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Jerusalem Magistrates' Court

5358/07CC

In the matter of:

1. _____ **Khalifa** I.D. No. _____

2. _____ **Dar Awed.** ID. No. _____

Both of whom are residents of Budrus Village, Ramallah District

Represented by attorneys Hava Matras-Iron (lic. no 35174)
and/or Yossi Wolfson (lic. No. 26174) and/or Anat Kidron (lic. No. 37665) and/or Yotam Ben Hillel (lic. No. 35418) and/or Sigi Ben-Ari (lic. no. 37566) and/or Abeer Jubran (lic. No. 44346) and/or Ido Blum (lic. No. 44538)

Of HaMoked: Center for the Defence of the Individual founded by Dr. Lute Salzberger

4 Abu Obeidah Street, Jerusalem, 97200

Tel: 02-6283555 ; Fax: 02-6276317

Plaintiffs

v.

1. **The State of Israel**

2. _____ **Maman**

3. _____ **Hever**

4. **Dr.** _____ **Haimowitz**

Represented by the State Attorney's of the Jerusalem District (Civil)
7 Mahal Street

P.O. Box 49333 Jerusalem

Tel: 02-5419555; Fax: 02-5419581

Defendants

Nature of Claim: Tortious, Monetary

Amount of Claim: NIS 293,523

Complaint

Nature of Claim

1. This claim is concerned with a chain of inequities that the defendants perpetrated against the plaintiffs and with the causes of action which have arisen for the plaintiffs, which are derived from the law of tort and from administrative law. And this is attributable to the conduct of the defendants with regards to everything to do with the capture and destruction of the plaintiffs' herds- Khalifa's herd and Dar Awed's herd – 24 and 35 goats and Billy goats respectively. In this way the defendants caused the plaintiffs, and the older goats, and the young goats in the pen, who died because of the lack of their mother's milk, irreversible damage. Up until today the plaintiffs have been unable to recover from the loss of their source of income. The sequence of events and omissions, the subject matter of this complaint, which are interwoven as links in this chain amounts to a serious systemic failure – acting in excess of one's authority and with no authority; by withholding the rights to justice and by preventing the plaintiffs access to justice; by causing a wasteful judicial process which lacked bona fides and which trampled the laws and principles of administrative justice and crushed it underfoot. Common sense and the law cannot abide such action.
2. The circumstances of this claim are very similar to the circumstances of another case, that was heard and decided under CC 5668/04 **Na'aman Jabarin et al v. The Nature and Parks Authority et al** (reported in Nevo), (hereinafter the **Jabarin** case). There too a herd of sheep was confiscated and slaughtered. There too it was claimed that the sheep penetrated Palestinian Authority territory lines and passed through a few hundred meters of Israeli territory, and was therefore captured. There too it was claimed that it was destroyed for the sake of the protection of public health in Israel. There too inspectors from the Plant and Animal Inspection (hereinafter: PAI) unit from the Ministry of Agriculture were involved. And Dr. Haimowitz is the very same Dr. Haimowitz, both here and there. There too they acted against the law and its provisions and coarsely trampled on orderly administrative procedures. The state chose to appeal the judgment. At the appeal it was agreed that the damages that were determined be lowered but the harsh words that the court expressed with regard to the state's responsibility remained unchanged.

T/A judgment 5668/04 is attached as **appendix 1**.

3. And so the honorable Judge Tanenbaum determines in the judgment that he gave in the **Jabarin** case:

Concerning the location of Jabarin's herd at the time it was captured (see: Para. 3 of the judgment):

“3. The herd penetrated into the area of Israeli territory by a few hundred meters (about six hundred to eight hundred meters approximately and perhaps even less)”

And despite this the honorable Judge Tannenbaum continues and determines

Concerning the delivery of the herd into Israeli territory (see *ibid.* para. 33-39):

33. "...Dr. Haimowitz testified with fervor... he explained that the very excursion of herds such as these on restricted territory can cause the spread of disease through the vegetation etc.

34. When Dr. Haimowitz was asked if it would not have been better to drive the herd back into the autonomous territory and not take it way to destroy it he explained that generally speaking if it is a short distance it is obviously preferable to take it out from Israeli territory rather than take it to get destroyed. This is because on the way to getting destroyed the herd passes a great distance which it can occasionally damage. He explained to the court that this game of chasing the herd is a daily occurrence...

35. ...Dr. Haimowitz's guidelines were well known. When the inspector was asked... if he was familiar with the explicit guidelines of Dr. Haimowitz “that if the herd is located nearby the green line, he needs to remove it to the other side of the green line...?”

Q: Is this instruction familiar to you? A: Yes.

.....

36. That means that the capture was *prima facie* in breach of the guidelines and procedures that were issued by the director of veterinary services, procedures with which members of the PAI unit were fairly familiar or at least should have been familiar with them and should have acted accordingly.

.....

38. However Dr. Haimowitz's testimony became a bit stammered when the facts as they had occurred were clarified to him...he even unwillingly replied to a question from plaintiff's counsel that this procedure [transportation by foot of herd within a distance of 2-3 km within a few hours] contaminates the area and causes more damage to public health than benefit...

39. ...when he was asked present the details before us, he replied to me that the eight hundred meters that the herd passed were enough to ensure that the herd needed to be confiscated, whereas had it been only 200 meters that would have been a small enough distance to remove it back to the area from whence it came. However these things were also said in a weak voice, and I will not expand on this."

And as to the slaughter in the abattoir of herd suspected of being dangerous (see: *ibid.* para. 40):

40. In his affidavit Dr. Haimowitz referred to the fact that the apparently dangerous herd was taken to slaughter at an abattoir which serves other herds. In the affidavit it was averred that there was a special procedure for these cases. However in practice none of these procedures were adopted as they would be had it been a "herd at risk", and in fact the herd was slaughtered like any other herd."

And as to the conclusions (see *ibid.* para. 43-49):

43. The conclusion from all this is clear and that is that the defendants acted with extreme unreasonableness and with mala fides. The correct course of action to adopt from the perspective of maintaining public health in the case before us would have been its removal into the West Bank and not its transportation into Israeli territory and then to the abattoir. It was precisely its transportation to “Merbak” that was a much greater danger to public health. If this were not bad enough, the leading of it to its destruction and slaughter was done with mala fides. I stress that we are not talking about a mistake in exercising discretion but a typically malevolent attitude, upon which I shall not expand.
44. Since this is the factual conclusion... there is then no place for discussing the question whether there is any defense for the defendants, for quite simply they have none in light of the fact that this was not a mistake but a malevolent act.
45. I can only wonder at the defendants’ behavior after the herd was captured. The general rule is that the public authorities need to be honest about all their activities. A public authority cannot ignore and/or hide its deeds but must announce them publicly. The moment the plaintiffs told inspector Keren and the district director Dadon that they are the owners of the herd, Keren and Dadon should have plainly and openly informed them of their intentions. That is to say that they should have informed them that the herd was now being taken to be destroyed in accordance with the instructions of a doctor and they had the right to seek an attorney to go to court if they wished to oppose this action.
46. The arguments before me alleging that the plaintiff did not have an identity document and/or they were not convinced of his ownership in the wake of things that he said, it would have been better had these arguments not been made. Instead the plaintiff was summoned (according to their claims) to an

enquiry the next day at Tarkumiya check post where he waited four hours for Keren while the latter ran to court to seek to ascertain the amounts that would be received from the slaughter.

47. ...Keren's and Dadon's conduct should be censured. I shall stress once again that already at the time the herd was captured they should have informed those who claimed to be the owners of the herd of the legal options that were available to them, and we shall not expand upon this.
48. With regards to the veterinarian Even-Tov I am somewhat surprised as to why he did not clarify exactly where the herd was captured, what the distance was from the border, etc. The sweeping order to send the herd directly to slaughter was exaggerated under the circumstances of the case, and here too we shall not expand.
49. To conclude this chapter [whether the veterinarian's order to destroy the herd was reasonable] I shall note that the behavior of members of the PAI unit after capturing the herd was inappropriate. It is difficult to free oneself from the impression that at least part of Keren's and Dadon's behavior emanated from an attempt to prevent the plaintiffs from exercising their rights and the court cannot exonerate conduct of such a nature."

And as to the operative aims and goal of the order (see: *ibid.* para. 75):

75. The true purpose of the operation before us was to serve as a deterrent and punishment for the very entry into Israel's borders, and not the protection of public health. It was not for this reason that the legislature delegated its authority and broad discretion to its state representatives. Therefore despite an understanding of the public interest which is represented by the defendants, the case before us does not fit these criteria. I especially cannot accept the defendant's conduct in their failure to inform the plaintiffs of their legal rights..."

4. The circumstances of the complaint before us are far more serious.

The events that form the cause of this complaint have their origin in a minor and a youth, who ventured out early in the morning of 3 November, 2002 to shepherd their fathers' herd. They were then apprehended by messengers of the state. The apprehension took place very close to their family homes in the Budrus village. There were no signs whatsoever of any form of state border or firing range on the path traveled by the shepherds and their herd. The defendants claimed that the herd was caught while grazing on the firing range attached to the "Adam" army camp, which was about 500m within Israeli territory. The captors led the herd by foot deep into the territory and assembled them into a structure that was situated in the territory of the camp. From there they were taken by truck to be destroyed at the "Merbak" abattoir. They then detained the minor and the youth and interrogated them under caution, provided them with a telephone number, and sent them back home. By means of the said telephone number the fathers were meant to verify with the investigator from the PIA unit, from defendant 1, the fate of the herd. The investigator made no efforts, neither through the shepherds, nor through any other means, to pass on any information whatsoever to the owners of the herd with respect to their inherent legal rights, before destroying their sheep. Already on that very day the plaintiffs tried to establish telephonic contact with the investigator, but to no avail.

The next day on 4 November, 2002 the goats were slaughtered. The slaughter was swiftly undertaken until the very last one of them. And on that same day immediately after the slaughter, the defendants hurriedly appeared in court asking for a court order for forfeiture of the monies from the sale of the slaughtered meat. The court "considered" the application in the presence of the defendants – respondents only. At the application the two herds were presented as one herd and the young shepherds were registered as respondents to the application. The identity of their fathers, the owners of the herds, who were known as the defendants, was not noted at all, and the wording of the application created a legal and factual presentation which was untrue.

The defendants came to court with unclean hands. And the court, on its part, in a questionable process, granted the application "as requested".

On 5 November, 2002 the defendants had already dealt with the sale of the slaughtered meat, and on 6 November, 2002 they sold the last part of it. However, it was only on 5 November, 2002 that the investigator summoned the owners of the herd to an interrogation under caution. The plaintiffs were questioned as to the health

of the sheep. They stated that the sheep had been immunized by the Palestinian Authority, and they were marked as immunized, by a slash in the ear, as was the accepted practice of the {Palestinian} Authority. Their request to present the immunization documents was rejected. And even then the investigating officer told them that a veterinarian was meant to examine the goats and if it would be discovered that they were not sick they would be returned to them (the owners). They did not tell them that they had already been slaughtered and an order for forfeiture of the monies from the sale of the meat had already been granted. And even then, despite being explicitly obligated by the Ordinance, the investigator did not inform them about anything to do with their legal rights: to appear before the court and to object to the capture and forfeiture of the monies, prior to the destruction of their herds.

In the various documents which recorded the chain of events, the defendants referred to the provisions of the Ordinance. However they did so in a fragmented fashion. They ignored the fact that their conduct was entirely at odds with specific paragraphs and/or provisions which compelled them to act in a certain manner. Also in their application to the court they gave themselves a free hand. Thus, in the application for a court order to forfeit the monies from the sale of the meat, the defendants did not mention that the Animal Diseases Ordinance [New Version], 5745- 1985 (hereinafter: the “**Ordinance**”), by virtue of which they professed to act, grants them the discretionary authority to expel the herds to the place from where they came. And they did not reveal to the court the existence of the procedures and guidelines - that were set by Dr. Haimowitz by virtue of the Ordinance – that direct the inspectors to act thusly, in the circumstances before us. Thus they also ignored the very provisions that subject their powers to the court’s overall supervision. They also did not veer from this path when they referred the court, in a distorted fashion, to the adjudicatory and fundamental powers that is granted to it by the Ordinance, with respect to the capture and transfer of animals from within Israel.

