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The Magistrates Court in Jerusalem
Civ. 13428/96
Asfour v. Tal
Opening date: August 21, 1996

At the Magistrates Court in Jerusalem

In the matter of: **Y. Asfour**

of the village of Sinjil District of Ramallah
Represented by counsel Adv. 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. 02-6283555; Fax 02-6276317

The Plaintiff

v.

1. N. Tal

of 10 Cleveland Community St.
Tel Aviv 69187

2. Y. Ibrahim

of Sajur 20130

The Defendants

Nature of the claim: **Bodily Injuries**

Amount of the claim: **NIS 50,000**

Complaint

1. The Plaintiff was born in 1969 and is a resident of the village Sinjil in the District of Ramallah.

2. The First Defendant served, at all times relevant to this complaint, as a policeman in the Border Guard.
3. The Second Defendant was born in 1970 and is a resident of the village Sajur. At all times relevant to this complaint, the Second Defendant served as a policeman in the Border Guard.
4. On 8 August 1989 at 14:00 or thereabouts, when the Plaintiff was on his way to visit friends in Abu Tor, Jerusalem, he was detained by a Border Guard patrol which included the Defendants, another person from the Border Guard and a policeman who drove the car. The patrol squad was in a police car of the Ford model, number 4346 P (hereinafter: the "Car").
5. After the Plaintiff was required to present his I.D. and did so, the Second Defendant pushed him into the Car and told him that they were taking him "to work".
6. The Second Defendant ordered the driver to drive to the tunnel under the bridge in the Jabal Az Za'ayem area, and when they reached the place the Defendants descended the Car with the Plaintiff.
7. The First Defendant, who was the patrol commander, and the Second Defendant ordered the Plaintiff to take his shirt and shoes off, and for 10-20 minutes beat the Plaintiff all over his body and kicked him in the abdomen. Finally, the Second Defendant punched the Plaintiff with his fist and broke the Plaintiff's nose (hereinafter: the "Incident").
8. After the Defendants beat the Plaintiff severely, and when the Plaintiff started bleeding, they left him in the tunnel and took off in the Car.
9. On September 19, 1989, the Plaintiff, through the Center for the Defence of the Individual founded by Dr. Lotte Salzberger, filed a complaint with the Ombudsman of the Border Guard against all the members of the said patrol squad, including the Defendants, for use of force.
10. Following the filing of the complaint by the Plaintiff, the Incident was reported for the first time to the commander of the company to which the Defendants belonged, and he debriefed all of the members of the said patrol squad, and ultimately sentenced the two Defendants to a few days of detention for a disciplinary offense.
11. Furthermore, following the filing of the complaint by the Plaintiff, the Second Defendant was indicted and, on February 18, 1993, convicted by the Hon. Justice Kovel of the Jerusalem Magistrates Court of Assault Causing Material Injury, pursuant to Section 380 of the Penal Law, 5737-1977.

The judgment is attached to this Complaint as an integral part hereof.

Assault

12. The Plaintiff shall claim that the beating he received to all parts of his body, the kicks to his abdomen, and the fist punch to his face which caused the fracture to his nose, constitute Assault, within the meaning of this term in Section 23 of the Torts Ordinance (New Version), and that the Defendants are directly liable for the Plaintiff's beating without his consent.

Negligence

13. The Plaintiff shall claim that the Defendants' act of assault constitutes, in itself, the civil wrong of negligence.
14. Alternatively, the Plaintiff shall claim that the Defendants were negligent, and that the Defendants' negligence was expressed in the following acts and/or omissions, in that they:
 - a. Exceeded their authority and acted against the instructions of the Border Guard Command and/or the orders and/or guidelines of the Inspector General of Police and/or
 - b. Behaved recklessly and/or contemptuously and/or apathetically towards the integrity of the Plaintiff's body and/or
 - c. Failed to do everything that reasonable Border Guard personnel are able to do in order to prevent the occurrence of the damage and/or
 - d. Used wrongful means to maintain public order and/or
 - e. Abused their authority by taking the law into their own hands and using force against the Plaintiff without any lawful justification and/or reasonable cause.

Negligence Per Se

15.
 - a. Alternatively to the alternative, the Plaintiff shall claim that the Defendants were negligent per se by violating statutory duties which are designed, according to their rightful meaning, to protect the type of persons to which the Plaintiff belongs, and that the assault and its resultant damage were due to the violation of such duties.
 - b. The Plaintiff shall claim that, *inter alia*, the Defendants violated the duties set forth in the Penal Law, 5737-1977 (hereinafter: the Law), in the Basic Law: Human Dignity and Liberty, 5752-1992 (hereinafter: the Basic Law) and in the Police Ordinance (New Version), 5731-1971 (hereinafter: the Ordinance).
16. For the sake of further specification, and without derogating from the generality of the aforesaid, the Plaintiff shall claim that the Defendants violated the following duties:
 - a. Section 280(1) of the Law, which provides that a civil servant who, while abusing his authority, performs or orders the performance of an arbitrary act which infringes the right of another, is liable for three years imprisonment and/or
 - b. Section 380 of the Law, which determines that a person who assaults another, thus causing him material injury, is liable for three years imprisonment.
 - c. Section 382(a) of the Law which concerns Aggravated Assault, and which determines that where an offense is committed pursuant to Sections 380, 379 or 381(a)(1) or (3) in the presence of two persons or more who collaborate in the performance of the act by one or several of them, then each one of them is liable for double the penalty fixed for the offense.

- d. Section 2 of the Basic Law which provides that “there shall be no violation of the life, body or dignity of any person as such”.
 - e. Section 3 of the Ordinance regarding the duties of a policeman in maintaining public order and personal safety.
17. As a result of the assault and the Incident, the Plaintiff suffered a broken nose. The Plaintiff shall claim that he is entitled to compensation for his mental damages and for the vast distress caused to him as a result of the beating, the kicking, the fist punch, the humiliation and the fear he experienced as a result of the acts of the Defendants as specified above, and is fixing his claim due to these damages at the sum of NIS 50,000.
 18. 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 payment of the Plaintiff's damages as specified in the Complaint, in addition to differences of indexation and interest as set out in the law from the date of filing of the Complaint until actual payment, in addition to trial expenses.

Hale Hour, Adv.
Counsel for the Plaintiff

Encl.: Judgment

Jerusalem, August 20, 1996

(T.S. 923, M.M. 16642)