

Translation Disclaimer: The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Hebrew language. In the event of any discrepancies between the English translation and the Hebrew original, the Hebrew original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Hebrew original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

Date: 21 November 2007
For replies please use
reference number: 27848

To:
Adv. Ahaz Ben-Ari
Legal Adviser to the Defense Agencies
Office of the Legal Adviser,
Ministry of Defence
22 Kaplan Street
Hakiryia, Tel Aviv, 61909

Per fax 03-_____
Per Registered Mail + Delivery Confirmation Stamp

Greetings,

Re: Complaint – the conduct of the private investigator over the course of an open investigation on behalf of the Ministry of Defense
The complainant – Hamoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger Registered Non Profit Organization 580163517
In the matter of your file (torts) – 11-372/03

I hereby refer you to the complaint concerning the conduct of a private investigator, who was acting on behalf of the Claims and Insurance Department of the Ministry of Defence (hereinafter: MoD) in the matters of my client, as follows:

Background

1. In Claims and Insurance Case No. 11-327/03 filed under the name of Mr. _____ Lahluah, ID No. _____ ongoing negotiations are being conducted with respect to damages for a property tort that took place on 15 June, 2003 within the course of a military and Israel Secret Service (hereinafter “ISS”) search for wanted persons (hereinafter: the “**tort event**”). A complaint in this matter was filed with the relevant authorities, soon after the event.
2. Over the course of the negotiations, a demand for compensatory damages was made by the plaintiffs and was subsequently filed with the Ministry of

Defence on 29 May, 2005 through the law offices of HaMoked : Center for the Defence of the Individual (hereinafter: “**HaMoked**”). Negotiations are still ongoing, and we should pay heed to the possible ramifications of the investigation into the complaint at hand with respect to the damages claim.

3. Within the framework of the negotiations HaMoked received a letter dated 21 June, 2007 in which it informed the then counsel for the plaintiffs, Adv. Kidron, in these words: “From a private and open investigation which we conducted at the home of the plaintiff it transpires that the alleged damages that were caused over the course of a search by soldiers of the IDF at the home, even by the plaintiff’s own testimony were puny” (And consequently the offer for compensation was also puny).

A copy of the letter dated 21 June, 2007 is attached and **marked A**.

4. Adv. Kidron requested to receive the investigation material, as was explicitly promised to her, in a prior conversation with Adv. Shnebel on 18 June, 2007. During this conversation she was informed for the first time of the carrying out of the investigation, of its findings and of the readiness to compensate the plaintiff with “a few thousand shekels”. And it bears mentioning that her request was not answered despite the assurances, and later requests to receive the investigation material were also denied.

A copy of the application dated 21 June, 2007 is attached and **marked B**.

5. As to the tort event itself (which is meant to be fully documented in the aforesaid file) and without expanding on the matter, it should be noted:
 - A. The plaintiffs are Mr. _____ Lahluah (hereinafter “_____ Lahluah), his aunts, Mrs. _____ Lahluah and her sister Mrs. _____ Lahluah (hereinafter: the “**aunts**”). Everyone lives in same building, which comprises two residential units and a shop. _____ Lahluah, together with his family lives in one of the units, and his aunts in the other. In one of the rooms [of this unit], the two of them ran a grocery shop (which as a result of the destruction of their merchandise that was caused during the search, and the consequent pecuniary loss, has been closed ever since), and they lived together in the other room. The forces entered _____ Lahluah’s apartment via the shop and common courtyard, and caused damages to the shop and to the residentially rooms of everyone there. (The suspect was apprehended in the home of other members of the Lahluah family which is located a few meters away from the home of the aforementioned plaintiffs. This matter is not being handled by HaMoked).
 - B. On 7 February, 2005 a state attorney from the Central Command announced that they had completed the handling of the complaint that had been referred to the army (their number: Inv. 12829 1687/03). The last-mentioned confirmed the arrest of the suspects and pointed out that he “**was uninformed** about the IDF forces’ invasion of the complainant’s home, of damage caused, or of documents confiscated”. (Emphasis added). Material from a subsequent investigation that the state attorneys’ office

conducted has thus far not been received, despite repeated requests. And this matter has been handled through another channel.

