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The Magistrates Court in
Jerusalem
CApp. 21096/96
Rasmi 'Abed v. The State of Israel
Opening date: 20 November 1996

At the Magistrates Court in Jerusalem

In the matter of: **1. _____ Jabir**

2. _____ Jabir

both represented by counsel Adv. Hala Huri and/or
Eliahu Abram and/or Hisham Shabaita
of HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Saltzberger
4 Abu Obeidah St., Jerusalem
Tel. 02-6283555, Fax 02-6276317

The Plaintiffs

v.

The State of Israel

Represented by the Office of the Jerusalem District Attorney
4 Yedidia St., Jerusalem

The Defendant

Nature of the claim: **Monetary**

Amount of the claim: **NIS 98,320**

Complaint

1. Plaintiff 1 was born in 1948, is married and a father of seven, and a resident of the Al-Mashariq al-Fawqa neighborhood in Hebron.

2. The Second Plaintiff was born in 1949, is married to the First Plaintiff and a mother of seven, and a resident of the Almasrak Alfuka neighborhood in Hebron.
3. The Defendant was, throughout the timeframe relevant to this Complaint, in charge of the actions of IDF soldiers in the Hebron area.

The Incident

4. On 13 December 1989 at around 11:00 a.m., a military force numbering approximately four soldiers arrived at the house of the First Plaintiff (hereinafter: the "House"; the "Plaintiff"). At that time, neither the Plaintiff nor any of his family members were home.
5. The soldiers broke the back door to the House and went in.
6. The soldiers entered the Plaintiff's bedroom, after having broken its wooden door, and turned the entire room upside down. They threw the bedding and the sheets on the floor, broke the two doors of the closet that stood in the room, and broke the closet drawers.
7. The soldiers did not make do with that. They took all the clothes out of the closet and threw them on the floor, and emptied out the entire contents of the closet in all directions, leaving chaos in the Plaintiff's bedroom.
8. In addition, the soldiers overturned all the armchairs in the living room and emptied out the closet that stood in the bedroom of the Plaintiff's sons, turned the sheets and bedding and threw them on the floor.
9. While at the Plaintiff's House, the soldiers met the Plaintiff's nephew, who was 15 years old at the time (hereinafter: the "Nephew") and who, at his mother's request, came to his uncle's house to see whether his uncle was home. After a short conversation with the soldiers, the Nephew left the House.
10. Before leaving the Plaintiff's House, the soldiers defecated in the living room of the Plaintiff's family.
11. The Plaintiff's Nephew immediately alerted the Plaintiff's neighbors and the Plaintiff's sister, who is the Nephew's mother, all of whom proceeded to the Plaintiff's House. However, when the family and neighbors arrived at the House, the soldiers were no longer there.

12. When the Plaintiff's sister and her son came out of the House, a military Jeep rode by. They stopped it, and complained to the soldiers and the officer in the Jeep of the break-in into the Plaintiff's House.
13. The said group of soldiers (that was in the Jeep) entered the Plaintiff's House and gained an impression of the chaos left by the soldiers who had broken into the House earlier.
14. The officer who was on the scene reported the burglary on his walkie-talkie and summoned several groups of soldiers who were patrolling in the Hebron area to the scene.
15. From among all the soldiers who responded to the officer's call, the same soldiers who had broken into the Plaintiff's House earlier arrived at the scene.
16. The Nephew recognized the soldiers and pointed them out as the ones who had broken into the Plaintiff's House.

The officer on scene questioned the soldiers on whether they had seen the Nephew in the Plaintiff's House, and they admitted that they did.

17. Ultimately, the officer made do with instructing the Plaintiff's sister that the Plaintiff should file a complaint with the police.
18. When the Plaintiff returned home – at around 13:00 – he was astonished to discover that his House had been broken into, and that most of the rooms in the House and the contents thereof were in complete chaos.
19. At that moment the Plaintiff remembered his wife's jewelry, that was hidden in one of the drawers in their bedroom closet, and immediately went there to check whether the jewelry was still in place. To his astonishment, the Plaintiff discovered that the soldiers had broken the lock of the said drawer and that the jewelry inside it was gone.
20. On the very same day, the Plaintiff went to the police station in Hebron and filed a complaint on the incident. He described the damage which the soldiers had caused to his House to the policemen, and told them that his wife's gold was gone. The Plaintiff also mentioned to the policemen that his Nephew had met the soldiers.

