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At the Magistrates Court in Jerusalem

CApp 10458/04

In the matter of:

1. T. Yassin

2. M. Y.

residents of 'Asira ash Shamaliya – Nablus District

both represented by attorneys Shirin Batshon (Lic. No. 32737)
and/or Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or Yossi
Wolfson (Lic. No. 26174) and/or Adi Landau (Lic. No. 29189)
and/or Manal Hazan (Lic. No. 28878) and/or Hava Matras-Irron
(Lic. No. 35174)

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 Plaintiffs

v.

The State of Israel

represented by the Tel Aviv District Attorney's Office (Civil Division)

1 Henrietta Szold Street, Tel Aviv 64921

Tel: 03-6970282 Fax: 03-6918541

The Defendant

Nature of the claim: **Financial, Damages**

Amount of the claim: **NIS 78,700**

Complaint

Nature of Claim – Being Used as a Human Shield and Property Damage During a House Search

1. This complaint involves the improper and unnecessary violation of the constitutional rights of the Plaintiffs, including their right to bodily integrity and to integrity of their property, which took place during an action by IDF soldiers in their house. The complaint

also deals with their right to compensation for the said harm and for the damages they suffered as a result thereof, all as shall be set forth below.

The parties

2. Plaintiff 1, who was born in 1944, is a resident of 'Asira ash Shamaliya, Nablus District.
3. Plaintiff 2, who was born in 1982, is the son of Plaintiff 1, and lives with him.
4. The Defendant, the State of Israel, is and was at the times herein relevant responsible and/or in charge of the acts and/or omissions or the security forces acting on its behalf, including soldiers and/or Police officers and/or Border Police officers and/or other security forces (hereinafter referred to as soldiers or IDF soldiers).
5. Also, at all times relevant herein, the Defendant held control of the area, including the area on which the house of Plaintiff 1 was situated, and was responsible for order and safety in the region.

The incident

6. On 9 September 2002, before sunrise, a contingent of IDF soldiers came to the home of Plaintiff 1, in which he lived with his family (hereinafter: the house). The soldiers surrounded the house, threw two stun grenades and fired a number of shots at the house. The forces called to the persons in the house to come out of the house. The occupants, including the Plaintiffs, did as they were told and went outside. The soldiers asked Plaintiff 1 and his family where their son T. was, and Plaintiff 1 replied that he was not in the house.
7. The soldiers asked Plaintiff 2 to go with them. The soldiers broke into house and searched the premises, using Plaintiff 2 as a human shield. The soldiers asked Plaintiff 2 to go into each room, open the cabinets, the drawers, and make sure that no one was in the room. As he did this, the soldiers stood at the doorway to the room with their weapons drawn, and after Plaintiff 2 left the room, the soldiers opened fire into the room. The shots fired by the soldiers at the house and its contents were massive and uncontrolled, and caused a great deal of damage, as will be described below.
8. Later, the soldiers took Plaintiff 1, his hands cuffed and his eyes covered, to a nearby place, where he met with a person who identified himself as "Captain Ma'aruf," who told him that the soldiers were looking for his son T. (hereinafter: the son T.), and threatened

him that if his son did not turn himself in, the house would be demolished and T. would be killed.

9. Two days later, out of fear that the soldiers and/or “Captain Ma’aruf” would carry out their threat, the son T. gave himself up. He was administratively detained for six months, without trial.
10. It should be mentioned that, at the time of the search, the son T. was not in the house.
11. The incident will be referred to below as the “the search incident.”

Correspondence with the military authorities

12. On 10 November 2002, Attorney Tamir Blank, counsel for the Plaintiffs on behalf of HaMoked: Center for the Defence of the Individual (hereinafter: HaMoked) wrote to the then legal advisor for the West Bank, Col. Shlomo Politis, and to the then Central Command Advocate, Lt. Col. Ro’i Ginot, requesting that the incident be investigated, that Plaintiff 1 be compensated for his damages, and that the soldiers be clearly informed of the directives and procedures relating to the search of houses in the West Bank.

A copy of Attorney Blank’s letter is attached hereto as Appendix 1.

