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CC 1278/05

Jerusalem Magistrate Court

In the matter of: _____ **Manasra I.D.** _____

Resident of Bani Na'im Village - Hebron District

Represented by counsel, Att. Shirin Batashun (Lic. No. 32737) and/or Lina Abu-Moch Zu'bi (Lic. No. 33775) and/or Yossi Wolfson (Lic. No. 26174) and/or Adi Landau (Lic. No. 29189) and/or Manal Hazan (Lic. No. 28878) and/or Hava Matras Irron (Lic. No. 35174) and/or Gil Gan-Mor (Lic. No. 37962) and/or Sigi Ben Ari (Lic. No. 37566)
of HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger – Registered Association
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555 Fax: 02-6276317

The Plaintiff

v.

The State of Israel

Represented by Tel Aviv District Attorney's Office (Civil)
1 Henrietta Sold St., Tel Aviv 64921
Tel: 03-6970282 Fax: 03-6918541

The Defendant

Nature of Claim: Personal injury
Amount of Claim: Up to the maximum authorized amount

Statement of Claim

The Parties:

1. The plaintiff, born in 1975, is a resident of Bani Na'im village in the Hebron District. At the time of the incidents which are the subject of this statement of claim, the plaintiff was twenty three years old, a fourth year student in the Ramallah campus of the Al-Quds University.
2. The defendant, the State of Israel (hereinafter: the "**defendant**"), is and, during all times relevant to this statement of claim, was responsible and/or in charge of the acts and/or omissions of the security forces acting on its behalf, including agents of the Israel Security Agency (hereinafter: the "**ISA**") [the Israel Security Agency has been formerly referred to as the General Security Service or Shine Beit; translator note] (including the ISA director) and/or other security forces that interrogated the plaintiff under the circumstances and during the times relevant to this statement of claim (hereinafter: the "**interrogators**").
3. The defendant is also responsible for the acts and/or omissions of the director and/or commander of the Shikma prison, who is in charge of order and security in the prison and the safety, security and health of the inmates and consequently the safety, security and health of the plaintiff during the times relevant to this statement of claim (hereinafter: the "**prison director**").
4. The interrogators and the prison director will also be referred to as: the "**defendant's agents**".
5. Additionally, the defendant, the State of Israel, is responsible for the acts, omissions and damage caused to the plaintiff at the time of and throughout his detention and until his release.

The Damaging Event

6. On January 3, 1998 around 8:30 a.m., the plaintiff took a taxi to the university in Ramallah (hereinafter: the "**taxi**"). At a checkpoint near the Bani Na'im village, the taxi was stopped for a check-up by soldiers stationed at the place. The plaintiff was taken off the taxi, detained and transferred to a police station in Kiryat Arba and thereafter to other police stations. On **January 8, 1998** the plaintiff was transferred to an ISA interrogation facility (hereinafter: the "**interrogation facility**") at the Shikma prison in Ashkelon.
7. Immediately upon his transfer to the interrogation facility as specified above, the interrogators used unacceptable, brutal and illegal means and methods to interrogate the plaintiff. The investigators beat the plaintiff, tied him in a manner causing pain, shook him and deprived him of sleep. The plaintiff was subjected to threats and humiliation which caused him the damage claimed, all as specified hereinafter.

8. When the plaintiff was detained he was healthy, both physically and mentally and did not suffer from any problems and/or illnesses. When he was released from detention, the plaintiff was a shadow of his former self and suffered grave mental injuries.
9. The following is a detailed account of the events which the plaintiff went through during his detention in the interrogation facility:
10. **Solitary confinement:** During his stay in the interrogation facility, the plaintiff was held in complete isolation for prolonged periods of time, including isolation from the outside world as well as isolation from other detainees in the facility.
11. The plaintiff remembers that in one case he was held in isolation in a very small room for about a week without any light. As a result of this solitary confinement the plaintiff felt disassociated from the world and after a while he lost his sense of time and space.
12. **Harsh physical conditions:** During his detention the plaintiff was held in very harsh physical conditions. The cells in which he was held were crowded. The toilets were located inside the cells, forcing him to go to the toilet in the cell. Plaintiff's clothes were taken from him and he was given only light shirt and trousers despite the cold winter weather during his detention. On occasion, the plaintiff was taken out to an open yard, handcuffed, his head covered, without any blanket and/or cover, and was left exposed to the rain and cold air for many hours.
13. **The "shabach" position:** The "shabach" is a combination of sensory isolation methods, the infliction of pain and sleep deprivation, employed for a long period of time. A "regular shabach" includes tying the detainee with tight hand and leg cuffs to a small diagonal chair, causing him to lean forward in an unstable position. The detainee's head is covered with a sack, usually filthy, and loud music is constantly played from loud-speakers. When subjected to "shabach", the detainee is not allowed to sleep. Sleep is deprived by the above means as well as actively, with the interrogators shaking anyone who tries to doze off.
14. Sometimes various variations are added to the "shabach", such as using cold air or employing the method in a standing position. A detailed account of the interrogation methods used during the time period relevant to this statement of claim and the preceding period is provided in a report issued by B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, entitled "**Routine Torture: Interrogation Methods of the General Security Service**" dated February 1998 attached as **Exhibit A** to this statement of claim.
15. **From the general to the particular** – immediately upon plaintiff's arrival at the interrogation facility, he was held in the "shabach" position for days and nights with three food breaks a day, lasting only about fifteen minutes each. Said position included sleep deprivation for many days and when the plaintiff

