

# **Rabbinical Misery: How Tair Rada Was Murdered?**

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## Table of Contents

Introduction	5
Zadarov's Admission of Murdering Tair Rada	6
The Road towards Obtaining Zadarov's Admission	6
The Intrusive 'Examination' by Yehiel Edri	11
The Recording of the Interrogation	13
The Credibility of the Israeli Investigation Authorities	13
Zadarov's Purported Motive to Murder Tair Rada	15
The Expert Opinions: Shoe Traces, Murder Instrument, and Head Injuries	17
The Murder Instrument and the Victim's Head Injuries	18
The Traces of Shoes on the Victim's Clothes and at the Scene of the Crime	19
Conclusion	20

"Made in Romania. Believe only what you can see...The main headline howled in red: the searches after the abducted kid are expanding. And below, in thick black letters: the police imposed a total blackout on the affair."

David Grossman, *The Zigzag Child* (Ha-Kibutz ha-Meuhad, 1993), pp.45, 202.

"He is reconstructing an impossible murder. She was not cut in the location where he reconstructed, rather on the other side...He is reconstructing the cut over here (right side of the neck - MD), but she was not cut there. She was cut here (left side of the neck - MD). This cannot be convincing when it is not compatible with the actual circumstances. He is reconstructing an impossible murder in the circumstances where he is standing and where the victim was stabbed. She was not stabbed where he is claiming."

Alex Peleg, former head of the police's forensic laboratory, while watching the video of Zadarov reconstructing the murder of Tair Rada. Mabat Sheni, Channel 1, 5 January 2011.<sup>1</sup>

"But, every legal determination is subject to change...Not long ago the Supreme Court ordered to send five cigarette remnants to D.N.A. examination abroad, in a well publicized case which was considered and ruled upon by the appellate instance: the despicable murder of the late justice Adi Azar...If I were the Attorney General - I would act to restore the public's trust in the system, and instruct the police to establish an investigation team from unit 433, in order to examine what had not been investigated (and still exists) in the Tair Rada murder case, and every pondering that lacks an answer today, by searching after additional testimonies and scientific evidence as well as applying logic."

Judge (Ret.) Shelly Timan, "The Media Battle over the Fate of Zadarov", *Ynet*, 2 May 2016.<sup>2</sup>

"The Prosecution's conduct in the Zadarov case is frightening...The Prosecution may have been convinced that Roman Zadarov was guilty of murdering Tair Rada, but the professional approach requires that when there is relevant information it is not possible to turn a blind eye and disregard it or say that this is not important."

Prof. Mordechai Kremnitzer, former Dean of Hebrew University Faculty of Law, quoted in Revital Hovel & Ronny Linder-Ganz, "Professor Mordechai Kremnitzer: 'the Prosecution's conduct in the Zadarov case is frightening'", *Haaretz*, 16 October 2016.

"Many posters sought solace in the Facebook discourse after watching the harsh content presented by the series – one that Mika Timor, 31, Yotam Guendelman, 30, and Ari Pines, 28, had labored over for the past three years.

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<sup>1</sup> Peleg testified for the defense in the Rada murder case. Doron Baldinger, a video and sound expert who together with Peleg voluntarily investigated the Rada murder said on the same show "I don't have a problem to prove that Roman is innocent. His innocence is clear to me...I can demonstrate very simplistically the twisted manner in which the system operated. In this case and in other many cases." Compare with Yael Gvirtz, "The Murderer of Danny Kats Remains at Large", *Yedioth Ahronot*, 5 July 1991 (former police officer Ezra Goldberg's evidence that the conviction for the 1983 murder of 13 year old boy Danny Kats was erroneous). In the 1980s Goldberg publicly claimed that the 1974 murder of 21 year old Rachel Heller was not correct and supported in court the request of the convicted for a re-trial. His 1983 book about this case is titled *The Truth about the Baranes Affair*.

<sup>2</sup> Timan is a frequent legal commentator on Israeli TV. He is featured in the TV special about pedophiles in Israel mentioned in the next footnote.

There were two main reasons for the level of distress: First, the creators knew how to concoct a spellbinding piece of journalism that produced more question marks than exclamation points. Thus, they prevented the viewer from reaching the desired goal of finding the guilty person and instead left them disturbed and restless. Each time the viewer thought they were about to receive the solution, another testimony emerged to contradict the previous one.”

Itay Stern, “The Brutal Murder Case that Continues to Haunt Israel”, *Haaretz*, 29 March 2016. (A review of a documentary on protest against the Rada murder case)

“It was almost a random encounter, in the Ramla prison. Someone simply pulled me into the cell and told me ‘meet Itzik Abergil. You should talk to him’. And we talked for more than two hours. He was 27 years old. He had only two conditions: not to record his face on the camera and not to mention his name. After about five years he was released from prison and immediately rose to the top of the underworld. The almost anonymous youngster became what the police had called as the number one target: the most important, dangerous and probably frightening criminal in Israel.”

Ilana Dayan, Uvda – This is How the Child from Lod Became the Police’s Number 1 Target, Channel 2, 29 April 2010.

“I want to open (spitefully - Davka) with the legal practitioner Avigdor Feldman. Major General Segalovich has mentioned the use that attorneys make of the media during a trial and in its aftermath. I want to ask you, when you speak in the name of your client, for example, Moshe Katsav, during trial, during the legal procedure, or subsequent to it, do you do this as part of the legal battle, or is it a public relations service that you provide to your clients as part of this legal procedure?”

Journalist Chaim Zisovich asking attorney Avigdor Feldman during a panel discussion on “Law and Public Relations: from Moshe Katsav to Dominique Strauss-Kahn”, Bar Ilan University, 26 December 2011.<sup>3</sup>

“The purpose is to divide Israeli society and create distrust among its various groups.”

Professor Yedidya Stern, Bar – Ilan Faculty of Law , Interview with Crossing Israel, Educational Channel 23, 2003.