21. The policemen at the Hebron police station notified the Plaintiff that the military police would summon him for questioning and take his statement.
22. Several days later, upon returning from Jordan, the Plaintiff's wife went to the police station in Hebron together with the Plaintiff, and described to the policemen all the types of jewelry that were stolen. At that time, the Plaintiff gave the policemen six pictures he had taken, documenting the chaos left by the soldiers who broke into his House.
23. Since that time, the Plaintiff has heard nothing from the Israel Police, nor were he or his Nephew summonsed for questioning by the military police.
24. On 12 April 1992 my predecessor sent a letter to the Advocate General of Central Command, inquiring what had become of the Plaintiff's complaint, whether it was investigated and what was the outcome of the investigation.
25. On 30 June 1992, a letter was received at the offices of the Center for the Defence of the Individual from the Advocate General of Central Command, whereby the Plaintiff's complaint was being looked into.
26. On 19 July 1992 a letter was received at the offices of the Center for the Defence of the Individual from the Office of the Advocate General of Central Command, announcing that from the inquiry conducted vis-à-vis the investigating authority, it appeared that there was no mention of the incident described herein in the Investigating Military Police's records.
27. It should be emphasized that in the Complaint-Filing Confirmation given to the Plaintiff by the Hebron Police, Staff Sergeant Ben Shushan mentioned that the investigation material had been forwarded to the Investigating Military Police.

The Complaint-Filing Confirmation of 17 December 1989 is attached to this Complaint as **Exhibit A** and constitutes an integral part hereof.

28. On 24 July 1992, my predecessor sent a letter to the Hebron Police asking where the investigation material on the incident described herein was forwarded to. On the same day, my predecessor turned again to the Office of the Advocate General of Central Command, asking them to look into the matter again and to take prompt action to forward the results of the investigation conducted by the Investigating Military Police to our office.

29. On 18 August 1992, the Center for the Defence of the Individual received a letter from Mr. Uri Weisskopf, Deputy Station Commanding Officer of the Hebron Police station, which read as follows:

“... the investigation material in our possession indicates that the investigation material was forwarded to the Judea and Samaria Legal Advisor on 1 April 1990 via R.L.H. Yeduda (this is the manner in which complaints are forwarded)...”

Mr. Weisskopf further announced that he was delivering a photocopy of the copy of the material that remained in the hands of the police to the Advocate General of Central Command, and referred the Center for the Defence of the Individual to the West Bank Legal Advisor to locate the original material.

The letter from the Hebron Deputy Station Commanding Officer is attached to this Complaint as **Exhibit B** and constitutes an integral part hereof.

30. After receiving the letter from the Hebron Deputy Station Commanding Officer, the Center for the Defence of the Individual sent another letter to the Advocate General of Central Command and to the West Bank Legal Advisor, in the hope that the investigation material would be found.
31. Only on 16 November 1993, after repeated reminders, was an answer received from the office of the West Bank Legal Advisor. In the answer, signed by Lieutenant Sarit Kluss, assistant to the officer in charge of prosecution, she doubted whether the investigation material had ever reached the office of the West Bank Legal Advisor.

Inter alia, she mentioned that:

- a. The Complaint-Filing Confirmation from the Hebron Police of 17 December 1989 explicitly stated that the material was sent to the Investigating Military Police. The mention of the West Bank Legal Advisor as possibly having material on the complaint was made at a later stage, on 10 August 1992, contrary to the original Complaint-Filing Confirmation form.
- b. The forwarding of material pertaining to complaints against soldiers from the police to the West Bank Legal Advisor was not the common practice. The common practice was that the material was forwarded to the Advocate

General of Central Command, which was the relevant entity that handled complaints against soldiers.

