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At the Jerusalem Magistrates Court

Civ 005693/01

In the matter of:

1. **Mahmoud _____; ID No. _____
al-Maqbiya neighborhood, near ‘Omar bin
al-Khatab Mosque, Yatta Village, Hebron
District**
2. **Muhammad; ID No. _____
al-Maqbiya neighborhood, near ‘Omar bin
al-Khatab Mosque, Yatta Village, Hebron
District**
3. **Khaled; ID No. _____
al-Sha’abin neighborhood, Yatta Village,
Hebron District**

all represented by counsel, Adv. Raida Karawani
(Lic. No. 20302) and/or Eliyahu Avram (Lic. No.
11851) and/or Hisham Shbeita (Lic. No. 17362)
and/or Yossi Wolfson (Lic. No. 26174) and/or Adi
Landau (Lic. No. 29189)
of HaMoked: Center for the Defence of the
Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem
Tel: 02-6283555, Fax: 02-6276317

The Plaintiffs

v.

**Roni Ben Yitzhak Bourgana, ID 25565268
108 A, Beit Hashmonai, Moshav**

The Defendant

Nature of claim: bodily harm

Sum of claim: within the jurisdiction of the Court.

Statement of Claim incidental to a Criminal Conviction

1. Plaintiff 1 was born on April 20, 1974. He is married and has two minor children.
2. Plaintiff 2 was born on November 7, 1962. He is married and has six minor children.
3. Plaintiff 3 was born on December 1, 1974. He is single.
4. On the date relevant to the Statement of Claim, Plaintiffs 1-3 were working in the goose coop of the Azaria Moshav community. They usually slept in a room near the goose coop. They earned an average of 2,500 shekels per month.
5. On the date relevant to the Statement of Claim, the Defendant served as an officer with the Israeli police border police.
6.
 - a. On December 14, 1999, the Honorable Court (Justice Y. Noam) convicted the Defendant of assault causing bodily harm under Sec. 380 of the Penal Code 5737 – 1977 (CrimC 234/96). The crime victims were the three Plaintiffs.
 - b. On January 23, 2001, the Honorable Court sentenced the Defendant in CrimC 243/96.
 - c. Once 45 days elapsed from the date of the conviction without an appeal being filed, the judgment became a peremptory rule.
 - d. According to Sec. 77 of the Court Law [incorporated version] 5744-1984, Honorable Justice Noam is requested to hear this claim as a civil claim containing the same facts which constitute the crime of which the Defendant was convicted.
 - e. In accordance with Sec. 17 of the Civil Procedural Regulations 5747-1984 [sic], **the following are attached to this Statement of Claim: A copy of the indictment in CrimC 243/96, marked A and certified copies of the verdict and sentence in CrimC 234/96 (hereinafter: the judgment), marked B and C respectively, and which form an integral part of this Statement of Claim.**

The facts of the claim:

7. The facts of the claim are as detailed in the judgment.

The Defendant's liability

8.
 - A. The Plaintiffs claim that the facts that establish the Defendant's liability for the Plaintiffs' damages derive from the judgment and from the provision contained in Sec. 42d of the Evidence Ordinance [new version] 5731-1971 that "the findings and conclusions made by a criminal court shall be considered as if made by a civil court".
 - b. The Defendant is liable for the Plaintiffs' damages as a result of the assault he committed against them in an incident of protracted abuse that occurred on the night of October 19, 1994, as detailed in the judgment, its findings and its conclusions.

The Plaintiffs' damages

9. Plaintiff 1: As a result of the Defendant's acts, Plaintiff 1 suffered injuries to many parts of his person, including the head, back, waist, legs and knees. These injuries caused Plaintiff 1 pain and suffering which persisted for approximately one month. Plaintiff 1 required medical attention. He

took analgesics and was forced to take leave from his work for a month in light of the pain, particularly the headaches and dizziness.

In addition, the Defendant injected Plaintiff 1 in the waist area with an anesthetic and/or agent causing drowsiness which caused drowsiness and convulsions for a number of days. The needle left a painful mark on his body for several days.

