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**At the Jerusalem Magistrates Court**  
**Before: Honorable Justice R. Carmel**

**Civ 005693/01**

In the matter of:

- 1. Mahmoud**
- 2. Muhammad**
- 3. Khaled**

represented by counsel, Adv. Raida Karawani

**The Plaintiffs**

v.

**Roni Ben Yitzhak Bourgana**  
represented by counsel, Adv. Horowitz Michael

**The Defendant**

## **Judgment**

1. The Plaintiffs filed their claim against the Defendant due to an incident that took place on October 19, 1994. At the relevant time, the Defendant was a border police officer and the Plaintiffs worked in the goose coop in the Azaria Moshav community and usually slept in a room nearby. Plaintiff 1 was born in 1974, Plaintiff 2 was born in 1962 and Plaintiff 3 was born in 1974. The Defendant (and others) was indicted for his actions in the incident which is the subject of the Statement of Claim before the Jerusalem Magistrates Court, CrimC 234/96. According to the indictment, on October 19, 1994, around midnight, the Defendant and his colleagues, all border police officers, entered the goose coop in Azaria, where the three Plaintiffs were sleeping. They allegedly woke up the Plaintiffs using violence and led them to the yard of a nearby house, where they assaulted them by beating and kicking them. They then forced the Plaintiffs into a car which drove them to the border police post in Beit Hashmonai. The Defendant allegedly continued to beat the Plaintiffs during the car ride. When the Plaintiffs and the Defendant arrived at the border police post in Beit Hashmonai, the Plaintiffs were taken into a trailer where the Defendant assaulted Plaintiff 2 with a club. He did the same to Plaintiff 1, while injecting him in the back. Furthermore, the Defendant, and a colleague, assaulted Plaintiff 3 with a club. Plaintiff 3 was injected in the buttock. As a result of these acts, Plaintiff 2 suffered pain and required medical attention. He lost sensation in his back for two hours. Plaintiff 2 suffered multiple

hemorrhages in various parts of his body and also required medical attention, as did Plaintiff 3. In a long and reasoned verdict given by the Jerusalem Magistrates Court (Honorable Justice Noam), the Defendant was convicted of assault causing bodily harm (and of enticement). The verdict and sentencing decision indicate that the incident occurred at the time of the terrorist attack on bus no. 5 in Dizingoff Street in Tel Aviv. One of the Defendants in the criminal case sought to remove the Plaintiffs from Azaria in light of the closure imposed on the Judea and Samaria Area following the terrorist attack. The Plaintiffs were residents of the village of Yatta and lived near the goose coop where they were employed by a man by the name of Yosef Asaraf. That Defendant's intent to remove the Plaintiffs was carried out at the request of his relative, a man by the name of Meir Karmani, Asaraf's neighbor. The sentencing decision further indicates that Azaria is located outside the operational territory of the border police post in Beit Hashmonai and that the Defendant decided to take care of his friend's complaint. He arrived at the site with another friend and two of his subordinates, without notifying his superiors of the action. The findings made in the sentencing decision with respect to the Defendant include the following: When the Defendant woke up the Plaintiffs in the room where they had been sleeping, close to the goose coop, he assaulted them. Subsequently, in the yard, the Defendant beat Plaintiffs 1 and 3 while conducting a search on their person. During the drive, the Defendant beat the Plaintiffs on the legs with an instrument that was present in the vehicle (the beatings were found not to have been powerful and left no marks). When they arrived at the trailer site, the Defendant took the Plaintiffs into a trailer, where he beat all three with a club, and then, as detailed, injected two of them with a syringe.