- C. The notice of the state attorney for the Central Command does not therefore refute the plaintiff's version. On the other hand it contains no affirmative solid finding indicating that the army forces did not enter the home of _____ and his aunts and thereby cause damages.
6. With regard to the tort case, therefore, the position of the Ministry of Defence, stated within the framework of the negotiations, that: "from an investigation that we conducted with the parties involved it emerges that the IDF Forces never entered the home of your client" is clearly at odds with the classified findings presented to us by the military advocate general.

A copy of the letter dated 10 September, 2007 is attached and **marked C**.

The conduct of the Ministry of Defence's Private Investigator

7. It is well known as stated above that the MoD carried out an open investigation over the course of the negotiations. The problem is that the conduct of the investigator arouses the genuine suspicion of his having breached unequivocal orders and prohibitions that were established in the Private Investigators and Security Services (Professional Ethics) Regulations, 5733-1972 (hereinafter: the "**regulations**"). Various indicators raise the suspicion of genuine criminal behavior. It is for this reason that the complaint of HaMoked is being filed.
8. From conversations with _____ Lahluah, the aunts and brothers of _____, _____ Lahluah was informed that the investigator had arrived at the home of _____, at a time when the latter was staying with his family outside that home. The investigator presented himself to them as an attorney on behalf of HaMoked, and said that he had come to gather material in preparation for the upcoming court hearing in the matter of the complaint that was filed by _____. In addition he told _____ who was hesitant about permitting the investigator to enter his father's home that Georgina from HaMoked knew that he was coming.
9. It should be made clear that Mrs. Georgina Saraya, formerly the coordinator of the violence desk at HaMoked, for all intents and purposes worked at HaMoked as an employee at its law offices, so that the law of attorney client privilege applies equally to her. Georgina was the person who kept in constant contact with _____ Lahluah, whom he knew, and trusted.
10. The investigator spoke with all three. These individuals, assuming that he was _____'s attorney, and on that assumption alone, relayed to him all that they knew. And _____, only when he heard from _____, that the visit has been coordinated with Georgina, did he allow the attorney from HaMoked to enter his house.

11. The investigator heard from _____ and _____ Lahluah, elderly women in their seventies, about the damages that were caused to them and which they estimated at amounting to a few thousand Jordanian Dinars, and was also told that ever since the search the shop, from which they earned their living had remained closed. This they also witnessed with their own eyes. To the best of their recollections, the investigator wrote down what was told to him, but did not ask them to sign any document.
12. _____ Lahluah showed the investigator the damages that were caused to _____'s house and remembers that the investigator took photographs. In addition the two went to a carpenter who repaired the damaged furniture. The suggestion to approach the plumber and the municipality (it should be remembered: a photographer from the municipality photographed the damages soon after the event. The film was burnt and the only a few pictures could be recovered, and these were sent to the Central Command) was rejected by the investigator who said that he needed to go to Jenin to conduct two additional investigations. It should be emphasized that _____ Lahluah did not know how to respond to the investigator's question with respect to the amount of damage caused to his brother's home and in this matter he referred the investigator to his brother.
13. And what do the documents of the investigation tell us?

The suspicions

14. The above overview raises the grave suspicion that the investigator adopted completely unlawful investigative methods. Regulation 3 explicitly prohibits an investigator from posing as someone else – as a licensed professional, as the agent of a specified individual, or as someone working on his behalf or as a public servant. And this applies without prejudice to the provisions of any other law with respect to passing off. Furthermore, there are explicit obligations upon an investigator to carry a license and to present it to anyone who so requests, and to whom he has approached for the purposes of the investigation, and to use the professional title “for any purpose or matter, that include the words “private investigator”. Using the words “investigator” alone or in addition to some other title is prohibited’ (Regulations 2 and 5).
15. The severity of the alleged suspicions against the investigator cannot be overstated: concealing his identity as an investigator and the identity of his dispatcher, posing as an attorney from a human rights organization and even as counsel for the interviewee while in fact carrying out an investigation on behalf of counsel for the tortfeasor – the army; abuse of the fiduciary relationship between an attorney and his client including the employees of his office, while creating a false presentation of legal procedures that do not exist (all the while harming the professional relationship between the client and his attorney) and entering the homes of the interviewees, under circumstances that qualify as passing off.
16. The severity of the cumulative harm to the overall public interests and to the individual rights that are protected under Israeli law cannot be overstated. It

suffices to mention the harm to the status of human rights organizations which are entrusted by law to protect the first degree constitutional and humanitarian rights and interests, and the critical harm to the public interest of maintaining unimpeachable attorney client relations, and to the right of a fair process, without which there could be no legal process whatsoever.

