

Translation Disclaimer: The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Hebrew language. In the event of any discrepancies between the English translation and the Hebrew original, the Hebrew original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Hebrew original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

The Magistrates Court in Jerusalem
Civ. 23492/97
Abu Najme v. Barkat
Opening date: 16 December 1997

Procedure: Ordinary

At the Magistrates Court in Jerusalem

In the matter of:

Abu Najme

represented by attorneys Hisham Shabaita
and/or Hala Huri and/or Eliahu Abram
of HaMoked: Center for the Defence of the
Individual, founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax 02-6276317

The Plaintiff

v.

1. Barkat

2. Ben Ami

3. Kashi

whose address for service of process is
Israel Police, National Headquarters, Jerusalem

4. The State of Israel

represented by the Jerusalem District Attorney's
Office
4 Uzi Hasson Street, Jerusalem
Tel. 02-6208122; Fax 02-6252457

The Defendants

Nature of the claim: **Damages for Bodily Injuries**

Amount of the claim: **NIS 50,000**

Complaint

1. The Plaintiff was born in 1975 and is a resident of the East Jerusalem neighborhood Ras al-'Amud. At the timeframe relevant to the facts of the Complaint, the Plaintiff was a minor, around 16 years of age.

2. Defendants 1-3 served, at the timeframe relevant to the facts of the Complaint, as policemen in the Border Guard of the Israel Police (hereinafter: the Defendants).
3. Defendant 4 was, at the timeframe relevant to the Complaint, in charge of the actions of Defendants 1-3 and of other policemen.
4. On 26 March 1991, during the fast of Ramadan, at around 13:00 or thereabouts, while the Plaintiff was walking back from the Silwan school where he studied toward his home in Ras al-‘Amud, near the school "Amal" in Ras al-‘Amud, he was detained by the Defendants and by another policeman who were sitting inside a jeep that had stopped on the side of the road (hereinafter: the Jeep).
5. The Defendants put the Plaintiff on the Jeep and drove him approximately 300 meters to the southern police station in Ras al-‘Amud.
6. When the Defendants arrived at the police station, and immediately after the Plaintiffs [sic] and the Defendants got off the Jeep, Defendant 3 forcefully slapped the Plaintiff on his cheek and punched him in the stomach, while asking him why he was wearing clothes in the colors of the Palestinian flag. It was only then that the Plaintiff realized that the main reason for his detention was the color of his clothes, which reminded the Defendants of the colors of the Palestinian flag.

It should be noted that the Plaintiff was wearing a sports outfit in black, red and white.
7. The Plaintiff was taken by the Defendants into the guard's booth at the entrance to the southern police station in Ras al-‘Amud. In the booth, the Defendants ordered the Plaintiff to kneel and rise about 10 times.

At the same time, a large number of other policemen who were in and/or in the vicinity of the booth, gathered around the Plaintiff in and outside the booth, and also joined in the acts of the other Defendants, as specified below (hereinafter: the Other Policemen).
8. In addition, the Defendants, each in his turn, drew the Plaintiff's attention to the booth window while saying to him "Look, here comes your Hamasnik father". When the Plaintiff would look out the window, the Defendants slapped him on the back of the neck.
9. Defendant 1 kicked the Plaintiff vigorously in the leg and scoffingly offered him yogurt to eat, since, as aforesaid, it was the time of the Ramadan fast, and the Defendants knew that the Plaintiff was fasting on that day.

10. One of the Other Policemen grabbed the Plaintiff's pants in an attempt to lift the Plaintiff in the air by his pants. Another policeman made several attempts to pull the Plaintiff's pants down, with the intention of undressing the Plaintiff. Each time, the Plaintiff would pull his pants back up. In addition, when the Plaintiff stood near the window, one of the policemen and/or Defendants would approach the Plaintiff from behind and brush against the Plaintiff's buttocks, with the other policemen and/or Defendants mocking the Plaintiff and laughing.
11. It should be noted that throughout the incident which is the subject matter of this Complaint, the Defendants and the Other Policemen accompanied their attacks and abuse with the casting of accusations at the Plaintiff due to the fact that he wore, as aforesaid, colored pants which, in the opinion of the Defendants and/or the Other Policemen, brought to mind the colors of the Palestinian flag, and warned the Plaintiff never again to dare to wear clothes with the said colors.
12. The Defendants and the Other Policemen demanded the Plaintiff to lie on his stomach. The Plaintiff, who feared the reaction of the Defendants and/or the Other Policemen, first complied with their request, but in view of the conduct of the Plaintiffs [sic] and of the Other Policemen, as described in Section 10 above, the Plaintiff feared that the policemen intended to commit indecent acts against him, and rose immediately.
13. Thereafter, the Plaintiff was taken by the Defendants in the Jeep towards the area of the Western Wall, close to Silwan. On the way, Defendant 1 hit the Plaintiff in the leg with the butt of his tear gas grenade rifle.