tried to sleep one of the interrogators kicked him or spilled cold water over him. When held in the "shabach" position, plaintiff was almost always exposed to extremely loud noise for many hours. When held in the "shabach" position, plaintiff was often exposed to extreme cold temperatures for prolonged periods of time.

16. Many times plaintiff was forced to stand up in the "shabach" position, his arms tied and stretched upwards, and the body leaning forward, the result being that the plaintiff had to struggle to keep his feet on the floor and was forced to stand on his toes for many hours. In some cases, the plaintiff stood in the "standing shabach" position next to a wall with his legs and hands cuffed behind his back and his head covered with a sack.
17. **Head cover**: for the entire time plaintiff was held in the "shabach" position, the interrogators covered his head with an opaque, filthy and stinking sack, without any fresh air.
18. **The "frog crouch" – "qambaz"**: this method is used during the interrogation itself with the interrogator forcing the detainee to crouch on the tip of his toes, with his hands tied behind his back. If the detainee falls down, he is forced again, by kicking and beating, to return to the crouching position. A detainee may be forced to stay in this position for hours. The plaintiff was also subjected to this method.
19. **Threats and humiliations**: during the detention and interrogations the plaintiff was subjected to severe threats by the investigators. Many times they threatened to kill him, to amputate and cut-off his body parts. He was told that he had been taken to the Lebanese border and that he would be left there. Several times the interrogators staged his execution and told him that they had killed other prisoners. In view of the above described threats, including the threats to his life, the plaintiff was convinced that he was about to be executed and that he would not survive prison. He lived in constant fear of death and other and additional torture.
20. **Cuffing in painful positions**: the interrogators cuffed the plaintiff with excessively tight steel handcuffs, causing him severe pain. Plaintiff was tightly handcuffed as described above during his interrogation and when transferred from place to place.
21. **Shaking and beating**: during the interrogation, the interrogators shook the plaintiff. They grabbed him by the lapel of his shirt and shook him forcefully forwards and backwards for a few minutes. In addition, during the interrogation, the plaintiff was subjected to kicking and beating all over his body by the interrogators.
22. The above events will be hereinafter referred to as: the "**torture**".

Individual Petitions to the High Court of Justice and the Chain of Events:

23. On January 15, 1998, Att. Andre Rosenthal and Att. Yihya Mustafa, counsel for the plaintiff on behalf of HaMoked: Center for the Defence of the Individual (hereinafter: "**HaMoked**"), filed a petition to the High Court of Justice, requesting it to order the defendant to cease torturing the plaintiff, including the usage of the "shabach" position, the "frog crouch" and sleep deprivation.

A copy of the petition and its exhibits is attached as **Exhibit B** to this statement of claim.

24. On January 18, 1998, following a notice given by Att. Shai Nitzan, the state's legal counsel, stating that no physical means would be used against the plaintiff, plaintiff's attorney requested to withdraw the petition. Following said notice, the High Court of Justice ordered to strike off the petition on January 19, 1998.

A copy of petitioners' notice and the decision which followed it are attached to this statement of claim as **Exhibits C and D** respectively.

25. On January 27, 1998, due to the fact that the torture and the physical means used against the plaintiff continued, including sleep deprivation, Att. Rosenthal filed an additional petition requesting to order the defendant to cease using the above described means against the plaintiff (hereinafter: the "**second petition**").