17. This and more. The suspicions cast a heavy shadow upon the findings of the investigation. Did the investigator “merely” jot down details that were not sufficiently accurate, or perhaps he was guilty of a greater trespass by ignoring and erasing essential details that support the plaintiffs’ version. For example: How were the findings documented and what emerged from the investigation with regard to the damages to the shop and to the residential room of the aunts which he heard about from their own mouths? And were all the damages which _____ Lahluah claimed against the military authorities documented and presented to the military authorities? Was the fact pointed out that the investigation was conducted in his absence? Did the investigator operate without favoritism, or was he trying to appease his dispatchers?
18. Already at this stage it is possible to refute the version that was delivered to counsel for the plaintiff in their letter dated 10 September, 2007 in the matter of the “testimony of the plaintiff himself”, and in the matter of the damages being “puny”, which is based, so it has been said, on the findings of the investigation. In light of the damage evaluations that were relayed to us from the plaintiffs, these are not puny and amount to approximately NIS 42,000: about NIS 7,000 damages to _____ Lahluah and the balance of damages to the aunts. This means that the investigator also breached regulation 24 with regard to the obligation that applied to him to ensure the veracity of the information that he was relaying to his client – which in the case at hand was the MoD.
19. Therefore it is incumbent upon the person ordering the investigation to persuasively prove that the investigation was performed lawfully and that its findings are credible.
20. In an investigation like the one at hand in which the initiator is a government agent, with a clear interest in its results, it is bound to amount to an exploitation of a legal right. The preparation of material for a legal proceeding must be done in good faith and in fairness. Always. And when it comes to a government authority this obligation is even greater. In circumstances in which the security system has commissioned an investigation in a matter where damages were caused by the army, this obligation is absolute. We are not saying anything new when we claim that like all government authorities you are obligated to remove any hint of suspicion as has been raised in this case.

Relief

21. We request that you order the carrying out of a scrupulous and comprehensive investigation that is free of even a hint of bias, in this complaint. Moreover we request that within the framework of the investigation reference is made to the

overriding matter that pertains to this issue, *viz.* engaging the services of private investigators in carrying out investigations on behalf of the Ministry of Defence, of plaintiffs of the type of the plaintiff *in casu*. It is our working assumption that this instance is not unique.

22. We request that you immediately adopt steps required to prevent the repetition of instances such as these. And in light of the findings of this investigation you adopt all necessary measures against the investigations office (if there was one) and the individual investigator, who carried out the investigation (on its behalf).
23. Upon completion of the investigation we request that we receive the findings. Both with respect to the particular complaint – whether it relates to the question of his impersonation, or to aspects that pertain to his qualifications, to the licensing of the investigator, to the documentation that he prepared, to the employer’s supervision of his work, and the like; as well as to the general procedures relating to the commissioning of a private investigation of this type on your behalf. This includes the methods of execution and supervision with which you supervise the investigation offices and its employees, and included in this matter is the carrying out of investigations by reliable and licensed investigators, the gathering of material, and supervision over the type and quality of the documentation and the conclusions that are presented to you.
24. Likewise, we request that we receive the particulars of the investigation office (if there was one) and the particulars of the investigator who carried out the investigation that forms the subject of this complaint, so that we may weigh up our next steps.
25. There is no need to expand upon the legal and moral aspects related to the engagement of private investigators for the purposes of preparing legal material, *fortiori* when a government authority commissions, as a matter of routine, an investigation from a private agent, who has a clear financial incentive to appease the commissioner. Under these circumstances it is obvious that there is a need to ensure that the investigative methods not be tainted by a suspicion of wrongdoing.
26. And it is essential to ensure that the Ministry of Defence, when it investigates claims against branches of the security network rely solely on material that has been verified and that has been cleared of all suspicion, in the most scrupulous manner, and not only because it represents the stronger side. For if this were not so then it would use its strength to crush everything in its way. Maintaining the purity of the legal process requires adherence to the law.

Sincerely yours,

Dalia Kerstein
Director General

Enclosures: Appendices A-C

CC: Adv. Dina Poliak, Head of the Complaints Department in MoD- per fax 03-6977101