And it bears repeating: in the circumstances of this complaint, the provisions of the Ordinance obligate the defendants, explicitly, to inform the court of the **detention of sheep in Israel**, as early as possible. It also grants the plaintiffs, explicitly, the right to appear before a judge and to oppose the **confiscation of animals, while they are still alive**. All of this is in order to cover **the costs of** maintaining them **exclusively, and before slaughter**. And the court is explicitly barred from granting an animal forfeiture order, if the owners are known but they were not given the opportunity to appear before it. In this complaint the owners were known to the defendants. They in

turn willfully prevented the plaintiffs from exercising their rights to appear before the court and to state their claims before they slaughtered the sheep. And instead they made a presentation before the court that was factually and legally misleading.

And it should be stated: the court did not weigh heavily upon the defendants, and prima facie, the plaintiffs were not in view of the court at all.

And after all this, and despite that the court spoke of one herd, the defendants sent each of the plaintiffs a fine in the amount of NIS 48,000 that was imposed on each of them. This fine was rescinded by defendant 1's fine committee, after the intervention of plaintiff's counsel, about two years after the destruction of the herds.

5. Below, we will see in detail, through documentation that the defendants prepared with their own hand, their failed conduct. Their own notes clearly show how they opted to conduct themselves, how one shortcoming followed the next. And we shall see how a sequence of acts and omissions became a serious systemic failure, in that it was tainted with callous violations of the Law and of general principles of administrative law, which the defendants trampled upon with a heavy foot. All the while aware of what they were doing.

The parties

6. Plaintiff 1 (hereinafter also: the herd owner, or Khalifa) is a Palestinian resident of the Budrus village, in the district of Ramallah, born in 1958, married and the father of minor children, and until 3 November, 2002, the owner of a herd of goats, which was captured on that very day, and which was slaughtered by the next day by employees of defendant 1. It is from this herd and from freelance building work that he supports his family. The destruction of the herd completely wiped out his source of sustenance
7. Plaintiff 2 (hereinafter also: the herd owner, or Dar Awed) is a Palestinian resident of Budrus village, in the district of Ramallah, born in 1960, married and the father of children and until 3 November, 2002, the owner of a herd of goats, which was captured on that very day, and which was slaughtered by the next day by employees of defendant 1. Plaintiff 2 primarily supported his family from this herd, and also in a small part from a portion of land that he owned. The destruction of the herd completely wiped out the main source of sustenance for the family and ever since then plaintiff 2 has been forced to rely on one of his sons for the family's livelihood.

8. Defendant 1- the State is and was at all relevant times to this complaint the administrative governmental framework, in which the District PAI units operated as well as the veterinary officers and veterinary services of the State of Israel, and was the employer and/or the responsible party and/or the operator and/or the supervisor of their operations and/or the hurdles of defendants 2-4.

PAI unit inspectors are authorized, among other things to perform inspection activities over the movement of agricultural products in the border districts, that divides the Palestinian Authority from territories in the State of Israel, and to undertake detention and enquiry activities by virtue of certain acts of legislation.

The veterinary offices and services are authorized, among other things, to act within the scope of their responsibilities for treating animals, for their capture and for their destruction by virtue of the Ordinance and the regulations that have been enacted by virtue thereof.

9. Defendant 2, _____ Maman (hereinafter also: Maman, or Inspector Maman) was at all times relevant to this complaint, an inspector in the Central PAI unit in the Ministry of Agriculture.
10. Defendant 3, _____ Hever (hereinafter also: Hever or Investigating Officer Hever) was, at all times relevant to this complaint, an investigating officer in the Central PAI unit in the Ministry of Agriculture.
11. Defendant 4, _____ Haimowitz (hereinafter also: Dr. Haimowitz) was, at all times relevant to this complaint the director of field veterinary services in the Ministry of Agriculture.

The Budrus Village and the location of the herds – matters of geography and law

12. The Budrus village is a Palestinian village that is situated in the west of Ramallah. "... Its land touches the border of Judea and Samaria, dozens of meters away from it."¹

The classification of the "territories", which is customary in the State of Israel, was established on the historic land of the village. All the area of its type its destiny, and its border: in 1949 within the framework of the ceasefire agreements between the

¹ HCJ 4825/04 Mahmad Khaled Alian et al v. The Prime Minister et al *Takdin Elyon* 2006(1), 3736, 3, the first paragraph of Chief Justice Barak's judgment.

Kingdom of Jordan and the State of Israel, was defined as “demilitarized territory” which ruptured about 80% of the land of the village. The remainder of the village remained on the eastern side of the border - the “green line”. Thus, pursuant to international law, the legal situation of the territory is different as it is conceived to have the status of land without any sovereignty – “ownerless territory”. Its borders were marked, like all state borders then, with a green line that crossed over the western part of the village. Until 1967, no man, aside from Red Cross personnel, was allowed entry into this ownerless territory and no laws of any state applied here.

After 1967, the village land, which in 1949 became ownerless territory, was not returned to their owners.

The State of Israel even added and expropriated about 250 more dunams from Budrus land, from its south-western portion, and this time in favor of a forest that was planted by the JNF.

To illustrate this two segments of a map have been attached. The first – **The Map of Hikes and Marked Trails** published by the Society for the Protection of Nature in Israel (hereinafter: the SPNI map). In this map one may see the location of the Budrus village and the various terrains that border its land.

The relevant section of the SPNI map is attached hereto as **appendix 2**.

When looking at the map, one may see that the huge firing range, whose area is divided between the State of Israel and the territories of the Palestinian Authority, is colored in pink. Within the firing range there is a marking on the map showing that in this area there is the “Southern Samaria Reserve” nature reserve. The reserve is marked with only a green colored border line (one should not confuse the “green line”, which is the political border of 1949, which has not been marked on this map and the marking of nature reserve borders). One may discern that close to the Budrus village, the territory of the reserve deviates eastward from the firing range. This is the territory that has been colored white, which is surrounded to the east by a green line, which marks the borders of the reserve. And in the south-west there is the abovementioned sprawling JNF forest. A part of it is also located within the firing range and its borders are also marked with the same green line, like the reserve. Close to the Budrus village, within the expanses of the firing range, there is the “Adam” army camp, whose location and borders have not been marked. The firing range, and the territories of the reserve and forest that are located in it, surround the Budrus

village from the north, west and south. And in this map there is no marking of the political border – “the green line” nor of the demilitarized area.

There is therefore a requirement to look at an additional map in order to see the extent of the demilitarized area in the region of the Budrus village. In this map the demilitarized area is colored in pink with the caption NO MAN’S LAND. We mark the Budrus village by encircling the words that show it.

This section of the map is annexed hereto as **appendix 3**.

13. In contrast to the maps, the borders of the Budrus village itself are the borders that have been embedded in memories. The residents refer to the territories as “land until 1948”, “the land until 1967” and “the land after 1967”. At this point in time, which began after the events of the cause of this complaint – they will speak about the “land until the gate” and “after the gate” (this is the gate that was erected in the region of this incident, some time after it occurred, and in connection with the separation fence). However, in reality, despite the incident that constitutes the cause of this complaint none of the signs that appear on the map have actually been marked in the territory. And everything is at a minimal distance from the homes of the families of the plaintiffs, which are located right next to each other at the extreme west of the village, in the region of cultivated agricultural land (including Dar Awed’s portion) and wild fields.

And it goes without saying that it is not within the nature of shepherds and goats to be equipped with maps when they go out grazing. And as to our plaintiffs and their young sons they certainly have no skill in reading maps.

14. And as to the legal situation that applies in this case: it has already been stated that: **“no one disputes that was no application of Israeli law in areas that were demilitarized before the Six Day War”²** (emphasis added).
15. And it is also important to stress that to every type of territory certain acts of legislation by virtue of Israeli law apply. By virtue of the last-mentioned, in this present case, there are, among other things, prohibitions and sanctions for forbidden entry that have been imposed. It is the various authoritative bodies that are in charge of enforcing these prohibitions, in accordance with the particular matter involved.

² (Beit Shemesh) 1193/04 The State of Israel v. Eitan Kramer (published in Nevo) 22-23 of the judgment paragraph 8 d (hereinafter the Kramer case)

These include: the IDF, Border Guards, the JNF, The Nature and Parks Authority, and when it involves animals, also the veterinary services and the PAI unit which operates in the Ministry of Agriculture. The Ordinance, as well as other provisions of the Law that apply to this matter authorizes the employees of defendant 1, as well as their aides to act with discretion, reasonableness, *bona fides*, and fairness and only in matters where the powers have been strictly defined and specified, and which inhere to a particular person, who is in charge of a particular field, which cannot be shared with another person.

The Ordinance, the defendants and the court - a normative sketch for exercising authority

16. The complaint is concerned, as stated, with the exercise of authority by virtue of the Ordinance for Animal Diseases. A presentation of the main provisions which apply to our matter, already at this stage, will aid us in focusing our sights on the failures, which the plaintiffs have pointed to in the factual chapter, and will make it easier to understand the way in which the defendants acted manipulatively in using the provisions of the Ordinance to achieve alien aims.
17. In their opening statement, the plaintiffs make their primary argument: in a place where the State did not mark a political border line and/or borders of a firing range it is prevented from arguing that the presence of herds in those places constitutes an infiltration into the territory in breach of the Ordinance (or in breach of any other legislative organ). The Ordinance does not grant authority to the State to attribute constructive knowledge to the plaintiffs, with regards to where exactly the political territory begins.
18. And as to the authority itself:

Sections 26 and 27 of the Ordinance determine the authority with respect to animals, concerning which there is a suspicion that an infringement of the Ordinance has been carried out (and in our case the relevant infringement is their unlawful entry into Israeli territory) .

Section 26(a)'s opening establishes two forms of authority: the first authority that has been delegated to the authoritative bodies is the authority to “**capture and examine**” the animals. This authority flows naturally from the aims of the Ordinance, to prevent the spread of disease.

The second type of authority that has been delegated to the authoritative bodies is the authority to **“order their return to the region or place from which, he suspects, the animal was unlawfully transferred”**. (According to section 15(b) the authoritative bodies may themselves perform what they are authorized to order, i.e. to return the animals to their place of origin by themselves). As we have seen from the quotes of the director of field veterinary services, this authority also flows naturally from the purpose of preventing disease and it is meant to practically enforce the restrictions on the transfer of animals from place to place. According to the guidelines of the veterinary services when animals penetrate the political borders by a short distance, it is preferable to use the authority of returning the [animals] over and above leading the animals deep into State territory.

Until now the authority is not contingent upon an application to court.

Further down subsection (a) establishes a third authority, which is the authority to **“transfer them to any place and to detain them subject to an order from a Magistrate’s Court Judge”**. Logic would dictate that this authority is relevant only in a place where it is not possible to ensure the goals of the Ordinance by using the former authorities.

The second part (of the subsection) stresses the obligation that has been imposed in these circumstances on the Authority personnel: **“When there is a capture and detention that was performed as stated, the one doing so shall inform the judge of Magistrates’ Court in the district where the capture took place at the earliest possible moment”**

The logic of these words is clear: when the authorities take possession of animals, it has to be done under judicial supervision, as an obligatory matter.

Section 26(a) therefore creates an arrangement which obligates the exercise of fundamental judicial supervision over the actions of factors authorized to operate in the area, already at the stage of the **capture** and immediately thereafter. And this applies when the factors apply to **transfer the sheep and to detain it**.

Section 26 (b) of the Ordinance deals with the costs that are liable to be incurred to the State as a result of the exercise of the authority in the final clause of **section 26(a)**. **The Ordinance grants the same judge who ordered the capture and detention of the animals, the authority to exercise his discretion to order the owners of the animals to bear the costs of the transfer, detention and sustenance of the animals**. During the second phase, the court is permitted to determine that if the costs will not be paid within a specified period, the animal will be confiscated.

The Ordinance does not establish that an order pursuant to **section 26** may be made *ex parte*, but rather a series of regular legal procedures apply, which is to say that the State must make delivery of the application to the owners of the animals, and they should be summoned to the hearing and granted their day in court and their right to counterclaim, which has been firmly established in natural justice.