2. **At the very commencement of proceedings, parties agreed that following a short written summary, the Court would make its ruling on the amount of damages in accordance with documents filed with the Court, the Court's discretion and the provision contained in Sec. 79 a (a) of the Court Ordinance (Incorporated Version) 5744-1984. This consent followed the Plaintiffs' waiver of filing a medical opinion with respect to the injuries they suffered. This consent and, naturally, the peremptory decision in the criminal case, have removed the question of liability.**
3. In their summations, the Plaintiffs repeated the description of the events as detailed above, and referred to the medical reports prepared the day after the incident. According to the medical report with respect to Plaintiff 1, prepared by Dr. Ahmed Mahmoud al-Jabur of the Yatta Medical Center, after hearing his complaints, the Plaintiff was advised to have comprehensive medical tests done and to rest in his home for one month. A similar document was given to Plaintiff 2. He was instructed to be tested by a urologist, an orthopedist and a surgeon. Plaintiff 3 was given a medical report by Dr. 'Abdallah Husan Hassan. The report lists the Plaintiff's complaints. No further medical documents were submitted. It was alleged that Plaintiffs 1 and 2 were unable to work for a month and that Plaintiff 3 found alternative work only seven months later, due to the fear the incident generated. It was alleged that the Plaintiffs suffered mental harm and that they were subjected to humiliation and terror. The Defendant was alleged to have forced them to sing songs praising the border police. In summary, counsel for the Plaintiffs argued that the Plaintiffs' human dignity and their rights to liberty and physical integrity were trampled underfoot. Counsel for the Plaintiffs referred to other, similar cases, with respect to findings on the amount of compensation to be paid and sought to have the non-fiscal damages paid to the Plaintiffs stand at 40,000 shekels. Counsel also asked to rule additional damages at the amount of 6,373 shekels each to Plaintiffs 1 and 2 and a similar amount of 26,611 shekels to Plaintiff 3 for loss of earnings. Conversely, in his summations, the Defendant argued that the medical reports submitted by the Plaintiffs themselves indicated that the mental and physical harm done to them was not serious at all. The Defendant raised arguments with respect to his finances and the trauma he

suffered as a six-year-old child, when he was hurt in the notorious terrorist attack in Maalot. The Defendant agreed that all the Plaintiffs together should be compensated to the amount of 1,000 shekels for medical treatments. The amount of 3,373 shekels was agreed as compensation for a month's worth of pay. With respect to non-fiscal damages, the Defendant argued that these should be assessed at 2,000 shekels for each of the Plaintiffs, both in view of the Defendant's difficult financial circumstances and his personal circumstances and in view of the fact that the incident ended without substantive damage. Therefore, according to the Defendant, the total damages for each of the Plaintiffs should be 6,373 shekels. Counsel for the Defendant requested to distinguish the incidents to which counsel for the Plaintiffs referred in his summations from the case at bar.

4. First, it should be made clear that the amount of compensation will be determined according to the extent of the damage rather than the Defendant's financial capabilities. The latter detail is irrelevant for a discussion on the amount of compensation. Indeed, the incident and the nature of the Defendant's acts in connection to the Plaintiffs were detailed in the verdict and sentencing decision. However, the significance and the results of the physical injuries suffered by the Plaintiffs are unclear, as the medical reports submitted by them were vague in the sense that they contained only details of the complaints made by the Plaintiffs but contained no notations of any findings.

The nature of the acts perpetrated by the Defendant is clear and they do not add dignity to the Defendant. There is no dispute that Plaintiffs 1 and 3 were injected with a syringe and that all the Plaintiffs were beaten, including with a club and other instruments. In light thereof, and in accordance with the framework agreed upon by the parties with respect to the manner in which the Court shall rule on the amount of compensation to the Plaintiffs, namely, Sec. 79 a (a) of the Court Law (Incorporated Version) 5744-1984, and since parties consented immediately upon commencement of proceedings in this case and in accordance to the amounts as claimed in the Statement of Claim (see para. 18 of the Statement of Claim, which cites lower amounts than those claimed in the summations), I order the Defendant to pay each of the Plaintiffs the sum of 12,000 shekels. The amounts will carry linkage and interest differentials, as is the law, from this day until full payment is made. Additionally, the Defendant shall pay the sum of 3,000 shekels for Plaintiffs' costs and legal fees.

**The secretariat shall provide parties with copies.**

**Given today, 15 Cheshvan, 5763 (21 October 2002), in parties' absence.**

[signed and sealed]

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R. Carmel, Justice

-stamp-  
Jerusalem Magistrates Court  
I certify that this is a true copy  
[signed]  
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