When the Jeep arrived at the area of the Western Wall, close to the road leading to Silwan and At-Tur, the Defendants let the Plaintiff off the vehicle, and the Plaintiff continued on foot on the long way to his home in Ras al-‘Amud.
14. On 27 June 1991, the Plaintiff filed a complaint for the incident with the Border Guard Ombudsman. The investigation file was closed by the Ombudsman on 25 October 1992 on the grounds of insufficient evidence.

The Liability of Defendants 1, 2 and 3 and of the Other Policemen

Battery

15. The Plaintiff shall claim that the beating and attacks he received from the Defendants and/or the Other Policemen constitute Battery, within the meaning of this term in Section 23 of the Torts Ordinance [New Version], 5728-1968.

Negligence

16. The Plaintiff shall further claim that the battery committed by the Defendants and/or the Other Policemen constitutes, in itself, the civil wrong of negligence.
17. In addition, the Plaintiff shall claim that the Defendants and/or the Other Policemen were negligent, and that their negligence was expressed, *inter alia*, in the following acts and/or derelictions, namely that they:
 - a. Exceeded their authority and acted against the law and the orders and/or instructions and/or directives of the Inspector General of Police and/or the Commander of the Border Guard, by unlawfully attacking the Plaintiff and/or using excessive force under the circumstances of the matter.
 - b. Behaved incautiously and/or recklessly and/or contemptuously and/or apathetically towards the integrity of the Plaintiff's body and his health, and contrary to the conduct of reasonable and skilled policemen under similar circumstances.
 - c. Failed to do everything within the power of reasonable policemen to prevent or mitigate the injury to the Plaintiff.
 - d. Used wrongful means to maintain public order.
 - e. Abused their authority by taking the law into their own hands and using force against the Plaintiff without any lawful justification and/or reasonable cause and/or to an excessive degree.

Negligence Per Se

18. The Plaintiff shall further claim that the Defendants and/or the Other Policemen were negligent per se by violating statutory duties which are designed, according to the rightful meaning thereof, to protect the type of persons to which the Plaintiff belongs, thus causing the damage claimed by the Plaintiff.
19. In particular, the Plaintiff shall claim that the Defendants and/or the Other Policemen violated the duties set forth in the Penal Law, 5737-1977 (hereinafter: the Law) and in the Police Ordinance [New Version], 5731-1971 (hereinafter: the Ordinance).
20. For the sake of further specification, and without derogating from the generality of the aforesaid, the Plaintiff shall claim that the Defendants and/or the Other Policemen violated the following duties:
 - a. Section 280(1) of the Law, which prohibits civil servants from abusing their authority to perform an arbitrary act which infringes the right of another.

- b. Section 368B(a) of the Law, which prohibits battering minors.
- c. Section 368C of the Law, which prohibits any act of physical, emotional or sexual abuse of a minor.
- d. Sections 378, 379, 380 and 382 of the Law, which concern simple battery, battery causing serious bodily injury and aggravated battery.
- e. Section 3 of the Ordinance regarding the duties of all policemen in maintaining public order and personal safety.
- f. Section 19(a) of the Second Schedule to the Ordinance, which prohibits the use of force against a person as part of the fulfillment of a duty, contrary to the Police Orders or any other lawful instruction.

False Imprisonment

- 21. The Plaintiff shall further claim that the Defendants unlawfully denied the Plaintiff his freedom, thus committing a false arrest and the tort of false imprisonment, within the meaning of this term in Section 26 of the Torts Ordinance [New Version], 5728-1968.