“I want to end my presentation quoting one of Orland’s early poems written in 1939 that reflect a serious personal dimension, having been a witness as a five year old child to massacring his family during a pogrom in his city of birth in Ukraine. Notwithstanding the intention at the beginning of the poem to silence and repress this memory, it also includes hope to reconcile the past, to hold a good encounter with the past, as this gathering attempts to do with the past and work of one of the most important producers of Israeli culture. And I quote:

I carry with me the sorrow of silence, the view of speechlessness that we burned then out of fear,

Haven't I told you that the city is so empty, and you replied ‘let us be silent together’ ...”

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<sup>3</sup> Attorney Avigdor Feldman co-represented Zadarov in the appellate stage of the Rada murder case. He is known for representing clients who have been accused of committing murder based on their admission during interrogation. The murder of 13 year old Danny Katz who was killed in Haifa in 1983 and 17 years old Hanit Kikus who was slain in 1993 near Be’er Sheva are among the cases he was involved in. After lengthy, well publicized procedures, and requests for re-trials alleging miscarriage of justice, Feldman’s attempts to realize justice for his clients have usually ended in failure.

Prof. Yaffa Zilbershats, Faculty of Law, Bar-Ilan University, gathering marking Jacob Orland's 100<sup>th</sup> anniversary of his birth, 30 December 2014.

"In our judgment we were compelled to include many difficult details and descriptions. Our heart is with Tair's parents. We hope that nine years after the murder of late Tair, this harsh affair, which left its marks on all persons concerned and raised much attention in the public, would come to an end and doubts regarding it would dissipate."

Concluding words of the Israeli Supreme Court appellate judgment in the murder case of Tair Rada, 23 December 2015.

## **Introduction**

1. Time and again children and youth in Israel have been slain generating peculiar criminal trials and convictions. The murder case of Tair Rada produced another such scenario. Eighth grade student Tair Rada was murdered in the bathroom (shirutim in Hebrew) of her school on 6 December 2006. The murderer cut Rada's throat with a knife. Subsequently he stabbed her in the neck and caused injuries in her chest, face, and hands.
2. Roman Zadorov, a Ukrainian national and resident of Israel without a citizenship status was convicted for murdering Rada and obstructing justice. He was sentenced for life imprisonment.
3. Zadorov was 28 years old at the time of the murder, married to an Israeli citizen, and had just fathered his first child. He had no prior criminal conviction or any negative legal involvement. Zadorov worked as a construction laborer at the school the day of the murder, and does not speak Hebrew.
4. According to the prosecution's indictment, Zadorov killed the victim at around 13:30 at the school where he worked, changed his clothes, broke the knife's blade which he used to execute the murder replacing it with a new one, made and drank coffee at the teachers room, and continued working until 17:30. The victim's body was found between 18:30 and 19:30.
5. Zadorov's conviction is based on his admission before a police agent inmate as well as before his interrogators who spoke to him in Hebrew and Russian. There is no forensic evidence that links Zadorov to the victim or to the scene of the crime. The knife in which he allegedly committed this murder was never found. The District and Supreme Courts could not establish a clear motive on Zadorov's part for committing this exceptionally brutal crime. They also denied his allegations regarding abusive and aggressive interrogation during which he lost 15 kg (33.5 lbs). There are indications that Zadorov was molested by police officer Yehiel Edri, an act which was not video taped or otherwise documented as required by law. The entire interrogation of Zadorov suffered from significant chronicling deficiencies.
6. On 14 September 2010 the District Court of Nazareth unanimously convicted Zadorov based on his admission. On appeal the Defense requested to introduce additional evidence. The Supreme Court Decided on 17 March 2013 to return the matter to the District Court to hear some of the new defense evidence: expert opinions in relation to footprints at the scene of the crime and the type of knife allegedly used by Zadorov to execute the murder.

7. The Nazareth District Court unanimously convicted Zadarov on 24 February 2014 also after admitting the new defense evidence. The Supreme Court confirmed its ruling on 23 December 2015 in a two to one majority judgment. However, all three judges of the Supreme Court concluded that Zadarov's admissions of murdering Rada were provided voluntarily and that he was not subjected to unfair interrogation by his investigators. The minority appellate judge noted that doubts arising from the expert opinions led him to conclude that despite the substantial evidence against Zadarov, he should be acquitted, notwithstanding his factual and legal affirmation that Zadarov willingly confessed to committing the murder.
8. 67 witnesses testified for the prosecution, and written material was filed regarding additional 30 witnesses with the consent of the defense. The defense testified 50 witnesses, and filed written submissions relating to additional tens of testimonies. Furthermore, the parties submitted films, video tapes, transcripts, photographs, physical evidence and "more and more", according to the District Court.
9. The report examines three main aspects of this case: 1. the manner in which the interrogators extracted Zadarov's admission; 2. the discussion of his purported motive; and 3. the analysis of expert opinions pertaining to the type of knife used to kill Rada and the shoe traces on her clothes as well as at the scene of the crime

### **Zadarov's Admission of Murdering Tair Rada**

"Indeed, the suspicion against the appellant is grave. He is not a random victim who was 'selected' by the law enforcement agencies as a scapegoat for the horrendous, and horrifying murder at the center of this case."

Justice Yoram Danziger, dissenting opinion, CA 7939/10 *Roman Zadarov v. State of Israel*, 23 December 2015, para.345.

"[There is] danger of confusing the actual picture by distracting attention to minor and vague matters, through the exploitation of this vagueness."

