



Belhas, et al. v. Moshe Ya'alon

THE CASE

On November 4, 2005, CCR brought a class action lawsuit against retired Lt. Gen. Moshe Ya'alon for his role in the 1996 shelling of a United Nations (UN) compound in Qana, Lebanon. Plaintiffs brought their claims under theories of direct responsibility, aiding and abetting liability and command responsibility. The complaint was filed in the U.S. District Court for the District of Columbia, and served on the defendant in Washington D.C. on December 15, 2005. CCR brought the case with CCR Cooperating Counsel Judith Brown Chomsky and Michael Poulshock, James Klimaski, Boston University School of Law Professor Susan Akram, and CCR Board Member Abdeen Jabara.

The suit against Ya'alon seeks damages for war crimes, extrajudicial killing, crimes against humanity, and cruel, inhuman or degrading treatment or punishment. The allegations arise from the intentional and indiscriminate shelling of the UN compound where internally displaced civilians were taking shelter – a fact that the IDF was aware of when it shelled the compound. Plaintiffs brought their claims pursuant to various laws, including the Alien Tort Statute (ATS), a 1789 statute giving federal courts jurisdiction over civil tort actions by foreign citizens for customary international law violations. Plaintiffs also brought claims for extrajudicial killing under the Torture Victim Protection Act (TVPA), which Congress passed in 1992 to allow damages suits on behalf of victims of torture or extrajudicial killing when the defendant acted under the authority or color of law of a foreign country.

BACKGROUND

In 1978, Israel invaded southern Lebanon, occupying Lebanese territory up to the Litani River. In Resolution 425, the UN Security Council called upon Israel to withdraw its forces from all Lebanese territory. At the same time, the Security Council established the United Nations Interim Force in Lebanon (UNIFIL), in part to oversee the withdraw of Israel from Lebanon.

In June 1982, however, Israel undertook a full-scale invasion of Lebanon, reaching Muslim West Beirut in an attempt to drive out the Palestinian Liberation Organization (PLO). The PLO had established its headquarters in Beirut in 1970; tens of thousands of Palestinians had fled to Lebanon after the establishment of Israel in 1948, and following the 1967 and 1973 wars.

In the early 1990s, Lebanon began to rebuild after 15 years of civil war. Israel, however, and the Israeli-supported Southern Lebanon Army (SLA) continued to occupy southern Lebanon, while Syria maintained a presence in Lebanon as well. Ongoing low-level conflict between Hezbollah, which formed after the 1982 invasion and opposed the Israeli occupation in southern Lebanon, and the IDF and the SLA continued, culminating in the 1996 military operation by Israel code-named Operation “Grapes of Wrath.”

QANA: THE ATTACK

In 1978, the United Nations had established a compound in Qana in southern Lebanon, staffed by Fijian peacekeepers. The UNIFIL compound in Qana, was north of the demarcation line of Israel's zone of occupation. When the IDF launched Operation "Grapes of Wrath" in April 1996, the IDF Northern Command directed the bombing, strafing and shelling of small villages in southern Lebanon. The attacks, intended to exert pressure on the Lebanese government to disarm Hezbollah, forced approximately 400,000 people to flee their homes. Beginning April 11, 1996, the IDF began intensive bombing of Beirut and the Bekaa valley.

On April 12, 1996, through the SLA radio station Voice of the South, the IDF issued warnings to Lebanese civilians to evacuate many towns and villages in the south of Lebanon. The IDF also stated that civilians who remained in their villages or towns would be considered connected with Hezbollah.