The Liability of Defendant 4

- 22. The Plaintiff shall claim that Defendant 4 bears vicarious liability for the foregoing acts and/or derelictions of Defendants 1-3 and/or the Other Policemen, in their capacity as its agents and/or employees and/or as acting on its behalf.
- 23. The Plaintiff shall further claim that Defendant 4 bears direct liability for the damage caused to the Plaintiff due to negligence and/or lack of caution and/or negligence per se, as expressed, *inter alia*, in the following acts and/or omissions, namely that it:
 - a. Failed to fulfill its lawful duties and/or missions to ensure the safety of the residents of the state, including the Plaintiff and/or failed to ensure that policemen in general and/or Defendants 1-3 and/or the Other Policemen in particular refrained from the use of force and/or refrained from the use of force other than to make an arrest and/or refrained from using unreasonable force.
 - b. Failed to supervise and/or to properly supervise the acts and omissions of the Defendants and/or the Other Policemen, its agents, and/or acted incautiously and failed to pay attention to and/or watch over the persons under its charge.

- c. Failed to instruct and/or direct the Defendants and the Other Policemen not to abuse their authority and not to commit an arbitrary act violating the right of others, including the Plaintiff.
- d. Failed to instruct and/or define for its agents their duty of maintaining public order, health and safety.
- e. Failed to clarify to Defendants 1-3 and to the Other Policemen the instructions and/or orders and/or guidelines of the Inspector General of Police and/or the Commander of the Border Guard and/or improperly supervised and taught the said orders and/or gave no and/or insufficient safety instructions and/or failed to ensure that persons dedicated to the instruction thereof, were familiar with or observed the same.
- f. Failed to do everything in its power and/or everything it should and/or ought to have done and/or was required to do in order to prevent the battery incident and the damage therefrom and/or acted recklessly and incautiously and failed to pay attention to and/or watch over the persons under its charge.

The Plaintiff's Damage

24. As a result of the Defendants' acts and/or derelictions, the Plaintiff had difficulty breathing and suffered pain in his chest. On the day following the incident, the Plaintiff went with his father to Al Maqased Hospital in East Jerusalem, where the Plaintiff had a chest x-ray, and was ordered to stay home and rest for a few days. A medical document is attached to this Complaint as **Exhibit A** and constitutes an integral part hereof.
25. In addition, as specified in the Complaint, the Plaintiff was beaten and attacked while being a helpless minor, for the main reason that the color of the Plaintiff's clothes allegedly reminded the Defendants of the colors of the Palestinian flag.
26. Thereafter, as aforesaid, the Plaintiff fell victim to very severe abuse which left its mark on the Plaintiff's vulnerable soul for a long time.

Particular mention should be made of the indecent acts committed against the Plaintiff, including the attempt to pull his pants down, the rubbing against his buttocks and the inexplicable demand to lie on his stomach which certainly contained, at the least, clear sexual innuendoes. These acts had a severe and grave effect on the Plaintiff's soul and behavior after the incident, as specified below.

27. The Plaintiff shall claim that this incident caused him a severe trauma which caused a drastic change in his daily routine. The Plaintiff was overcome by a phobia and deterrence from Border Guard policemen in particular and/or men in uniform in general. This anxiety stayed with him for more than a year: the Plaintiff was afraid to leave the house alone, and whenever he wanted to go out, his father had to go with him.

In addition, as a result of the incident and for about one year, the Plaintiff experienced continuous depression and frequently suffered from adverse mood changes.

28. In July 1991, as a result of the incident, and due to his emotional state as described above, the Plaintiff turned to the Palestinian Counseling Center in East Jerusalem, which provides mental support for children and youth, for psychological counseling and assistance for his mental state. The Plaintiff was treated at the center for about a year, during which time he visited the center about once a week.

29. For these general damages, which include, as described above, physical and emotional pain and suffering and great distress and humiliation, the Plaintiff is fixing his claim in the total sum of NIS 50,000.

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

31. The Honorable Court is therefore moved to summon the Defendants and to charge them, jointly and severally, with payment to the Plaintiff of his damage in full as specified above and/or according to any other specification as the Court shall deem right and just under the circumstances, and to charge the Defendants with payment of trial expenses, and all in addition to differences of indexation and interest as set out in the law until the date of actual payment.

(-)

Adv. Shabaita Hisham
Counsel for the Plaintiff

Jerusalem, 16 December 1997

(T.S. 2157, M.M. 19777)