- c. According to the memo of the Hebron Station Commanding Officer, at least 4 months had passed between the filing of the complaint and the date of dispatch of the material to the West Bank Legal Advisor, a relatively long time, it would appear, for forwarding a complaint that was supposed to be investigated by the Investigating Military Police and not by the police in the region.
- d. The material was not located at the offices of the Legal Advisor, nor was there any “accurate confirmation of the date of occurrence of the incident and the opening of an investigation into the same.”

Lieutenant Kluss’ letter is attached to this Complaint as **Exhibit C** and constitutes an integral part hereof.

- 32. On 25 July 1994, a letter was received at the Center for the Defence of the Individual from Lieutenant Colonel Shlomo Politis, then Advocate General of Central Command. In the letter, the Advocate General writes that in this case, unfortunately, **a mishap had occurred.**

As for the findings of his investigation, he writes that it has revealed that:

“The Investigating Military Police did not investigate the incident, and according to the Israel Police, the complaint was forwarded to the Judea and Samaria Legal Advisor. It later transpired that the complaint did not belong in the jurisdiction of the Judea and Samaria Legal Advisor. I should note that during the information-digitization process we conducted at the office, we found that in early 1990 the complaint was brought to the attention of the then-Advocate General of the Command. I was unable to find how the complaint was handled.”

Lieutenant Colonel Politis’ letter is attached to this Complaint as **Exhibit D** and constitutes an integral part hereof.

33. In his said letter, the Advocate General of Central Command suggested that an affidavit by the Plaintiff's Nephew, who saw the soldiers at the House, be forwarded to him so that he could consider opening an investigation.

The Nephew's affidavit was delivered to the Advocate General of Central Command on 6 October 1994, but even after this affidavit the Advocate General did not deem it fit to open an investigation.

The Soldiers' Liability

Trespass to Land

34. The Plaintiff will claim that the IDF soldiers who broke into his House on 13 December 1989, as specified above, committed the tort of trespass to land, within the meaning of this term in Section 29 of Pequddat Ha-Nezikin (Nosah Hadash) [the Torts Ordinance (New Version)], 5728-1968 (hereinafter: the "Ordinance"), by entering the Plaintiff's House, damaging the House by breaking doors and disturbing the same by turning the House and its contents upside down and defecating in the living room.

Conversion

35. The Plaintiff shall claim that the IDF soldiers who broke into his House, as aforesaid, committed the tort of conversion, within the meaning of this term in Section 52 of the Ordinance, by appropriating the jewelry which the Plaintiffs are entitled to hold, by taking the jewelry and/or holding onto the same and/or otherwise denying the same from the Plaintiffs, and by failing to arrange for the return of the same, when doing so was both practicable and their lawful duty.

Negligence and Negligence Per Se

36. The Plaintiffs shall further claim that the foregoing incident and their damage were caused by the negligence and/or indifference and/or negligence per se of the soldiers who entered the Plaintiffs' house, and of their commanders, as expressed in the following acts and/or omissions, cumulatively and/or complementarily and/or alternatively, *inter alia* in that they:
- a. Exceeded their authority and acted against general staff orders and/or IDF directives and/or orders.

- b. Behaved contemptuously and/or recklessly and/or indifferently towards the Plaintiffs' property.
- c. Failed to do everything within the power and ability of reasonable soldiers and/or forces to prevent the occurrence of the damage.
- d. Broke into the House when there was nobody at home and searched it without being accompanied by the proprietor of the House, a relative or a neighbor.
- e. Failed sufficiently and/or specifically to brief the soldiers under their command on the manner of entry into and search of the Plaintiffs' house.
- f. Failed sufficiently to supervise the soldiers who conducted the search at the Plaintiffs' house.

The Defendant's Liability

Conversion

37. The Plaintiffs shall claim that the Defendant committed the tort of conversion, within the meaning of this term in Section 52 of the Ordinance, by otherwise denying the jewelry, which the Plaintiffs are entitled to hold, from the Plaintiffs, and *inter alia* in that it:
- a. Allowed the soldier or the soldiers to convert the jewelry belonging to the Plaintiffs, while the soldiers were acting on its behalf and were subject to its authority, command and supervision and/or
 - b. Failed to arrange for the return of the jewelry, when doing so was both practicable and its lawful duty.
38. The Defendant is liable for the torts committed by the soldiers as specified above in their capacity as its agents and/or as acting on its behalf.

