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**At the Magistrates Court in Jerusalem**

**CApp 16099/96**

In the matter of: \_\_\_\_\_ **Shuli**

Represented by counsel Adv. Hale Hourri and/or  
Hisham Shabaita  
of HaMoked: Center for the Defence of the  
Individual, founded by Dr. Lotte Saltzberger  
4 Abu Obeidah St., Jerusalem  
Tel. 02-283555; Fax 02-276317

**The Plaintiff**

v.

**The State of Israel**

Represented by the District Attorney of Tel Aviv  
(Civil Department)  
1 Henrietta Szold St.  
Tel Aviv 64921  
Tel. 03-6970282; Fax 03-6918541

**The Defendant**

Nature of the claim: **Bodily Injuries**

Amount of the claim: **NIS 750,000**

## **Complaint**

1. The Plaintiff was born in 1972, and is a resident of Sabastiah in the District of Nablus.
2. The Defendant, the State of Israel, was at all times relevant to the complaint in charge of the actions of IDF soldiers in the area of Sabastiah in the District of Nablus.
3. In the morning hours of 12 September 1989, the Plaintiff left his house near the Sabastiah Mosque on his way to his uncle's restaurant, in the area of the Sabastiah ruins.

4. On his way, the Plaintiff noticed a group of young men running in the same direction in which he was walking. In order to avoid running into the said group, the Plaintiff left the main road and turned left to one of the side roads of the village.
5. Upon turning left, the Plaintiff noticed a soldier opposite him, approximately 100-200 meters away, pointing his gun at the Plaintiff.
6. The Plaintiff was startled and turned to walk in the opposite direction, at which point he met another soldier opposite him, approximately 10 meters away.

At that moment the Plaintiff was shot from behind, in the head, without any justification, and lost his consciousness (hereinafter: the "Incident"). The Plaintiff emphasizes that he did nothing, nor took part in any action of any kind which could have provided a cause for firing at him.

7. Despite the IDF's knowledge of the Incident, no investigation was conducted by any military body with regard to the injury to the Plaintiff and, at any rate, he was never informed of the outcome of the investigation, if any was conducted.
8. After being hit, the Plaintiff was rushed to Al-Maqasid Hospital in Jerusalem.
9. It should be noted that after being released from Al-Maqasid Hospital in Jerusalem, the Plaintiff was not summoned for questioning at the police or civil administration, nor was he arrested, nor indicted of any charge.

### **The Soldiers' Liability**

10. The Plaintiff shall claim that the Incident and the damage therefrom were caused due to the negligence and/or lack of caution and/or recklessness and/or disregard and/or per se negligence of the soldier and/or soldiers who committed the shooting that caused the accident, as expressed in the following acts and/or omissions, namely that they:
  - a. Used live fire in circumstances that did not justify such use.
  - b. Used live fire indiscriminately in a residential area, while endangering human life.
  - c. Opened fire from a short range and/or from a range endangering human life and/or in violation of the open-fire regulations.

- d. Used live fire negligently and/or in violation of the open-fire regulations.
  - e. Opened fire while facing no material danger and with no justification or cause to open fire.
    - e.1. Fired toward the body in the circumstances mentioned in this subsection above, without verifying that innocent passersby were not injured thereby.
  - f. Fired without permission from the soldier authorized therefor.
  - g. Acted against high command orders and/or against the general staff orders and/or against IDF commanding and/or regional orders and/or against the open-fire regulations and/or against orders given to them by law and/or against statutory duties designed to safeguard the body and health of persons of the Plaintiff's type.
  - h. Failed to do everything within the power and ability of a reasonable soldier to prevent the shooting incident.
  - i. Failed to act as would have a reasonable soldier under the circumstances.
11. In the event that any act or omission constituting the negligence that caused the accident was performed and/or caused by any other person who acted in the Defendant's name and/or in its service and/or on behalf thereof and/or as its agent, then the Defendant bears vicarious liability for the consequences of the accident and for payment of the damage caused to the Plaintiff.

### **The Defendant's Liability**

12. The Defendant is liable for the negligence of the soldier and/or soldiers who committed the shooting, in their capacity as its agents and/or as having acted on its behalf.
13. The Defendant is liable for the accident and for the damage therefrom due to the negligence and/or lack of caution and/or negligence per se on the part of itself and/or its agents and/or another acting on its behalf, as expressed in the following acts and/or omissions, namely that it:
- a. Failed to supervise and/or properly to supervise all of the acts and/or omissions of IDF soldiers in the territories in general and/or in the region and/or at the scene of the accident in particular.