Justice Zvi Zilbertal, concurring and decisive opinion, CA 7939/10 *Roman Zadarov v. State of Israel*, 23 December 2015, para.5

### *The Road towards Obtaining Zadarov's Admission*

10. Zadarov's conviction is based primarily on his admission. The District Court unanimously found that he voluntarily admitted of murdering Rada. He was not subject to any unfair or abusive interrogation. His confession is in line with the applicable legal standards of Israeli law. The Supreme Court unanimously approved the District Court's findings, including through the lengthy dissenting opinion which reasserted the fairness and legal nature of the interrogation.<sup>4</sup>
11. Zadarov's allegation that he was physically abused during the interrogation by manually searching in his physical parts, which was not recorder by the interrogators, was denied by

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<sup>4</sup> The dissenting Judge Danziger determined that there is reasonable doubt regarding Zadarov's guilt arising from certain elements of his admission, notwithstanding his firm findings negating its involuntariness as well as regarding the fair and legal manner in which the interrogation was carried out. In his words "I should emphasize that this case is on the margins, 'steps' away from conviction." See Judge Yoram Danziger, CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, para.353-54.

the District Court. The defense neglected this issue during its final trial brief, but the District Court considered it nevertheless. The defense failed to raise the intrusive interrogation on appeal, despite challenging the admissibility of Zadarov's admission based on inappropriate interrogation tactics was a central argument. The Supreme Court did not consider this issue although it is authorized to do so on its own initiative in accordance with articles 211 and 212 of the Criminal Procedure Code - 1982:

Article 211 - The Court is authorized, if it considered it to be required for realizing justice to obtain evidence, or instruct the lower instance to gather evidence as ordered.

Article 212 - The Court is authorized to conclude from the evidence before it or before the lower instance different conclusions from those reached by the lower instance, or to hold that its conclusions are unfounded.

12. This authority and obligation bestowed on the appellate instance is informed in this case by official reports indicating the persistent abusive conduct of Israeli investigative authorities, most notably the police and the Israel Security Agency. Both bodies have closely collaborated in relation to domestic criminal matters and external security issues. In 2015 a governmental bill was introduced in the Israeli Parliament that proposed barring the admissibility of suspect's admission outside of court that was obtained through torture. The bill was based on a special committee formed within the Ministry of Justice and headed by Supreme Court Justice Edna Arbel that operated during the previous three years.
13. The District Court found that the documentation and recording of the interrogation that are required by law were sound and reasonable, despite certain failures throughout the questioning of Zadarov. The defense did not raise this matter on appeal. The Supreme Court, the dissenting opinion in particular, commended the documentation and recording of Zadarov's interrogation without indicating any failures committed by the investigating authorities.
14. The police questioned Zadarov on 10 December 2006 and 11 December 2006 when he was placed under house arrest. The following day, 12 December 2006 he was arrested and subjected to an intensive and brutal interrogation process that resulted in his admission of murdering Rada which he later retracted from. According to Zadarov his interrogation was lengthy and aggressive, conducted by several interrogators, who shouted at, humiliated, and threatened him. They also denied him legal representation, misled him, broke his spirit, and denied him food and sleep.<sup>5</sup>
15. In total Zadarov was questioned and interrogated 19 times including one psychological examination after the eighth interrogation. Various interrogators investigated him simultaneously or interchangeably and spoke to him in Russian and Hebrew. He lost 15 kg (33 lbs) during this process, a detail mentioned only once throughout the proceedings, by Zadarov at trial, and not refuted by the prosecution or the Judges. The following is a table of key features of Zadarov's interrogation as chronicled in the District Court's judgment:<sup>6</sup>

Date	Description	Interrogator / Language
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<sup>5</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, p.9.

<sup>6</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, pp.12-53.

10 December 2006	First questioning prior to arrest	Not mentioned / Hebrew
11 December 2006	Warned interrogation because of Zadarov's claim he threw the pants which he wore the day of the murder. Placed under house arrest.	Azulay - Nashri / Hebrew
12 December 2006	First interrogation conducted in Russian. Zadarov denied any involvement in committing the murder	Sasha - Yosi / Russian
13 December 2006	Zadarov denied the interrogators' claims that the victim's blood was found on his clothes or equipment. Then he alleged that her blood could have reached his equipment through the actual murderer while fleeing the murder scene. The Court described the interrogators' claims as deceptive investigative tactics.	Yosi - Alex - Malka / Russian
14 December 2006	Zadarov claimed that he may have seen blood stains and stepped on them in a different bathroom at the same school and that traces of blood could be found on his clothes and the knife which he worked with.	Sasha / Russian
15 December 2006	A rough interrogation accordig to the District Court. Malka shouted at Zadarov that he is the murderer. Sasha claimed that the forensic examination results show that Zadarov is the murderer. Zadarov denied their allegations. Tired and weeping Zadarov said to his interrogators that he doesn't want to talk and that if the police want to frame him for this murder it can go ahead. He is confident that the true murderer would be discovered in the future and that his fingerprints are not at the scene of the crime or on the victim's body.	Yosi - Malka - Sasha - Gorodzinski / fragmented Hebrew and Russian
16 December 2006	About 4 hours of interrogation. Sasha informed Zadarov that the pressure he was feeling was nothing compared to what could come ahead, and noted that he did not mean physical pressure. Zadarov claimed that he initially lied about the blood stains because he though it might be linked to the	Sasha - Yosi / Russian



	murder. Sasha angrily informed Zadarov that it is not reasonable that only now he mentioned this and without telling the truth the real murderer cannot be found. Sasha explained to Zadarov that he will try to salvage him, if he indeed did not commit the murder. The recording of this interrogation ended by requesting Zadarov to take off his clothes for external examination.	
18 December 2006	Interrogation about Zadarov's conversation with his employer in which he allegedly claimed that the murder was perpetrated in the school's bathroom. A detail purportedly not known to Zadarov.	Yosi - Malka - Gorodzinsky / primarily in Hebrew
18 December 2006	Zadarov returned to his cell, broke down and cried to his police agent-inmate Arthur. Mentioned that he could have murdered Rada but did not remember it. Zadarov was then taken to a psychiatric examination which confirmed that Zadarov's stressful breakdown was genuine. The Court denied the defence's claim that Zadarov's acknowledgment that he may have committed the murder was a result of the breakdown. It asserted that the breakdown is a result of his debacle given his responses to the interrogation.	Arthur the police agent-inmate
18 December 2006 (evening)	Zadarov's said that he was suffering a nervous breakdown and that he may have not said the entire truth in previous interrogation. He said to Sasha that had the interrogation been conducted by Yosi or Malka he would not have cooperated. Sasha said that cooperation would improve Zadarov's detention condition and its duration. Zadarov's asked for time to think about it. At the end of the interrogation Zadarov reasserted his innocence.	Sasha / Russian
18 December 2006	Zadarov returned to his cell. Admitted before the police agent-inmate that he murdered Rada. During this	Arthur the police agent-inmate

