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**At the Magistrates Court in Jerusalem**

**CC 11850/96**

In the matter of:

\_\_\_\_\_ (**a minor boy**)  
through his natural guardian, his father \_\_\_\_\_ Mura'ib  
of Halhul

represented by attorneys Badrah G. Huri and/or Hala Huri  
and/or Hisham Shabaita  
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 Plaintiff**

v.

**The State of Israel**

represented by the State Attorney's Office (Civil  
Department)  
1 Henrietta Szold Street  
Tel Aviv

**The Defendant**

Nature of the claim: **Bodily Injuries**

Amount of the claim: **NIS 830,700**

## **Complaint**

1. The Plaintiff hereby respectfully submits his complaint to the Honorable Court, while stating that all of his arguments are asserted severally and/or alternatively and/or cumulatively, all as the context prescribes, and that all of the exhibits attached to the complaint constitute an integral part hereof.
2. The Plaintiff shall be represented in his complaint as provided in the title.
3. The Plaintiff was born on 5 January 1977, and is a resident of the town of Halhul in the District of Hebron. The house at which the Plaintiff resides is located in the vicinity of a military camp.

4. The Defendant is the State of Israel, which is in charge of, *inter alia*, the soldiers and command of the IDF.
5.
  - a. On 4 November 1990, when the Plaintiff was herding sheep and tending to his flock, together with his little brother \_\_\_\_\_, who was seven years old, six IDF soldiers, the Defendant's agents, approached the place where he was herding. The Plaintiff got scared upon seeing a large number of soldiers, left his flock and began to run.
  - b. The soldiers chased him and shot him.
  - c. As a result of the shooting, the Plaintiff was injured in the upper part of his left thigh.
6. The Plaintiff did nothing, nor took part in any action of any kind which could have presented grounds for shooting him. The Plaintiff was injured severely and was rushed to the hospital in an IDF helicopter.
7. On 29 May 1991, Att. André Rosenthal turned to the West Bank Legal Advisor on behalf of the Plaintiff, asking that an investigation be conducted into the soldiers' opening fire and hitting the Plaintiff.
8. The Advocate General of Central Command replied that there was a report on the incident and that it was claimed that the shooting followed the throwing of stones at an IDF force, and that the Plaintiff was identified as one of the stone throwers.  
  
The investigation material was not received by the Plaintiff and/or by anyone on his behalf. It was claimed by the office of the Advocate General that only an operations report was made, and not an investigation.
9.
  - a. The Plaintiff was neither questioned on stone-throwings, nor brought to trial for any actions in breach of the public peace, following the incident which is the subject matter of the Complaint. He lived his entire life near the military camp from which the soldiers emerged and fired. At the time of the shooting, he was accompanied by his little brother.
  - b. On the same day on which the Plaintiff was shot, no minors and/or stone-throwing suspects were arrested, which testifies that no such stone-throwing incident ever occurred.

### **The Soldiers' Liability**

10. The Plaintiff shall claim that the incident and the damage therefrom were caused owing to the negligence and/or lack of caution and/or recklessness and/or disregard

and/or per se negligence of the soldier and/or soldiers who committed the shooting that caused the injury, as expressed in the following acts and/or omissions, namely that they:

- a. Used live ammunition under circumstances not justifying such use.
- b. Used live ammunition indiscriminately in a residential area, while endangering human life.
- c. Opened fire from a short range and/or from a range endangering human life and/or in violation of the open-fire regulations.
- d. Used live ammunition negligently and/or in violation of the regulations for the use of live ammunition.
- e. Opened fire while facing no material danger and having no justification or cause to open fire.
- f. Fired without any advance warning, while aiming to hit the body, without any justification.
- g. Fired without permission from the soldier authorized therefor.
- h. Acted against high command orders and/or against the general staff orders and/or against IDF commanding and/or regional orders and/or against the open-fire regulations and/or against orders given to them by law and/or against statutory duties designed to protect the safety, body and health of persons of the Plaintiff's type.
- i. Failed to do everything within the power and ability of a reasonable soldier to prevent the shooting incident.
- j. Failed to act as would have a reasonable soldier under the circumstances.

### **The Defendant's Liability**

11. The Defendant's liability derives from its direct liability for its acts and omissions which caused the damage, and its indirect liability by virtue of its vicarious liability, in the event that any act or omission constituting the negligence that caused the accident were performed or caused by any other person who acted in the Defendant's name and/or in its service and/or on behalf thereof. In such a case, the Defendant bears vicarious liability for the consequences of the incident and for payment of the damage caused to the Plaintiff.

12. The Defendant is liable for the incident and for the damages therefrom due to negligence and/or lack of caution and/or breach of duty on its part and/or on the part of its agents and/or of another on its behalf, as expressed in the following acts and/or omissions, namely that it:
- a. Failed to supervise and/or to properly supervise all of the acts and/or omissions of IDF soldiers in the Territories in general and/or in the region and/or at the scene of the incident in particular.
  - b. Failed to fulfill its lawful duties and/or missions, and to ensure the safety of the residents of the region, including the Plaintiff.
  - c. Failed to foresee, although it ought to have foreseen, the incident and/or the course of events which led to the incident and/or did nothing and/or did not do enough to prevent the incident and/or prevent the damage and/or mitigate the same.
  - d. Dispatched an unskilled force and/or a force lacking the appropriate commanding function to deal with a breach of peace incident, if any took place.
  - e. Failed to clarify and/or failed to adequately clarify the open-fire regulations to the soldier or soldiers.
  - f. Failed to observe and/or teach and/or supervise the observance of the open-fire regulations and/or improperly supervised and taught the open-fire regulations and/or gave no and/or insufficient safety instructions and/or failed to ensure that persons dedicated to the instruction thereof, and particularly the soldier or soldiers who carried out the shooting, were familiar with or observed the same or acted in accordance therewith.
  - g. Failed to do everything in its power and/or everything it should and/or ought to have done and/or was required to do in order to prevent the incident and the damages therefrom and/or acted recklessly and incautiously and failed to pay attention to and/or watch over the persons under its charge.
  - h. Acted other than as a responsible, cautious and sensible person would have acted under the circumstances of the location and the matter to prevent the occurrence of the incident and the damage and/or to mitigate the same.
  - i. Acted in violation of the rules of safety and in per se negligence.

