

Hassan Zbeidi was left seriously disabled after interrogation – and release without charges – by the Shin Bet. Now, after a precedent-setting civil trial, he has won compensation of nearly half a million shekels

By Efrat Steiglitz

In the middle of a September night in 1992, Israeli security forces burst into the home of Hassan Zbeidi in the village of Anabta near Tul Karm, and arrested him. Zbeidi, then 33, was first interrogated at the Shin Bet facility in Tul Karm (details of the suspicions against him have not been released for publication) and then transferred to Far'a Prison. He was released after a period of time without any charges being filed against him. What happened to Zbeidi during the 33 days he spent in detention caused him severe psychological harm – in fact, ruined his life.

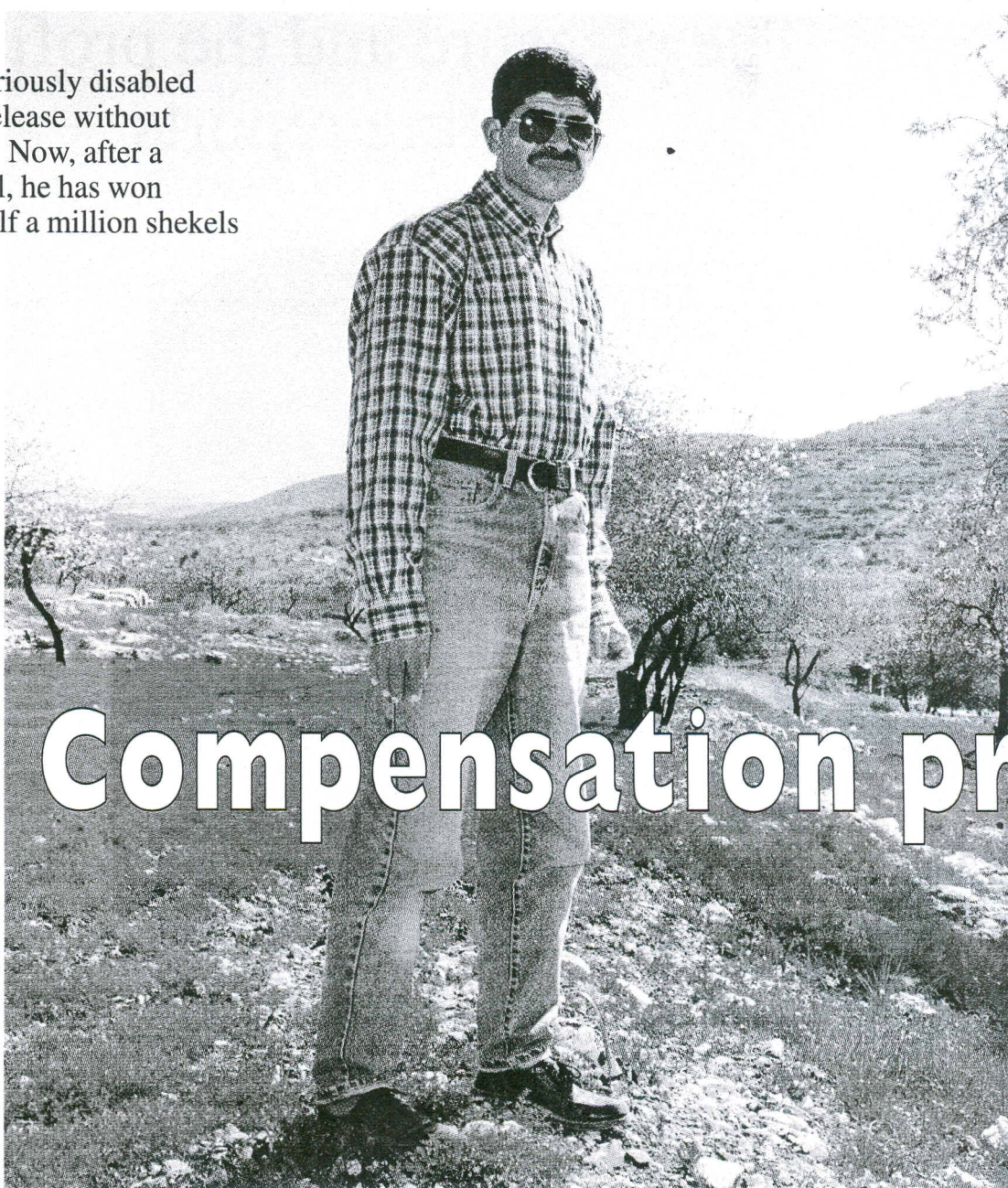
In January, the State of Israel paid the Zbeidi family NIS 438,230 in compensation for those 33 terrible days. "This is the first time [the authorities have] permitted publication of the fact that the Shin Bet has compensated an interrogatee with such a large sum," says attorney Dan Assan, who represented Hassan Zbeidi. The compensation was paid as part of a settlement between the two sides, signed in October 1999, which followed an earlier, partial ruling handed down by Judge Michaela Shidlovsky-Orr of Jerusalem District Court in January 1999. "Even though there was a settlement, and one in which the state did not officially assume responsibility for the plaintiff's injuries, the publication makes it a precedent-setting case," says Assan.