Negligence and Negligence Per Se

39. The Defendant is liable for the damage caused by the negligence of the soldiers who were in the Jeep, as specified above (and who were the Defendant's agents and/or acted on its behalf), negligence that was expressed, *inter alia*, in the following acts and/or omissions, namely that they:

- a. Failed to immediately relay the details of the soldiers who were identified as having broken into the Plaintiffs' House, and who even admitted thereto, to the Plaintiffs' family and/or to the Hebron Police (to which the family was referred for the filing of a complaint) and/or to the Investigating Military Police and/or to any other entity authorized by army procedure to handle complaints of this type.
 - b. Failed to accompany the family and the soldiers complained against to the police station at once for an investigation of the incident, but made do with a general instruction to the family that they should complain to the police.
40. Had the soldiers in the Jeep acted as would have reasonable soldiers in their place, an immediate and exhaustive investigation of all the circumstances of the incident described herein may have been conducted on the very same day. Furthermore, had the soldiers in the Jeep acted as would have reasonable soldiers in their place, a record would have been kept of the details of the soldiers who broke into the Plaintiffs' House, thus making it possible to search them for the jewelry upon discovering the absence thereof approximately one hour after the incident. Such a search would probably have resulted in the discovery of the jewelry and the return thereof to the Plaintiffs already seven years ago.
41. The Defendant is liable for the damage caused by the negligence and/or negligence per se of the investigative authorities (which are its branches, agents and/or employees acting on its behalf), which mishandled the incident described herein, as specified below:
 - a. The Hebron Police failed to take a statement from the Plaintiff's Nephew, who met the soldiers who broke into the Plaintiffs' house and later identified them.
 - b. The Hebron Police, according to its own version, as reflected in *Exhibit B* hereto, failed to forward the investigation material to the Investigating Military Police, despite the fact that the Complaint-Filing Confirmation delivered to the Plaintiff stated that the material *was* sent (thus, in the past tense) to the *Investigating Military Police*
 - c. The Hebron Police, according to its own version, forwarded the material to the entity which it believed was authorized to investigate the incident (namely, the West Bank Legal Advisor), only more than three and a half

months after the complaint was filed by the Plaintiff, a period of time which, even according to the assistant to the officer in charge of prosecution in the West Bank, is “relatively long”.

- d. Even this tardy forwarding of the investigation material was performed in an awkward procedure, via a third party (R.L.H (Office Chief) Yehuda), when an immediate investigation was vital for uncovering the truth.
- e. By these derelictions, the policemen of the Hebron police breached the duty imposed on them in Section F(1)(a)(1) of 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.”

- f. The West Bank Legal Advisor, if the investigation material was indeed forwarded thereto, failed to arrange for an investigation of the complaint described herein. In fact, it is not known at all how he treated the material that had reached him and what became of the said material.
 - g. The Investigating Military Police, if the investigation material of the Hebron Police was delivered thereto (as claimed in the Complaint-Filing Confirmation), conducted no investigation at all.
 - h. The Office of the Advocate General of Central Command has known of the complaint since early 1990, but there is no information of any action which it took to investigate the Plaintiff’s complaint.
42. In conclusion: Not one of the Defendant’s investigative authorities conducted an effective, or any, investigation into the Plaintiff’s complaint. The various investigative authorities are agreed that a dereliction of duty has indeed occurred in this case.

The Defendant’s various arms are at odds on three points only:

- a. The factual version regarding the manner of handling and passing along of the complaint.
- b. The entity that was authorized to investigate the complaint.