The forfeiture order mentioned in **section 26(b)** is meant to ensure the defrayment of the State's costs for the handling of the animals that were used in the commission of the violation of the Ordinance. **Section 27** determines the additional authority with respect to the matter of confiscation. **The authority to confiscate in terms of section 27 is granted pursuant to the court's discretion and is contingent upon 4 cumulative threshold conditions:**

- a. "The presiding judge in the Magistrate's Court has been informed that an animal or object has been apprehended pursuant to the provisions of section 26", which is to say that a precondition is the lawful exercise of the authority pursuant to section 26;
- b. "The person to whom the execution of the offense has been attributed is not known or may not be located"- which is to say that **if the offender is known and can be located, there is no authority whatsoever to confiscate according to the above-mentioned section 27, and one must act in accordance with regular procedures (criminal procedures, civil fines, etc.)**
- c. "If it was reasonable to have a basis for assuming that an offense was committed as stated" – which is to say that there is the necessary proof that shows a reasonable probability to assume that an offense has been committed;
- d. "The above-stated order shall not be granted unless the owner, if his name and place of origin are known, has been given the opportunity to appear before the judge and to in turn provide a reason why the above-stated order shall not be granted." Which is to say that **even in a situation where the offender is not known, but it is possible to locate the owner of the animals, one must allow the latter the right to put forward his claims and to have his day in court, so that he may be able to protect his property rights.**

Section 27 therefore grants owners of herds that have been captured, in circumstances where **section 26** applies, the fundamental and explicit right to be heard in court, and imposes a positive obligation (in the Hohfeldian sense) upon the Authority's personnel – to summon the herd owner to court. That means that they must act with due diligence to ensure that the fundamental rights of the goat owners are not frustrated. And only after topping all of this may the court make an order with respect to exercising its authority to order the confiscation of the goats, subject to the above cumulative conditions. The Ordinance therefore explicitly directs the judge of the Magistrates Court to exercise fundamental and not merely formal judicial supervision.

Other relevant authority may be found in **section 7** of the Ordinance. This authority is the authority to order the putting to death of the animals (or in conjunction with section 15(a)- to kill the animal). Whereas the threshold condition for exercising the other authorities which we previously dealt with is a violation of the provisions of the Ordinance, the threshold condition for exercising the putting to death authority is that the animal is: “infected with a disease... there was contact with the aforesaid animal or he was exposed in some other way to a contagious disease or to the contamination thereof or when the doctor suspects that he was infected by the disease”.

It is thus possible to put to death an infected animal even if no offense was committed by it. On the other hand there is no inherent right to kill an animal for the reason that it has been used in the committing of an offense, if it is not infected with a disease or suspected of being so infected.

The authority for putting to death is within the discretion of the government veterinary surgeon. General principles of standard administrative practice should teach us that when it says “when the doctor suspects that it has been infected by disease” it is concerned with a well-founded suspicion, and not the inkling of a suspicion, nor with an across-the-board policy towards goats that are raised in this or that place. If we combine the authority of making an investigation (to which we have already related) with the authority of putting to death, we discover that a precondition for exercising the authority to put to death is that first the authority for investigating has been exercised, and that authority has resulted in findings that establish a genuine suspicion that the animals have been infected with a disease.

Without going into further detail, it should be noted further that in the Ordinance and in the regulations that were promulgated by virtue thereof various provisions have been established as to the examination of goats suspected of being ill, as well as

various provisions with respect to adopting a diverse number of cautious means at all stages of contact with goats suspected of being infected, including during the slaughter process in Israeli abattoirs.

We shall also mention in this context **chapter 3 of the Ordinance**, which regulates the granting of compensation for the putting to death of animals. From the provisions of that chapter it emerges that an additional examination is required, after putting the animal to death, and when it becomes clear that the suspicion that the animal was infected has been refuted, the compensation to the owners increases commensurately.

The fabric of these authorities should be read as one related whole – with everything being subject to the rule that the exercise of the authority needs to be done in good faith, with responsibility, and with the purpose of preventing the spread of animal disease.

It shall also be seen that in our case the defendants did not exercise their authority to return the animals to their place of origin, even though the correct application of such discretion would have dictated such a move. They did not exercise their discretion to examine the animals, even though this is an elementary step that is required. They captured the animals, detained them and transferred them to another place, without reporting to the court, which they should have done at their earliest convenience. They did not apply for a court order as is required, and they acted on their own behalf without any order. They caused the slaughter of the goats, in a way that ensured that their transfer would be irreversible, and the authority that was within the discretion of the court was emptied of all content. After they themselves “pulled the rug” from under the court’s authority, they applied to court to confiscate the meat of the slaughtered sheep. And was not the authority to grant an order merely one of the supplementary authorities which they themselves prevented from the court: the authority to issue a capture and transfer order and the authority to impose the State’s costs upon the owners. And if this was not enough they also applied for the monies from the forfeiture to be used to defray the costs of slaughter, which are not included in the costs recognized in section 26 of the Ordinance. And as to the authority of putting to death mentioned in section 7 of the Ordinance: it would appear that this authority does not apply to a situation where a special arrangement has been determined that requires the court’s supervision, and nonetheless the putting to death of the animals was done swiftly and without there being any real suspicion that they were infected by a disease.

To summarize what we have said: the provisions of sections 26 and 27 establish a chronological sequence of actions that the authorizing body's personnel are ordered to carry out, the timetables for doing them and the limits of the authority which accompanies each and every action. This, already from the stage where it has been discovered that there are goats from the Palestinian Authority situated within Israel's borders, in violation of the Ordinance, and where there is a decision not to drive them back home. And all this for one purpose only: in order to protect public health in Israel. The factors' decision explicitly imposes an obligation not to remove the sheep back to the place from where they reached Israel, an application to court, and the exercise of fundamental judicial supervision.

These provisions establish, therefore a "closed arrangement": the factors listed in the Ordinance, who apply for the transfer of the sheep into Israel, shall only be allowed to do so subject to a court order. No person – herd owners, personnel of the Authority, or the inspectors of the animal movement – is permitted to admit animals into Israel without a permit issued by an authorized body. And with regards to the inspector and the government veterinarian, the court is the authorized body. And even a judge, who is authorized to order the implementation of sanctions upon the goat owner, and who is subject to the binding arrangement, has deviated from his authority, in a case where the goat owners are known and yet he has not provided them with their day in court. The established arrangement in the Ordinance thus prohibits the State Authorities, including the judicial branch, to take away animals from their owners, if the latter's identity is known to personnel of that Authority who apply to do so, and they do not provide that person with the ability to realize his legal rights in court.

However, it was not the orders listed in the Ordinance for which the defendants applied to court. Dr. Haimowitz instructed the inspectors to obtain an order forfeiting the monies that were received from the sale of the meat of the slaughtered herds. And this was after they had already been slaughtered. And they did exactly that. The court however was informed for the first time about the entry of the herd into Israeli territory only after the defendants did not leave behind any living remainder [of the herd].

19. And now we shall see, by means of the facts that were recorded by the defendants in their documents, how the defendants acted and how they turned everything around to suit their desires. How they took liberties by deriding the Ordinance by virtue of professing to act in its name, but in practice acting for the realization of alien aims which were contrary to the purposes of the Ordinance. How they took away the lives of the goats for the sake of nothing, and how with total arbitrariness they slaughtered

the source of income of two families. How they conducted themselves towards the plaintiffs, by trampling their rights, and how with relation to the courts they drained its jurisdiction of all content. In all of these they prevented the plaintiffs from access to justice, by negating their rights to a fair hearing and by bringing about the issuing of a wasteful decision by the court.

The chain of events

20. In the early hours of the morning of 3 November, 2002 a youth and a child went out to shepherd the herd of goats of their fathers. _____, a nineteen year old, with his father Khalifa's herd – 24 in total, 23 goats and one Billy goat – reached the portion of land of the Dar Awed family. There he met his neighbor, -----, a minor who had not yet turned fifteen. Since it was the olive harvest, the child was sent to shepherd his father Dar Awed's herd- 35 in total including 32 goats, and 3 Billy goats. Here, in the border area at the western edge of village lands, these two shepherded the two herds of their fathers.

21. Where were the herds at the time they were captured by the defendants? To the best of the defendants' and the shepherds' knowledge, the herds were within the boundaries of the West Bank. The documentation that the PAI personnel drafted in support of their claim – which is that the herds crossed the border does not show this. There was good reason (as shall be seen below) for the cancellation of the fine that was imposed upon the plaintiffs for the incident. And if the herds were not in West Bank territory, they were then in an ownerless area, which is not part of the State of Israel and where Israeli law does not apply.

As a legal claim the plaintiffs will argue in the alternative, that even if the herd was within the Israeli territory, it did not constitute any danger of spreading animal disease. According to the guidelines of the veterinary services, as aforesaid, a herd that minimally penetrates Israeli territory should be sent back to the border of the territories, since the risk of leading it deep into Israeli territory (for the sake of loading, of detention, or for slaughter) is larger than the risk of actual penetration into the border territory (and see: the quotation above from the **Jabarin case**).

22. After a short while, while the goats were still going out to graze, Israeli vehicles suddenly burst out of nowhere. Their sudden appearance caused mayhem. The shepherds were shocked and ran away while the goats dispersed in all directions. Those who arrived chased after the goats assembled them together, and led them westward to territory under Israeli control. They apprehended _____ and _____, and charged them with shepherding in a firing range where entry was

forbidden, they then continued to frighten them, and after handcuffing them, they drove them to an unidentified location in Israel. After a while they were joined by the herds, which the captors led by foot into Israeli territory. It was at this place that _____ and _____ saw their goats for the last time. After that, while the goats were left alone with their captors, the two were interrogated at the Modi'in precinct. At the end of the investigation they were sent home, equipped with telephone number _____. By means of this telephone number the fathers were meant to verify the fate of the herds at defendant 3. The youths did not know how to explain what had happened to the herds. Aside from the telephone number, they were not asked by defendants 2 or 3 to relay information of any sort to their fathers, as to their legal rights with respect to the capture of their herds.

23. On that day, 3 November, 2002, the shepherds, _____ and _____ were interrogated (from the documentation of testimony given under oath, which shall be discussed below, we learn that Inspector Maman took down the words attributed to _____ and _____, whereas Investigating Officer Hever only jotted down the words attributed to _____). Already at this stage it must be stressed: the notes taken down by Maman, supposedly straight out of the mouths of the interrogated, were written in the Hebrew language and were not translated for their benefit into Arabic. Therefore, even if they did sign the testimony document, they did not have a clue what was written and what they had signed. Therefore _ and _____ deny the veracity of these notes on whichever documents they appear including knowledge as to where the firing range began, or where Israeli territory began, whether there was deliberate and willful entry into this territory, previous shepherding of sheep in these territories, or previous warnings that they had received for shepherding their sheep in these areas, and all the ramifications thereof. On the other hand the plaintiffs point to the contradictions and the inconsistencies that were revealed in these notes.
24. On the day on which the herds were captured, the plaintiffs unsuccessfully tried to establish contact with investigating officer _____ Hever by dialing the aforesaid telephone number. Only after the passage of one or two days, was plaintiff 2 afforded the opportunity to speak with him telephonically, and the latter summoned the plaintiffs to the Beth Sira check post for an interrogation under oath. This occurred only after the third day from the time the herds were captured, corresponding to 5 November 2002. Within the course of the interrogation the plaintiffs were adamant that their herds had been immunized by the Palestinian Authority, and as proof thereof a mark was made on their ears, as is customary with the Authority. They therefore requested that their herds be returned to them immediately. However,

Investigating Officer Hever replied that only after the veterinarian would have completed his examination, would the goats be returned to them. It should be pointed out that at the time of the interrogation the plaintiffs did not have the certificates of immunization with them, and their requests to present them at a later date were refused.

25. It bears stressing: Investigating Officer Hever did not tell the plaintiffs anything about their legal rights: not through their shepherd children, neither during the telephone conversation summoning them to the interrogation, and nor during the interrogation itself. These rights include the right of argumentation that is granted to them by law, before exercising legal sanctions, from which there is no return, against them and against their goats. The plaintiffs have also insisted that over the course of the interrogation Hever told them explicitly that the goats would be returned to them after a veterinary examination.
26. After returning to their homes, and after experiencing increased fear for the goats' fate, the plaintiffs that same day once again telephoned Investigating Officer Hever pleading with him that he return the goats. Only then it was relayed to them that the examination found that the goats were indeed sick, and under the instructions of the veterinarian, they were already slaughtered.

The incidents as they were recorded by the defendants in the documents that they drafted

27. As stated, as a result of the capture of the herds the defendants drew up various documents. They opened an official investigation file for the two plaintiffs which contain these documents, as well as other documents which were produced by others, who were not the defendants.
28. Since until the present date not all of the documents from the investigation file have been handed over to plaintiff's counsel, the plaintiffs reserve the right to make written changes to the complaint as much as is necessary, in the event that important information reaches them at a more progressive stages of this legal process.
29. Below we shall present a detailed chronological account of the facts as these were written by the defendants in their own hand, in the documents that were drafted by them, and were found in their possession. It will already be argued at this stage that these documents constitute legal testimony for all intents and purposes and the defendants are therefore barred from raising arguments against them.