During his detention, Zbeidi was sent to a clinic due to what was described as "strange behavior." This is noted in documents on file at the offices of Doctors for Human Rights, a non-profit foundation that began assisting Zbeidi immediately after his release. A psychiatrist from the organization who examined Zbeidi the day after his release found him to be in a state of "acute catatonia." Zbeidi was unable to identify his brother or his wife and children and could not communicate with them. He did not comprehend his surroundings and was incapable of feeding himself. He trembled constantly and could not control his urination or bowel movements.

Only after several weeks in which he was under the care of volunteer doctors did Zbeidi's condition improve slightly. To this day, he cannot bring himself to verbally describe his ordeal. But nevertheless, mostly by means of gestures, he explained how his interrogators choked him and beat him severely on the head until, at one point, he thought he was dead.

The Zbeidi family's battle to obtain compensation for Hassan's injuries lasted eight years. He is one of 10 siblings, and his brother Ahmed led the struggle, turning to Salah Haj-Yahya, of Doctors for Human Rights, as soon as his brother returned from Israeli prison, a broken man.

Haj-Yahya, 33, of Taibe, is married and the father of twins. He works as a field-work coordinator for the physicians foundation. "Despite the ruling by the High Court of Justice [regarding the illegality of torture], Palestinian detainees still report being subjected to torture during detention by the security services in Israel," says Haj-Yahya. "Certainly, during the Intifada, there were many innocent people who were hurt – people who were tortured and severely beaten during their arrest and imprisonment. Most have not been



Hassan Zbeidi. Constantly worried and fearful.

able to receive any compensation from the state."

### In another land

Haj-Yahya, the photographer and I met at a gasoline station in Taibe. From there, we followed Haj-Yahya into town, and I parked my car at his house. This was just a few days before suspected members of a Hamas cell barricaded themselves inside a house in town and detonated the explosives they had prepared. It was a week before the security forces poured into the town and demolished the house, a week before Taibe once again grabbed some unflattering headlines.

From Haj-Yahya's home, we set off for the home of Ahmed Zbeidi in the village of Anabta. At 10:30 in the morning, the passage to Area A of the Palestinian authority was crammed with cars traveling in both directions, and the soldiers at the roadblock were busy doing their job. Going to Tul Karm is like traveling to another land full of unfamiliar sights and smells.

Palestinian flags abound on the houses, as do large pictures of Arafat in the town squares. Children walk by dressed in their school uniforms, while groups of unemployed men sit on street corners, leafing through newspapers and smoking. Housewives attired in long dresses and headscarves go about their errands.

