

**(TRANSLATION)**

**Summary of the Verdict (T.A. 371/05) Estate of the Late Rachel Corrie, etc.  
v. The State of Israel – Ministry of Defense**

1. The decedent, Rachel Corrie, was born on April 10, 1979. She was an American citizen, residing in Olympia, Washington. On March 16, 2003, the decedent was killed during an incident which is the focus of this lawsuit. She was 24 years old.

The decedent was an activist in the International Solidarity Movement (hereafter: "the Organization" or "the ISM").

2. In this lawsuit (T.A. 371/05) the plaintiffs, the estate of the late Rachel Corrie (hereafter: "the decedent"), the decedent's parents, brother and sister, are petitioning to direct the defendant, the State of Israel, to pay them compensation for special damages and general damages inflicted on them, they claim, as a result of the death of the decedent during the incident that is the focus of this trial. In addition to the aforementioned, the plaintiffs have petitioned to direct the defendant to pay "**punitive damages**".

3. The plaintiffs claimed in their lawsuit that on March 16, 2003, the decedent, together with other activists in the ISM, arrived at the "**Philadelphi Corridor**" in the Rafiah area of the Gaza Strip where two bulldozers and an IDF tank were observed conducting operational activities in the area. The plaintiffs claimed that the bulldozers were about to demolish a house in the area and that the decedent and her fellow members of the ISM stood in the path of the bulldozers in order to prevent them from implementing their plan.

In Article 8.5 of the Statement of Claim, the plaintiffs claimed as follows:

**"At 17:00 or thereabouts, the decedent stood near the house of Dr. Samir Nasrallah, which was designated for demolition, and one of the bulldozers was 10 to 15 meters from her. The bulldozers approached the decedent and pulled dirt from under her feet. The decedent fell and the blade of the bulldozer ran over her leg and later the bulldozer ran over her body. When the bulldozer backed up the decedent was gravely injured and was bleeding extensively, although she was still breathing.**

**The decedent was evacuated to the Al-Najer Hospital in Rafiah, where her death was declared after 20 minutes".**

4. The plaintiffs claimed that the bulldozer **intentionally** caused the death of the decedent. The plaintiffs based their claim on the following three grounds: assault, negligence and legal grounds.

5. After hearing many witnesses from both sides, including expert witnesses, and studying the extensive summations from representatives of both sides, I hereby determine as follows:

- a. During the relevant period of time, the "**Philadelphi Corridor**" was the site of daily warfare, i.e. daily gunfire by snipers, missile fire and IED explosions directed at the IDF forces. During this period, unceasing efforts were made to kidnap IDF soldiers. Only soldiers who were in combat units fought in the region.

According to the notes made in the IDF records, from September 2000 to the date of the incident that is the focus of this lawsuit (March 16, 2003), nearly 6,000 grenades had been thrown at IDF forces in the Corridor; there had been approximately 1,400 incidents of gunfire; and there were more than 40 occurrences of mortar fire. These aforementioned events led to the injury and death of many Israelis.

**The United States government issued a travel warning on March 16, 2003 to warn American citizens against visiting the Gaza Strip area or the West Bank.**

- b. During the period pertinent to this case, there was a military directive in force declaring the "**Philadelphi Corridor**" a "**closed military area**" and forbidding the entry of civilians.
- c. The ISM assigned itself the task of working alongside the Palestinians against the "**Israeli occupation**" by using what it called "**non-violent protest activities**". However, the evidence presented to me shows a significant gap between the Organization's statements and the true character of its activities and actions. **The actions taken by the members of the organization, in practice, do not match its statements. In fact, the Organization exploits the dialogue regarding human rights and morality to blur the severity of its actions, which are, in fact, expressed through violence.**

Inter alia, ISM activities included "**defending**" Palestinian families, even ones that were engaged in terror activities. The Organization's activists "**specialized**" in **sabotaging the IDF's operational actions.** ISM activities included, inter alia: stationing activists to serve as "**human shields**" for terrorists wanted by Israeli security forces; financial, logistical and moral assistance to Palestinians, including terrorists and their families; **interrupting demolition activities or the sealing off of houses belonging to terrorists who conducted suicide attacks with multiple casualties.**