30. As to the date, 3 November, 2002

- a. The herds were caught as a result of a decision by Dr. Haimowitz, pursuant to the authority of capture in **section 26(a)** of the Ordinance. This, we deduce from his letter to the inspectors, which shall be discussed below (**appendix 11 below**) and from what has been stated in Adv. Aviani's letter to the plaintiffs counsel, from 11 December, 2002.

Adv. Aviani's letter from 11 December, 2002 is attached as **appendix 4**.

- b. **Defendant 2, Inspector Maman**, from the PAI unit in defendant 1, saw, chased after, and captured the herds and the shepherds, and was active in transferring them to the "Merbak" abattoir in Israel. He prepared seven reports in which he recorded the chain of events of the day of capture. These reports are attached hereto and are marked as follows:

The report "Incident within the jurisdiction of veterinary inspection" is attached as **appendix 5**;

The report "delay" is attached as **appendix 5(1)**;

The report "admitting the animals into the abattoir" (apprehensions 11803 and 11804) is **attached as 5(2)**;

The report "apprehension" 11803 (Khalifa) is attached as **appendix 5(3)**;

The report "apprehension" 11804 (Dar Awed) is attached as **appendix 5(4)**;

The statement-taking sheet of the youth shepherd, ___ Khalifa is attached as **appendix 5(5)**;

The statement-taking sheet of the minor shepherd, ___ is attached as **appendix 5(6)**;

- c. Inspector Maman relays in the "incident within the territorial jurisdiction of the veterinary inspector" report (**appendix 5** above) his version of the apprehension of the herds: Close to 6 o'clock in the morning, he, with the assistance of the Border patrol police and the personnel of the Green commando unit **saw, identified, and pursued the herds as they were crossing the green line**. They also detained the shepherds. The herd, as is noted down, was apprehended in the firing range of the "Adam" army camp. **Approximately 500 meters to the west of the Green Line**, at the Nivlat stream, at marking point 198000/653500 that was marked on the map (which was not provided to the plaintiffs despite their request for its receipt).

- d. Maman also wrote down that they **admitted the herd into one of the buildings of the firing range** of the “Adam” army camp, where it waited for a truck **“that would deliver it to quarantine or to slaughter at Merbak”** and that the delivery took place. The class of offense was described as “infiltration into Israeli territory (**where the goats were unmarked**) from blockade territory (autonomy) in contravention of the Diseased Animals Ordinance” (emphases added).

The delivery of 56 goats, on 3 November, 2002 from the “Adam facility to Kiryat Malakhi (Merbak)” was verified through an invoice from the towing company, which performed this delivery.

The invoice for the delivery of the goats is attached as **appendix 6**.

- e. In the report “admitting the animals into the abattoir” (**appendix 5(2) above**) Maman wrote that the herd from apprehensions 11803 and 11804, for the captured _____ and _____ (appendices 5(3) and 5(4) respectively) has disembarked at the abattoir at 11:35 a.m. “There to receive the merchandise” he wrote “ was the veterinarian, Dr. _____ Hochman”
- f. It should be stressed: On all of the reports prepared by Maman, the number of goats, whether in reference to the total or to those belonging to Khalifa’s herd or to Dar Awed’s herd, is filled with inaccuracies making it difficult to identify the number of each herd. (See also the testimony of _____ which was taken down by Investigating Officer Hever, **appendix 7** below) Additionally the number of heads of goat, in total or belonging to each herd is not uniform and ranges in the various documents compiled by Maman and Hever between 53 and 56 heads in total. However from his various notes it is clear that Maman relates to two separate herds.

It should also be noted that Inspector Maman, in all the documents wrote down the date 4 November, 2002, or 4 December, 2002, and only in some of them did he correct it to 3 December, 2002, which indeed was the day on which he captured the herds.

- g. According to the “delay report” (**appendix 5(1) above**) which refers jointly to _____ and _____, Maman wrote down that at 6:30 a.m. these two responded to the delay by saying “they warned me in the past and told me not to enter with the herd” (the statement refers to both of them as one unit). At 9:30 a.m. the shepherds _____ and _____ were transferred to the Modi’in police station for verification of their identity documents, and the

herds that were captured as stated, minutes after 6 a.m. (**appendix 5** above) were loaded on to trucks and were delivered to the Merbak abattoir, and was dismantled at 11:35 a.m. (**appendix 5(2)** above).

- h. In the “capture” report which referred separately to each one of the herds (**appendices 5(3) and 5(4)** above) the **youth shepherds _____ and _____ were referred to as the “owners of the produce” rather than the plaintiffs, whose identity had already been relayed to Maman by the two (youths), and was therefore known to him.**
- i. Inspector Maman interrogated _____ and _____ and compiled a “sheet of statement taken under caution” (**appendices 5(5) and 5(6)** above respectively). In the two sheets he did not take down their identity numbers or their birth years. However in the sheet of _____ he wrote down, purportedly verbatim, that he was 16 years old (when he was in fact 19 and carried with him an identifying document). And in the sheet of _____, he makes no mention at all of the age, which on that day was 14 years and 11 months. Maman also remarked that _____ **was married.**
- j. And these are the things that he wrote down on the testimony sheet of _____ (**appendix 5(6)** above)

“... I left the Budrus village in the direction of Israel proper **to the firing range of the Adam camp...**” ;
 “Q&A How many times per week do you shepherd the herd. **Today was my first time**” “Q&A **My father bought the goats yesterday...**”; “Q&A Did you know that it was forbidden for you to shepherd in the firing range of the Adam camp? **I did not know that, this is my first time**”; “Q&A what happened when you saw us coming towards your herd? I saw you and **decided to run away and then the herd ran in the direction of the firing range**”. These things cannot be reconciled and in fact contradict what was written in the delay report (**appendix 5 (1)** above): “They warned me in the past and told me not to enter with the herd” (emphases added).

Did _____ really reply, as Maman had written down? Were these the he really said? What did the boy really know “during my first time”? Because if everything that Maman wrote down is in fact true, why did Maman not

decide to drive back the herd to the village? And how could Dr. Haimowitz be so bold, as we shall see below, to order the capture and slaughter of 35 goats and Billy goats, on the basis of things that were said by a child? Since a story such as this should certainly have raised doubts in Maman's mind, at least as to the reasonableness of the details, that he took down from the boy's narrative, and he should have had to verify and confirm these things with the boy's father. Maman, as an inspector was already authorized according to section 26(a) of the Ordinance to decide to return the herd, as was Dr. Haimowitz. Nonetheless, the latter, apparently on the basis of the details that were relayed to him by Maman ordered that the herd be captured and slaughtered, without listening to the owner of the herd, the child's father.

And we shall see below how details like these – that if they were said are irreconcilable and ought to raise a red flag – which were written in such a manner, with contempt and neglect as to the time of apprehension, without giving due consideration to their content and significance, are presented in the following documents, as solid and sufficient enough, for the sake of negating life and property. And this is true, whether with respect to the administrative decision to apprehend and destroy the goats or whether with respect to the court order to confiscate the monies.

And furthermore, according to Maman's version of events, between the time the herds were spotted crossing the Green Line – at 6 o'clock and the time when the shepherds were already interrogated – at 6:30, after the goats had been dispersed and were captured at a distance of no more than 500m from Israeli territory, only half an hour had passed. The herds did not manage to really graze in that territory. They were caught as they were merely passing by. Therefore, also on the basis of these circumstances, in accordance with the accepted procedures and pursuant to the Ordinance, Maman should have returned the herds to the Budrus village. And he would have been permitted to do so even without an order from Dr. Haimowitz, by virtue of the authority vested in him by the Ordinance in his capacity as inspector.

- k. **Defendant 3, Investigating Officer Hever** – also wrote down the testimony of _____ on 3 November, 2002. Hever identified _____ according to his identifying document, that was on his person, and he wrote in the testimony sheet its number and the year of birth of its holder. However he gathered no testimony from _____.

The statement sheet of _____ is attached as **appendix 7**.

The plaintiffs argue that Investigating Officer Hever's refraining from gathering testimony from _____ shows, that the personnel of the PAI unit knew that _____ was a minor. Whether this is so, it was incumbent upon defendants 2-4 to clarify and to know that _____ was a minor, before their fate was sealed and the life and source of income was extinguished on the basis of details that were jotted down. And what makes this 100 times worse is the fact that it would have been possible with very little effort to hear his father, and in fact there was a duty to do so pursuant to **section 27** of the Ordinance. Everything could have been done before the slaughter and before the defendants applied to court.

31. **With regards to the date 16 September, 2002**

This is the place to present the facts that have been discovered in four of the documents that were found in the investigation file on the date 16 September, 2002. These were drafted by others, who are not defendants 2-4, and as a result of events that took place prior to the capture incident which forms the cause of this complaint. Two of the documents were prepared on behalf of the Unit for the Inspection of Open Spaces, as a result of the infiltrations of two herds into a firing range on 16 September, 2002, alongside two warnings which were published, on the same day on behalf of the IDF, as a result of the aforesaid infiltrations.

The two documents prepared as a result of the evacuation of the two herds are attached as **appendix 8 and appendix 9 respectively**.

The two warnings published in response to the entry onto a firing range are attached as **appendix 8(1) and appendix 9(1) respectively**.

Since the infiltration into the firing range that was closed by order, constituted a contravention of the law, and since a warning, in terms of which the offender is liable to be punished as laid down in the law, was in fact made by virtue of **Regulation 125 of the Defense (Emergency) Regulations, 1945** (hereinafter: emergency regulations) it is thus explicitly recorded in army documents, and explicitly not by virtue of the Ordinance.

Already here the plaintiffs argue that the emergency regulations do not grant authority to the defendants or any other factor to slaughter the herds. The very fact that a Palestinian herd is entering a firing range does not constitute a danger to public health in Israel.

And now pay attention to what was jotted down in these documents: the identifying details relate to two people – the first one, _____ (or _____) _____ Khalaf, and the second, _____ Mahmid, both of whom are from Budrus village.

Therefore, there can be no dispute that either one of them is the plaintiff in this case.

And behold one more strange detail: on the warning to _____ Mahmid, on the diagonal at the center of the sheet towards the left the date 3 November, 2002 appears, this in addition to the date that is written on the blank space reserved for the date where the real date 16 September, appears. Furthermore: the signature of the person who confirmed the receipt of the warning seems like that of _____ Khlaifa, the son of plaintiff 1. However, _____ argues that he never once shepherded the herd of anyone else aside from his father's. Who on 3 November, 2002 had in his possession documents from 16 September, 2002?

And another question: in the testimony sheet of _____ on 3 November, 2002 (**appendix 7** above) which relates to this complaint, Investigating Officer Hever wrote the following: “We bought 20 sheep from our village from _____ Khalaf, a sheep merchant”(**emphasis added**).

It turns out therefore that these documents from 16 September 2002 are apparently “evidentiary basis” upon which the defendants rely to “prove” that the shepherds _____ and _____ had already been caught in the past with the herds of their fathers, and had been warned in the past, not to enter the firing range with their herds. And on the basis of these dubious documents these two also unanimously “admitted” that this indeed was apparently the case. These “proofs” were written by the personnel of the PAI unit in their application for the forfeiture order (**appendix 12** below).

Therefore the plaintiffs underscore their argument already here: most of the notes in the documents that were transferred to the plaintiffs from the investigation file raise serious questions, to put it mildly. This includes sheets of statement taken under caution from _____ and _____, signed with their own hand. Concerning almost all the documents, one finds, in the best case scenario, intolerable negligence, including the attaching of those documents from 16 September, 2002 to this investigation file. In the worse case scenario, there arises the suspicion of genuinely deplorable activity. This all points to conduct by defendants 2 and 3, which is permeated by extreme unreasonableness, a lack of good faith and fairness, and which spreads out to all that they do.

And still a lot remains to be said.

32. **On the date 4 November, 2002**

On this day – the day after the day on which they apprehended the herds – the defendants acted in a very hasty fashion. As was written down in the various documents they hastily complied with Dr. Haimowitz’s instructions and they did the following:

- a. Firstly, they slaughtered the herds- 56 goats and Billy goats at the “Merbak” abattoir.

An invoice from Merbak with respect to the slaughter of 56 goats on 4 November is attached as **appendix 10**.

