

Dispute Resolution

Israel

I. INTRODUCTION TO ISRAEL LAW**I.1 LEGAL SYSTEM****I.2 SOURCES OF LAW**

The legal system was first established by the King's Order in Council, when Great Britain was entrusted with the mandate over Palestine, after the First World War. This King's Order preserved the then existing law, which was the Ottoman Majelleh, but allowed the introduction of the Laws of England. After the State was created, the same laws remained, but were, little by little, substituted and supplemented by new Israeli legislation. By and large the legal system follows the English one. However, family laws are governed by laws based on the Jewish religion (for Jews) and on the Muslim or Christian religion for the other sects.

Some new laws such as, for example, the Law of Contracts, now follow the European-Continental example rather than the English one.

Even though the Israeli law system is basically an adversarial one, it became eroded to some extent throughout the years: the judges tend more and more to intervene in the legal process and the system became inquisitive, to some extent.

Israel does not have a constitution, but there are 11 "basic laws". These laws have a special normative status, and they set the ground principles for matters regarding the three authorities that every democratic regime relies upon – legislative, executive and judicial, regarding human rights, and some other important issues.

The Court system still closely follows the English one: there exist three levels of Courts: Magistrate, District and the Supreme Court. The Supreme Court acts either as a Court of Appeal or as an Administrative Court, seizing itself of prerogative writs.

In handing down a verdict the Courts are bound by precedents set by Courts of a higher instance.

I.3 LIMITATION PERIOD**Criminal law**

Limitation under Israeli law is governed by the Law of Criminal Procedure 1982. There are four types of limitation – 1, 5, 10 or 20 years, depending on the penalty for the offence committed.

Civil law

Limitation under Israeli law is governed by the Limitation Act 1958. The period of time for prescription is 15 or 25 years for real estate claims (depending on the type of the land registration) and 7 years for matters regarding issues that are not real estate claims except for specific issues which the limitation period regard them is determine by law. The period of time for non real estate claims mentioned above can be altered by agreement. The "counting" of the limitation period starts on the day that the cause of action was "born".

An action can be brought even after the date of limitation, but the defendant has to claim prescription at the first opportunity.

2. ADMINISTRATION OF JUSTICE AND JUDICIAL FUNCTION

2.1 JURISDICTION

The Israeli courts have the jurisdiction to hear any proceedings if the service of the summons was performed in Israel. Compulsive presence or even a transit stop at the airport is good enough to perform the summons and give the Israeli courts jurisdiction.

The defendant can object to the proceedings continuing in Israel on the ground that the Israeli courts are not the most appropriate place to hear the case.

If the plaintiff cannot perform the summons in Israel, he can file a Request and ask for the (Israeli) court's permission for a "service of process permit" outside of Israel, according to article 500 to the Civil Procedure Regulations 1984.

3. LEGAL PROCEEDINGS

3.1 COURT SYSTEM

3.1.1 Magistrates Court

The Magistrates Court is competent to judge offences which only entail a fine or seven years of imprisonment, civil claims, excluding claims regarding real estate, when the amount is no more than NIS 2,500,000, and claims regarding the possession and usage of real estate, regardless of the amount of the claim. There are also Magistrates Courts which sit as courts for family affairs.

3.1.2 District Court

The District Court deals with all cases which are not in the jurisdiction of the Magistrates Court or other judicial institutions and claims concerning intellectual property. The District Court is also the instance of appeal on verdicts and decisions of the Magistrates Court. The District Courts sit also as courts for administrative affairs.

3.1.3 The Supreme Court

This is the highest court in Israel and it sits in Jerusalem. The Supreme Courts has "two hats". It hears appeals on verdicts and decisions of the District Courts and it sits also as the Supreme Court of Justice. While sitting as the Supreme Court of Justice, it deals in matters in which remedy for justice needs to be given and in matters which are not in the jurisdiction of any other court.

3.2 CIVIL PROCEDURE

Litigation in the courts in Israel is carried out according to the Civil Procedure Regulations 1984 (the "CPR").

3.2.1 Ordinary Action

In the regular courts there are three “tracks” for filing a claim:

- Regular track in which the claimant issues a statement of claim and the defendant issues a statement of defense.
- Summary procedure track in which the claims to be issued are as follows:
 - claims on a liquidated amount of money which arises as a result of a contract, as long as there is evidence in writing, or which arises due to an obligation according to the law;
 - Claims of a local municipality for payment to which it is entitled according to the law;
 - Claims to eviction from real estate or evacuation of leasehold as long as there is evidence in writing.

In said track the defendant is not able to defend himself without the permission of the court. Should the court decline a defendant’s application to defend himself, the claimant shall be entitled to receive a verdict against the defendant.

- Fast track – applies only in Magistrates Courts and when the value of the claim does not amount to the sum of NIS 50,000.

3.2.2 Corporate Litigation Procedure

There is no special procedure regarding corporation litigation and it is carried out according to the CPR as well.

3.2.3 Interim Measures

In the course of litigation each party can submit to court an application on any matter. The application has to be in writing and an affidavit authenticating the facts must be accompanied with the application. The respondent may respond to the application and then the court gives its resolution.