- d. **The mission of the IDF force on the day of the incident was solely to clear the ground.** This clearing and leveling included leveling the ground and clearing it of brush in order to expose hiding places used by terrorists, who would sneak out from these areas and place explosive devices with the intent of harming IDF soldiers. There was an urgency to carrying out this mission so that IDF look-outs could observe the area and locate terrorists thereby preventing explosive devices from being buried. **The mission did not include, in any way, the demolition of homes.** The action conducted by the IDF forces was done at real risk to the lives of the soldiers. **Less than one hour before the incident that is the focus of this lawsuit, a live hand-grenade was thrown at the IDF forces.**
- e. I hereby determine that, on the day of the incident, the two bulldozers and the armored personnel carrier were occupied with **the clear military operational task of clearing the land in a dangerous area which posed a significant risk.** The force's action **was designed to prevent acts of terror and hostility,** i.e. to eliminate the danger of terrorists hiding between the creases of land and in the brush, and to expose explosive devices hidden therein, **both of which were intended to kill IDF soldiers.** During each act of exposure, the lives of the IDF fighters were at risk from Palestinians terrorists. As aforementioned, less than an hour before the incident that is the focus of this lawsuit, a live hand-grenade was thrown at the IDF force.

For this reason, I hereby determine that the act of clearing the land with which the IDF force was occupied during the event was "a **war-related action**" as defined in **The Civil Wrongs Ordinance.**

- f. On March 16, 2003, the decedent and her fellow ISM activists arrived at the location where the IDF force was working to clear the land. They did so, they claim, in order to prevent the IDF force from demolishing Palestinian houses. They did so illegally and in contradiction of the military directive declaring the area a "**closed military area**". They held signs, stood in front of the bulldozers and did not allow them to carry out their mission. The IDF soldiers informed the activists that they had to distance themselves from the area, threw stun grenades towards them, fired warning shots towards them and used methods to disperse demonstrations. All without avail.

The IDF force was very careful not to harm the Organization's activists. Because of the activists' interference, the force repeatedly relocated to continue carrying out their mission.

- g. Based on the evidence presented to me, including the testimony of **the expert for the prosecution, Mr. Osben,** I hereby determine that at approximately 17:00, the decedent stood roughly 15 to 20 meters from the relevant bulldozer **and knelt down.** The bulldozer to which I refer was a large, clumsy and shielded vehicle of the DR9 model. The field of view the

bulldozer's operator had inside the bulldozer was limited. At a certain point, the bulldozer turned and moved toward the decedent. The bulldozer pushed a tall pile of dirt. With regard to the field of view that the bulldozer's operator had, the decedent was in the "**blind spot**". The decedent was behind the bulldozer's blade and behind a pile of dirt **and therefore the bulldozer's operator could not have seen her.**

The bulldozer moved very slowly, at a speed of one kilometer per hour. decedent saw the pile of dirt moving towards her, she did not move, as any reasonable person would have. She began to climb the pile of dirt. Therefore, both because the pile of dirt continued to move as a result of the pushing of the bulldozer, and because the dirt was loose, the decedent was trapped in the pile of dirt and fell.

At this stage, the decedent's legs were buried in the pile of dirt, and when her colleagues saw from where they stood that the decedent was trapped in the pile of dirt, they ran towards the bulldozer and gestured towards its operator and yelled at him to stop. By the time the bulldozer's operator and his commander noticed the decedent's colleagues and stopped the bulldozer, a significant portion of the decedent's body was already covered in dirt.

The decedent's entire body was not covered in dirt. In fact, when the bulldozer backed up, the decedent's body was seen to free herself from the pile of dirt **and the decedent was still alive.**

The decedent was evacuated to the hospital and after 20 minutes, her death was declared.