	<p>conversation Zadarov said “I am fed up with everything. I remember everything.” Arthur provided advice to Zadarov how to conduct himself during an interrogation to improve his condition.</p>	
19 December 2006	<p>At the beginning of the interrogation Zadarov denied murdering Rada. Then he admitted of killing her and described the manner in which he executed the crime. The interrogators urged Zadarov to properly remember what took place at the school. Yoram proposed to Zadarov that an interrogator named Boris could assist in refreshing his memory. Zadarov cried during this interrogation. The Court interpreted it as a sign of relief for telling the truth.</p>	Sasha - Azulay - Yoram / Russian
19 December 2006 (evening - reconstruction)	<p>Reconstruction at the scene of the crime. During the reconstruction Zadarov said “I can’t explain the situation I was in, because I saw in the victim’s face my own child.” The Court concluded that the reconstruction was reliable and authentic.</p>	Anatoly Sheklar / Russian
21 December 2006	<p>6 hours interrogation. Zadarov constantly admitted murdering Rada and retracted from his admission. The court sharply criticized interrogator Azulay’s comments during the interrogation about Zadarov’s attorney without detailing them. It described them as “totally inappropriate”.</p>	Sasha- Yoram Azulay / Hebrew and Russian.
22 December 2006	<p>Zadarov refused to talk to his interrogator Sasha and retracted from his admission. Azulay talked to Zadarov at a different room. Requested from him to acknowledge that the interrogation was fair and not abusive in any form. Zadarov concurred. Azulay screamed at Zadarov that he is a “psychopath, pedophile, manipulator whose place is in prison.”</p>	Sasha - Yoram Azulay / Russian and Hebrew
26 December 2006	<p>Zadarov told his interrogators that he gave an erroneous admission for the</p>	Sasha - Tsahi Boker /

	murder because “I was fed with all of you.” Said that he was psychologically broken and started to cry. Believed that forensic evidence would demonstrate his innocence.	Russian and Hebrew
1 January 2007	Interrogation about Zadarov’s admission before the police agent-inmate cell inmate Arthur. Zadarov explained that he admitted because he sought a reduced sentence and wanted to end the interrogation. Azulay insisted before Zadarov that the interrogation was not abusive and fair.	Sasha - Yoram Azulay / Russian and Hebrew
9 January 2007	Zadarov denied the finding of forensic expert that his shoe footprint could be traced at the scene of the crime.	Sasha and Yoram Azulay / Russian and Hebrew
11 January 2007	Zadarov is questioned about a toothpick that was found in the door of the shelter. Denied that he placed the toothpick to close the shelter’s door.	Sasha - Yoram Azulay / Russian and Hebrew

*The Intrusive ‘Examination’ by Yehiel Edri*

16. The District Court rejected Zadarov’s allegations against his interrogation and unequivocally found that he was not a reliable witness who repeatedly lied before it:

The accused’s testimony in court...was full of lies, manipulations, and inconsistencies, in addition to substantive and fundamental internal as well as external contradictions. The accused did not hesitate to lie in his court testimony as long as it served his interest and changed versions.<sup>7</sup>

17. During trial Zadarov’s defense claimed that he was subjected to exceptionally humiliating and intrusive search on his body while he was naked in a closed room. This search was not video taped or chronicled in any police document. The interrogators claimed that this was not an investigative act thus there was no obligation to document it in any manner. The District Court adopted this interpretation for the police’s conduct, in contrast to the clear provisions of the Criminal Procedure Law (Investigating Suspects) - 2002. The defense neglected this allegation in their final trial brief. The District Court:

Yehiel Edri who conducted this search testified in court that it was an orderly search based on regulations and authorization which was carried out on 16 December 2006 and did not generate any results. Zadarov broke down and admitted of murdering Rada during the following interrogation session which took place on 18 December 2006. According to Edri:

To the best of my recollection, at the end of the interrogation I asked Sasha, I informed him that I want to carry out this examination, which lasted less than a minute or so, I asked him to take off his clothes, he took off his clothes by himself, the suspect took off his clothes, I looked at his body, examined,

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<sup>7</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, p.95.

without any touching on my part, only talking, I asked him to turn around, I examined, I did not see any sign on his body and by that the examination ended...**I entered to conduct my activity**, it was not an investigative act or any conduct that should have been video taped....At the time I did not consider that the examination should be chronicled, today I think that it should have been documented. At the end the examination was without any results.<sup>8</sup> (emphasis added - MD)

18. Zadarov testified that he will remember this examination for a long time and that he felt humiliated.<sup>9</sup> He alleged that he did not complain to the police about the examination because:

You know how the police is, they are together, if I had complained that an interrogator abused me no one would have done anything, that is why I replied to the interrogators' questions that everything is fine with me.<sup>10</sup>

19. The District Court concluded that the examination was legal and does not affect the admissibility of Zadarov's admission. The lack of documentation for it is appropriate given that the examination was not an investigation activity, although it could have been documented by a memorandum:

The testimonies of Boker, Sasha, and Yehiel Edri in this regard should be preferred over the testimony of the accused who during his testimony in court did not exclude the possibility that he lied to his attorney by telling him that he had undergone such an examination, adopting a strategy of all means are legitimate to achieve his goal. At the end of the day, it should be determined that no intrusive examination was carried out against the accused, as he testified, rather a visual search for signs on his body...the search carried out on the body of the accused is not an "interrogation", thus there was no legal obligation to conduct a visual documentation, especially considering the intention to respect as much as possible the accused's right for privacy. Nevertheless, **it ought** to have been documented by any kind of memorandum, even though nothing was found on the accused's body. Despite this failure, it cannot be said that it affects the admissibility of the admissions.<sup>11</sup> (emphasis in the original text - MD)

20. Article 1 of the Criminal Procedure Law (Investigating Suspects) - 2002 defines a police investigation as "questioning or obtaining a statement in relation to a crime by a police officer." Article 2 stipulates that the interrogation should be conducted in the suspect's language or in a language that he or she understand. Article 4 proclaims the obligation to chronicle and document the police interrogation throughout this process "from beginning to end":

a. A visual or a recording documentation of the interrogation shall be conducted during the entire interrogation from beginning to end, including the exchanges between the interrogator and the suspect or in the presence of the suspect, and through a visual chronicling, including responses and body moves.

b. Written documentation of a suspect's interrogation shall include the essential exchange, responses and body moves that substitute an exchange, which took place between an interrogator and a suspect or in the presence of a suspect, in a manner that

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<sup>8</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, pp.163-64.