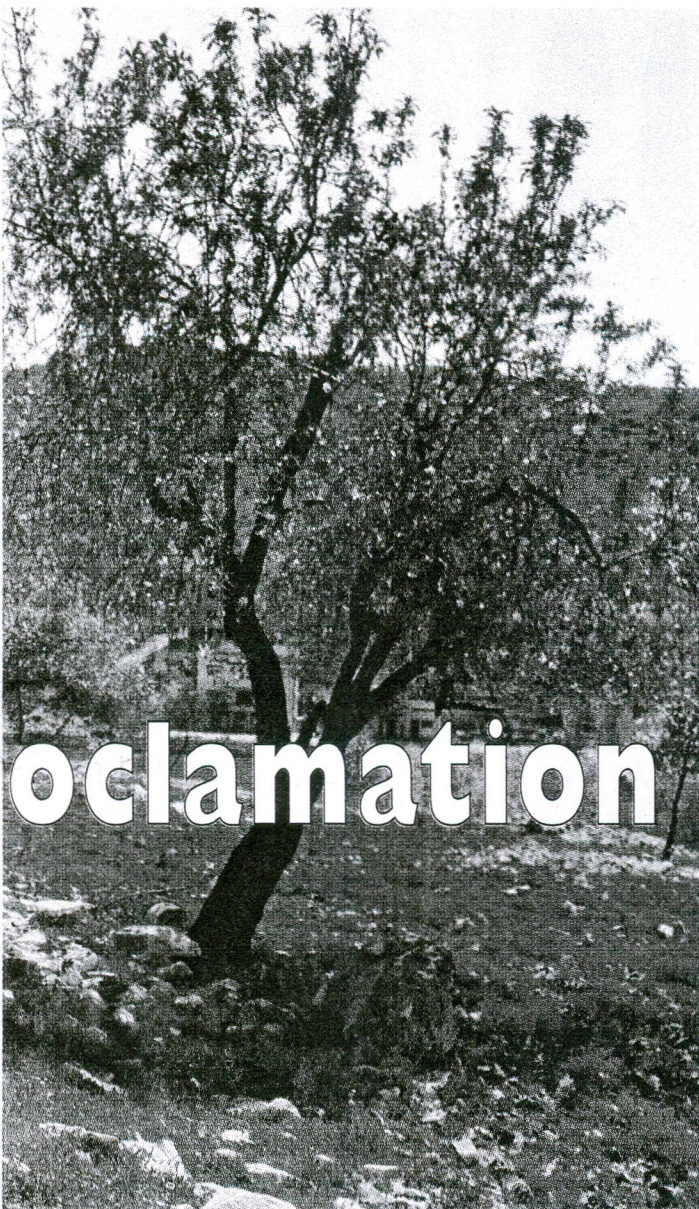
Blossoming almond trees line the road to Anabta. A winter sun blazes in the blue sky, and lush green fields are visible through the olive trees. Hassan Zbeidi looks like he did in newspaper photos eight years ago – neatly dressed in belted jeans, a checked shirt and jacket; his hair is smoothly combed. He has a firm, stiff bearing. Salah embraces him warmly. I extend my hand. Though he averts his eyes, as if somehow afraid of me, he accepts my handshake. The icy coldness of his fingers is startling. Zbeidi, now 42, is married and the father of four children, all of whom were born prior to his arrest. Since his release, he has not had any more children, something that deeply troubles and depresses him.

Ahmed Zbeidi, 52, greets us with a smile and a handshake. In 1991, Ahmed was injured in an accident while working as a contractor in Herzliya Pituah and Kfar Shmaryahu. A cement mixer fell on him, leaving the lower part of his body paralyzed; he welcomes us now from his motorized wheelchair. We sat down outside the house on plastic chairs. Ahmed's pretty wife Zainab, the mother of their 12 children, served us coffee and tea and peeled oranges and grapefruits. Hassan sat there frozen and seemingly cut off; he would not look at me, nor he did he take part in the conversation.

### Only himself to blame

Hassan Zbeidi's case was reported in the December 1992 issue of *Tzomet Hasharon*, a local weekly in the Sharon region. "When the Landau Commission allowed for 'moderate physical pressure,' it certainly didn't have in mind the interrogation methods used in the Shin Bet's Tul Karm facility," the article stated. "In the





Photos by Adi Mazen

first month alone, three prisoners reported being subjected to severe torture and their testimony was backed up by medical opinions. One of them, who had been completely lucid before his arrest, was stricken with serious catatonia." Next to the headline was a photograph of Hassan Zbeidi, sitting frozen with a frightened, unfocused look on his face, his fingers clenched. Alongside his picture were photos of other detainees who had been abused and seriously injured subsequent to their arrest.