- b. Dr. Haimowitz sent a letter with instructions to inspectors in the PAI unit to transfer the herds to slaughter, and to “address a judge of a Magistrates court with an application for a seizure of the meat that was received from the animal slaughter”. From the wording of the letter one is left with the impression that Dr. Haimowitz gave these instructions to the inspectors prior to writing the letter. One may assume that various activities were carried out before, or at the same time of delivery of the letter to the inspectors (see also: last paragraph of Adv. Aviani’ letter, **appendix 4** above).

Dr. Haimowitz’s letter from 4 November, 2002 is attached as **appendix 11**.

- c. On behalf of defendant 1, an application for a court order was filed with the Jerusalem Magistrates’ Court – M.M. 7517/02 **Magistrates Court J-m The State of Israel. v. Khalifa Son of _____ and _____** (hereinafter: “M.C. 7517/02” or “confiscatory order”) which was concerned with **a confiscation of the monies from the sale of the slaughtered meat, after the herd was already slaughtered.**

An application for a court order from 4 November, 2002 is attached as **appendix 12**

The content of the application shows that it was reliant upon the above-mentioned documents that were written by Maman and Hever, and the letter written by Dr. Haimowitz that was attached to the application as an inseparable part of it (**appendix 11** above)

(It shall be pointed out that at the time of drafting the complaint, the plaintiffs have no knowledge which of the other documents the defendants have presented before the court and whether they support the application in the affidavit as is required by law)

The plaintiffs refer to facts that are apparent from the Application, signed by Investigating Officer Hever. The owners of the herds are not at all mentioned in the application, despite the fact, that their identity was known to Inspector Maman and Investigating Officer Hever. Their shepherd children, _____ and _____, are registered as respondents to the application. And this without pointing out, that the shepherds are not the owners of the herd, and without pointing out, that _____ is a minor. And this was done even though; there was a requirement for these details to have been brought to the court's attention. Furthermore, the application speaks about one herd alone of 56 goats, purportedly owned by _____, and _____ so one may understand a form of assistance to him.

The application, prima facie, is a falsification, which is apparently typical, and is full of contradictions, even concerning those things that Inspector Maman jotted down from the purported verbatim statement sheets of _____ and _____, as mentioned above.

- d. **Factual presentation** – the defendants wrote down in the documents, which they drafted during the aforesaid three days, including that of 16 September, 2002 (the above-mentioned **appendices 7, 7(1), 8, 8(1)**), details such as these: that the goats were not immunized and were not marked as immunized (despite the fact that the goats were marked as immunized by a slash in the ear, as is customary in the Palestinian Authority, of which the defendants were fully aware, and something which is noticeable to the naked eye); that the two shepherds admitted that together with their herds they knowingly entered a firing range within the State of Israel, and they admitted that that they had been apprehended in the past and were warned a number of times not to shepherd their herds within Israeli territory. This in contrast to the explicit and contradictory words that were written down by Maman in the statement sheet of _____ (the above-mentioned **appendix 6**), and in contrast to the hesitant, and by no means unambiguous words that were jotted down in the statement sheet of _____ by Inspector Maman (**appendix 5(5)** above) and by Investigating Officer Hever (**appendix 7** above).

This record points to serious failures for which the defendants were responsible. And because of this, defendants 2-4 found their way to drafting an Application, which they filed with the court (**appendix 12** above) and created, also before the judge, a factual presentation, which appears solid, but which in practice is far from the truth.

- e. **Legal presentation** – Dr. Haimowitz in his letter refers the inspectors, when discussing the matter of **the capture of herds, only to the initial clause of section 26(a)**, while ignoring **section 26 (a)’s final clause**. He thus creates the impression that for the sake of preventing the spread of animal disease he and his inspectors have been vested with complete authority to capture animals and to bring them into Israel. However, as we have shown, above, his authority and that of the inspectors in this matter is subject to the review and order of the judge of the Magistrates’ Court. And the obligation is upon them to inform the latter about the actual capture, “as soon as possible”. This is because they chose not to return the herds, but instead to lead them a good part of the way by foot into Israeli territory, and to drive them to the abattoir where they would be destroyed.

The documents show, therefore how defendant 4 surpassed himself in creating both with respect to the inspectors and with respect to the court, a fragmented and misleading legal presentation, which amounts to a falsification of the fixed provisions that are determined in the Ordinance, through broadening the powers that the Ordinance explicitly does not grant him.

- f. Dr. Haimowitz also instructed in his letter to the inspectors to take the herds that were captured, and to **lead them to their slaughter**. This is because they infiltrated from the Palestinian Authority without a permit. The herds were indeed slaughtered immediately, on 4 November, 2002 (see: **appendices 4 and 10** above)

However as we have shown **section 26** does not grant authority to order the slaughter of herds that were captured. The authority for ordering the putting to death of animals is laid down in **section 7** of the Ordinance. The language of that provision is explicit. Slaughter is only permitted where the animals are infected with disease, or suspected of being infected. **The Ordinance does not grant authority to destroy animals solely for the reason that they infiltrated from territories of the Palestinian Authority without a permit.** And in the aforesaid circumstances this instruction also constitutes an act of exceeding one’s authority which goes against the procedures which Dr. Haimowitz himself formulated, by virtue of the Ordinance.

- g. Astoundingly, Dr. Haimowitz all along ignores the explicit and separate discretionary authority granted by the Ordinance to him **or** to the inspectors, **to return the animals to the place from where they came.**

From the findings of the court in the **Jabarin case**, which was quoted above it transpires that Dr. Haimowitz in his letter ignores those guidelines and procedures that he himself determined. These instruct the inspectors to desist from capturing herds, which infiltrated from a distance of a few hundred meters from the Israeli border. He instructs them to drive them away to the place from which they came. This was in order to prevent the spread of disease to animals and to man. These instructions were familiar, or should have been familiar to the inspectors. The **Jabarin case** involved an infiltration of between 600 to 800 meters, and the court ruled that defendants had no authority to act as they did.

And it should be remembered that in the case of this complaint, as in the records of the reports that were jotted down by Inspector Maman, the goats were apprehended **after a pursuit which extended at most to a distance of 500m** into the firing range.

- h. And furthermore, relying upon **section 27**, which deals with the seizure of animals, Dr. Haimowitz instructs the inspectors in his letter “to apply to a judge of the Magistrates’ Court and to request the **forfeiture of the meat that was received from the slaughter of the animals**” (emphasis added). (And for an analysis of **section 27**, see the introductory chapter above).
- i. Investigating Officer Hever indeed acted quickly in filing with the court an application for a court order to seize the monies from the sale of the slaughtered meat, to which he attached Dr. Haimowitz’s letter. However, Investigating Officer Hever chose to refer the court in respect to the judicial authority that is vested in it, not to **section 27**, but to **section 26(b)**. However as stated in the normative chapter in the introduction, **section 26(b)** is concerned with the authority granted to a judge of a Magistrates’ Court to order the **payment for the maintenance and feeding of the animals in the stages of capture before its slaughter, and only as a supplementary provision to the order to capture animals and to detain them in a place that has been determined.**

It is not possible, not to ask already here: why did Investigating Officer Hever refer the court only to the authorities listed in **section 26(b)** and avoid,

as Dr. Haimowitz did, mentioning **section 27?**; and why was the application made *ex parte*, when it would have been practically possible, and from a normative perspective also obligatory to summon the owners of the herds and to give them their day in court?

It is incumbent upon Investigating Officer Hever, as defendant 3 to provide persuasive answers to the court with within the framework of this complaint.

Already here the plaintiffs shall argue that Dr. Haimowitz and Investigating Officer Hever were obligated, and able to wait until they heard them, before slaughtering their herd, and before they rushed to court with their dubious application. The plaintiffs will argue further that in their case as in the **Jabarin case**, the defendants knowingly operated against the explicit provisions and procedures of the Ordinance. They intentionally did not drive back the herds to the place from where they came, as was required in the circumstances. And therefore their conduct, including the way in which the defendant opted not to refer the court to the court's supervisory powers that is explicitly granted to it by the Ordinance, indicates a conscious intent to divert the judge's attention in a direction favorable to the defendants, in a typically selective fashion, in order to obscure those activities, that they were forbidden from doing. The catch is that as a result thereof their shame was exposed.

33. **A summary of events of 4 November, 2002**

The plaintiffs claim that on this day the defendants acted outside their areas of jurisdiction, in an unlawful manner, and through their behavior they have negated genuine judicial review as required by the Ordinance in the circumstances of this complaint. The defendants destroyed immunized, healthy herds, and apparently without any appropriate examinations. And they did so without adopting any of the obligatory cautionary measures over the course of the transfer of the herds to the abattoirs in Israel, before their slaughter there, and over the course of the slaughter. And all of this is contrary to the purpose of the Ordinance to protect public health in Israel. And all of this was done without hearing the plaintiffs, whose identity the defendants knew how to obtain and could have very simply located. The defendants worked to deny the plaintiffs of their essential rights granted to them by law, and even the highest form of these – their day in court. This is a natural supra constitutional right and a right that is legislated in the body of the Ordinance, which is explicitly granted to them, as owners of the herds. The defendants tried to conceal

from the eyes of the court the forbidden acts that they did. And they did not shy away from taking measures to void the court's authority of all content, nor from diverting the attention of the presiding judge. Using underhanded means, they succeeded, at the blink of an eye, to carry out their deeds.

But why did the court behave in the way that it did?

As stated, in the context of the court's authority as determined in sections 26 and 27, the provisions of the Ordinance require the judge to act with maximum caution, one step at a time. And only after an examination, verification and proof of the situation from a factual and legal perspective, and after the exercise of scrupulous and careful discretion, the Ordinance directs the presiding judge to grant an order, but only upon the fulfillment of the explicit cumulative conditions, and if these are not fulfilled, it is completely barred from making an order. However, according to the documents that defendant 1 transferred to the plaintiffs, it appears that the court did not act in such a manner. These documents reveal a legal process that was very strangely conducted. In the margins of the application (**appendix 12** above) in what purports to be the transcript of the hearing, there appears the following written by hand: The applicant's counsel after being warned: it is not possible to preserve the meat, and therefore we were forced to sell it. . The decision is granted as requested. "Signed: S. Dotan (the honorable judge before whom the process was conducted). This and nothing further.

Throughout, those involved have aggressively denied the plaintiffs their rights, under every law, to a fair legal proceeding.

34. However it could have all been very different. M.C 685/03 **Ministry of Agriculture v. Na`aman Jabarin** (hereinafter: **MC Jabarin**). It concerned the State's application in the aforesaid **Jabarin case** – and is a model of proper judicial supervision. It involves an identical application to this one where the State applied to confiscate monies from meat from slaughtered sheep. This application was brought before the honorable Judge R. Lavi from the Ashdod Magistrates' Court. The honorable Judge Lavi dismissed the application with a reasoned judgment, relying upon the Ordinance.

A copy of the decision in MC 685/03 is attached as **appendix 13**.

35. **On 5 November, 2002**
- a. It was only on 5 November, 2002, after the goats had already been slaughtered, and after an order was already given for the aforesaid forfeiture order, only then that defendant 3 summoned the plaintiffs to an interrogation. Investigating Officer Hever – the one who knew with certainty who they

were and where one would find them, who signed the above-mentioned application for confiscation knowing that the application hid the fact of their ownership, and summoned the plaintiffs to an “interrogation under oath”. On this day he asked them the very questions that he was obligated to before the herds were destroyed. And this, while knowing that he was investigating a past action of herds that had already become meat that was on sale to the market. But this did not stop him from telling the plaintiffs during the interrogation, that a veterinarian would be examining the goats, which would afterwards be returned to them. And he did not tell them a thing about their legal rights.

The testimony sheets for Khalifa and Dar Awed recorded by Investigating Officer Hever are annexed as **appendix 14 and appendix 14(1)** respectively.

- b. On the day on which Investigating Officer Hever made himself available for the interrogation of the plaintiffs under oath, and refused to allow them to present immunization certificates, defendant 1 was already busying itself with the sale of the meat of 45 goats, from an overall total of 56, which were slaughtered the previous day. And the balance, comprising 11 goats – were sold the next day 6 November, 2002.

The sales receipt is attached as **appendix 15**.