<sup>9</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, p.165.

<sup>10</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, p.166.

<sup>11</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, pp.167-68.

would properly reflect the interrogation, from beginning to end; the written documentation shall be carried out simultaneously during the interrogation or shortly after it.

21. The District Court erred in accepting prosecution's claim that the examination of Zadarov while he was naked was not an interrogation activity and therefore not subject to the documentation obligation.

#### *The Recording of the Interrogation*

22. The issue of failures in recording Zadarov's interrogation, in addition to not chronicling his examination while naked, was not raised by the defense on appeal. In few sentences the dissenting opinion of the Supreme Court considered that the recording of Zadarov's interaction with the police agent-inmate was proper:

I should recall that the suspect's admissions and conversations with his fellow police inmates had been recorded and taped at all times, in a manner that allowed to easily follow the descending events and permitted direct observation of the way he conducted himself as well as his body language.<sup>12</sup>

23. The defence's expert alleged at trial that the video taping of the interrogation had been seriously edited given discrepancies in the video tape time and the clock in the interrogation room. In addition there were differences between the transcripts of the interrogation and the video taping. The prosecution's expert of the Police Forensic Unit denied these allegations based on technical arguments.<sup>13</sup> The District Court considered that despite certain technical problems, the failures in recording Zadarov's interrogation was not malicious and reasonable explanations were provided for them. The Court also expressed wonder at why the entire interrogation sessions were not video taped, rather mainly recorded by a tape recorder:

To conclude this chapter, it is not possible to disregard the recording methodology applied in this case which has suffered from deficiencies. Indeed, at the end of the day, these deficiencies did not affect the admissibility issue, appropriate explanations were provided to the different faults, particularly for the sound disruptions when tapes were replaced, and there is no doubt that no malicious hand sabotaged the tapes in these parts.

Nevertheless, many hours spent in Court to provide hypotheses and explanations, both by the parties and the Court, a task we would have not pursued had the technical followup staff applied clear and effective guidelines. The methodology whereby the sound reaches the video tape through a tape recorder, could be effective for transcript purposes, but it entails many breaks (about 45 minutes), while the video tape could encompass image and sound for several hours. To prevent the Defence from raising similar allegations in the future, the relevant bodies can and should address this issue.<sup>14</sup>

#### *The Credibility of the Israeli Investigation Authorities*

24. The Israeli police and Security Service (Shabak or Shin Bet) are the main bodies who investigate criminal and security related activities. Their investigation form the basis for indictments before civilian and military courts. Their cooperation is close and most visible

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<sup>12</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, para.141.

<sup>13</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, pp.53 - 57.

<sup>14</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, p.73.

at the operation of the Israeli Border Police (Magav) and the Israeli Prison Service (Shabas). The Israel police and Security Service apply similar investigative tactics and methodology.

25. The Israeli police has applied inappropriate interrogation methods that violated rights of suspects for physical integrity and dignity. These include beatings, sleep deprivation for extended periods, and threats regarding the family of the interrogated suspect. In 1994 a special committee established by the Minister of Justice to examine criminal conviction based on the accused's admission recommended an amendment to the existing law. Headed by Supreme Court Justice Eliezer Goldberg the committee recommended to bar reliance on admissions obtained pursuant to coercive interrogation. The Israeli legislature did not adopt the committee's recommendation which stipulated in the relevant part:  
A statement of a person shall not be admitted as evidence if obtained after applying to the interrogated individual one of the following: inhumane treatment, actual violence, physical torture, mental torture, serious humiliation, or a threat of applying one of these methods.<sup>15</sup>
26. In 2015 the government introduced to parliament a bill amending the Evidence Ordinance - 1971 that was based on the work of an advisory committee formed by the Ministry of Justice and headed by Supreme Court Justice Edna Arbel. The proposed amendment provided that an admission obtained by the police through torture or by violating the due process rights of an interrogated suspect is inadmissible.<sup>16</sup>
27. The Shin Bet's practices of fabricating evidence during legal proceedings are also well known and thoroughly documented in Israel, particularly through the Izzat Nafso and Bus 300 affairs.
28. Izzat Nafso was a sergeant in the Israeli military who was indicted before a military court with espionage charges for allegedly providing information to the enemy in 1979 Lebanon. His allegation about severe mistreatment during interrogation by the Shin Bet, including sleep deprivation for extended periods of time and at night was denied. The Supreme Court ruled the opposite pursuant to examination conducted by the Attorney General Office. It

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<sup>15</sup> Report of the Committee regarding Conviction based on Admission Alone and the Grounds for Retrial, 22 (Jerusalem, Dec. 1994). See also Mordechai Kremnitzer, "Conviction Based on Admission – Is There a Risk of Convicting Innocents in Israel?", 1 Ha-Mishpat, 205-216 (1993)(inappropriate investigation methods that led to the conviction of innocents); Leon Sheleff, "On Finality of Procedure and Doing Justice in Criminal Trial: Melancholic Reflections about Retrial, Criminal Appeal, and Amnesty", 1 Qiryat Ha-Mishpat, 134 (2001) ("Since the Goldberg report which inquired about the problem of admissions provided by the accused, and possibly also pursuant to the Landau report which exposed a fraction of the interrogation methods applied by the Shin Bet we should be experienced regarding the questionable value of admissions obtained from detainees in detention and interrogation facilities.").

