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The Magistrates Court in
Jerusalem
CApp. 2596/97
Rafaf et. al. v. The State of Israel
Opening date: 2 February 1997

Procedure: Ordinary

At the Magistrates Court in Jerusalem

In the matter of:

1. _____ **Jiradat**
2. _____ **Jiradat**
3. **A minor boy, through his parents, Plaintiffs 1-2**
4. **A minor boy, through his parents, Plaintiffs 1-2**

Represented by counsel Adv. Eliyahu Avram and/or
Hale Houry and/or Hisham Shabaita
of the Center for the Defence of the Individual
4 Abu Obeidah St., Jerusalem 97200
Tel. 02-6283555, Fax 02-6276317

The Plaintiffs

v.

The State of Israel – The Ministry of Defense

Represented by the District Attorney of Tel Aviv
(Civil Department)
1 Henrietta Szold St., Tel Aviv 64924
Tel. 03-6970222, Fax 03-6918541

The Defendant

Nature of the claim: **Tortious**
Amount of the claim: **NIS 70,500 (as of January 30, 1997)**

Complaint

The Parties

1. The First and Second Plaintiffs are a wife and husband, born in 1962 and 1959 respectively, residents of Jerusalem. Their eldest children are the Third and Fourth Plaintiffs, who were born in 1985 and 1987.

2. In the period of time pertaining to this Complaint, the Plaintiffs lived in a house owned by them in the Kafr Akab neighborhood in North Jerusalem. Their house is located near Muhtad al-Quds Hospital in Jerusalem, in block 13, parcel 13 (hereinafter: the "House").
3. In the period of time pertaining to this Complaint, the Second Plaintiff (hereinafter: the "Second Plaintiff") worked the evening and night shifts at a café in central Jerusalem. His wife, the First Plaintiff (hereinafter: the "First Plaintiff"), who was 28 years old at the time, stayed home alone at night with their two children, the Third and Fourth Plaintiffs, who were then two and five years old.
4. The Defendant is responsible for the actions of the IDF and its soldiers. In the period of time pertaining to this Complaint, the Defendant stationed IDF soldiers at the Samiramis camp, also known as the Alon camp. This camp is located in the Northern gateway to Jerusalem. The Defendant directed the soldiers at the Samiramis camp to operate amidst the civil population in the neighborhood and vicinity of Kafr Akab, commanded the actions of the soldiers vis-à-vis the residents of the State of Israel living there and authorized their actions.

The February and March 1990 Harassments

5. In the evening hours in the month of February 1990, three IDF soldiers from the Samiramis camp rang the front door bell at the Plaintiffs' house. The First Plaintiff, who was home alone with her children, opened the door hatch. The soldiers demanded to come in. The First Plaintiff told them that she was alone and could not open the door for them at night, with her husband gone. One of the soldiers threatened her with his rifle and told the First Plaintiff that if she didn't open the door, he would shoot her. The First Plaintiff asked the soldiers what they wanted. The soldiers did not reply, but rather repeated their threats and demands to open the door. The First Plaintiff opened the door and the soldiers came in.
6. Once inside the House, the soldiers neither asked to perform a search, nor performed any other action. They took an interest in the personal details of the First Plaintiff and her husband, asking where her husband was, what he did, when he would be back from work, and if the First Plaintiff was home alone. The soldiers then took an interest in a picture of the First Plaintiff's husband that was hanging in their living room. One of the soldiers said that they were looking for a grocery store, and asked the First Plaintiff where there was a grocery store. He further asked the First Plaintiff

if she was afraid. The First Plaintiff answered the soldiers that they did not have to come in the House and threaten her for a grocery store, and asked them whether they would not have been afraid in her place. The soldiers laughed and left the House. Their visit at the House lasted more than half an hour, in the presence of the First Plaintiff's little children, the Third and Fourth Plaintiffs.

7. In the weeks following the events described in paragraphs 5 and 6 above, IDF soldiers from the Samiramis camp came to the Plaintiffs' house another three or four times, always at night, knocking on the front door and ringing the bell. On one occasion the First Plaintiff opened a window, the soldiers saw her and demanded to come in. Again they entered the House, walked about without performing a search and left.

The First Plaintiff started turning the lights in the House off and keeping the place dark in the evening hours, hoping that the soldiers would thus not force her to let them in.

8. On 22 March 1990, hearing the doorbell ring at 20:30 or thereabouts, the First Plaintiff switched off the lights and tried to hide with her children.

The younger boy ran to the front door and bolted it. The soldiers banged on the door, tore the bell out of its place, bent the door, broke the lock, cut an antenna wire, threw stones at the balcony windows and broke a window.