13. On 1 December 2002, a reply was received from the assistant legal advisor for the West Bank (hereinafter: the legal advisor), in which he stated that he was not the proper person to direct the correspondence, and that such matters were handled by the Central Command Advocate’s Office.

A copy of the legal advisor’s reply is attached hereto as Appendix 2.

14. In light of the long time that had passed from his first correspondence, Attorney Tamir Blank wrote again to the Central Command Advocate’s Office, and attached the response of the legal advisor of 11 November 2002. Attorney Blank requested a response and/or a pertinent reply of some kind.

A copy of the letter of 30 March 2003 is attached hereto as Appendix 3.

15. In a letter of 29 April 2003, the Central Command Advocate’s Office indicated that the matter was under investigation.

A copy of the reply is attached hereto as Appendix 4.

16. In follow-up to the said response of the Central Command Advocate’s Office, and in light of the great amount of time that passed since the said response, Ms. Alva Kolan, a staff

member of HaMoked, sent two letters, one on 18 May 2004 and the other on 12 July 2004, to the Central Command Advocate's Office, requesting an update and/or substantive response.

Copies of the two letters are attached hereto as Appendixes 5 and 6, respectively.

17. On 25 July 2004, a reply was received from Captain Orly Goz, military prosecutor in the Central Command, indicating that the file had been forwarded to the Military Police Investigation Unit for investigation.

A copy of the letter of Captain Orly Goz is attached hereto as Appendix 7.

18. As of the time of the filing of the complaint, the Plaintiffs and their counsel have not received the results of a Military Police investigation and/or other update from the Central Command Advocate's Office.

The Soldiers' Liability

Use of Plaintiff 2 as a human shield

19. The use of Plaintiff 2 as a human shield and/or as a hostage breached the right to life, dignity, and liberty, which are enshrined in the Basic Law: Human Dignity and Liberty.
20. The act also flagrantly breached the rules of international law, in particular the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War (1949), which prohibits the use of civilians as a means of protection or as hostages or to assist the occupying power. The specific provisions of the Fourth Geneva Convention in this matter are set forth below in Sections 30(I)-(M).
21. In addition, the use of Plaintiff 2 as a human shield also clearly violated the temporary injunction issued by the High Court of Justice on 18 August 2002, a copy of which is attached hereto as Appendix 8.
22. The background of the temporary injunction is as follows: On 5 May 2002, a petition was filed in the High Court of Justice, HCJ 3799/02, *Adalah et al. v. OC Central Commander et al.* (hereinafter: the human shield petition), against the use of Palestinians as human shields and/or as hostages for the purpose of assisting soldiers in their operations in the West Bank. The petition is still pending.
23. On **18 August 2002**, the petitioners in the human shield petition requested the Court to issue a temporary injunction. That same day, the High Court responded favorably to the

petitioner's request and issued a provisional temporary injunction enjoining the army from using the Palestinian civilian population as human shields to assist in military operations, until a final decision was reached on the application for a temporary injunction.

24. On 10 September 2002, the State Attorney's Office informed the High Court that it did not oppose the temporary order against the military authorities, and stated that it needed an additional two weeks to file its response.
25. Since then, there have been a number of developments in the file, the principal one being that, on 21 January 2003, following the filing of the response of the State Attorney's Office, the High Court reduced the temporary injunction and permitted the implementation of the "prior warning" operational directive. However, in the last hearing on the human shield petition, held on 6 September 2004, the High Court criticized the said directive and urged the army to withdraw it in light of the provisions of the Fourth Geneva Convention.

Trespass

26. The Plaintiffs will argue that breaking into the house and searching the premises without an order permitting the search and in the circumstances described above constitute trespass of real and personal property, within the meaning of these terms in Section 29 and 31 of the Civil Wrongs Ordinance [New Version], 5728 – 1986 (hereinafter: The Ordinance).
27. According to Sections 30 and 32 of the Ordinance, the Defendant has the burden of proof that the soldiers' actions inside the house were carried out lawfully, pursuant to a valid order, for proper reasons, and in a manner that safeguarded the Plaintiffs' substantive and procedural rights.
28. The Plaintiffs will argue that the trespass of real and personal property constitutes negligence *per se*.