Ma'ariv published a similar article in 1992, including a photo of Zbeidi and his son; other papers published editorials mentioning his case; and his story was covered by Channel One's "Yoman" (Journal) program. Zbeidi also appeared on Gabi Gazit's television program, along with Dr. Ruchama Marton, the psychiatrist who founded Doctors for Human Rights in 1988 and one of those who had treated Zbeidi. On the program, he was presented as living proof of a person permanently damaged as a result of torture.

**'Certainly, during the Intifada,' says a field worker for Doctors for Human Rights, 'there were many innocent people who were hurt – people who were tortured and severely beaten during their arrest and imprisonment. Most have not been able to receive any compensation from the state.'**

The normal legal-bureaucratic process that is always pursued by human rights organizations in such cases was also followed in the case of Hassan Zbeidi. Complaints were filed with the various authorities – the prime minister, the justice minister, the defense minister and the state prosecutor – with attached testimony collected by volunteers from B'Tselem, the Association of Israeli and Palestinian Doctors (Doctors for Human Rights) and the Public Committee Against Torture in Israel. This process routinely involves sending letters and receiving laconic replies, like "The matter is being examined," "No irregularities were found" or "The letter has been transferred to..."

"They didn't even properly release my brother from prison; they just threw him into the street," says Ahmed, who speaks excellent Hebrew. "When he arrived, we didn't recognize him. My brother came out a completely different man after that month in prison." As Ahmed spoke, it was obvious that Hassan was tensely listening to his brother's words.

"The day after Hassan came home, we turned to Salah. He was known around here as someone who deals with this kind of case," recalls Ahmed. "Salah referred us to Doctors for Human Rights and they started to help and to handle the situation. My hat is off to this foundation, which helped us every way it could. If it hadn't been for them, we couldn't have done the physical examinations and obtained the medical opinions on Hassan's condition and received the help that we did. They also referred us to the lawyers who handled our case."

The legal proceedings progressed very slowly. After the complaints were filed, Rachel Sukar of the State Prosecutor's Office investigated the incident and reported that Zbeidi had behaved strangely during his arrest and had subsequently been examined by physicians at a civilian hospital. These physicians had found nothing to indicate that any drugs or medical treatment were required. The state prosecutor therefore found no irregularities in the interrogation.

The Zbeidi family decided not to wait and, with the help of attorney Assan, filed a lawsuit for damages against the State of Israel, claiming that it was clear from the circumstances of the case that the Shin Bet's interrogation methods were responsible for the serious psychological damage he suffered. The lawsuit was based on the opinions of psychiatrists Dr. Ruchama Marton and Dr. Alexander Zeidel, who determined that Zbeidi suffers from a catatonia-like condition and severe mental disturbance bordering on psychosis – afflictions that imply permanent 70 percent disability, itself linked to the conditions of his detention and interrogation.

In the defense brief, the state's representative, Attorney Aharon Gal of the Tel Aviv District Attorney's office, referred to the findings of the State Prosecutor's Office, asserting that the security forces had fulfilled their obligations toward Zbeidi in a reasonable manner. Gal also argued that arrest and detention inevitably cause mental distress, that Zbeidi's actions led to his arrest and interrogation, and that, therefore, he had no one to blame but himself. The defense relied on the opinion of a psychiatrist, Prof. Shmuel Tiano, who maintained that to a great extent, Zbeidi was just pretending, and that he had only suffered temporary, 10 percent psychiatric disability for a period of five years.

#### Living like an animal

The lawsuit was heard before Judge Shidlovsky-Orr in Jerusalem District court. The court acceded to the state's request that the plaintiffs and their representatives be barred from transferring Shin Bet or military documents to any party not directly involved in the trial, including the media. The court also stipulated that certain evidence would be heard only

behind closed doors. These rulings are in effect to this day.

"We are 10 brothers," Ahmed says, "and we stood together as one in order to help Hassan's family and look after him. Hassan hasn't been able to work for eight years. We help him to get good treatment and medicines; we help his wife and children. Financially, we came out of this trial very badly. The judge ruled that they were guilty and she decided on a certain amount of compensation, but the government's lawyer began these protracted negotiations. We also didn't want to keep dragging the thing out, and we ended up getting just 60 percent of the original sum. If you divide this by all the months that we spent nearly NIS 4,000 taking care of Hassan, you see that it doesn't come to much. It's not enough for Hassan to build a home. He can just pay off debts to everyone who helped him up until now."

