I would expect other statements from the State. The mere "defence" of this manner of investigation is surprising, and there is no understanding the wasting of hundreds of words in the summations on the efficiency of this investigation. This is not the moral norm which our society should follow, and when the Investigating Military Police had failed, the State would have been better to admit as much, rather than waste, as aforesaid, hundreds of words and dozens of pages defending such act. An investigation was indeed carried out, 38 actions were indeed taken therein; they were all, however, nothing but lost labor. Instead of performing several basic acts, the investigating officer performed the same futile acts over and over again; it was not for nothing that his testimony was embarrassing; he was unable to "defend" what he had done.

There is no dispute that on 18 June, the Investigating Military Police received the Plaintiffs' complaints, both through HaMoked: Center for the Defence of the Individual and through the police. As may be recalled, the Plaintiffs gave detailed statements at the police and those were, as aforesaid, forwarded to the Investigating Military Police.

The Defendant's claim, which it repeats in detail over and over again, that the Plaintiffs gave no version to the Investigating Military Police, is factually correct, but in essence meaningless, since the Plaintiffs' full versions were taken from them at the police and were in the hands of the Investigating Military Police. The Investigating Military Police investigator _____ Mashiah testified that he received the complaints only on 14 August, namely when two months had passed. He had no explanation why he got them late, and to the actual question of whether he wanted to question the Plaintiffs again, or whether he made do with their statements, he had no answer. It appeared from what he said that it was certainly possible that he made do with the statements they gave at the police (p. 55 of the transcript). In other words, he himself never asked that the Plaintiffs come and testify before him.

It should be emphasized that this witness confirmed that the entity at which residents are supposed to address complaints is Captain Mufid, the Red Cross representative. Therefore, the Defendant's claims that the Plaintiffs failed to give prompt notices to the official entities are unfounded (see his testimony on p. 55, line 26 of the

transcript). Also the puzzlement that the Plaintiffs did not ask for written confirmations is surprising. These are simple, uneducated country folk, who knew only to say that if they had a complaint, they had to go to "Captain Mufid" – some of them did not even know which body exactly he represented. The expression of puzzlement that they did not ask for written confirmation – is misplaced.

Mr. Mashiah testified that he used to seek assistance from Captain Mufid to locate and summon locals. Therefore, the Defendant's attorney's claims, whereby the Investigating Military Police investigator (who preceded Mr. Mashiah) summoned the Plaintiffs through HaMoked: Center for the Defence of the Individual deserves second thought, since there was a much better way of summoning the Plaintiffs, namely through the representative who was at the village. Why this was not done – one cannot know. The witness's reply to the question of why no attempt was made to visit the complainants' homes and to obtain additional identifying details from them was "**it is difficult for me to give you an answer to that**" (p. 57, line 19).

To the point: The Plaintiffs' statements at the police were before the Investigating Military Police investigator. The statements contained full (or almost full) details. Under these circumstances, one would have thought that the Investigating Military Police would summon all of the soldiers who searched the Plaintiffs' specific houses for questioning. This investigative act appears to be so basic, that any statement thereon would be simply superfluous. Amazingly, however, this basic act was not performed, and Mr. Mashiah's "explanation" is worthy of quotation:

> **I did not collect testimonies from the soldiers… there were 50-200 soldiers and I could not take testimonies from all of them… (p. 57, line 22).**
>
> **Q. In the testimony of 5 July 1989, the Company Commander** (Kellermann – B.K.) **said that if he had an aerial photo, he could have said which force entered which house. Why did you not present him with an aerial photo?**
>
> **A. I want to see where that appears in the file.**
>
> **Defendant's attorney: I would like to help the witness. There is a document that he wrote that is in the file.**

Yes, I tried to find the aerial photo, there are reports in the file on the matter, I went, it appears in the document of 13 September 1989, I went with Lieutenant Eyal to the Intelligence in Bethlehem and I asked the Intelligence Officer _____ Sela' to find the locals' addresses according to surnames and to mark the families' location on the aerial photo. The officer, Sela', said that it could not be done because there were no addresses in the village and there was no way of knowing a local's name, where he lived, and, furthermore, the aerial photo was classified as confidential.

Q. Everything you did was well and good, but I put it to you that no one asked you to show the aerial photo to the locals, all that the Company Commander asked was show me an aerial photo, unmarked. Why was this simple act not performed?

Defendant's attorney: I object.