Negligence

29. In addition, and in the alternative, the Plaintiffs will argue that the search and the resultant damages caused to them, were committed as a result of the negligence and/or impulsiveness and/or carelessness and/or irresponsibility of the soldiers, Defendant's agents, which were reflected in the following acts and/or omissions:

- A. They conducted a search and/or broke into the house without an order and/or proper permission.
- B. They did not safeguard the property and/or personal objects, and acted irresponsibly and/or in disregard and/or indifference toward the property of Plaintiff 1 and toward the life and bodily integrity of Plaintiff 2.
- C. They violated, to an unnecessary degree, the constitutional property rights of Plaintiff 1 and the right of Plaintiff 2 to bodily integrity and to life.
- D. They did not act as a reasonable soldier and/or person would have acted in the circumstances, and did not do their best to prevent the damage that they caused to the Plaintiffs.
- E. They fired their weapons in an unlawful and unnecessary manner and violated the directives and/or open-fire regulations at a closed building, endangering human lives.
- F. They unlawfully and unnecessarily used Plaintiff 2 as a human shield and/or hostage, thereby endangering his life and body.
- G. They flagrantly breached the temporary injunction issued by the High Court on 18 August 2002 in HCJ 3799/02, *Adalah et al. c. OC Central Command et al.*, as described in Section 23 above.

Breach of statutory duties

- 30. The Plaintiffs will argue that the soldiers, Defendant's agents, in their acts and omissions, breached their statutory duties set forth below, which are intended to protect the category of persons to which the Plaintiffs belong, and that the Plaintiffs were damaged as a result of the said breaches:
 - A. Sections 2 and 3 of the Basic Law: Human Dignity and Liberty, 5752 – 1992, which prohibits harm to life, body, dignity, and property of a person, and Section 11, which requires the state authorities to respect the rights set forth in the said Basic Law.
 - B. Section 280 (1) of the Penal Law, 5737 – 1977 (hereinafter: the Penal Law), which requires a public official, which includes soldiers, to refrain from committing an arbitrary act, by misuse of authority, that violates the right of a person.

- C. Section 452 of the Penal Law, which prohibits the unlawful damage of property.
- D. Sections 68 and 70 of the Military Justice Law, 5716 – 1955 (hereinafter: the Military Justice Law), which prohibits the deliberate exceeding of authority and causing injury as a result thereof or thereby.
- E. Section 124 of the Military Justice Law, which deals with negligence.
- F. Section 46 of the Regulations Attached to the Hague Convention on the Laws and Customs of War on Land (1907), which require that the honor, lives, and private property of residents of occupied territory be respected.
- G. Sections 427 and 428 of the Penal Law, which prohibit extortion under force and extortion under threats.
- H. Article 27 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, which states that protected persons are entitled to respect for their honor and protection against acts of violence or the threat thereof.
- I. Article 28 of the Fourth Geneva Convention, which prohibits the use of civilians as a means of protection.
- J. Article 31 of the Fourth Geneva Convention, which prohibits the use of physical coercion, particularly to obtain information from them or from third parties.
- K. Article 34 of the Fourth Geneva Convention, which prohibits the use of hostages.
- L. Article 51 of the Fourth Geneva Convention, which prohibits the occupying state to compel protected persons to serve in the occupation forces or to assist them in an auxiliary manner.

The Defendant's Liability

- 31. The Plaintiffs will argue that the Defendant is liable in agency for the negligence and/or carelessness and/or impulsiveness and/or irresponsibility and/or breach of statutory obligations by IDF soldiers, who carried out the search and/or broke into the house, and used Plaintiff 2 as a human shield as described above, while they were its agents and/or were acting on its behalf.
- 32. The Plaintiffs will further argue that the Defendant is directly responsible for the damages caused to them as a result of the negligence and/or carelessness and/or breach of statutory duty by IDF soldiers, as reflected in part by the following acts and omissions:

- A. Failure to supervise and/or failure to properly supervise the acts and/or omissions of IDF soldiers acting on its behalf, its agents, and/or acted carelessly and inattentively and/or did not control the persons under its responsibility.
- B. Failure to instruct and/or explain to its agents their duty to safeguard the rights of the civilian population in the West Bank, including the protection of the lives, bodily integrity, and property of the Palestinians, and the prohibition on violating the said rights.
- C. Handing over performance of its actions to persons who were unskilled and/or unsuitable for the task.
- D. Failure to properly train its agents in protecting fundamental human rights in the course of carrying out their duties and/or failing to give any and/or insufficient safety instructions and/or failure to verify that the persons under its responsibility knew or acted in accordance with the said instructions.
- E. Failure to make its best effort and/or do everything it was supposed to do and/or everything that was proper and/or necessary to do to prevent the illegal search and the damages and/or to act responsibly and with due care and attention and/or control the persons under its responsibility.
- F. Failure to clarify and/or explain and/or inform the IDF soldiers acting on its behalf, its agents, as regards the orders and/or instructions and/or procedures for conducting searches and/or entering houses in the West Bank.
- G. Failure to clarify and/or explain and/or inform the IDF soldiers acting on its behalf, its agents, as regards the orders and/or instructions and/or procedures for the use of live fire in a closed building.
- H. Failure to clarify and/or explain and/or inform the IDF soldiers acting on its behalf, its agents, as regards the prohibition on using Palestinians as human shields.
- I. Failure to act as a responsible, careful, and rational authority would act in the relevant circumstances to prevent the search and its resultant damages.
- J. Expected, or should have expected, that its failures would result in the damages suffered by the Plaintiffs.

The Burden of Proof

33. Plaintiff 1 will argue that he did not know and/or could not know the circumstances that led to the search and/or the gunfire that caused the damage to his house and property, and that the damage was caused by an object and/or thing over which the Defendant had complete control, and that the circumstances of the search and/or gunfire that caused the damage are more consistent with the conclusion that the Defendant and/or someone on its behalf did not take reasonable care, than with the conclusion that it took reasonable care.
34. Therefore, the Plaintiff will argue that the Defendant has the burden of proving and/or of showing that it was not negligent in regards to the search and/or the use of gunfire.
35. In addition and in the alternative, Plaintiff 1 will argue that the damage he suffered resulted from a dangerous implement that was owned by the Defendant and/or was in the control of the Defendant and/or the responsibility of the Defendant and/or a person acting on its behalf and/or its agents.
36. Therefore, Plaintiff 1 will argue that the Defendant has the burden of proving and/or showing that it was not negligent as regards the dangerous implement.

The Plaintiffs' Damage

37. The acts and/or omissions of the Defendant, as described in this Statement of Claim, caused the Plaintiff the following damages.
38. *As regards Plaintiff 1:* When Plaintiff 1 returned to his home after the IDF forces had left it, he was stunned when he saw the house and its contents. The damage was enormous: signs of gunfire and holes from the shooting covered a large part of the walls, floor, cabinets in the bedrooms, other furniture, and clothes. Most of the glass in the house, including the windows, was broken. Much of the furniture had been rendered useless, having suffered irreparable damage. Plaintiff 1 estimates that the total damage to his property amounted to some **NIS 28,700**.
39. **Compensation for mental anxiety:** Plaintiff 1 seeks compensation for the profound mental anxiety that he and his family suffered as a result of the unnecessary damage caused to his house and its contents. The Plaintiff sets his demand for compensation on this count at **NIS 10,000**, based on a consideration of the filing fee.
40. *Plaintiff 2, compensation for violation of his constitutional rights:* During the incident, Plaintiff 2 suffered from apprehension and actual fear for his life and body, in that he was

used as a human shield and was witness to the massive, uncontrolled firing by soldiers inside the house. Plaintiff 2 seeks compensation for breach of his right to freedom, life, dignity, and bodily integrity, and for endangering his life, during the course of the incident. Plaintiff 2 sets his said damages for violation of his constitutional rights at **NIS 40,000**.

General

41. The Honorable Court has subject matter and personal jurisdiction to hear this complaint.
42. In light of the above, the Honorable Court is requested to summon the Defendant to court and to order him to compensate the Plaintiffs for the damages they suffered, together with court costs and attorney's fees, as well as interest and linkage differentials from the day of filing of the complaint to the time of payment.

Jerusalem, Today, 8 September 2004

[signed]
Shirin Batshon, Attorney
Representing the Plaintiffs