A copy of the petition filed on January 27, 1998 is attached as **Exhibit E** to this statement of claim.

26. Immediately upon filing of the petition, Att. Malchiel Blas, state's counsel, informed the court of his consent to grant plaintiff reasonable sleep hours during each twenty-four-hour period. Following the above, plaintiff's attorney filed a motion to withdraw the petition and on February 6, 1998, the court accepted the motion to withdraw the petition as aforesaid.

A copy of the petitioners' notice and the decision that followed it are attached as **Exhibits F and G** to this statement of claim.

27. Shortly after the second petition was withdrawn, plaintiff's family received information that the plaintiff was hospitalized in the psychiatric department of Ayalaon Prison in Ramla, and therefore, Att. Mustafa Yihya, who had visited the plaintiff in the past, went to visit him in prison on March 5, 1998. However, the plaintiff did not recognize his attorney.

28. The medical records provided to plaintiff's legal counsel by the Israeli Prison Service indicates that on February 6, 1998, the plaintiff was transferred to the Kishon prison in Haifa and that on February 16, 1998 he was hospitalized at Rambam Hospital in Haifa after having assaulted a Red Cross employee and due to concern that psychotic condition had caused him to act in this manner.

29. On February 27, 1998, the plaintiff was hospitalized in the closed psychiatric ward of the Ayalon prison in Ramla pursuant to an observation order issued by a military court, and on April 23, 1998, he was released from prison having been deemed unfit to stand trial.
30. When the plaintiff was released from prison he was a shadow of his former self. He did not cooperate with people around him, suffered from anxiety, sleep disorders and loss of appetite and was transferred to the care of Dr. Sahwil, a psychiatrist from the Treatment and Rehabilitation Center for Torture Victims – Ramallah (hereinafter: the "**TRC Center**").

High Court of Justice (HCJ) Decision Rendered by a Special Panel of Nine Justices

31. In HCJ 5100/94 Public Committee Against Torture in Israel et al. v. The State of Israel et al. IsrSC 53(4) 818, the Supreme Court, sitting in a special panel of nine justices, discussed the issue of the interrogation of Palestinian residents by members of the ISA and examined the legality of the physical and psychological means used in such interrogations.
32. The court discussed several private and public petitions filed with the HCJ, following the exposure of many detainees to physical and psychological means amounting to torture over many years and especially during the period relevant to this statement of claim.
33. Honorable President Aharon Barak held that ISA interrogators were authorized to conduct interrogations since they are equivalent to police officers for this purpose. However, they were not authorized to employ violent physical means against detainees under interrogation. The court referred specifically to some of the interrogation methods mentioned above in this statement of claim, and held that they were unacceptable, and that the use thereof was illegal.
34. The HCJ held that:

"Consequently, it is decided that the *order nisi* be made absolute in the sense that we declare that **the ISA does not have the authority to "shake" a person, hold him in the "shabach" position** (which includes the combination of various methods as specified in paragraph 30), **force him into a "frog crouch" position and deprive him of sleep in a manner other than that which is inherently required by the interrogation** (emphasis added).

The Liability of the State

35. The plaintiff will claim that the defendant is vicariously liable for the negligence and/or carelessness and/or recklessness and/or irresponsibility and/or breach of statutory duties by the interrogators who interrogated the plaintiff and tortured him and/or by the prison director who failed to supervise

their actions and/or failed to secure plaintiff's safety, health and well being, by virtue of them being agents of the state and/or acting on its behalf.

Assault

36. The plaintiff will claim that the acts of the interrogators specified above constitute assault as this term is defined in Section 23 of the Tort Ordinance [New Version], 5728-1968 (hereinafter: the "**tort ordinance**").
37. The plaintiff will claim that the defendant is responsible for the acts of assault carried out by the interrogators due to the fact that it has authorized such acts within the framework of the directives given to ISA interrogators which permitted the use of physical means in the course of an interrogation. Alternatively, the plaintiff will claim that the defendant ratified the acts of assault since it did not instruct the interrogators to cease the torture employed against the plaintiff after it was informed of same and/or since it failed to investigate the actions taken by the interrogators and did not take any legal measures against them.