The witness: I don't have an answer. (emphasis added – B.K.)

Q. As you saw in the complainants' statements at the police, when you read, did you learn that the complainants' relatives were arrested, did you not find out from which houses people were arrested, could it not have led you to the houses and so you could have told the Company Commander here, in this house this platoon operated, and then you could perform a lineup and people could have identified the soldier, is this not a necessary act, don't you agree with me.

A. … I didn't do it, let's say that I didn't work in that direction… (p. 58, line 13 forth).

At this point it should be stated that Kellermann testified that immediately after the incident, he was approached by an Investigating Military Police investigator who laid out the complaints before him. He asked to see an aerial photo in order to identify the houses, and thereby to tell which forces were involved. These details were also

recorded in the statement he gave to the Investigating Military Police in proximity to the incident, in June 1989. However, he was never presented, neither with an aerial photo nor with other specific data. The witness confirmed that had he been presented with an aerial photo, he could have said which soldiers entered each house (p. 68 forth). He also confirmed that since these were never presented to him he "**did not specifically look into the complaints**" (p. 68 of the transcript, line 16).

Similar statements were made by _____ Virov. He testified that he was never summoned for questioning at the Investigating Military Police, and that had he been summoned, he could have indicated with certainty which house he had entered.

In conclusion, the most basic investigative acts were not performed in this investigation, no genuine attempt was made to uncover information which was undoubtedly known to the IDF, which soldiers entered which house, comparing the Plaintiffs' complaints and questioning those soldiers, performing a lineup, etc., and it was not for nothing that the investigator was able to give no answers to these omissions.

The argument that aerial photos are secret, assuming that it is accurate, cannot justify the failure to present partial photos, as necessary, to the commanders and planners of the operation, to present them with the chart of the operation plan, or any other similar document.

In conclusion, there is no doubt that the Investigating Military Police conducted a negligent investigation, in a manner which clearly excluded the possibility of reaching the "converters"; the results of the "investigation" were, in any case, that "**during the investigation, no support was found for the locals' complaints**" (investigation summary report of 10 October 1989).

8. The Legal Aspect

8.1 Negligence

There appears to be no genuine dispute that the Defendant owes a conceptual duty of caution to the Plaintiffs. From the aforesaid, nor does there appear to be any dispute that it had breached this duty by the manner of conduct of the negligent investigation. Two questions present themselves: the one, should a concrete duty of caution be imposed, and the other, is there a causal relation between the negligence and the damage, namely with the fact that the thieves

were not found, hence leaving the Defendants [sic] with no one from whom to collect their damages. I believe that the answer to the two foregoing questions is affirmative.

8.2 In order to examine the existence of a concrete duty of caution, one needs to examine:

> **Whether the wrongdoer breached the duty of caution imposed upon him, namely whether he deviated from the standard of caution imposed on him**. CA 145/80 *Vacknin v. The Local Council*, *Piskei Din* 37 (1) 113, 122.

In CA 337/81 *Buskila v. The State of Israel*, *Piskei Din* 38 (3) 337, the court expanded the duty of caution imposed on the State, while ruling that also in the enforcement of a court order, the State was subject to a duty of caution, even though it was an act of government which had no parallel in private law.

The Defendant's attorney wishes to distinguish that case from ours, while relying on the scholar I. Gil'ad in his article "Ha-Ahrayut biNziqin shel Rashuyyot Zibbur weOvede Zibbur" [Tort Liability of Public Authorities and Public Officials], *Mishpat uMimshal*, Vol. 2, 339 and Vol. 3, 55, and claims that the expansion of the duty of caution does not apply to cases in which the State has to exercise judgment. In principle, this claim is acceptable to me, but I do not accept the manner in which the Defendant's attorney applies it. If our case had concerned ***the exercise of mistaken judgment*** in the execution of such or another investigative action which led to an incorrect outcome, I would indeed have believed that the State cannot be said to have breached the duty of caution. However, the test of breach of the duty of caution is one of reasonableness, namely of whether the investigative authority acted ***reasonably*** when taking the investigative measures. A mistake in judgment is not inconsistent with the test of reasonableness of the investigative act. However, where the investigative acts were not reasonable, since basic investigative measures were not taken as in the case before us, there is no question of mistaken judgment at all, but of negligence, and according to all tests, the governmental authorities should be imposed with a duty of caution due to such an act.