A medical certificate given by physician, Dr. Ahmad Muhammad al-Jabur dated March 14, 2001, is attached hereto and marked D. It forms an integral part of this Statement of Claim.

10. Plaintiff 2: As a result of the Defendant's acts, Plaintiff 2 suffered injuries to his entire body. These injuries caused Plaintiff 2 severe headaches as well as back, abdominal and testicular pain. Plaintiff 2 suffered bruises and subcutaneous hemorrhages all over his body. Plaintiff 2 required medical attention, took analgesics and was forced to take leave from work for a month due to his pain.

A medical certificate given by physician, Dr. Ahmad Muhammad al-Jabur dated March 14, 2001, is attached hereto and marked E. It forms an integral part of this Statement of Claim.

11. Plaintiff 3: As a result of the Defendant's actions, Plaintiff 3 suffered injuries to his entire person, including the legs and knees and particularly in the area in which he had surgery just prior to the incident (the appendix). Plaintiff 3 was also injected with an anesthetic and/or an agent causing drowsiness. Plaintiff 3 required medical attention as a result of the severe pain, convulsions, general weakness and dizziness. He took analgesics and was forced to take leave from work for a month as a result of his pain.

A medical certificate given by physician, Dr. 'Abdallah Hussein Hassn Khadra dated March 12, 2001, is attached hereto and marked F. It forms an integral part of this Statement of Claim.

12. The Plaintiffs also suffered humiliation and a violation of their dignity as the Defendant's acts were accompanied by the use of foul language. He also forced them to sing songs praising the border police as they were being beaten and kicked.
13. The Defendant's conduct, as detailed in the judgment, caused the Plaintiffs pain, suffering and distress, injured the dignity as human beings and severely humiliated them.
14. As a result of the incident, the Plaintiffs suffered mental anguish, plagued by a sense of dread and humiliation after the incident – a feeling that has remained with them to this day.
15. As a direct result of the incident, Plaintiff 3 discontinued his work at the goose coop, as he was afraid to enter Israel again. Plaintiff 3 looked for alternative work and found such only after seven months.
16. In addition or alternatively, the Plaintiffs argue that they are entitled to compensation for the infringement on their personal autonomy and their right to dignity as a separate and independent head of damages.
17. In view of the severity of the incident, as described in the judgment, and particularly in view of the Defendant's status as a police officer in charge of upholding the law and defending the dignity and bodily integrity of others and in view of the Defendant's lack of care for the Plaintiffs' pain, the Honorable Court is requested to rule increased and/or punitive damages against the Defendant, expressing the disdain felt by society in general and the Honorable Court in particular

for the acts perpetrated by the Defendant and the increased damage to the Plaintiffs, who were helplessly subjected to protracted abuse by the Defendant.

18. The Plaintiffs' damages are as follows:

- Special damages:
- A. Loss of past earnings - 2,500 shekels for Plaintiffs 1 and 2.
17,500 shekels for Plaintiff 3.
 - B. Past medical expenses and assistance – 3,000 shekels for each plaintiff
- General damages:
- A. Pain, suffering and distress – at a rate to be determined by the Honorable Court
 - B. Infringement upon personal autonomy and the right to dignity – at a rate to be determined by the Honorable Court.

All plus interest and linkage differentials in accordance with the law from the date of the incident until payment is made.

19. The Honorable Court has material and geographic jurisdiction to hear the claim in accordance with the provision contained in Sec. 77 of the Court Law (incorporated version) 5744-1984, civilian jurisdiction incidental to criminal jurisdiction.

20. Therefore, the Honorable Court is requested to subpoena the Defendant and order him to pay full damages to the Plaintiffs, as detailed in paragraphs 17 and 18 above and/or according to any other specification the Honorable Court finds just and appropriate in the circumstances of the matter.

The Honorable Court is also requested to order the Defendant to pay trial costs and legal fees.

Jerusalem, today, 20 March 2001

[signed and stamped]

Raida Karawani, Adv.
Counsel for the Plaintiffs

(File No. 10637)