Breach of Statutory Duty

38. The plaintiff will claim that the acts and methods of interrogation employed by the interrogators, as well as the acts and/or omissions of the prison director constitute a breach of statutory duties, the purpose of which, according to the proper interpretation thereof, is to benefit and protect individuals such as the plaintiff. By such acts and/or omissions they have caused damage to the plaintiff.
39. In greater detail and without derogating from the generality of the above, the plaintiff will claim that the acts and/or omissions specified above constitute a breach of the following statutory duties:
 - a. Section 277 of the Penal Law, 5737 – 1977 (hereinafter: the "**penal law**") prohibiting a public servant from using force, violence or threats to extort information or confession of an offense;
 - b. Section 322 of the penal law concerning responsibility for helpless persons.
 - c. Section 378 of the penal law prohibiting assault.
 - d. Section 280 of the penal law prohibiting abuse of power.
 - e. The provisions of section 6"A" of the penal law concerning violence and abuse of a helpless person and the ancillary obligations imposed upon a person who has reasonable grounds to believe that any such offense was committed.

- f. The provisions of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), which was signed and ratified by the defendant, the State of Israel;
- g. Article 7 of the International Convention on Civil and Political Rights (1966) prohibiting torture and cruel, inhuman and degrading punishment;
- h. Article 32 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), prohibiting the taking of any measures so as to cause physical suffering to civilians during wartime, including tortures and any other brutal means;
- i. The provisions of customary international law which fully, completely and unequivocally prohibit torture and inhuman and degrading treatment of prisoners;
- j. Section 2 of Basic Law: Human Dignity and Liberty, 5752–1992 providing that there shall be no violation of the life, body or dignity of any person as such.

Negligence

- 40. Additionally and in the alternative, the plaintiff will claim that the damaging event in the course of which he was tortured and that the damage inflicted upon him as a result thereof, occurred due to the negligence and/or recklessness and/or carelessness and/or irresponsibility of defendant's agents, resulting, *inter alia*, from the following acts and/or omissions:
 - a. The acts of assault, false imprisonment and breach of statutory duties constitute , the tort of negligence of themselves and impose liability on the defendant;
 - b. The interrogation methods employed by the interrogators amounted to torture, which is prohibited by law under any circumstances and without any reservations; such methods may never be considered as reasonable and legal interrogation methods; the use of such methods constitutes a breach of the duty of care imposed on the defendant, the interrogators and the prison director towards any person in custody.
 - c. The interrogation methods employed by the interrogators were cruel, degrading and inhuman and, therefore, illegal; these were not reasonable or legal interrogation methods and the use thereof breached the duty of care imposed upon the defendant and its agents towards persons in custody;
 - d. The torture used against the plaintiff was perpetrated without any legal authority;

- e. The torture used against the plaintiff violated his dignity, body and mental health unlawfully, without any justification and in breach of the principle of proportionality including all aspects thereof;
- f. The interrogators did not take any measures to protect the plaintiff, contrary to the duty imposed upon them towards any person in custody. On the contrary, they acted with the intention of injuring him, treating his bodily integrity, human dignity and well being in a hostile and degrading manner;
- g. The interrogators foresaw, or at least should have foreseen, that the torture would cause damage to the plaintiff, but nevertheless, they took such action;
- h. The interrogators deviated from obligatory norms of international law regarding the treatment of detainees and suspects (some of which were specified above), thus, deviating from reasonable standard of care;
- i. The interrogators did not act in a manner that a reasonable investigator would have acted under the circumstances in order to obtain information from a suspect and failed to use their best efforts to prevent the damage caused to the plaintiff;

Direct Liability

41. The plaintiff will further claim that the defendant is directly liable for the damages caused to him due to the negligence and/or carelessness and/or breach of statutory duty by defendant's agents, resulting, *inter alia*, from the following acts and/or omissions:
- a. The defendant approved and authorized the interrogators' acts in advance and/or after the fact using an illegal authorization system, in which the highest ranking members of the ISA and the government officials were involved;
 - b. The defendant ordered the interrogators to use torture and caused them to employ such means via a set of directives, orders, procedures and arrangements it introduced employed inthe ISA.
 - c. The defendant approved and authorized, in advance and after the fact, the acts of the interrogators and acted in concert with them, *inter alia*, by supplying them with the means and facilities required to torture the plaintiff; developed the interrogation methods used against the plaintiff; directed the investigators to use these means and instructed them how to use such methods; continued to cooperate with the interrogators and assisted them through other agents, including staff at detention facilities, medical and legal staff, including the state attorney's office;