<sup>16</sup> See also an article by the Deputy Public Defender Hagit Larnau, "False Admissions and False Convictions", 11 Alei Mishpat - College of Law and Business, 351 (2014)("The motivation for writing this article was born at an academic gathering which dealt with false admissions. Dr. Meir Gilboa, one of the few experts who write about this topic in Israel, was one of the speakers. Dr. Gilboa defended himself from the criticism against the police's interrogation practices arguing that the criticism relies primarily on foreign writing, and that there is no "phenomenon" of false admissions in Israel contending that their number is minuscule. To illustrate his idea Dr. Gilboa indicated that it is possible to count on the fingers of one hand incidents where convictions were entered based on false admissions."). Gilboa is a former senior police officer who headed the Major Crimes Unit responsible for interrogations.

found that Nafso's interrogation was not legal and that the Shin Bet lied about their conduct against him while in detention.<sup>17</sup>

29. Following the Supreme Court ruling in the Nafso case the Israeli government decided on 31 May 1987 to establish a committee to examine the methods applied by the Shin Bet when investigating security related crimes. In October 1987 the committee headed by former Chief Justice of the Supreme Court Moshe Landau published a public part of its report and maintained another one undisclosed for national security reasons. It related to the Bus 300 affair as well underscoring the Shin Bet's long standing norm of providing false evidence and intentionally misleading the courts:

The second affair, known as the "Bus 300 affair", is significantly different from the norm of committing perjury in courts. Different, and in our opinion, much more severe. In this instance, in addition to committing perjury, a Shin Bet officer member of the investigation committee (Zorea Committee - MD) knowingly and intentionally obstructed its proceedings. Suffice for our purposes to say that most probably this unimaginable and grave conduct could not have occurred without a systematic and decades long custom of providing false testimonies in courts, which succeeded to mislead courts in so many occasions.<sup>18</sup>

30. In 1999 the Israeli Supreme Court found that certain interrogation practices applied by the Shin Bet against Palestinian detainees formed torture and declared them illegal:

In the end result, the legality of an interrogation is deduced from the propriety of its purpose and from its methods. Thus, for instance, sleep deprivation for a prolonged period, or sleep deprivation at night when this is not necessary to the interrogation time-wise, may be deemed disproportionate.<sup>19</sup>

### **Zadarov's Purported Motive to Murder Tair Rada**

31. Zadarov was 28 years old at the time of the murder, who had just fathered a child. He is a Ukrainian national with no permanent status in Israel who is married to an Israeli woman. Zadarov's criminal record is clean and he has no prior involvement with the police or criminal elements.
32. Zadarov was charged of Rada's premeditated murder pursuant to article 300(a)(2) of the Israeli Criminal Code - 1977 (as amended in 1994). Premeditation is defined by articles 301(a) and (c) which include aspects of awareness to the circumstances in which the crime was committed and its probable result, preparation to commit the crime and the instrument in which it was executed. The concept of motive does not appear in the Israeli Penal Code and the prosecution is not obligated to prove it as part of the specific elements of the crime. The existence of a motive for committing a crime could enhance the circumstantial evidence in a case, and the lack of it could undermine them.
33. The prosecution argued at length at trial that Zadarov possessed the motive to murder Rada because he felt stressful given his status as non-citizen; he exercised violence as a means

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<sup>17</sup> HCJ 124/87 *Nafso v. The Military Advocate General*, 41(2) PD, 631 (1987).

<sup>18</sup> Report of the Commission of Inquiry about the Shin Bet's Interrogation Methods relating to Hostile Terrorist Activity, Part I, para.30, (Jerusalem, Oct. 1987).

<sup>19</sup> HCJ 5100/94 *Public Committee Against Torture in Israel v. The State of Israel*, 53(4) PD 817, para.24 (1999).

to relieve his frustration; and responded to racist expressions leveled against him by students at the school and confrontations with them by murdering Rada.<sup>20</sup>

34. The District Court found that Zadarov's troubled relations with the students at school prior to the murder could be a motive for committing it. The Court denied Zadarov's allegation that the police agent-inmate advised him to mention this motive to improve his deteriorating condition before his interrogators. It also considered that Zadarov's coffee drinking immediately after the murder does not benefit him, rather the contrary. It adds to the mystery of his troubled character:

Indeed, the police inmate attempted time and again to attract the accused to talk about his troubled relations with the students at the school (which is not improper, he is not a police inmate for nothing). The accused alleged before us that, the police inmate "incited" him to talk about the issue of the students and told him that his situation is very bad, that in any case he is going to be sentenced for life, and he should confess of committing the murder. In response Zadarov told the police inmate that the students were bad and gave him some examples.

...

Could the encounter between the victim and the accused had taken place not at the beginning of the staircase, rather somewhere else. And maybe, as the Prosecution had argued, there was no such encounter, but the accused heard the victim cursing her friend and interpreted it as directed at him. Or maybe she came across the accused at a moment of rage and relief of dark instincts with no motive at all?

...

One way or another, a human being cannot know the facts as they occurred, motive is not one of the crime's elements and it is not possible to make decisive determination in this matter. The inner soul of a person and deepest thoughts at a given moment could remain unknown. It is possible that we could never know why Smith murdered John...As professionals tasked with determining facts based on evidence, we should not presume. We could try and understand based on the accused's character and the evidence as demonstrated above.

...

We should not disregard the accused's character. He is a manipulative, sophisticated, violent person with a low stimulus rate, he holds racist views, who was angry at the state because of his wish to become a citizen, and during a situation in which he walked after the victim, viciously caused her death.

...

We do not have an answer to the inner soul and behavior of the accused. The defence wondered how could a person who had allegedly cut the throat of a young gentle girl, went to drink coffee shortly after the murder and continued working?

...