**I hereby determine unequivocally that there is no foundation to the plaintiffs' claim that the bulldozer struck the decedent intentionally.**

This was **a very unfortunate accident and was not intentional.** No one wished to harm the decedent. I was convinced that the bulldozer's operator would not have continued to work if he had seen the decedent standing in front of the bulldozer, as he and his colleagues acted in similar circumstances earlier that day, when they moved from location to location because of the disturbances caused by the members of the Organization.

Because I find, as aforementioned, that the decedent was accidentally killed in the framework of a "**war-related activity**" as defined in **The Civil Wrongs Ordinance**, and in light of the instructions laid out in **Article 5 of the aforementioned ordinance**, the State bears no responsibility for the damages inflicted on the plaintiffs resulting from a war-related action.

This makes superfluous the need to discuss the cause of action made by the plaintiffs because legally their demand should be rejected. Nevertheless, above and beyond what is necessary, I have also decided to discuss the cause of action filed by the plaintiffs as well as their other claims.

- h. The plaintiffs claimed that evidentiary damage was done in two areas: **first**, they claim that the Criminal Investigations Division (CID) investigation carried out after the event was sloppy and unprofessional and led to evidentiary damage for the plaintiffs; **the second area**, which refers to the responsibility of the Institute for Forensic Medicine for evidentiary damage caused to the plaintiffs as a result of the violation of the judicial order and the destruction of the recording documenting the decedent's autopsy.

It could be expected that, in light of the claim made above, the plaintiffs' representative would submit to the court the file of the investigation conducted by the CID so that I could form my own opinion regarding the investigatory actions carried out and the manner in which the investigation was carried out, and to learn if the actions taken by the CID were sufficient or not. However, it was the plaintiffs that objected to submitting the full file of the investigation as evidence, even though the defendant agreed to do so. Thus did the plaintiffs, by their own actions, introduce circumstances in which an extremely important tool to examine their claims was denied to the court.

After examining the evidentiary material and studying the claims made by representatives of both sides, I reached the conclusion that the CID investigation was conducted appropriately and without fault.

- i. With regard to the claims made regarding evidentiary damages relating to the Institute of Forensic Medicine:

Investigators from the CID concluded that in order to advance the investigation, an autopsy would have to be performed on the decedent. As a result, they approached the District Court in Rishon LeZion and asked for a court order that would allow for such an autopsy. The court order **"...that the body be autopsied at the Abu Kabir Institute for Forensic Medicine by a doctor who is not in the military and in the presence of a representative of the American State Department" (Exhibit 6/T).**

Professor Hiss testified that since the American Consulate saw no need to send a representative to be present at the autopsy, the autopsy was conducted, **with the family's agreement**, without a consular representative. He also testified that the Consulate sent a fax confirming that the autopsy could be conducted **without a representative from the family (Exhibit 11/T).**

After examining the evidentiary material and studying the claims made by representatives of both sides, I reached the conclusion that the plaintiffs' claim of evidentiary damage by **the Institute for Forensic Medicine** seems strange. This is because the decedent's father himself testified that, from the outset, the family had no intention of conducting an autopsy and that their intention was to pursue the matter diplomatically in order to clarify what happened to the decedent. Moreover: it appears that the

decedent's family had no interest regarding **the identity** of the Consular representative that was to be present during the autopsy, nor in **the type of professional training** they had had. The family wanted a Consular representative to be present **even if a secretary or typist had been sent!**

Professor Hiss explained in his testimony that the aforementioned fax was sent to him **after he telephoned the United States Embassy and asked that they send an American doctor to be present at the autopsy. He claims that the embassy did not find a need to do so.** Professor Hiss asked to receive approval from the decedent's family and he then received the fax 11/T in which it is specifically stated that the decedent's family agreed to the autopsy and that no other faxes would be sent.

I believe that under these circumstances, Professor Hiss was well within his rights to conclude that, ultimately, the decedent's family conceded its demand for a representative to be present during the autopsy. The family's desire was to receive the decedent's body as soon as possible. Indeed, the family did not conduct any additional examinations after receiving the decedent's body and it was cremated: see Mr. Craig Corrie's testimony.