And if they were diseased, as the defendants claim, how is it that they were slaughtered in the regular manner and without adopting measures to guard against their disease, as is required in the Ordinance? And how is it possible that their meat was sold to the very last goat? And the plaintiffs will reply: since it was not for the sake of preventing animal and human diseases that the herds were captured and destroyed. Rather performing in as a punitive and arbitrary fashion, contrary to the explicit provisions of the Ordinance, and not in accordance with its goals the defendants’ sealed the fate of healthy animals and destroyed them, and have acted in contravention of the purpose of the Ordinance. They have done this for lucre, and in contravention of every law.

After these things: The administrative tax and its cancellation

- 36. On 21 November 2002, about three weeks after capturing the herds, defendant 1 sent 2 notices signed by defendant 3, or so it appeared. These notices concerned the intention to issue a demand of payment of an administrative fine in the amount of NIS 48,000 to **each one** of the plaintiffs. The State intended to collect NIS 96,000 in hard cash from the plaintiffs. And note: this time defendant 1 was more punctilious with

noting the facts. This time they referred to two herd owners and two children, against each one of whom there was a claim that he led the herd owned by his father, from the territories into Israel, and was thus in violation of the Ordinance.

And in paragraph 6 of the registered notice: “If you have claims against this demand you are hereby given the opportunity to make a claim in writing or verbally, to the address... within 15 days from receipt of this warning.”

The notice of fine to Khalifa and to Dar Awed is attached as **appendix 16 and appendix 16(1)** respectively.

37. And it bears restating: in the notice of fine it was recorded that Khalifa’s herd comprised twenty goats, and Dar Awed’s herd – 33, which is a sum total of 53 heads. This despite the fact that there are 56 recorded in the various documents drafted by the defendants as discussed above, and in others – for their delivery, slaughter and the sale of their meat. The plaintiffs stand by their claim, in terms of which Khalifa’s herd was comprised of 23 goats and one Billy goat, to make a total of 24 heads, whereas Dar Awed’s herd consisted of 32 goats and 3 Billy goats, adding up to 35 heads and raising the grand total to 59. And they also claim that they relayed this number to Investigating Officer Hever over the course of the interrogation, and he was the one who chose to record for each one of them the number of goats as was recorded to him. This, even though it varied from the numbers recorded by Inspector Maman.
38. After all these troubles, the plaintiffs contacted HaMoked: Center for the Defence of the Individual (hereinafter: HaMoked) and requested that it assist them in their distress, and HaMoked in turn accepted upon itself to represent the plaintiffs before the authorities. Firstly, an attorney from HaMoked applied, verbally and in writing, to various factors in defendant 1, and requested to clarify details in the matter of the apprehension of the herds, their destruction and the plaintiffs’ right to compensation for these. Later on, on 11 December, 2002, Adv. Aviani from the legal office of defendant 1 responded to these applications by plaintiffs’ counsel (see: **appendix 4** above). In the letter she enumerated the reasons for the capture and destruction of the herds, while referring to the sources for the authority in the Ordinance, by virtue of which they undertook these actions. Moreover they rejected the herd owners’ entitlement to any kind of compensation, because of their violation of the Ordinance, and the regulations (importing animals) published by virtue thereof.
39. It was only on 5 July, 2004 that a hearing was held on the plaintiffs’ objections to the administrative fine, before the “Civil Fines Committee” that is operated by defendant

1. Plaintiffs' counsel pointed to the defects that had characterized the authorities' conduct and the gross deficiencies in the evidence which was supposed to have accurately documented the place of capture of the herds. The Committee decided that this was not the situation in which fines should have been imposed upon the plaintiffs. Or, in its own words: "After having heard counsel for the fined individuals and after examining the investigation file, the committee reached the general conclusion, to close the said files without issuing any demands for payment for a civil fine."

The minutes from the Fines Committee is attached as **appendix 17**.

40. We thus have a situation where when defendant 1 allowed the plaintiffs to realize their legal rights, and to put forward their claims in advance, the plaintiffs were able to persuade the court of their just cause, so that the defendant had to rescind its previous decision. Behold, the fine decision is based on the same investigation file and the same documents that defendant 2-4 had drafted, for which the herds had been destroyed on the spot. (It bears noting that the investigation file was handed over to plaintiffs' counsel in preparation for this hearing).
41. It is self understood that the cancellation of the fine was not enough to retract the suffering, fear and frustration, which was imposed upon the plaintiffs and their sons for many days, from the day the herds were captured and destroyed until the day on which, and only because of their counsel's intervention, the fine was cancelled and they enjoyed slight relief. And already here it bears stating: all this has been recognized by Israeli law, as non- monetary damages, which are compensable.
42. The eyes see, and the mind comprehends but refuses to accept: this is how they acted on behalf of a government ministry in a country governed by the rule of law.

In conclusion of the factual chapter: what can we learn from the defendants' writings in the documents as a whole?

43. Firstly, the documents- which were prepared by the defendants themselves, in their ordinary course of business- have the status of a litigant's testimony and attests to the conduct of the defendants in everything related to the capture and destruction of the herds. Therefore, the defendants have been caught with this testimony and they are barred from raising claims against these documents.
44. Secondly the writings convey the defendants' version of the capture incident. And so the following is their recollection of the sequence of events as they occurred:

Close to six o'clock in the morning of 3 November, 2002 (which is exactly when the shepherds met their herds) defendant 2 and others noticed, while in an area designed for observation, that the herds **were crossing the green line, and so they pursued them.** Within minutes they caught the herds, at a distance not exceeding 500 meters west of the green line. This was in the area that was claimed to be the firing range of the "Adam" camp in Israel. However, after this they led the herds deep into territory of the army camp where they detained them for a number of hours, until they were transferred to their slaughter at Merbak. According to Maman's version, the herds were caught at a distance that would have required ejecting them back to the Budrus village, whose lands form the actual border of the green line. And it was much more risky to lead them through the territory which he chose to do.

Defendant 2 shows, in an unambiguous fashion that it did not act to return the goats to the Budrus village. This despite the explicit language of section 26(a) of the Ordinance, which grants the discretionary authority, **to every inspector or veterinarian** to return herds to the place whence they came. It also shows that it acted in contravention of Dr. Haimowitz's instructions, which it was, or should have been, familiar with. So too Dr. Haimowitz acted in contravention of the Ordinance, and his very own instructions. This is seen in his instruction to Maman to capture the herds and to transfer them into Israel. Defendant 2 or Maman's behavior is exacerbated by the fact that knowledge as to the time taken and distance traversed during the infiltration, which he himself recorded in the reports that he drafted, was within his exclusive province. He was duty bound to relay this information to Dr. Haimowitz. However, Dr. Haimowitz should also have clarified, on his own initiative, the depth of the infiltration, because everything depends upon his instructions. And if indeed he did clarify, then he acted with abysmal unfairness when he sent the instruction to immediately capture and slaughter.

45. Therefore, under the circumstances of this complaint, starting with the decision, or instruction, not to drive the herd back to the Budrus village, and onwards, the defendant's acts and omissions exceeded their jurisdiction and were unreasonable.
46. The defendants' documents tell a story, therefore, of ever-exacerbating shortcomings; of the deterioration of governmental actions so that it reaches the lowest possible level, to the point where the very foundations of law and justice in the State of Israel have been crushed underfoot.

The defendants' notes show that they set in motion a legal process, which lacked good faith, which was unreasonable, and which included measures which

administrative authorities in a State governed by the rule of law are prohibited from ever adopting. In this way they caused a judge from the Jerusalem Magistrates' Court to conduct a wasteful trial, which caused a perversion of justice, unprecedented in its severity, to the plaintiffs and to the animals.

The defendants' notes speak for themselves and prove that in the circumstances of this complaint, they have violated the obligation to act moderately, to reach even-handed decisions, and to display *bona fides*, transparency, precision, reasonableness and fairness, and all this before delivering the herds into Israel and before their destruction. Firstly, according to these very notes, in order to realize the purpose of the Ordinance, the defendants should have driven the herds back to the place from where they came, and they did not do so. Moreover, the defendants were prohibited at the outset from establishing the facts that they jotted down from, the mouths of the young shepherds, as it were, and from the irreversible decision to destroy the herds, and were also prohibited from implementing such. This was certainly true by virtue of the Ordinance, upon which they chose to base themselves in a typically selective manner. The Ordinance obligates the defendants, to listen to the owners of the herds, before seeking to harm their possessions. Rather they did not listen to the latter at all and they did not inform them, at any stage, of their legal rights. And they were duty-bound by the explicit provisions of the Ordinance, to inform the court, as early as possible of the very capture of the herds and their transfer into Israel, before their slaughter. But they did not do so. Rather they perverted the provisions of the Ordinance for their own needs, and they concealed essential facts from the judge. And like everyone else they were prohibited from going to court with unclean hands, which they nevertheless did. And they did so as a governmental authority. The court, for its part was prohibited, under these circumstances, and without proper investigation, to comply with the defendant's request, and to make an order for a monetary confiscation, but it nevertheless did comply. And the defendants were prohibited in these circumstances from imposing a fine, which they nevertheless did.

And indeed in the aforementioned **Jabarin case** although plaintiff's counsel was unsuccessful in preventing the destruction of the herds, they did manage to appear in court and to respond to the State's application to confiscate the money from the sale of the slaughtered meat. And indeed, there the honorable Judge Lavi did not accept the State's application, and did not grant it the monetary confiscation (see the abovementioned **appendix 13**). And it shall be stressed: there too the State did not bother at any stage to inform the plaintiffs of their legal rights, and it was only by a

stroke of luck that plaintiffs' counsel was able to speedily reply to the confiscation application.

Therefore the plaintiffs already argue here: the monies that the state took for itself, from the sale of the slaughtered sheep, belong to them. The State, because it acted in an unlawful manner, was prohibited from receiving a court order to cover the costs of its evil deeds, which its messengers performed. And especially, where the Ordinance, under these circumstances, does not in any form or shape permit an *ex parte* confiscation of the goats or of the monies from the sale of the goat's meat

47. Therefore the plaintiffs argue that this series of wasteful actions, like a snowball rolling down a slippery slope, strongly and unambiguously points to a gross systemic failure. By blurring the boundaries and authorities, whether in relation to the plaintiffs or in relation to the court the defendants have brought about the destruction of the plaintiffs' livelihood and source of income in an unfair administrative and legal process that is totally at odds with every law. The defendants, without the appropriate administrative supervision, set in motion procedures which lacked the court's fundamental and proper supervision. And the latter did not succeed in handing down the appropriate decision - in accordance with general principles of law, natural justice and morality, neither did it prevent, nor order an on the spot examination of the constitutionality of the actions, which prima facie were performed unlawfully.
48. In light of the aforesaid the plaintiffs claim that this travesty of justice, involving such interwoven and wasteful conduct, carried out by the State Authorities, establishes a cause of action by virtue of administrative law, and in addition to those causes that are founded upon the Tort Ordinance.
49. There therefore cannot be any dispute that the notes recorded by the defendants by their own hand, prove the plaintiff's cause of action. And the plaintiffs argue, that through the documents that were drafted by the defendants, the plaintiffs have borne the burden of proof that has been imposed upon them, and they have completely proven their causes of action.

The legal claim

General

50. In the events which form the basis of this complaint the defendants purported to act pursuant to the Animal Diseases Ordinance. It is from this starting point that one must examine their deeds. Exercising authority pursuant to the Ordinance is conditional in our case upon the fulfillment in good faith of the following cumulative conditions:

- a. **The territorial condition.** If the herd did not enter Israeli territory then this alone means that there no authority was created pursuant to the Animal Diseases Ordinance; Firstly, because the Ordinance grants authority only within the territory of Israel, and like other Israeli law it does not apply to the West Bank nor to terra nullius. Secondly, because the provision which the defendants purport to enforce is one that prohibits the entry of animals into Israeli territory without a permit.
- b. **Purpose conditions.** Authority according to the Animal Diseases Act needs to be exercised with discretion and for the purposes of the same act of legislation. The purpose of the Ordinance is the prevention of the danger of the spread of animal diseases in Israel. In our case the defendants did not work towards that aim, but used it as a tool of punishment against someone whom was conceived in their eyes as encroaching on Israel's borders. That is the best case scenario. In a worse case scenario they were acting out of greed. From the perspective of the Ordinance, the step required for preventing the danger of the spread of diseases would be to drive the herds deep into the territories. Leading the herds deep into Israeli territory, concentrating them into a structure that is meant to serve soldiers in an army camp, or in a firing range; driving them to an abattoir in vehicles that are used for conveying animal within Israeli territory, where the goats are bound to be in contact with other animals, or in contact with the abattoir's facilities, all these carry real risks of the spread of disease. In light of all this, defendant 4 even issued instructions to the inspectors with regard to the expulsion of the goats. And these applied precisely to the circumstances that existed in this complaint.
- c. **Procedural conditions.** Like every authority, the authorities granted by the Animal Diseases Ordinance must be exercised within the limits of the authority determined by legislation, in a transparent and fair manner, while preserving the right of argumentation and fundamental court supervision.