By April 18, 1996, over 800 Lebanese civilians, including the Plaintiffs, had sought refuge from the IDF bombings in the UNIFIL compound in Qana. Plaintiffs and other civilians in the compound were internally displaced persons who fled their homes in the areas of Tyre, Qana, and the Al-Battam mountains as a result of "Grapes of Wrath." Most of the civilians sheltered there were women, children, and elderly people who were too poor or otherwise unable to get transportation out of the areas of shelling. Just after 2:00 pm local time, the headquarters of the compound of the Fijian battalion of UNIFIL came under artillery fire by the IDF. No precautions to prevent civilian casualties from the shelling at Qana were taken. No warning to the UNIFIL base that it was about to come under attack was issued. Thirteen high explosive shells directly hit the compound or detonated over the compound, eight of which were proximity fuse shells that detonate explosives above ground when closest to their targets, rather than exploding upon impact. As such, they inflict death or bodily injury rather than material destruction. Over one hundred civilians were killed in the deliberate attack, almost half of whom were children, and many more were wounded, including UN personnel. At the time of the shelling, Israel had two helicopters and a remotely piloted vehicle with real-time data link capability flying over Qana. The UN subsequently launched an investigation and denounced the IDF attack as violating the rules of international humanitarian law and concluded that it was "unlikely" that the shelling was the result of gross technical or procedural errors.¹

During the 2006 summer war, history tragically repeated itself. On July 30, 2006, at least 28 Lebanese civilians, including many women and children, were killed when Israel bombed a residential building in the village of Qana. Israel claimed that Hezbollah was using a near-by building to launch attacks. Human rights groups have called for an independent investigation into the attack.

THE PLAINTIFFS

The case against Moshe Ya'alon was brought by seven Lebanese families on behalf of surviving members and those members who were injured or killed on April 18, 1996 in Qana.

The Belhas family: Plaintiff Saadallah Ali Belhas's wife Zeineb, and nine of his fourteen children were killed in the attack on the U.N. compound: Ghaleb, Fayyad, Nayla, Fatimeh, Zahra, Amal, Mohamed, Ibrahim and Kadijah. In total, Saadallah Ali Belhas lost 32 members of his extended family in the attack. Now aged 66, Saadallah Ali Belhas, who also lost his right eye in the attack, recently said: "My sons tried to marry me off again, but I refused. No one can replace my wife, my life partner."² His son, Ali

¹ <http://domino.un.org/UNISPAL.NSF/0/62d5aa740c14293b85256324005179be?OpenDocument>.

² *Daily Star*, "Qana survivors confront ghosts of the past daily," April 18, 2006, pg. 2

Saadallah Belhas, also lost his wife and three young children: Ali witnessed his infant son being decapitated and shrapnel penetrate his wife's body.

The Hammoud family: Plaintiff Ibrahim Khalil Hammoud, a resident of Qana, sued on his own behalf for shrapnel injuries to his back and right leg he suffered on April 18, 1996. He remains partially disabled, and suffers ongoing pain.

The al Haja Family: Plaintiff Raimon Nasseeb al Haja is a resident of Qana. He sues on his own behalf for disabling injuries he suffered April 18, 1996, and on behalf of his mother Georgette Michael al Haja, who was killed in the attack.

The Deeb family: Plaintiff Hamidah Sharif Deeb, now age 37, lives in Rishqinayeh, Al Dibsheh, District of Tyre, Lebanon. She sues on her own behalf for disabling injuries she suffered on April 18, 1996, and on behalf of her sister, Sakeena Deeb, who was killed in the attack. Her brother's children also died during the attack. Hamidah Sharif Deeb's left arm and right leg were severed as a result of the attack, and she now uses artificial limbs.

The Ismail family: Plaintiff Ali Mohammed Ismail sues on his own behalf for injuries suffered on April 18, 1996, and on behalf of his sons, Mohammed Hassan Ismail and Hasan Ismail, his daughter, Mariam Ismail, and his wife Banin Ismail, who were killed in the attack.

The Khalil family: Plaintiff Hala Yassim Khali is from the Batoliyeh, District of Tyre, Lebanon. She and thirty-seven of her family members sought refuge in the UNIFIL compound when houses in their village were hit. She sues on her own behalf for disabling injuries she suffered on April 18, 1996, and on behalf of her brothers Ali Khalil and Hussam Khalil who were killed in the attack.

MOSHE YA'ALON

Moshe Ya'alon was a Major General and head of the Intelligence Branch of the IDF in April 1996, when he participated in the decision to shell the UN compound in Qana during the course of Operation "Grapes of Wrath." The Intelligence Branch of the IDF was responsible for cross border operations, including the attack on Qana. The complaint alleges that forces under Ya'alon's command failed to warn the UNIFIL compound of impending attacks and deliberately and wantonly attacked and killed internally displaced civilians who had taken refuge in a known and clearly-marked U.N. compound. The IDF continued to shell the compound even after it was specifically notified by UNIFIL that it was shelling a UN position in which civilians were taking shelter.