- c. The entity responsible for the neglect of the complaint.
43. Without opining on the dispute that has arisen between the Defendant's various arms, the Plaintiffs shall claim that had the Defendant's arms, agents and employees acting on its behalf followed the procedures, and as reasonable investigative authorities would have acted, they would likely have discovered the persons responsible for the theft, located the stolen property, and enabled the return of the jewelry to the Plaintiffs.
44. The Defendant is responsible for the safety and for safeguarding the property of the residents of the region, including the Plaintiffs:
- a. Maintaining security and protecting property are amongst the most important missions of the state army, to which the soldiers belong.
 - b. The investigative authorities, the Israel Police, the West Bank Legal Advisor and the Office of the Advocate General of Central Command, are also entrusted with safeguarding property, including that of the Plaintiffs.
 - c. All along, all of the foregoing authorities demonstrated severe contempt, indifference and apathy with respect to the protection of the Plaintiffs' property and their complaint of the jewelry theft and the damage to the House.
 - d. Law and justice require that they be held liable for this negligence.

The Plaintiffs' Damage

45. As a result of the incident described herein, the Plaintiffs suffered the following damage:
- a. Owing to the soldiers' breakage of the back door to the House and the First Plaintiff's bedroom door, the First Plaintiff had to replace the two doors.
 - a.1. The First Plaintiff shall claim that he is entitled to compensation for the cost of replacing the said two doors, in the sum of **NIS 1,784.25**. This amount, revaluated from the date of the incident until the date of filing of the Complaint, amounts to **NIS 6,230**.

- a.2. In addition, owing to the soldiers' breakage of two doors and one drawer of the wardrobe that stood in the First Plaintiff's bedroom, the First Plaintiff had to repair the same.
- a.3. The First Plaintiff shall claim that he is entitled to compensation for the cost of repairing the two wardrobe doors and one drawer in the sum of **NIS 1,098**. This sum, revaluated from the date of the incident until the date of filing of the Complaint, amounts to **NIS 3,834**.
- a.4. Furthermore, the First Plaintiff is entitled to compensation for the grave sorrow and distress he suffered due to his House having been burglarized and turned upside down and due to the vile use made thereof by the soldiers, as specified above, and he is fixing his claim due to this damage at the sum of **NIS 10,000**.

- b. The following jewelry was stolen from the Second Plaintiff's House:

2 similar gold bracelets worth	NIS 11,501
A gold bracelet to which gold coins were attached	NIS 6,709
A special gold bracelet known in Arabic as a <i>Ganzir</i> worth	NIS 9,584
Another gold bracelet worth	NIS 4,792
A gold necklace worth	NIS 6,709
A gold necklace worth	NIS 3,834
3 gold rings worth	NIS 1,917
A gold watch worth	NIS 3,834
A pearl necklace worth	NIS 7,667
A pearl bracelet worth	<u>NIS 6,709</u>
	NIS 63,256

- b.1. The Second Plaintiff shall claim that she is entitled to have the said jewelry returned to her or, alternatively, to monetary compensation at the value thereof on the date of filing of the Complaint, in the sum total of **NIS 63,256**.
- b.2. Furthermore, the Second Plaintiff is entitled to compensation for the grave sorrow and distress she suffered due to the loss of her jewelry, which carried substantial emotional value to her, and due to the damage caused to her home due to the burglary thereof by the soldiers, and is fixing her claim due to such damage at the sum of **NIS 15,000**.

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

The Honorable Court is therefore moved to summon the Defendant and to charge it with payment to the First Plaintiff of his damage as specified above.

The Honorable Court is further moved to charge the Defendant with returning the Second Plaintiff's jewelry to her and to compensate her for the distress she suffered as specified above. Alternatively, if restitution is not possible, to charge it with payment of the damage as specified above.

All that in addition to lawful indexation and interest from the date of filing of the Complaint until the date of actual payment, and in addition to trial expenses and V.A.T. as set out in the law.

(-)

Hala Huri, Adv.
Counsel for the Plaintiffs

Jerusalem, 19 November 1996.

(T.S. 2755, M.M. 17292)

[Letterhead of the Israel Police and stamp of the Hebron Station of 17/12/????]