9. The elder son suggested to his mother, while hiding with her in the dark, that they get into bed. He explained that it would be better if the soldiers shot them while they were sleeping.
10. Neighbors and relatives arrived at the House. A soldier shouted to a neighbor that they wanted the woman who lived there. After one of the soldiers threatened to throw a gas or smoke grenade into the House, a relative of the First Plaintiff's opened the door to the House with a hammer. Four soldiers from the Samiramis camp entered the House.
11. Once inside the House, the soldiers did not perform a search. They argued with the First Plaintiff, ordering her to open the door in the future when demanded to do so. One of the soldiers warned the First Plaintiff that he would be back to drive her mad. The entire event, which lasted about an hour, took place in the presence of the First Plaintiff's children, the Third and Fourth Plaintiffs.

12. That same night, after returning home from work, the Second Plaintiff went to the Samiramis camp to complain. Not one of the soldiers or commanders on the base took any notice of his complaint. On the following day, the Plaintiff complained of his wife's harassment to soldiers on patrol. One of the soldiers told the Second Plaintiff that they would come back to his house.
13.
 - a. Following the harassment and the threats, as described in Sections 5-12 above, the First Plaintiff stopped staying home when her husband left for work. Every evening, for more than nine months after March 1990, the First Plaintiff slept at her parents' house with her children, for fear of the soldiers' return.
 - b. The First Plaintiff's children, the Third and Fourth Plaintiffs, suffered deep and lasting anxiety as a result of the foregoing events. To this very day, they are overcome with uncontrollable fear whenever they see soldiers.
14. The Plaintiffs filed a complaint with the IDF authorities via their attorneys from the Center for the Defence of the Individual on 27 March 1990. Their complaint was investigated by an examining officer, who took statements from two soldiers only, who were involved in entering the Plaintiffs' house on 22 March 1990. The Advocate General of Central Command opined that the soldiers' acts were performed for operational purposes, and ordered the investigation file closed. Thus, the Defendant's representative ratified and embraced the soldiers' acts. The Advocate General of Central Command recommended, nevertheless, that the Plaintiffs be compensated for the damage caused to their house upon the soldiers' entry.

Forced Labor

15. One day in November 1990, when the Second Plaintiff left for work at 15:00, soldiers from the Samiramis camp stopped him, took his I.D. away from him and forced him to take down a flag that was hanging on an electricity pole in the street. When the Second Plaintiff got onto the roof of his car and tried to take the flag down with a stick, electric sparks started flying. The Second Plaintiff was afraid and did not go on. The soldiers ordered him to keep going, until the Second Plaintiff managed to get the flag down and continued on his way to work.
16.
 - a. On 29 April 1991, at around 10:00 a.m., five soldiers from the Samiramis camp arrived at the Second Plaintiff's house. They banged heavily on the door. At that time the Second Plaintiff was in bed, having worked during the

night. The Second Plaintiff got up from bed and saw that two soldiers had already broken into the House. Per their demand, the Second Plaintiff handed his I.D. to one of the soldiers. The soldiers then ordered him to get out. The Second Plaintiff got dressed and stepped out the front door.

- b. The soldiers ordered the Second Plaintiff to whitewash slogans from the walls of a neighbor's house. The Second Plaintiff answered the soldiers that he had no paint. The soldier then threatened him, saying: "Do you want me to beat you up, do you want me to take you to Samiramis."
17. The Second Plaintiff borrowed paint from his neighbors, brought a brush from his yard and, having no other choice, whitewashed the slogans from his neighbor's house. While he was doing so, the soldier pushed him, and even grabbed him by the neck and told him: "Do a good job!" When the Second Plaintiff was done, the soldier asked him to whitewash slogans from the walls of another house. The soldier then demanded that he paint another coat over the slogans he had whitewashed at the beginning.
18.
 - a. The soldier claimed that the brush used by the Second Plaintiff was no good, and demanded that the Plaintiff bring another brush. The Plaintiff went inside to bring a brush, and at that moment the First Plaintiff called the Center for the Defence of the Individual.
 - b. After urgently taking the Second Plaintiff out of his house, the soldier ordered the Second Plaintiff to whitewash more slogans from several walls in a nearby neighborhood.
 - c. Meanwhile, representatives of the Center for the Defence of the Individual arrived on the scene. The Director of the Center for the Defence of the Individual, Ms. Dalia Karstein, asked for the soldier's details, but he refused to give them to her. He then ordered the Second Plaintiff to continue whitewashing more slogans, in the presence of the Center's representatives.
19. Before leaving the area, one of the soldiers threatened the Second Plaintiff that if he ever argued with them, he would be beaten up. The Second Plaintiff tried to explain to the soldier that the soldiers had no right to order him around, and that they were in the jurisdiction of Jerusalem. The soldier replied: "Do you want your wife not to recognize you?" As he was speaking, the soldier grabbed the Second Plaintiff by the

neck and put his fingers around his throat. The soldier then gave the Second Plaintiff his I.D. back.