A week after the attack, Ya'alon stated that "[t]he fact that civilians are evacuated from the villages into UN facilities was known to us from the second day of the operation. In the intelligence wing there was no discussion of whether there were two or six hundred civilians in Qana....The relevant question is, was it correct to open fire in such circumstances?"³

A 37-year veteran of the IDF, Ya'alon retired in June 2005 as the IDF's Chief of Staff. He then took up a position at the Washington Institute for Near East Policy as a "Distinguished Military Fellow," which ended in 2006.

³ Derek Brown, *Gunners' Cover is Blown*, The Guardian (London), May 11, 1996.

STATUS OF THE CASE

Moshe Ya'alon, through his counsel at Arnold & Porter LLP, filed a motion to dismiss on February 21, 2005. Ya'alon argued that the case was barred by the political question doctrine and the act of state doctrine, and that Ya'alon is entitled to immunity from suit under the Foreign Sovereign Immunities Act (FSIA). Ya'alon also submitted a letter for the Israeli Ambassador to the U.S. State Department, stating that "anything" Ya'alon did was in the course of his official duties, and as such the suit was in effect against the State of Israel and therefore Ya'alon should be immune. Plaintiffs opposed this motion, arguing that because Ya'alon was a former official whose actions constituted violations of peremptory norms under international law, they were acts outside the scope of his lawful authority and could not be considered "official acts," and thus he was not immune from suit. Plaintiffs argued that discovery was needed on the issue of whether Ya'alon was authorized to act as alleged. Plaintiffs also contested Defendant's characterization of the case, including its assertion that the shelling was accidental. Plaintiffs further asserted that the political question doctrine does not bar adjudication of this case, and that the act of state doctrine does not apply since the acts in question occurred outside of Israel, and could not have been "official" acts.

On December 14, 2006, Judge Friedman of the U.S. District Court for the District of Columbia granted Defendant's motion. In dismissing Plaintiffs' case, he relied on the letter from the Israeli ambassador to find that Ya'alon was acting in his official capacity in the IDF. He found that Ya'alon was therefore an "agent or instrumentality" of a foreign state and is immune from suit under the FSIA. The court rejected Plaintiffs' argument that to permit immunity under the FSIA for individuals in the case of torture or extra-judicial killing would effectively nullify the TVPA, and further rejected the claim that acts such as those raised in the complaint cannot constitute "official acts" on the basis that the FSIA does not provide exceptions for violations of international law norms.

On January 12, 2007, Plaintiffs filed their notice of appeal and on August 30, 2007 Plaintiffs' opening brief was filed. Plaintiffs urge the Court of Appeals of the District of Columbia to find that Ya'alon is not entitled to immunity because he was retired from the IDF at the time the suit was filed, and as a former official who acted outside the scope of his lawful authority in participating in the decision to shell the UN compound, he is not entitled to immunity. Plaintiffs further argue that to allow immunity for claims brought under the TVPA defeats the very purpose of the Act. Plaintiffs also appealed the denial of discovery, arguing that because the Court looked outside of Plaintiffs' allegations, an inquiry into Ya'alon's duties and responsibilities is necessary to determine whether he was acting within the scope of his authority, and thus, in his official capacity.

On August 31, 2007, the Center for Justice and Accountability filed an *amicus* brief in support of the Plaintiffs. It argued that an interpretation of the FSIA that allows only those TVPA actions that fall within the narrow FSIA exceptions to proceed is inconsistent with the Congressional understanding of the relationship of the two statutes and constitutes a "virtual nullification" of the TVPA.

Defendant Ya'alon filed his brief on appeal on October 15, 2007, raising the same arguments he raised in his motion to dismiss. Plaintiffs' filed their reply brief on November 15, 2007.

Oral argument will be heard by the Court of Appeals for the District of Columbia on December 10, 2007. The panel who will hear the appeal is comprised of Judges David Sentelle, Karen Henderson and Stephen Williams.