A person's nature has many aspects, and could lack an explanation. It is not possible to extract reason from unimagined atrocity, we cannot read the inner soul and thoughts of a despicable man, whose hands are covered with blood that prove more than a hundred witness that his conduct is illogical. Not few murderers continue their regular conduct after committing the heinous crime as if nothing had taken place. It is not possible to conclude from this anything. For such a person's soul there is no redemption.<sup>21</sup>

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<sup>20</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, p.359.

<sup>21</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, pp.360, 366-67.



35. Both the majority and dissent opinions of the Supreme Court confirmed the District Court's analysis and findings on the question of Zadarov's motive to murder Rada.<sup>22</sup> Justice Amit of the majority commented on the 'loss of control' motive which he called a non-motive motive and mentioned a similar murder case that he heard as a judge at the Haifa District Court:

If the reader considers that this is not reasonable, I refer him to a case which I heard at the Haifa District Court. In that case, the accused, allegedly an ordinary person, cut the female victim's throat by one of the knives from his personal collection, only to experience the feeling, lacking a motive, simply "to hurt people so they would be injured."<sup>23</sup>

### **The Expert Opinions: Shoe Traces, Murder Instrument, and Head Injuries**

36. Zadarov's conviction is based on his admission before a police agent-inmate and his interrogators. Nevertheless, in its original ruling the District Court engaged in an extensive discussion of expert opinions regarding the type of knife Zadarov allegedly used to murder Rada, which was never found, and traces of shoes on the victim's clothes and at the scene of the crime. It concluded that there was no forensic evidence linking the accused Zadarov to the murder scene, which did not bar entering a conviction verdict.<sup>24</sup>
37. On appeal the accused's defense was replaced. The Public Defender Office became part of the new defense team which requested to introduce new evidence in the form of expert opinions as well as other type of evidence. These were: an opinion by an internationally renowned expert regarding the traces of shoes on the victim's clothes and at the scene of the crime; a forensic expert opinion regarding the type of knife used to execute the murder and injuries inflicted on the victim's head that contradict Zadarov's admission; statements and information about a certain individual who claimed that his wife told him on the day of the murder that she committed it; and newspaper clips published in the period between the murder and Zadarov's admission which indicate that certain information he provided to his interrogators were not specific to him rather publicly available and known. The Supreme Court permitted to introduce the expert opinions regarding the traces of the shoes and type of murder instrument and injuries inflicted on the victim's head:

After reading the written argument, watching the appellant's admission before the police inmate and his reconstruction of the murder, and extensively heard the parties' arguments, we reached the conclusion that it would be appropriate to refer the matter back to the District Court, in order to obtain two of the pieces of evidence that we were requested to order their admission: the expert opinion of Mr. Bodziak regarding the traces of the shoe and the opinion of Dr. Forman-Reznik relating to the murder instrument and the victim's head injuries. The Court shall examine the influence of this evidence on the entire body of evidence and the judgment's result. An institutional basic (Yesod Mosad - MD) is that parties should admit evidence before the procedural instance. But, this rule has an exception...

The evidence relating to the shoe traces, the murder instrument, and the victim's head injuries touch upon central issues in the judgment - objective issues of expertise - and could inform the body of evidence in this case. It seems from first impression, and without making a final determination on the merits, that evidence in question carry a

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<sup>22</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, paras.18, 144 (Dissent, J. Danziger); 17, 64-65 (Majority, J. Amit).

<sup>23</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, para.65.

<sup>24</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 14 September 2010, pp.251-263.

significant weight which justifies applying the exceptional procedure of obtaining additional evidence on appeal and refer the matter back for the procedural instance. We were convinced in the circumstances before us that justice requires admitting this evidence, despite the possible violation of the principle of procedural finality.<sup>25</sup>

38. The District Court opened its reconsideration of the new evidence noting that it was based on “the presumption that the obligation to discover the truth is, as known, of the things that the Torah is purchased.”<sup>26</sup>

*The Murder Instrument and the Victim’s Head Injuries*

39. The murder instrument was never found. Zadarov admitted before the police agent-inmate Arthur that he murdered the victim with a Japanese knife which he worked with. He had a collection of such knives in his tool box.<sup>27</sup>
40. The prosecution’s expert, a pathologist from the National Institute of Forensic Medicine, the only such institution in Israel, concluded in his supplementary expert opinion from 3 January 2007, after Zadarov’s admission before the police inmate and the interrogators:  
Based on the results of my examinations of Japanese knives and in comparison to the assessment of the blades that caused the cut injuries in Tair Rada’s body, I hereby provide my opinion that blades of Japanese Knives or similar blades, could have caused the cut injuries in the victim’s body.<sup>28</sup>
41. The defense’s expert, now a pathologist at the same institute, alleged that the injuries on the victim’s body were caused by a serrated blade and therefore could not have been inflicted by a Japanese blade which is a straight one. In addition, this expert argued that there were 7 separate and irregular bleeding signs in the head which indicate 7 blows to the head, unless the victim fell or was injured from a surface that could have left 7 simultaneous injuries.<sup>29</sup>
42. The District Court rejected the defense’s allegation relating to the knife’s blade and the head injuries undermining her personal and professional integrity.<sup>30</sup> In relation to the knife issue it determined that it could not disqualify the possibility that the victim used “a Japanese knife with a serrated blade, a deficient one, amputated blade, or worn given his work” and that the victim was murdered by “a sharp instrument, that could have been a Japanese knife. We are unable to positively find that the accused used a Japanese knife in particular.”<sup>31</sup>
43. Regarding the head injuries, the District Court noted that the prosecution’s expert did not preclude the possibility that the head injuries were caused by intended blows, the fall of the victim, or a combination thereof given the small size of the bathroom where she was killed. The Court concluded that such injuries may have been the result of the victim’s struggle against the murderer.<sup>32</sup>

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<sup>25</sup> CA 7939/10 *Roman Zadarov v. State of Israel*, Decision, 17 March 2013, para.4

<sup>26</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 24 February 2014, para.6.

<sup>27</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 24 February 2014, para.31.

<sup>28</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 24 February 2014, para.9.