- d. The defendant approved the acts of the interrogators after the fact by failing to investigate their actions and failing to press charges against them, in breach (*inter alia*) of its duty under Article 146 of the Fourth Geneva Convention, which stipulates a universal obligation on all states to try any individual who perpetrated a grave breach of the provisions of the Convention, including inhuman treatment of protected persons and torture;
- e. The defendant failed to supervise and/or properly supervise the acts and/or omissions of the ISA interrogators and/or the security forces acting on its behalf, its agents, and/or acted carelessly and did not pay attention and/or did not monitor the persons under its responsibility;
- f. The defendant failed to instruct and/or to inform its agents of their obligation to safeguard detainees' rights, including their lives, bodily integrity and dignity;
- g. The defendant appointed inadequate and/or unskilled persons to carry out its duties;
- h. The defendant failed to provide its agents with proper instructions concerning the protection of basic human rights in the course of fulfilling their duties and/or failed to provide any and/or adequate safety instructions in that regard and/or failed to ascertain that its agents were familiar with such instructions or followed them;
- i. The defendant failed to use its best efforts and/or to take the actions it should have taken and/or to take the correct and/or required actions in order to prevent plaintiff's damage and/or acted irresponsibly and carelessly and did not pay attention and/or failed to monitor the persons under its responsibility;
- j. The defendant failed to act in a manner that a responsible, prudent and decent authority would have acted under the circumstances in order to prevent the damaging event and its ensuing consequences;
- k. The defendant foresaw or should have foreseen that its omissions would cause plaintiff's damage.

The Burden of Proof:

42. The plaintiff will claim that he did not know and could not have known the circumstances that actually caused the damage that was inflicted upon him, and that the damage was caused when the plaintiff was under the responsibility and control of the defendant. The plaintiff will further claim that the circumstances of the damaging event which caused the damage are more consistent with the conclusion that the defendant and/or any one acting on its behalf failed to exercise reasonable care than with the conclusion that it did exercise such care, and therefore the rule set forth in section 41 of the tort ordinance should be applied.

43. In view of the above, the plaintiff will claim that the burden to prove and/or show that the damaging event was not caused as a result of its negligence lies on the defendant.

The Damages:

As a result of defendant's acts and/or omissions described in the statement of claim, the plaintiff suffered the following damage:

44. Prior to his detention, the plaintiff was a young man, healthy in body and mind and did not suffer any physical and/or mental and/or psychological problems. He was twenty three years old, a fourth year student, in the beginning of his personal and professional career, until he was detained on January 3, 1998 and released after more than three months.

45. As specified above, the plaintiff was released to his home on April 23, 1998, having been deemed unfit to stand trial and suffering from a very severe mental condition.

46. When sent back home he was a shadow of his former self. He suffered from symptoms of depression, anxiety caused by everything around him, , an inability to communicate with the environment and his family; he suffered from nightmares, sleep disorders and loss of appetite.

47. While in detention the plaintiff already suffered from a similar condition of over alertness, anxiety and depression. He started to hear voices, became aggressive and on one occasion even tried to commit suicide.

48. Due to his severe mental condition the plaintiff was transferred, after his release, to the care of the TRC center, where he is being treated to this day. He was diagnosed as suffering from a severe post traumatic syndrome.

A current medical report prepared by Dr. ____ Sahwil, the psychiatrist treating him in the above center, is attached as **Exhibit H** to this statement of claim.

49. The plaintiff was examined by Dr. ____ Bar Chaim, an Israeli licensed psychiatrist who was also of the opinion that he was suffering from a post traumatic syndrome limiting his ability to function and work. Dr. Bar Chaim diagnosed the plaintiff as suffering from a 30% medical disability.

A copy of the psychiatric opinion is attached as **Exhibit I** to this statement of claim.

50. The following is a detailed account of plaintiff's damages:

Special Damage:

Travel expenses in the past

ILS 9600

Medical expenses in the past ILS 7200

Loss of income in the past (36 months)

General Damage:

Mental pain and suffering

Future loss of income

Compensation for constitutional tort

Increased and punitive compensation

General

51. This honorable court has the geographic and material jurisdiction to hear this claim.

52. In view of the above, the honorable court is requested to summon the defendant and order it to compensate the plaintiff for the damage caused to him, in addition to trial costs and legal fees, including interest and linkage differentials from the date of the filing of this statement of claim until the date of actual payment.

Jerusalem, today January 9, 2005

Shirin Batashun, Att.
Counsel for the Plaintiff

(Our file: 12304.2)