Location of the herds and the authorities of the apprehenders

51. As stated, the sides are divided as to the factual question, as to the exact place the herds were at the time they were observed, pursued after and captured by PAI personnel and their aides. And in this context the plaintiffs make three claims :

Primarily. The herds at the time they were observed, pursued after and apprehended by PAI personnel and others, were not in Israeli territory. And nonetheless the shepherds _____ and _____ could not have known whether they were in forbidden territory, in the absence of any warning signs or barrier.

Alternatively. In the event that the court establishes as a factual finding that the herds indeed infiltrated the firing range, as claimed by the defendants, in the place mentioned in their notes, or in any other place, the honorable court will be requested to determine as a legal conclusion, that the defendants exceeded their jurisdiction when they acted against the plaintiffs, in contravention of the Ordinance and in violation of the principles of natural justice and the principles of administrative law. All of this is as detailed in the body of the complaint, and pursuant to the judgment in the **Jabarin case**, upon which the plaintiffs rely.

And it should be restated: The infiltration into the firing range in violation of emergency regulations, does not at all grant the authority to destroy the animals, while the Ordinance restricts in clear language the authorities that are granted to defendants 2-4. In the circumstances of this complaint the Ordinance explicitly subjects all the authorities, according to which it is permitted to capture and **transfer animals into Israel**, to the fundamental supervision that has been given over to the court. And as stated, this also applies to their slaughter. And they must come to the court with clean hands, always.

And in the alternative to the alternative. In the event that the court establishes as a factual finding, that the herds and the shepherds entered and were captured in territory held by Israel under belligerent occupation, in a place which between the years 1949-1967, was a demilitarized zone, as has been detailed in the body of the complaint, the conclusion that will be drawn will be that the event took place in lands without a sovereign, as defined by international law.

The State of Israel, explicitly did not apply Israeli law to a demilitarized zone after taking control of it in 1967, and also, as the court already ruled in the **Kramer case** the status of an area as one that is liable to “belligerent occupation” does not help : “The doctrine that supports recognition of Israeli sovereignty over an area which was demilitarized on the eve of the Six Day War, on the basis that Israel has effective

control over the place, does not accord with the accepted conceptions in Israel, has no basis and in the circumstances of this case, cannot be regarded as proven.”³

Therefore, the honorable court is requested to determine, as a legal conclusion, that the defendants, in the exercise of their authority against the plaintiffs in a demilitarized zone by virtue of Israeli law, acted against them without any authority whatsoever.

The State of Affairs and the Causes of Action - Tort Law and Administrative Law

52. Defendants 2-4, while working for defendant 1 and on its behalf, wrote down a factual review, against which they are barred from arguing. Their actions are interwoven and feed off each other morphing into a monstrous whole, which is greater than its individual parts. With these things it created a situation which amounts to a gross systemic failure which goes down to the root of the problem, as broadly detailed in the factual chapter. There is enough in this review to establish as required the legal claims of the plaintiffs as to the careless conduct of the public administration personnel towards them. And there is enough in these to determine that the series of acts and omissions that were committed and omitted, were carried out while seriously deviating from the confines of the authority which the Ordinance grants them, and from the standard of care, both conceptual and concrete, which is expected of the Authority and of those working in it and on its behalf, in accordance with every law. And there is enough in these to establish as required the defendants' responsibility for the plaintiffs' damages and all the causes of action claimed by the plaintiffs. This is both by virtue of tort law and by virtue of administrative law.

- a. **Exceeding jurisdiction** – as emerges from an analysis of **sections 26, 27, and 7** of the Ordinance, in the introductory chapter and as detailed at length in the factual chapter, it appears that in the circumstances of this complaint, the defendants exceeded their powers: on the one hand, they expanded the powers granted to them by virtue of these provisions of the Ordinance. On the other hand, they ignored and omitted from undertaking actions which these provisions explicitly require one to perform. The same holds with respect to everything to do with informing the plaintiffs and the court, as aforesaid. So too with regard to the specific provisions, which speak of the protection of public health, which have been determined by the Ordinance, in other sections thereof. For example, the provisions which provide for the examination of animals, suspected of spreading diseases upon their capture or

³ Kramer case Paragraph 8(e)

those that deal with the disinfection of places and vehicles, in which these animals lived or were conveyed, and the adoption of special cautionary measures that should be taken when slaughtering them at the abattoir.

- b. **And it bears emphasizing:** the authority to put animals to death that is granted to every state veterinary surgeon, in **section 7** of the Ordinance, is discretionary authority, meaning that the veterinarian **may but is not obligated** to exercise it, with regard to the animals and to their owners. This provision, places explicit conditions, and only upon their fulfillment may the veterinary surgeon instruct the taking of the animals' lives. Giving an order to destroy animals, only because they are raised in the Palestinian Authority, as sweeping policy, without a thorough and detailed examination, and without an affirmative finding that states that these particular animals are indeed sick, but on the basis of a mere general and non-specific suspicion, constitutes an action of exceeding one's authority. This authority is both that which is granted to defendant 4 by the Ordinance as well as that which is derived from the purpose of the Ordinance and the rationale behind it.

And furthermore: such a sweeping decision to put animals to death – an extreme course of action from which there can be no return – requires the literal and restrictive interpretation of the act of legislation. It requires to be taken with discretion, using measured criteria, and after weighing everything up according to the law. And this with regard to specific animals, where there is an intention to lead them to their death, where there is a complete absence of alien motives. And everything is done after carefully balancing conflicting interests, including the interests of the herd owners, even if they happen to be from the Palestinian Authority territories. And this is so even if the infiltration of herds into Israeli territory is intolerable in the eyes of the defendants. Since the defendants did not act in such manner, they thus performed the acts which they recorded in the documents, while exceeding their powers.

When the defendants denied the right of argumentation from the plaintiffs, which right has been granted by law to every person, and explicitly to the plaintiffs by virtue of the Ordinance, prior to the destruction of the herds, they exceeded their jurisdiction. And when they denied this right from the plaintiffs during the hearing for a confiscatory order – an application that was worded in the form of “sinning and causing others to sin”- then their exceeding of their jurisdiction was not the result of an error, but a sign of a

total lack of good faith which was in willful violation of the most basic administrative fairness. With unclean hands which they concealed, the defendants arrived at the court and succeeded to mislead it, and with a heavy foot they crushed the foundations of the State of Israel's law and justice.

- c. **With complete lack of authority-** An infiltration into a firing range and a consequent violation of emergency regulations does not grant anyone the authority to destroy animals. And therefore inasmuch as the herds were slaughtered for infiltrating a fire range, the defendants acted with complete lack of authority.

And inasmuch as Israeli law was inapplicable to the territory upon which the herds were apprehended, if indeed the court finds this to be the case, the defendants will have acted with complete lack of authority.

In the circumstances of this complaint, most of the actions performed by the defendants in excess of their authority, and/or with complete lack of authority, constitute, in addition to and on their own, actions which were also done with negligence and in general violation of public administration.

- d. **With negligence** – in the sense of this concept in section 35 of the Torts Ordinance [as amended] (hereinafter the Torts Ordinance). In the acts and omissions which the defendants did or failed to do, while exceeding their authority, and acting with extreme unreasonableness while crushing the rights granted to plaintiffs by law – by the principles of natural justice, by the Ordinance for the Prevention of Animal Diseases, by the Basic Laws and by the principles of administrative justice – and in violation of these when they came to the court with unclean hands, everything as detailed in the body of the complaint.

- e. **In violation of statutory obligations** – as this concept has been interpreted in section 63 of the Damages Ordinance, and which is intended for the protection of people in the position of the plaintiffs. Among other things, the defendants in their acts and omissions violated their statutory obligations, and through such violations caused the plaintiffs' damages:

- (i) **Basic Law: Human Dignity and Liberty, 5752-1992: section 3**, which establishes that there shall be no violation of the property of a person; **sections 2 and 4**, which establish, that there shall be no violation of the life, body or dignity of any person, and that all persons are entitled to protection of their body, liberty and dignity, **section 8**, which establishes

that there shall be no violation of basic rights except by a law enacted for a proper purpose, and to an extent no greater than is required, **and section 11**, which requires all governmental authorities to respect the rights under this Basic Law.

(ii) **The Ordinance: section 7**, which establishes the limits and restrictions of the authority which the Ordinance grants the government veterinarian to put animals to death which are infected with disease, or suspected of being infected with disease; **section 26**, which establishes the limits of authority granted to the governmental veterinarian and inspector, who by virtue of the Ordinance act to capture sick animals, or those suspected of being sick, subject to an application to court and to a court order, and which includes the authority which in these matters is within the discretion of court; and **section 27** which grants the right to owners of animals, which have been caught, to appear before the court, before issuing a forfeiture order, and to put forward their claims; and it explicitly prohibits the issuing of a confiscatory order before the owners have been heard in court, prior to the issuing of an order, unless, and only unless, the owners are not known or have not been located. And this provision also mandates those applying to the court to issue an order, to locate the owners of the animals, due to which the order is applied for and to inform the court, when they are known to the applicants. And everything, as detailed in the introductory paragraph and the factual paragraph.

(iii) **Animal Diseases Ordinance, section 10** which grants the governmental veterinarian the discretionary authority to order the disinfection of a place, or object, where there was a sick animal, or one suspected of being sick; and **section 11** which grants the governmental veterinarian the discretionary authority to carry out examinations of animals suspected of being infected with disease.

f. **And in violation of the obligations of administrative law** – through exceeding authority – through failing to inform the plaintiffs of their legal rights and denying the right of argumentation before performing an administrative act, which embodies total, certain, immediate and irreversible harm to the plaintiffs and to the animals; in adopting patently disproportional measures, where there was an obligation at adopting measures that were at the very least, less harmful. And in the violation of the obligation of fairness

–through a lack of good faith, a non punctiliousness to saying the truth and thus providing partial, and typically falsified information to the plaintiffs and to the court. And in crushing the obligation – which applies to the defendants and to the court – to hold a fair hearing, and the denial of the right granted to a plaintiff, to a fair hearing whether from the administrative authority or whether from the court. And everything, as detailed in the body of the complaint.

And in this matter see: CC (Jerusalem District Court) 782/91 **Avna`el et al v. The State of Israel et al** (reported in Nevo) and the appeal to this judgment – CA 1081/00 **Avna`el et al v. The State of Israel et al** (reported in Nevo).

And it shall be emphasized: “Under appropriate circumstances, a fundamental harm to the right to a fair hearing shall amount to a harm of the constitutional right to human dignity”

(see HCJ 1661/05 **The Gaza Beach District Council et al v. The Prime Minister et al**, Piskei Din 59(2) 481, para. 173 of Chief Justice Barak’s judgment).

In our circumstances, there can be no dispute that actions of such fundamental harm to the right to a fair hearing are so intertwined and interwoven that the right to compensation for the plaintiff has indeed been established, which includes harm to the constitutional right to dignity.

Responsibility

The State’s direct responsibility – General

53. There is also a general duty imposed on the State and its institutions not to act negligently towards those to whom they have duty of care – which means not to deviate from the standards of care of the reasonable person. The State defiantly deviated from the standards of care, as follows:

- a. It disregarded the fact that Israeli law is inapplicable to demilitarized zones, and it did not instruct all the relevant factors as to the legal situation that applied to the situation, nor to the lack of authority to capture and detain animals originating from the Palestinian territories that had infiltrated a demilitarized zone or to impose sanctions upon the herd owners, even if at the present moment these territories are held by Israel under “belligerent occupation”.

- b. It failed to place clear and comprehensible signs of those territories and borders, which it determined were forbidden entry [areas] for man and animal, and moreover it did not mark, nor fence over, nor prevent access of man and animals to the firing range. Even though such a range would by its very nature be dangerous to man and animal, and was located in a place as far as this complaint s concerned, virtually at the edge of the houses of citizen residents of the Budrus village. It did not do what it was obligated to do, and which it was it empowered to do, to place clear warning signs which cautioned the border residents or those who were likely to be located within the vicinity of territories with forbidden access of either the life threatening danger that awaited them or about the risk of being subject to sanctions by virtue of Israeli law, for entering forbidden territory which the defendants purported to be exercising. It did not foresee, and did not succeed in preventing a fundamental harm of the right to a fair hearing, which included that conducted by a Magistrates' Court and this while grossly trampling on the State of Israel's principles of law and justice This was the place where it should have foreseen the consequences, especially under circumstances such as these, in light of the defendants' claims that an infiltration of herds from the Palestinian territories was a frequent phenomenon that had carried on for decades, and in light of the comprehensive powers which are claimed by the defendants by virtue of the Ordinance and the broad interpretation with which they interpret the provisions, which are directed towards them, and in light of their conduct pursuant to this which has continued for many years.