- j. Acted negligently by allowing the shooting soldier or soldiers to shoot unlawfully.
- k. Acted negligently by allowing the soldier or soldiers to use fire unlawfully.

### **Burden of Proof**

13. The Plaintiff shall claim that with regard to the circumstances of the shooting and of his injury, the real circumstances are neither known to him nor can be learned, but since the weapon with which the Plaintiff was shot was under the control of the Defendant, jointly and/or severally [sic], the circumstances of the case are more consistent with the Defendant's agents' negligence than with their non-negligence. The circumstances of the case are subject to the rule of *Res ipsa loquitur*, and it is the Defendant that needs to prove that the incident did not occur through any negligence.
14. Alternatively, the Plaintiff shall claim that the Defendant is required to prove that the incident occurred through no negligence on its part and/or on its behalf and/or on the part of another acting as its agent, because the incident was caused by a "dangerous instrumentality" owned and/or controlled by the Defendant, and the "dangerous instrumentality" rule applies.

### **The Plaintiff's Damage**

15. The Plaintiff shall claim that as a result of the acts and omissions of the Defendant and/or of another on its behalf and/or of any of its agents, he suffered the following severe damages and losses:
  16. a. The Plaintiff was rushed by the soldiers in a military helicopter to the Hadassah Ein Kerem hospital in Jerusalem. The helicopter arrived at the hospital at around 16:00.  
  
During the flight, the Plaintiff received 4 units of compressed blood cells, and required respiration following the beginning of a pulmonary edema.
  - b. The Plaintiff was taken into surgery immediately: a transaction of the left femoral artery was found. He received another 8 blood units, 5 units of fresh plasma and 6 platelets.  
  
Two case summary reports from Hadassah hospital are attached hereto as Exhibits A and B; a surgery details report is attached hereto as Exhibit C.
17. After the surgery, the Plaintiff was transferred to the intensive care unit, where he remained for two days, until 6 November 1990. On that day, 6 November 1990, the Plaintiff was transferred to the vascular surgery department. On the following day, 7

November 1990, the Plaintiff was transferred to plastic surgery, until 8 November 1990.

18. Upon the Plaintiff's release from Hadassah hospital, he was transferred to Muqased hospital for further treatment.

The final case report of Muqased hospital is attached hereto as Exhibit D.

19. The Plaintiff's injury has left a wide scar under the left groin, with a scar that runs along the inner side of the left thigh to the knee, a scar on the inner side of the right thigh, longitudinal scars and on the front of the bottom left shin. The Plaintiff was also left with a swelling of the shin due to disturbed drainage, and a weakness of the toe rectifier.

His disability was assessed by Dr. M. Liling, an expert on orthopedic surgery from Hadassah Ein Kerem hospital, as follows:

- \* For the injury to the blood vessels and the swelling in the shin – 28% according to Article 11(2)(c) of the NII [National Insurance Institute] regulations.
- \* For the injury to the Gracilis muscle – 5%, one half of Article 51(4)(a).
- \* For the injury to the long toe rectifier – 5%, one half of Article 51(7)(a).

According to the opinion, it was determined that the Plaintiff was limited in extended standing and in walking. No further disabilities were expected in the future, and he will require no further surgery in the future due to his injury.

A copy of the medical opinion is attached hereto as Exhibit E.

20. The Plaintiff was unable to study for a long time, which has hurt his academic achievements. Prior to the incident, the Plaintiff was a good student at school. After being shot and being cut off from his studies for a long time, his chances at high academic achievements were prejudiced. He has suffered and is suffering pain, limited movement and fatigue, which have caused him to retreat into himself, not cooperate with his surroundings and, mainly, not function properly at school and not attain good achievements at school.
21. The Plaintiff shall claim that following the incident his functioning in his surroundings was injured – he was bed-ridden for approximately four months, required assistance and was dependent on others for the performance of daily functions.

22. The Plaintiff's family was very supportive of him. Three of his brothers and his mother stayed by his side for a long time in the hospital and at home. Consequently, they suffered a loss of earnings.

23. Following are the details of the damages caused to the Plaintiff due to the incident:

Special Damages

a.	Past medical expenses	NIS 2,000
b.	Past travel expenses	<u>NIS 2,500</u>
	Total special damages	NIS 4,500

General Damages

a.	Pain and suffering	NIS 202,500
b.	Loss of earning capacity	<u>NIS 623,700</u>
	Total general damages	NIS 826,200

**Total special and general damages** **NIS 830,700**

24. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint.

25. The Honorable Court is therefore moved to summon the Defendant and to charge it with payment to the Plaintiff of his damages in the sum of NIS 830,700 in addition to indexation and interest from the date of adjudication until the date of actual payment.

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Badrah G. Huri, Att.

Counsel for the Plaintiffs

Jerusalem, 23 July 1996

[Opening date: 1 August 1996]