- b. Failed to fulfill its lawful duties and/or missions, and to ensure the safety of the residents of the region, including the Plaintiff.
  - c. Failed to foresee, although it ought to have foreseen, the accident and/or the course of events which led to the accident and/or foresaw the accident and/or the course of events that led to the accident and yet did nothing and/or did not do enough to prevent the accident and/or prevent the damage and/or mitigate the same.
  - d. Dispatched an unskilled force and/or a force lacking the appropriate commanding function to deal with a breach of peace incident, if any took place.
  - e. Failed to clarify the open-fire regulations to the soldier/s.
  - f. Failed to observe and/or teach and/or supervise the observance of the open-fire regulations and/or improperly supervised and taught the open-fire regulations and/or gave no and/or insufficient safety instructions and/or failed to ensure that persons dedicated to the instruction thereof, and particularly the soldier/s who carried out the shooting, were familiar with or observed the same.
  - g. Failed to do everything in its power and/or everything it should and/or ought to have done and/or was required to do in order to prevent the accident and the damage therefrom and/or acted recklessly and incautiously and failed to pay attention to and/or watch over the persons under its charge.
  - h. Acted other than as a responsible, cautious and prudent person would have acted under the circumstances of the location, the subject matter and the case to prevent the occurrence of the accident.
  - i. Acted in violation of the rules of safety and in negligence per se.
  - j. Acted negligently by allowing the shooting soldier/s to shoot unlawfully.
  - k. Acted negligently by allowing the soldier/s to use fire unlawfully.
14. Alternatively, the Plaintiff shall claim that he neither knows, nor can know, the real circumstances that caused the accident, but since the weapon with which the Plaintiff was shot was under the control of the soldier/s who are the Defendant's agents, the

circumstances of the case are more consistent with the Defendant's negligence than with its non-negligence. The circumstances of the case are subject to the rule of *Res ipsa loquitur*, and it is the Defendant which has to prove that the accident occurred through no negligence on its part.

15. Alternatively, the Plaintiff shall claim that the Defendant is required to prove that the accident occurred through no negligence on its part, because the accident was caused by a "dangerous instrumentality" owned and/or controlled by the soldier/s, the Defendant's agents, and the "dangerous instrumentality" rule applies.
16. The Plaintiff does not know the identity and/or names of the soldiers and/or defense forces personnel who caused the damage, and the Defendant is charged with disclosing the same together with all the documents, investigations and reports pertaining to the events which are the subject matter of the Complaint. The Defendant is further requested to disclose all field operations records of the defense forces from the day of the Incident.

### **The Plaintiff's Damage**

17. The Plaintiff was hospitalized in Al-Maqasid Hospital for 25 days. When admitted to the hospital, he was unconscious and had a bleeding injury to the skull and paralysis of the left limbs. He underwent urgent surgery in the area of the rear left skull, from which bone fragments were removed. He subsequently regained consciousness, but still suffered from spastic paralysis of the left limbs.
18. After being released from Al-Maqasid Hospital, the Plaintiff remained bedridden at home. However, three days later his condition deteriorated and he was transferred to Al-Ittihad al-Nisai Hospital in Nablus. He was hospitalized there for one week and was released to his home.
19. After the Plaintiff's release from Al-Ittihad al-Nisai Hospital in Nablus, he received rehabilitative physical therapy, both at the hospital and by a physiotherapist from the village Dir Saraf, who used to visit the Plaintiff at home and give him the necessary treatments for a period of approximately six months. During the said period, the Plaintiff received ongoing medical treatment and was under medical observation.
20. Thereafter, the Plaintiff traveled to Jordan, where he received medical treatment at the Palestine Hospital and from private doctors, particularly neurologists. In 1993 the

Plaintiff returned to Sabastiah and continued receiving medical treatment at Al-Watani Hospital.

21. As a result of the Incident and the injury, the Plaintiff has difficulties walking because of his left leg, as well as difficulties with all operative functions of the left arm. The Plaintiff also suffers from headaches, dizziness and interferences in concentration and memory.

Following the Incident and as a result thereof, the Plaintiff experienced a mental crisis which has caused him severe suffering.

22. The Plaintiff's neurological disability is specified in the opinion of Prof. Oded Abramsky of 5 January 1996 (**which is attached to this Complaint as Exhibit A and constitutes an integral part hereof**), following which it was determined that the Plaintiff has permanent disability at the rate of 50%.

23. Following is a specification of the damage suffered by the Plaintiff due to the Incident:

**Specific Damage**

|    |  |                    |
|----|--|--------------------|
| a. | Past lost earnings<br>(According to NIS 50 per day, 25 days per month) | NIS 80,000         |
| b. | Past medical expenses  | NIS 20,000         |
| c. | Past travel expenses   | <u>NIS 10,000</u>  |
|    | Total specific damage  | <b>NIS 110,000</b> |

**General Damage**

|    |                          |                    |
|----|--------------------------|--------------------|
| a. | Pain and suffering       | NIS 300,000        |
| b. | Loss of earning capacity | <u>NIS 340,000</u> |
|    | Total general damage     | <b>NIS 640,000</b> |

**Total specific and general damage** **NIS 750,000**

24. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint.

The Honorable Court is therefore moved to summon the Defendant and to charge it with full payment to the Plaintiff of his damage, as specified in Section 24 above, and

to charge the Defendant with payment of trial expenses and V.A.T. as set out in the law, and all in addition to indexation and interest from the date of the incident.

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Hale Houry, Adv.  
Counsel for the Plaintiff

Encl. Medical opinion of Prof. Abramsky

Jerusalem, 10 September 1996

(T.S. 8678, M.M. 16757)