I am aware of the fact that, according to the language of the District Court's decision regarding the autopsy of the decedent's body, there should have been a representative of the US Embassy present during the autopsy. However, under the circumstances, when it was explained that the embassy saw no reason to send a representative, as Professor Hiss testified, and because the fax sent to Professor Hiss (11/T) stated that the family agreed to the autopsy, we can understand why Professor Hiss believed that there was nothing preventing him from conducting the autopsy without an embassy representative being present. **There is no doubt that the proper course of action would have been to return to the District Court so that, in light of the change in circumstances, the court could amend its decision and remove the condition regarding the presence of an embassy representative.** However, given the circumstances and in light of the aforementioned, it is not clear what evidentiary damage was made to the plaintiffs' case because of the conduct of the Institute of Forensic Medicine.

With regard to the plaintiffs' claim regarding the recording documenting the autopsy, I found no grounds to accept it. It is an audio recording (**as opposed to a video recording**) which served as a draft for Professor Hiss when preparing his report. Recordings like this are made because, during an autopsy, the doctor's hands are holding scalpels and covered in blood, and therefore notes cannot be taken. Apparently, the aforementioned audio recording simply does not exist anymore **because, due to budgetary problems, the Institute of Forensic Medicine recycles tapes (see the testimony given by Professor Hiss).** Under these circumstances, it is not clear what evidentiary damage was caused

to the plaintiffs as a result of the aforementioned draft having been erased due to recycling.

**In summation, with regard to evidentiary damages, I hereby determine that the two cumulative conditions necessary as laid out in the precedent determined by the Supreme Court were not upheld. They did not prove that evidentiary damage was caused which harmed their ability to prove their claims, nor did they prove that the defendant, through negligence, caused the claimed evidentiary damage.**

- j. **With regard to grounds for assault** I hereby determine that there is no foundation for such claims because there is no component of "**malice**". As I have determined that the decedent was killed accidentally and not intentionally, legally the claim regarding grounds for assault must be rejected.
- k. **With regard to grounds for negligence:** I am convinced that, given the circumstances created at the location of the incident, the actions taken by the force were without fault. Indeed, the field of vision of the bulldozer's operator was limited. However, the decedent's field of vision while she stood in front of the bulldozer and knelt down was open and without any limitation. The decedent could have distanced herself from any danger without any difficulty. However, she chose to take the risk described above, and that eventually led to her death.

Given these circumstances, I have reached the conclusion that it was not negligence on the part of the defendant or any of its representatives that caused the decedent's death. Therefore it can be understood that I reject the claim that there is any foundation for the grounds of negligence in this case.

The defendant claims a "**willing endangerment**" defense, in accordance with **Article 5(A) of the Civil Wrongs ordinance**. I reached the conclusion that the foundation for this defense, as determined by the Supreme Court, has not been proven in this case, and therefore I hereby determine that the aforementioned defense does not exist with regard to this lawsuit.

However, even though I have determined that it was not negligence on the part of the defendant or its representatives that led to the death of the decedent, and although the aforementioned defense does not exist with regard to this lawsuit, it is not enough to change the result of rejecting this claim.

- l. **With regard to legal grounds:** It is true that the decedent was killed during the incident that is the focus of this lawsuit. However, in this case **the defendant did not violate the decedent's right to life**. The decedent put herself in a dangerous situation. She stood in front of a large

bulldozer in a location where the bulldozer's operator could not see her. Even when she saw the pile of dirt moving towards her and endangering her, she did not remove herself from the situation, as any reasonable person would have. The decedent began to climb the pile of dirt, got tangled up in it, fell and eventually died.

The decedent's death was the result of an accident that the decedent caused. This occurred despite the efforts of the IDF force to distance her and her colleagues from the area.

I believe that, under these circumstances, there is no justification to obligate the State to pay compensation for damages that the decedent could have prevented, but preferred not to, thereby choosing to risk her life as she did.

Therefore, I reject the request to obligate the State to pay compensation on legal grounds.

6. Because of this and in light of the aforementioned, I reject the lawsuit.

Because of the circumstance surrounding the decedent's death, I will not make the plaintiffs' pay the legal expenses and each side will bear its own costs.