Direct responsibility of defendants 2-4.

54. Defendants 2-4 are directly responsible for the actions which they performed, and for failing to undertake measures which they should have done. And so the defendants are responsible for the cumulative effect of these actions, as has been recorded in the documents of defendant 1, as described in the factual chapter.

The State/ Defendant 1's vicarious liability for the actions of defendants 2-4.

55. Defendant 1 is vicariously liable for the acts and harmful omissions of defendants 2-4. This is because the latter acted as its emissaries and/or worked on its behalf and was employed by it. Since the above acts and/or omissions were carried out over the course of their service within the framework of defendant 1, and while carrying out its ordinary course of business on its behalf.

The State/ Defendant 1's direct responsibility for the actions of defendants 2-4.

56. Defendant 1 is directly responsible for the acts and omissions of defendants 2-4, for the following reasons:

- a. It did not ascertain whether defendants 2-4, who were under its supervision and who worked on its behalf, knew and observed the provisions as prescribed by law.
- b. It did not determine clear and mandatory guidelines and instructions for the PAI unit inspectors, for the director of field veterinary services, and for the governmental veterinary surgeons, for the time when they are required to exercise discretionary authority by virtue of the Ordinance. This applies both to the capture of animals, especially under circumstances where there was an obligation to return them to the territory from where they came, and to the need to distinguish between ordinary cases, where there is an obligation to apply to court, as is required in the Ordinance and between proven cases of disease, where they are authorized to act without being reliant on the courts. But this must always be done with discretion, by using criteria of proportionality and by balancing all the conflicting interests under the circumstances of the case. However, everything to do with giving instructions to capture or destroy animals on the spot has to be done within the confines of the authority and must to accord with every law.
- c. It did not supervise the conduct of defendants 2-3, with respect to everything to do with the contacts with the herd owners and the shepherds of the herds that were apprehended, which includes scrupulously providing them with advance notice of their right of argumentation; and with respect to everything to do with the lawful conduct of an interrogation under oath, and to recording it in the Authority's documents. And in the lack of supervision over the authorized bodies' conduct by failing to instruct them how to act, as in the case of the authority of the director of field veterinary services with respect to the inspectors of the PAI unit.
- d. It did not supervise defendants 2-4, in all the acts and omissions that constitute the cause of this complaint, including neglecting to go to the courts with an application **for capturing and destroying the herds**, as is required by the Ordinance; including, the refusal to receive from the plaintiffs their certificates of immunization of the herds by the Palestinian Authority, and including presenting an application to court for it to issue an order, in matters

that have not been listed in the Ordinance, and presenting it with unclean hands.

- e. It has not determined clear procedures; which are tailored to the lifestyles of villages in the Palestinian Authority territories, which enable speedy payment of the balance of the confiscated monies, without conditioning payment on presentation of documents, which it knows the villagers cannot provide.
- f. It did not bother to guide and/or to instruct those working on its behalf, not to misuse its authority and not to perform arbitrary acts which harm the rights of others including the plaintiffs in our case and their herds.
- g. It did not do all within its ability and/or all it should have done and/or all that which would have been correct and/or that which was required to be done, in order to prevent the capture incident, the destruction of the herds, the confiscation of the monies and the imposition of fines and/or acted with negligence and carelessness and did not pay attention and /or did not supervise those people who were under their responsibility.

Damages and relief

57. The damages that the defendants caused to the plaintiffs has been described at length in the complaint and is a direct result of the conduct of the defendants and from the host of systematic and wide-scale violations of the plaintiff's fundamental rights, including the rights to a fair hearing in an Israeli court.

58. The defendants caused pecuniary damages and non-pecuniary damages to the plaintiffs. In the circumstances before us the non-pecuniary damages are submerged and interwoven into each one of the pecuniary damages, which the defendants caused, whether by the tort of negligence or by a tort under administrative law.

Money from the sale of the slaughtered goats

59. The plaintiffs cared for their herds in order to benefit from their yield. Their value rest in the produce of the kid goats and goat's milk and not in their meat. The defendants slaughtered 56 goats and Billy goats, and sold their meat for the minute sum of NIS 11, 377 only (see: **appendix 14** above).

The plaintiff's counsel applied to Adv. Aviani with an application to receive the balance of the monies, which was left over for the benefit of the plaintiffs. On 29 April, 2003 Adv. Aviani responded to plaintiff's counsel that the defendants deducted expenses for the delivery and slaughter of the herds from the intake from the sale of

the meat (see **appendices 6 and 10** above). Thus a tiny balance totaling NIS 1,197 remained in the coffers of defendant 1 for the benefit of both plaintiffs together.

Adv. Aviani's letter dated 29 April, 2003 is attached as **appendix 18**.

And it should be emphasized: the State does not argue that the defendants are entitled to this money and in fact it has no proprietary right over it whatsoever.

However, until today the State has not transferred this money, which belongs to the plaintiffs. This is because it has made futile demands upon the plaintiffs to prove the ownership of the herds through various documents, which the defendant knows is not and will not be in the possession of the plaintiffs (see: **appendix 18** above). In order to repay the two plaintiffs jointly the sum total of NIS 1,197 from the balance of monies from the sale of their goats it has been very punctilious about the ownership, but in order to impose a fine of NIS 48,000 on each one of them individually, it appears that it knew exactly who the owners were. In the meantime the money remains in the state coffers where it is yielding interest.

60. The State is first and foremost obligated to hand over to the plaintiffs this sum of money, which is not in dispute, under both property law and the law of conversion, in addition to interest and linkage from the day it began holding the money.

The balance of the sale money – NIS 1,197 – revaluated as of the date of filing this complaint amounts to NIS 1,464

Value of the herds

61. The **proprietary damage** that the defendants caused in its willful act of destruction of the herds embodies at once the loss of the source of livelihood and income – the withholding of income from the herds – from the sale of the kid goats, the milk and its byproducts – and the costs of buying milk products, which the plaintiffs have been forced to incur from 3 November, 2002. The value of the two herds and the loss of income is calculated for one season as follows:

a.	<u>Khalifa- value and total losses</u>	62,440
	Herd value – 23 goats and one Billy goat	31,800
	Loss of yearly income from the net sale of kid goats	16,170
	Loss of income from the sale of milk and its byproducts during the yielding period	12,600

Loss of personal consumption of milk and its byproducts during the above-mentioned period	1,870
b. <u>Dar Awed - value and total losses</u>	<u>94,600</u>
Herd value – 32 goats and 3 Billy goats	49,500
Loss of yearly income from the sale of kid goats	23,100
Loss of income from the sale of milk and its byproducts during the yielding period	19,800
Loss of personal consumption of milk and its byproducts during the above-mentioned period	2,200

The damages estimate for the value of the two herds – NIS 62,440 for Khalifa and NIS 94,600 for Dar Awed – amounts to a total of NIS 157,040. With the addition of interest and linkage as at the time of filing this complaint, the grand total comes to NIS 192,059.

The frustration and harm to the plaintiff's human dignity

62. Non-pecuniary damage- along with harm to property is pain and suffering which cannot be measured : the fear felt by the young shepherds, from whom the herds were grabbed and who themselves were detained, charged, frightened, interrogated and sent home to their families to explain something that they were incapable of explaining (imagine to yourselves the feelings and fear of the child, _____ who by chance went out to shepherd the herd, while the adults were busying themselves with harvesting the olives and found themselves embroiled in this destruction, which the defendants caused to his family.) The bitter disappointment and frustration with the scampering that was forced upon the plaintiffs, with the hope that the defendants would return the herds to them, followed by the verdict, which was already carried out and which they learned about only after it had been executed, that the goats were found to be sick and thus slaughtered. And they knew that they were immunized and that they were healthy. And there can be no doubt that this was indeed the case. For the fear for their existence and for the worries about earning a livelihood, which would no longer come from the herd; for the insult and humiliation felt by the head of the family, Dar Awed, for no longer being able to provide for his family and for having to rely on his younger son's assistance, and for the harm to this child, who could not make a home of his own and would have to maintain his bachelorhood status, and for Dar Awed's concern as to how he would repay the debts incurred for purchasing the goats; and the fear and helplessness as to how each one of the

plaintiffs, Khalifa and Dar Awed, after the herds were destroyed would come up with the NIS 48,000 to pay the fine, during those long days, until it was rescinded. Think: how much was deprived of these poor family members, in food and drink, and how much we would withhold from each one of them in objects and actions, and in the small daily pleasures, which they have to make the heart happy, and to slightly gladden, a soul even in the Budrus village which is on Israel's border, and the sense, that even their little bit of money has been stolen from them, money that they received from the sale of the meat of their herds that was sold very cheaply until the very last one; and the nagging thought, how could they be told that the goats were sick and yet all their slaughtered carcasses were sold? And the hopelessness in the inability to fulfill the holy red tape requirements, without which defendant 1 is prevented, or so it claims, from repaying them those NIS 1,197 that remained for their benefit, after covering redundant and disproportionate costs, which it caused to them, and which the court ordered should be returned to them.

The honorable court is requested to award both plaintiffs fitting compensation, under the non-pecuniary damage count, for anguish and for harm to human dignity in the amount of NIS 50,000.

Violation of the right to apply to court and to a fair hearing

63. Harm to the right to a fair hearing and the resultant damages, which have their source in a breach of administrative law has been recognized for some time, in consistent and firmly established rulings, as compensable damages by virtue of tort law, as distinct and separate from relief for pain and suffering.

"For breach of administrative law, administrative remedies apply. For a breach of the duty of care in torts, civil remedies apply, provided that the two categories of relief are not in fundamental conflict with each other and that there is not double compensation."

(Avna'el case para. 17 of Chief Justice Barak's judgment)

"And when a particular individual comes into contact with an administrative authority and its employees in a matter concerning him, he is entitled to a practical and fair attitude. When this duty is breached, and when a wrongful justification is given while denying the right of argumentation, this is bound to cause him compensable non-pecuniary damages in tort law"

(Ibid. para. 19)

The same applies, and even worse to the matter under discussion, which has been detailed at length in the body of the complaint. The harm here is especially critical both because of its irreversible consequences with respect to the plaintiffs and animals, and also because it prevented the exercise of one's right to access to justice in two respects: on the one hand in the denial of the right to argue before court and on the other, on conducting a wasteful hearing in court. Therefore:

"they are obligated to pay fair compensation... which will provide expression to the harm caused as the result of negligent conduct with respect to proprietary damages."

(Ibid. Para. 22).

The honorable court is requested to award both plaintiffs fitting compensation, under the separate non-pecuniary damage count, for a critical violation of the right to apply to court and to have a fair hearing in the amount of NIS 50,000.

Punitive and increased damages

64. In the body of the complaint the plaintiffs detailed and proved at length, the massive systemic failure caused by the defendants and the heavy losses which they caused to the plaintiffs through their poor conduct. The harmful deterioration amongst the governmental authorities requires, so the plaintiffs believe, that the court expresses its disapproval by issuing a ruling of increased and punitive damages. The plaintiffs are of the opinion that this is a case where a ruling for increased and punitive damages against the State, is appropriate, and extremely necessary.

The plaintiffs leave the determination of the amount of just compensation to the discretion of the honorable court.

General

65. All the claims in this complaint are argued cumulatively or in the alternative and/or complement one another, each according to the matter, the context of these things and their mutual relationship. Any place where a claim attributes an act or omission or where a claim is made in relation to the onus of proof or an omission, this claim is made against the State and its employees, representatives and emissaries respectively, everything according to the context.
66. The court is vested with the territorial and substantive jurisdiction to hear this complaint.

67. Therefore, the honorable court is hereby requested, to summon the defendants to trial and to obligate them to pay the full damages of the plaintiff as detailed in this complaint, to obligate them to pay court costs and attorneys fees along with linkage and interest that has accrued from the day the herds were destroyed until payment is made in practice.

3 May, 2007

_____ *[signed]* _____

Hava Matras-Iron
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