"No amount of compensation will give us back the young man we used to have," Ahmed continues, "but it's a shame we were left with a bitter feeling as far as the financial aspect is concerned – [the compensation] is not enough to ensure any kind of future for his children and it's certainly not enough to compensate for the pain and suffering caused to them, as well. Now his condition has improved a bit. He can sit with the children and help them with their homework, but there were years in which it was like he wasn't really there. He was alive, but it was as if he were in a different world. For many years, he didn't recognize anyone, not even his children, and later he had a lot of outbursts at home."

Hassan is currently under the supervision of the prisoner rehabilitation program run by the Welfare Office of the Palestinian Authority, and is receiving psychological help. "In the Palestinian government, there's no one who can properly take care of families that have been hurt," says Ahmed. "And if the Israeli government wants peace, it also has to take responsibility for the damage it has done to people. It can't try to avoid it. I know a lot of people who were hurt, many who became disabled, but not everyone is ready to pursue their case. We chased after justice. If we hadn't been quick about it and if we hadn't gotten to the right places, we wouldn't have gotten anywhere. They would have thrown us out like dogs."

"We also had the strength not to give up," he adds. "The military administration tried to get us to halt the process. They threatened not to allow our children to work in Tul Karm. They threatened to demolish our houses if we continued with the legal proceedings. But we didn't give in. You know what they used to do? You'd go to the authorities to ask for a permit... They'd send you to the Shin Bet and there they would try to compel you to become a collaborator, saying that if you didn't, they wouldn't give you a permit. If you're strong and you believe, then you don't give in. But if you're weak, you fall."

"If the State of Israel and the Jewish people want to make a real peace with the Palestinian people, then this is not the way. I want to see the opposite side show that it wants to make up for the damage it has done and be ready to compensate every injured person. Financially, we lost in this trial, but ideologically, we won. By paying this money, they're admitting that they caused Hassan harm and that they have to pay for that. It's just a shame that they're not paying enough."

"We're a family that stood against the occupation. All of my brothers have been arrested at least once. But Hassan was always the most delicate and studious among us. He finished his degree at An-Najah University – in accounting. When he was arrested, he was working in a store and not involved in anything. He was a bright young man and when they took him out of prison, he was a disgrace. Now, God willing, his condition will continue to improve, but still, no one will hire him."

"Ours is not an easy society," says ▶



◀ Ahmed sadly, and Hassan hasn't managed to fit in again. "He has bad periods and better periods. He is still afraid that if he tells what was done to him, he'll be punished one way or another. That's his fear. He doesn't even want to tell us, his brothers. He wants to forget all of that trauma. He wants to work. From what we've managed to glean from him - he's said more than once that they put a sack over his face and pounded on his head, as if with a hammer. He used to cry out, 'They're beating me on the head, they're beating me on the head.' They would leave him bound with chains, with his hands and legs behind his back, for more than a day. They also tied him to the bed.

"Even now that the trial has concluded, Hassan still feels apprehensive. While the legal proceedings were going on, the investigators were persecuting him, trying to make it look like he was pretending, and this disturbed him greatly, the way they followed him around. Ever since he got out of prison, every little thing damages his health. He has prolonged headaches and he suffers from hemorrhoids and back pain."

Hassan Zbeidi spoke quietly, answering some of my questions. He has a delicate voice, but his words were clear and articulate. He kept his gaze on Haj-Yahya, who translated the questions for him, never once glancing at either me or the photographer. "I call upon the Israeli people to work against the security apparatus," he says. "To rein in those who feel like they're above the law. It should be inconceivable that here, in the modern world, those things could be done to me. The Jewish people call upon the world to protest what the Nazis did, but the Israeli security forces - the Shin Bet - use classic punishing techniques that don't leave marks. They hurt someone in such a way that the psychological implications are much more severe than the physical ones."

*Are you optimistic?*

"Even though my condition is improving, I don't have much hope in life. I'm sitting here with you, but, in all honesty, I feel constantly afraid and worried."