20. On 5 May 1991, the Plaintiffs filed a complaint with the IDF authorities, through their attorneys from the Center for the Defence of the Individual, asking that the incident described in Sections 16-19 above be investigated.
21. No investigation was conducted. On 23 November 1993 a military attorney notified the Plaintiffs' counsel as follows: "It appears that due to the loss of the relevant material, no examination file was delivered to us. Presently, due to the passage of time, there is apparently no room to order a re-examination. Our apologies." In refraining from investigating the incident, the Defendant's representatives have, in practice, embraced the soldiers' conduct.

The Soldiers' Liability

Negligence

22. The Plaintiffs shall claim that the soldiers acted towards them with negligence, and negligently caused them damage through their acts and/or omissions as described in the Complaint, including that they:
 - a. Entered the Plaintiffs' house unlawfully and while exceeding their authority, and all in contempt and/or recklessness and/or indifference and/or lack of caution and/or malice;
 - b. Harassed the Plaintiffs, violated their privacy and interfered with the Plaintiffs' use of and enjoyment from their house, and all unlawfully, while exceeding their authority, and in contempt and/or recklessness and/or indifference and/or lack of caution and/or malice;
 - c. Damaged the Plaintiffs' house and household articles, while using excessive force and/or lack of caution and/or by failing to take alternative measures, as reasonable soldiers ought to have taken under the circumstances of the matter and/or in recklessness and/or indifference to the Plaintiffs' property;
 - d. Unlawfully and without authorization harassed, assaulted and humiliated the Second Plaintiff and denied him his freedom, and all in contempt and/or recklessness and/or indifference and/or lack of caution and/or malice.

Private Nuisance and Trespass

23. In addition or alternatively, the Plaintiffs shall claim that the soldiers committed the tort of private nuisance against them, pursuant to Section 44(a) of Pequdat Ha-Nezikin (Nosah Hadash) [the Torts Ordinance (New Version)], 5728-1968 (hereinafter: the "Ordinance"), in that, by their conduct, when entering the Plaintiffs' house and when attempting to enter it, they caused a substantial interference to the Plaintiffs' reasonable use of and/or reasonable enjoyment from their house, and caused them damage.
24. In addition or alternatively, the Plaintiffs shall claim that the soldiers committed torts of trespass to land against them, pursuant to Section 29 of the Ordinance, by unlawfully entering the Plaintiffs' house and causing pecuniary damage to their house.

Invasion of Privacy

25. In addition or alternatively, the Plaintiffs shall claim that the soldiers committed torts of violation of privacy against them, pursuant to Section 4 of Hoq Hagannat Ha-Peratiyyut [the Privacy Protection Law], 5741-1981, by causing the Plaintiffs substantial and continuous harassment, without any lawful authority.

Assault and Battery

26. In addition or alternatively, the Plaintiffs shall claim that the soldiers committed torts of assault and battery against them, pursuant to Section 23 of the Ordinance, by threatening the First Plaintiff and the Second Plaintiff to use force against their body, and by touching the Second Plaintiff, pushing and seizing him, and all intentionally, without the Plaintiffs' consent and without any lawful authority.

False Imprisonment

27. In addition or alternatively, the Plaintiffs shall claim that the soldiers committed the tort of false imprisonment against the Second Plaintiff, pursuant to Section 26 of the Ordinance, by taking his I.D. away from him, detaining him in practice and making him do forced labor, while absolutely and unlawfully denying him his freedom.

Negligence Per Se

28. In addition or alternatively, the Plaintiffs shall claim that the soldiers committed torts of negligence per se against them, pursuant to Section 63 of the Ordinance, which are expressed, *inter alia*, in the following acts and/or omissions, namely that:
- a. By entering the Plaintiffs' house in the circumstances described in the Complaint, the soldiers failed to fulfill the provisions of Sections 6, 24 and 25 of Pequddat Seder Ha-Din Ha-Pelili (Ma'azar We-Hippus) (Nosah Hadash) [Criminal Procedure Ordinance (Arrest and Search (New Version)), 5729-1969, which obligate them to refrain from entering private houses in Israel for searches or arrests, other than in rare and very limited cases. These directives are intended to protect all Israeli residents against an invasion of their private domain by unauthorized persons and to prevent an infringement of their right to privacy.
 - b. The soldiers failed to comply with the provisions of Section 376A of Hoq Ha-Onashin [the Penal Law], 5737-1977, by holding on to the Second Plaintiff's I.D. This provision is designed to protect the right and duty of residents of the State of Israel to carry identity cards and to prevent an infringement of their freedom.
 - c. The soldiers failed to comply with the provisions of Section 428 of the Penal Law, by threatening the First and Second Plaintiffs with injury, if the First Plaintiff did not let them into her house, and if the Second Plaintiff did not perform forced labor for them. This provision is designed to protect the freedom and dignity of every person in Israel and to prevent extortion by threats.