To *Whom it may concern*

Unit: *Hebron Station*

Tel.: *961444*

Date: *17/12/89*

Complaint-Filing Confirmation

Comment:

This confirmation is intended for the purpose of inquiring into the complaint only, and is not a substitute for any other official confirmation (confirmation for insurance companies, etc.)

I, the undersigned, *Staff Sergeant Elie Ben Shushan*, P.N. *58100*, of the investigation unit *Hebron*, do hereby confirm that on *13/12/89* you filed a complaint with our unit on the matter of *damage caused to his house by IDF soldiers*.

Log number *Incident 8 13/12/89*, P.A. number* *Material sent to the Investigating Military Police*

This confirmation is intended for the purpose of inquiring into the complaint. Should you learn of any additional details on the foregoing complaint, please forward them to our attention as early as possible at the aforementioned unit, telephone number *961444*, mentioning the foregoing details.

We recommend turning to the **Home Protection Consultant** at the police unit (at the above telephone number) for explanations and guidance on ways to protect your home and property.

The Home Protection Consultant will be happy to advise your neighbors and acquaintances too.

Sincerely,

(-)

Signature

* Fill out if details exist.

[Letterhead of the Israel Police]

Adv. Badra G. Huri
2 [sic] Abu Obeidah St.
Jerusalem
Zip code 97200

Unit: Hebron S.
Address:
Tel.:
Date: August 10, 1992
Please mention PT/JM/324/89

Dear Sir/Madam,

We hereby confirm receipt of your letter dated July 24, 1992
on the matter of: *Rasmi A*

- We are handling the matter and will inform you upon concluding the same.
- We wish to advise you hereby that *in your letter 2755 of July 24, 1992, you mention, and rightfully so, that the complaint was forwarded to the Investigating Military Police.*

The investigation material in our possession indicates that the investigation material was forwarded to the Judea and Samaria Legal Advisor on April 1, 1990 via R.L.H. [?? ראה לעיל.] Yeduda (this is the manner in which complaints are forwarded).

In any event, I am now forwarding the copies in our possession to the Advocate General of Central Command, who currently concentrates the handling of complaints against IDF soldiers, and I recommend that you send a letter to the Judea and Samaria Legal Advisor, who may still have the material in his possession.

Sincerely,

Title Deputy Station Commanding Officer
Signature (-)

[Stamp: Received on August 18, 1992]

[Letterhead of the IDF, Judea and Samaria Region, Office of the Legal Advisor]

Telephone 02-982571
Facsimile 02-982626
P.O.B. 10482 Bet El
Date: Heshvan 23, 5754
November 7, 1993
Ref: 09656-118/01

Ms. Rotem Arielli
Complaints Coordinator
Center for the Defence of the Individual
4 Abu Obeidah St.
Jerusalem 97200

Dear Madam,

Re: **Rasmi Abed**, December 13, 1989 Incident

1. After receiving the administrative material on the complaint of the aforementioned, another search was performed which, unfortunately, has revealed nothing on the fate of this complaint, originally from December 1989.
2. We should add that in light of the accompanying documents and the attempt to track down the handling of this complaint, and particularly the December 17, 1989 Complaint-Filing Confirmation signed by Staff Sergeant Elie Ben Shushan of the Hebron Police, it was written explicitly that the material was sent to the **Investigating Military Police**.

I should further note that the forwarding of material pertaining to complaints against soldiers from the police to the West Bank Legal Advisor is not the common practice. The common practice is that the material is forwarded to the Advocate General of Central Command, which is the relevant entity that handles complaints against soldiers. It is also puzzling to me that the police has retained no copy of the complaint in its possession.

3. The mention of the Judea and Samaria Legal Advisor as possibly having material on the complaint was made later than the date on which it was filed, on August 10, 1992 (the memo by the Deputy Station Commanding Officer – Uri Weisskopf), contrary to the original Complaint-Filing Confirmation.

Moreover, according to this memo, at least four months had passed between the filing of the complaint and the date of dispatch of the material to the Judea and Samaria Legal Advisor, a relatively long time, it would appear, for forwarding a complaint that is supposed to be investigated by the Investigating Military Police and not by the police in the region.

[Stamp: Received on November 16, 1993]