The aforesaid is equally applicable to the distinctions which the Defendant's attorney attempts to draw with respect to the other cases cited by him, such as CA 429/82 *The State of Israel v. Suhan*, *Piskei Din* 42 (3) 733, and CA 126/85 *R.G.M. Meret v. The State of Israel*, *Piskei Din* 44 (4) 272.

As for the English case, *Alexandrou v. Oxford*, 1993 (4) All E.R. 328, cited by the Defendant's attorney, the case there is not similar to the one before us. In that case, it was found that the police had acted reasonably in its examination of the scene of the burglary, even though it did not discover the same. In our case, if the Investigating Military Police had conducted reasonable measures of investigation there would, indeed, have been no room to impose a duty of caution thereon. However, in our case they did not act reasonably, and for that reason and that reason alone, it should be determined that they had breached their duty of caution to the Plaintiffs.

All of the tests determined in the aforementioned Buskila case lead to the conclusion that the Defendant was subject to a concrete (or, as referred to in the judgment, normative) duty of caution, which has been breached, and no elaboration is necessary.

8.3 **The existence of a causal relation**

The lack of an investigation prevented the Plaintiffs from receiving information on the identity of the thieves, consequently preventing them from filing a complaint against them. Therefore, it may be said that there is a causal relation between the negligence and the damage. In our case, the damage is the inability to collect damages.

Indeed, it is true that the investigation would not necessarily have led to an affirmative outcome, namely that the identity of the thieves could have been ascertained. However, this matter too is examined with reasonableness, or with a test of the balance of probability, and it appears that a reasonable investigation which would have been carried out immediately could have made it possible to discover the persons who committed the theft. It would further appear that the lack of a proper investigation has caused the Plaintiffs "evidentiary damage", since all of the information on the identity of the soldiers who entered each house was in the hands of the Defendant, and it, as

aforesaid, due to unreasonable considerations, did not try to find out who had indeed entered each specific house; not having found out, it was unable to give the information to the Plaintiffs. However, on this matter too I find no reason to expand, in view of my foregoing conclusion.

9. The Damage

It was claimed that the Plaintiffs did not prove the damage they suffered. Indeed, no expert opinion was submitted, as the Defendant claims in Article 121 of its summations, nor were receipts presented. The Defendant's attorney further claims that the Plaintiffs ***refrained from*** bringing evidence in support of their claim, and cites the well-known judgments on this matter, such as LCA 465/88 *Finance and Trade Bank v. Mattityahu*, *Piskei Din* 45 (4) 651, and CA (BS) 143/92 *Metzada Hotel Ltd., v. The Jewish Agency*, *Taqdin Mehozi* (2) 43. I wonder, however, what evidence the Plaintiffs could have brought and didn't – and I have no answer.

Plaintiff 2 testified on the jewelry that was stolen from her. Naturally, she did not have the purchase receipts, also at the time of the incident. She estimated their cost at a sum which I believe is reasonable and that is sufficient, since the court is authorized to rule on damage even if the sum thereof is not proven (CA 178/91 *Drucker v. Partosh*, *Pesaqim Mehoziyyim* 47 (2) 621).

Since the Plaintiff's assessment is reasonable in my eyes, I accept it and rule that that was her damage.

I believe the testimony of Plaintiff 3 that the 1,000 Dinars he had saved for his fiancée were stolen, and that is sufficient.

10. Conclusion

Following the aforesaid, I rule in favor of Plaintiffs 2 and 3 and order the Defendant to pay them as follows:

To Plaintiff 2, damages in the sum of NIS 3,700 plus differences of indexation and interest as set out in the law from the date of filing of the complaint, 21 May 1996, until actual payment in full.

The Defendant shall also refund the fee paid by the Plaintiff and shall further bear the Plaintiff's expenses in the sum of NIS 1,000 (legal fees were not claimed in the complaint).

To Plaintiff 3, the sum of 1,000 Dinars, at the value thereof in NIS on the date of the incident, plus differences of indexation from that day until actual payment in full. The Defendant shall also refund the fee paid by the Plaintiff and bear his expenses in the sum of NIS 1,000.

The complaints of Plaintiffs 1 and 4 are dismissed, and each one of these Plaintiffs shall pay costs to the Defendant in the sum of NIS 1,000.

Issued today, 7 Tammuz 5758, 1 July 1998 in the absence of the parties.

The office of the court clerk shall serve a copy on the parties' attorneys.

Publishable from 1 July 1998.

[signature]

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Justice Bilha Kahana