The Defendant's Liability

29. The Plaintiffs shall claim that the Defendant bears vicarious liability for the soldiers' aforementioned acts and omissions, based on that IDF soldiers are the Defendant's agents and/or employees and/or act on its behalf.
30. In addition or alternatively, the Plaintiffs shall claim that the Defendant bears direct liability for the torts committed by the soldiers, as specified above, because it permitted the same and/or directed the soldiers to perform the same and/or ratified the said acts retroactively, as clarified in Sections 14 and 21 above.

31. In addition or alternatively, the Plaintiffs shall claim that the Defendant is liable for the damage caused to the Plaintiff due to its negligence, which is expressed, *inter alia*, in the following acts and/or omissions:
- a. The Defendant directed the soldiers to act in accordance with the law applicable in the West Bank and with the authorities conferred upon soldiers in that region, and/or failed to take reasonable measures to clarify to the soldiers and to direct them that when acting in the territory of Jerusalem, they were to act in accordance with the laws of the State of Israel, and this due to lack of caution and/or apathy to the rights of the Arab residents of Jerusalem;
 - b. The Defendant failed to take reasonable measures to supervise the actions of the soldiers stationed at the Samiramis camp and operating in the territory of the State of Israel, and this due to lack of caution and/or apathy to the rights and personal safety of the Arab residents of Jerusalem;
 - c. The Defendant failed to activate efficient authorities to investigate complaints of Jerusalem residents, with respect to the unlawful conduct of soldiers, and failed to arrange for reasonable measures to enforce law and discipline on its soldiers operating in the territory of Jerusalem, and this due to lack of caution and/or apathetically and/or intentionally. Consequently, certain soldiers were able to behave without any rule of law, and to hurt the Plaintiffs and others in their condition.

The Plaintiffs' Damage

32. Prior to the events described in the Complaint, the Third and Fourth Plaintiffs were mentally healthy and easy-mannered children. As a result of the said events, they suffered severe anxiety, suffering, shock and distress due to their tender age, which have adversely affected and continue to affect them, their enjoyment of their childhood, their self-confidence and their confidence in their parents, their attitude to their surroundings and to others, and their behavior.
33. The First Plaintiff suffered a violation of her privacy and dignity, as well as distress and embarrassment.
34. All of the Plaintiffs suffered an injury to their enjoyment from their house and to their normal use of their residence. This injury lasted for a considerable period of time, as

the First Plaintiff was forced to leave the House every evening with her children for more than nine months.

35. Physical damage was caused to the Plaintiffs' house, as described in Section 8 hereof.
36. By the events described in Sections 15-19 hereof, the First Plaintiff suffered severe humiliation, pain, distress and embarrassment. He also received injuries to his body, dignity and freedom.
37. The Plaintiffs' damage amounts to the following sums:

Specific Damage

Broken window, bent door, broken lock, torn out bell, cut lines	NIS 500
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General Damage

- | | |
|--|-------------------|
| a. Third Plaintiff's anxiety, distress, suffering
and loss of life's pleasures | NIS 20,000 |
| b. Fourth Plaintiff's anxiety, distress, suffering
and loss of life's pleasures | NIS 20,000 |
| c. Injury to the First Plaintiff's privacy and dignity,
her embarrassment and distress | NIS 5,000 |
| d. Denial of enjoyment and use of the House
to the Plaintiffs 1-4 | NIS 10,000 |
| e. Second Plaintiff's pain, suffering, distress,
embarrassment and injuries to his body,
freedom and dignity | <u>NIS 15,000</u> |

<u>Total specific and general damage</u>	<u>NIS 70,500</u>
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38. All of the arguments asserted herein are asserted cumulatively, alternatively or complementarily, all as the context prescribes. Wherever an act or omission is attributed herein to a person, the argument is made with respect to the Defendant and against its employees, representatives and agents and all as the context prescribes.
39. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint.
40. The Honorable Court is therefore moved to summon the Defendant and to charge it with payment to the Plaintiffs of their damage in full, as specified in Section 37 above or in accordance with any other specification, as the Court shall deem right and just under the circumstances, and to charge the Defendant with payment of trial expenses

and attorneys' fees as set out in the law, and all in addition to indexation and interest as set out in the law until actual payment in full.

Jerusalem, 2 February 1997

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Eliyahu Avram, Adv.
Counsel for the Plaintiffs

(T.S. 2057/1368, M.M. 17831)