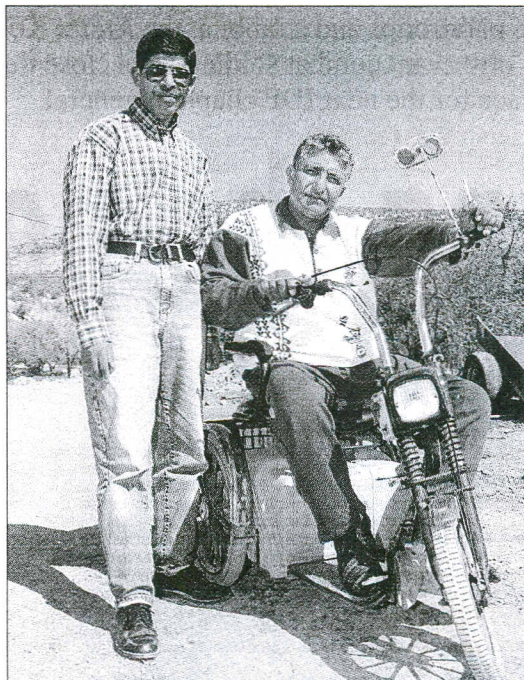
We got up to take photographs and say goodbye. This time, when I shook his hand, it was ever so slightly warm. Three hours in the sun had had an effect.

"The ruling in the Zbeidi case constitutes a precedent in the sense that the state is paying a Palestinian injured in a Shin Bet interrogation such a large sum of money, and that this is public knowledge," says attorney Dan Assan. "In other cases, even if a settlement was reached and a large sum of money agreed upon, the amount remained confidential." Some aspects of Zbeidi's case were kept secret. As his lawyer, Assan was allowed to study the classified record of the interrogation, but the court barred him from passing this information on to a third party, such as the media.

### Fighting torture

Born in Romania in 1956, Assan was six when his family moved to Israel. At 13, he moved to Germany with his mother and later studied law there. At age 24, he returned to Israel and, in the framework of his military service, served as an attorney in the office of the advocate general. After completing his army service, he worked for seven years in the office of attorney Amnon Zichroni, where he ran the "security and espionage department," as he calls it. Some of his clients there included Mordechai Vanunu, Shabtai Kalmanovich, Shimon Levinson, Yosef Amit and Marcus Klingberg. For the past six years, he has run his own practice, dealing mainly in commercial and civil cases.

"I am involved in civil lawsuits brought by Palestinians for reasons of conscience," Assan says. "My background is important, because part of my experience and identity is connected to the subject of Germany, to confronting the Holocaust and fascism. Among the Jewish people, there are two extreme conclusions that one could reach



Ahmed Zbeidi. We lost financially, but we scored an ideological victory.

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in light of fascism and the events of the Holocaust. One - that the whole world is against us and we must fight our enemies with every means at our disposal, without making any distinction, and two - that, having been a persecuted minority ourselves, we must be even more careful than others to uphold human rights, particularly the rights of minorities and people under our military rule. Therefore, since returning from Germany, I have endeavored throughout my career to fight against the infringement of human rights."

Assan was first exposed to the phenomenon of torture in Israel in 1985, while he was working on the case of Faisal Abu Sharah. The deputy commander of Fatah's Force 17 in Beirut during the Lebanon War, Abu Sharah was kidnapped on the open sea while on his way from Lebanon to Cyprus and subjected to severe torture. "I wrote to Yitzhak Rabin, who was then the defense minister," says Assan, "and asked him how the Jewish state could possibly be torturing people. He wrote me back saying that our captives aren't treated too well in prison, either - something like that. Of course, I wasn't convinced by this excuse and I decided to keep fighting against torture."

"Doctors for Human Rights, which deserves all the credit for its dedicated, persistent and effective handling of the Zbeidi matter, came to me to handle the legal aspect of the case. From my experience, I've found it that this process of sending letters of complaint to the various authorities, after which a criminal investigation is supposed to be opened, invariably concludes with statements like 'The case is not a matter of public interest' or 'We checked and did not find any evidence' or, 'The investigators claim that the information you possess is incorrect,' etc., etc.

Unfortunately, there is an endless amount of such correspondence to be found in all the offices of the organizations working for human rights. The criminal proceeding is stopped in its tracks, unless an interrogator is ready to confess his actions - which never happens. Torture goes on in a closed room - so it's interrogator versus interrogatee."