<sup>29</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 24 February 2014, para.7.

<sup>30</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 24 February 2014, paras.16-26.

<sup>31</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 24 February 2014, para.31.

<sup>32</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 24 February 2014, paras.27-28.

44. The dissenting Supreme Court Justice Danziger refuted the District Court's findings regarding the defense's expert with respect to the type of blade the perpetrator used and the head injuries. He considered that the defense's expert was reliable and thorough and that the prosecution failed to contradict her findings, particularly by not calling its expert to testify before the court. He found that the conclusion of the defense's expert that the knife's blade was serrated and therefore it was not a Japanese knife contradicted Zadarov's admission and significantly reduces its weight. As to the head injuries, accepting the expert's findings that there were 7 separate blows to the head caused during the execution of the murder should result in a minor reduction in the weight of Zadarov's admission, who never mentioned this detail. This is because he may have either forgotten it as part of a sudden attack of rage at the time of the murder or intended to conceal it from his interrogators.<sup>33</sup>
45. The majority Justice Amit was willing to concede that the defense's expert is reliable and accept her opinion, but noted that the knife issue is not relevant to the question of the accused's guilt or innocence. He observed that this issue had been disproportionately exhausted by the District Court. The knife injuries discussed by the expert are not those that caused the murder. He also did not mention the expert's discussion of the head injuries. In his opinion, given that the accused admitted that he disposed of the knife in which he alleged to have committed the murder, and that a knife could become serrated either through regular use or due to sharpening by a stone, as the accused admitted to have done, the relevance of the knife's blade question is extremely minor.<sup>34</sup>

*The Traces of Shoes on the Victim's Clothes and at the Scene of the Crime*

46. The District Court reiterated a new precedent adopted after its first ruling which determined that the examination of shoe traces lacks the sufficient methodology to amount to a recognized field of science.<sup>35</sup> It nevertheless upheld its findings from the earlier judgment in this matter indicating that the new precedent would have prevented it from relying on the prosecution's police expert as sole supporting evidence for Zadarov's admission to enter a conviction verdict, despite its unquestionable credibility. Given the entirety of the evidence in this case, that include supporting evidence to Zadarov's admission mainly through his admission itself, his conviction remains sound.<sup>36</sup> According to the Supreme Court's dissent ruling which was not negated by the majority:

The appellant was able to provide several concealed details, some with high or decisive weight, that fit the objective exhibits connected with the murder. Nevertheless, it should be noted that the vast majority of the concealed details were extracted during his interrogation and not during his confession to Arthur (the police inmate - MD). In the admission to Arthur, which has a substantial internal weight, and is in fact the most incriminating piece of evidence in the case, the appellant did not provide any concealed detail, certainly not an important one or such detail that could be verified.<sup>37</sup>

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<sup>33</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, paras.274, 277-78, 283-84 (Dissent, J. Danziger).

<sup>34</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, paras.25-31 (Majority J. Amit).

<sup>35</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 24 February 2014, para.34.

<sup>36</sup> CC 502/07 *State of Israel v. Roman Zadarov*, Judgment, 24 February 2014, para.86-88.

<sup>37</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, para.302 (Dissent, J. Danziger).

47. As to the shoe traces issue the dissenting Justice considered that the prosecution failed to prove a link between the blood traces on the victim's pants and Zadarov's shoes.<sup>38</sup> In addition, he found that the three traces of shoes on the murderer's departing path from the scene of the crime that are not Zadarov's should decrease some of his admission's weight.<sup>39</sup>
48. The majority Justices disagreed with the District Court's interpretation of the precedent regarding expert opinion pertaining to shoe traces. Justice Amit concluded that a judge should be able to distinguish between expert opinions and scientific findings and make a sound judgment based on the latter. He commended the exceptional efforts of the prosecution's police expert who determined that the shoe traces found on the victim's clothes belonged to a rare kind of shoe manufactured abroad which Ukrainian and other Eastern European immigrants brought with them when they came to the country. Justice Amit concluded that this is a powerful circumstantial piece of evidence which should not be disregarded rather granted an intermediate weight.<sup>40</sup>
49. Regarding the other shoe traces the majority Justice Amit concurred, as the prosecution's police expert did, that they are not Zadarov's. He opined that this is the only piece of evidence in the entire case that is not coherent with the whole body of evidence. He explained this discrepancy by the fact that shortly after the murder there was commotion at the scene of the crime. Until it was properly sealed citizens, ambulance staff, and police officers entered the scene of the crime.<sup>41</sup>

### **Conclusion**

50. Forensically, Zadarov is disconnected from the victim and the scene of the crime. The knife in which the murderer killed Rada was never found. The District and Supreme Court could not decisively determine Zadarov's motive to murder the victim. He had just fathered a child and had neither a criminal record nor any prior involvement with the police or with criminal elements. Zadarov spoke only Russian.
51. He admitted before the police agent-inmate after his encounter with police officer Yehiel Edri who intrusively examined Zadarov's naked body. This crucial examination was not recorded. His interrogation before police officers was lengthy and aggressive during which he lost significant amount of weight. The entire interrogation procedure suffered from substantial chronicling deficiencies.
52. Convictions for murder based on the suspect's admission are a common phenomenon in Israel and the subject of official commissions of inquiry that have documented the illegal nature of the police's conduct. The procedures that generated such convictions have often been well publicized in the Israeli media: disadvantaging the accused during trial, and expressing doubts about it after entering the conviction verdict. The Zadarov case is no different. An appeal for additional hearing before the Supreme Court is pending.<sup>42</sup>

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<sup>38</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, para.310 (Dissent, J. Danziger).

<sup>39</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, paras.299, 303 (Dissent, J. Danziger).

<sup>40</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, paras.48-49 (Majority, J. Amit).

<sup>41</sup> CA 7939/10 *Roman Zadarov v. The State of Israel*, 23 December 2015, paras.52 (Majority, J. Amit).

<sup>42</sup> CR 9022/15 *Roman Zadarov v. The State of Israel*, Case Pending.