In light of all this, Assan decided that the only way "to push things along" was to file a civil suit, where there are different rules of evidence. Unlike a criminal lawsuit, in which the interrogatee must present evidence that is very close to irrefutable (there must be a 95 percent rate of probability in order to convict) in a civil suit, 51 percent probability is enough to prove the claim. In addition, in a civil trial, the plaintiff is the initiator of the process, and the state is the defendant.

"In a criminal trial, the state accuses the interrogatee of participation in a hostile organization, and then that person accuses his interrogator [of torture]. Then the interrogator can claim that the interrogatee has an interest in incriminating him, in order to disqualify his confessions. In the civil process, the defined interest of the plaintiff is to obtain financial compensation, and therefore, he cannot be accused of seeking any 'secondary gain' from having approached the court."

Since criminal lawsuits by torture victims have thus far proved ineffective, and since a *bagatz* (appeal to the High Court regarding civil liberties), even if successful, can only pertain to the future, Assan believes that filing civil suits for damages on behalf of individuals tortured during interrogations is the way to proceed. Even if the trial is very protracted, he says, the torture victim will still eventually get some compensation, some justice.

Assan: "In a civil trial, the court may rule that the state is responsible for the damage caused to the plaintiff, that is, to the person tortured under interrogation, by virtue of the fact that it employed illegal means of interrogation. Such a ruling was not made in the Zbeidi case. The second possibility is for the state to propose that the plaintiff be given financial compensation within the framework of a settlement."

*Why would the state choose this option?*

"You arrive at a settlement when one or both parties is afraid of losing the case. If the state hadn't had such a fear, Zbeidi wouldn't have gotten one measly agora, and the trial would have continued. And if the state had had only a slight fear of losing the case, it would not have been ready to pay the considerable sum it agreed to in the settlement. Based on the settlement, one could deduce that the state figured its chances of losing were greater than 50 percent. In order to properly defend itself, the state would have had to reveal the methods of interrogation used against Zbeidi, along with the considerations that went into the decision to use these means. And, as we know, the suspicion that led to his arrest was unfounded."

In civil cases, the question of responsibility is usually settled first and the issue of damages addressed only afterward, but in Zbeidi's case, says Assan, the issue of damages was examined first - at the state's initiative. The hearing on the issue of responsibility was postponed, and as a result, the state did not have to reveal its secret interrogation methods. In addition, there was a huge gap between the plaintiff's claim of permanent 70 percent disability and the state's claim of 10 percent disability lasting only five years. Judge Shidlovsky-Orr gave a partial ruling that related solely to the question of damages stipulating that, should the state be found to be responsible for the harm caused to Zbeidi, it would have to pay him NIS 730,000. The two parties decided to compromise on 60 percent of that sum; the money was transferred to Zbeidi and the case was closed.

Assan: "First of all, a bird in the hand is worth two in the bush. And secondly, even though we had a good chance of winning on the question of responsibility, there was still the chance that we would lose. Not to mention the fact that even if we did win, the state could have appealed and the legal process could have dragged on for many more years. From the ideological perspective, we felt satisfied by the fact that the state was paying a large amount of money to a Palestinian permanently injured as a result of a Shin Bet interrogation. This payment entails a certain degree of admission."

*Do you think there is a link between the decision in this case and the High Court's ruling on the prohibition of torture?*

"Zbeidi's lawsuit was filed in 1993. The legal process and the state's interest in settling it began way before the High Court ruling. Judge Shidlovsky-Orr's ruling was given in January 1999, before the High Court ruling. The money itself was paid afterward. It's true that the fundamental significance of the Zbeidi case and the achievement it represents was diminished after the High Court ruling on torture, and after the decision to suspend legislation permitting torture, but on the practical, individual level, it has great importance."

Assan has no illusions, however. "I don't believe that even interrogators who deviated from the guidelines of the Landau Commission will be put on trial, although we know what went on in the late 1980s and early '90s in Shin Bet interrogation facilities in Tul Karm and Gaza. Even if the statute of limitations doesn't apply to these deeds, we know how hard it is to prove what was done behind closed doors. But the Zbeidi case constitutes a precedent - it states that someone who was harmed by torture during interrogation deserves to receive compensation, and that if he files a lawsuit, he can get it."