3.2.4 Enforcement Proceedings

Enforcement of obligations according to verdicts, bills or deeds of pledge or mortgage are carried out according to the law of execution, 1967. There are various measures one can take according to the law in order to enforce verdicts such as a warrant of arrest, detaining a debtor from leaving the country, attachment of the debtor’s assets, whether moveable property or real estate and their sale, appointment of a receiver to a certain property of the debtor and other measures.

3.2.5 Enforcement of Foreign Decisions

The definition of “**foreign judgment**” according to Foreign Judgments Enforcement Law, 1958 is: “**judgment which was given by a court in a foreign country in a civil matter, including judgment to pay compensation or damage to an injured party even if it is not in a civil matter**”.

The enforcement of a foreign judgment is declarative, that is, it does not create rights or obligations, but recognizes the rights given in the judgment.

The court in Israel will not discuss a request to enforce a foreign judgment that was admitted more than **five years** after judgment was given, unless it is agreed otherwise between Israel and the country in which the judgment was given, or if the court finds that there is a special reason that justifies the delay.

The conditions in which the court may declare that a foreign judgment is enforceable are:

- the judgment is given by an authorized court according to the law of the country in which it was given;
- the judgment cannot be appealed anymore (exception: a temporary judgment or interlocutory order regarding alimony);
- the obligation in the judgment can be enforceable according to the Israeli law concerning judgment enforcements;
- the content of the judgment does not contradict public good;
- the judgment is enforceable in the country in which it was given.

The court will not declare foreign judgment as enforceable if it was given in a country that, according to its law, an Israeli judgment cannot be enforced, unless the attorney general requests to do so. Foreign judgment will not be declared as enforceable if its enforcement may harm Israel's sovereignty or security.

Foreign judgment will not be declared as enforceable if one of the following terms prevails:

- Foreign judgment is fraudulently achieved;
- If the court in Israel finds that there was no reasonable option for the defendant to state his claim and to show his evidence before judgment was given;
- The foreign judgment was given by a court that was not authorized to do so according to the international private laws in Israel;
- The foreign judgment contradicts another judgment in the same matter that is still valid;
- When the claim was filed in a foreign country, there was a pending trial in the same matter and between the same parties in an Israeli court or tribunal.

A foreign judgment that is declared as enforceable can be executed as an Israeli judgment. If it is not possible to enforce the obligations or rights defined in the foreign judgment, there is an option to file a request to recognize foreign judgment according to the terms defined by law.

4. ARBITRATION

4.1 ARBITRATION IN ISRAEL

Arbitration in Israel is governed by the Arbitration Act 1968, according to which the legal basis for conducting arbitration is an agreement between the parties in dispute. The parties are free

to draw the arbitration conditions as they see fit, starting by selecting an arbitrator, through to determining whether the arbitrator will be bound by the rules of evidence and/or rules of procedures or not, until determining the date of the verdict to be received. If no special provisions determined in this respect, then the addendum of the Arbitration Act prevails, as described below.

4.2 PROCEDURE

As stated above, the first condition is to have an arbitration agreement in writing. The procedure of the arbitration shall be as detailed in the addendum to the Arbitration Act, unless the parties have agreed otherwise. Any person can act as an arbitrator and no special skills or legal or other education is required

The arbitrator is not bound by any law, procedure or rules of evidence unless the parties decide otherwise, and he is not obliged to give reasons for his decision. The award should be given by the arbitrator within three months from the day he commenced hearing the dispute, although the parties may change the period for giving the award to a shorter or longer time.

The court is entitled, at the request of either party, to confirm the arbitration award, and on giving said confirmation the award shall be as a court judgment, apart from an appeal.

4.3 APPEAL

An arbitration award, unlike a court judgment, cannot be appealed in court and the courts do not intervene in cases of wrong conclusions in the award, whether in law or in fact.

The only remedy if one party desires to involve the court is to apply for an annulment of the award, and the court is limited to a closed list of ten possible causes for cancellation of an arbitration award, as enumerated in the law.

An appeal on an arbitral award is now possible before an arbitral appeal tribunal, subject to several provisions. The appeal before an arbitrator has to be determined by the parties to the arbitration agreement in advance. In such case, the first arbitral award must be reasoned and the appeal must be submitted within 30 days from the date that the first arbitration award was served to the parties. The procedure of an appeal is the same as the procedure regarding the first arbitration. If no special provisions are determined in this respect by the parties.

5. ALTERNATIVE EXTRA-JUDICIAL DISPUTE RESOLUTION

5.1 ALTERNATIVE DISPUTE RESOLUTIONS

In Israel, there are three alternative dispute resolutions: arbitration, compromise and mediation. To encourage the parties to use such alternatives, the court may instruct to return the court fee if the dispute has been transferred to arbitration or has ended in a mediation settlement. The court may also instruct to return the court fee if the dispute ends in a compromise not later than the first pre-trial session.

5.2 MEDIATION

Mediation becomes more and more popular in Israel, mainly due to the encouragement of the courts. Like arbitration, it depends on the consent of the parties. But mediation is to be distinguished from litigation or arbitration in the sense that the mediator is not able to impose a solution. In the course of mediation, the mediator can meet with the parties, together or separately. Things that were said or given in the framework of the mediation process shall not be used as evidence in a civil trial.

5.2.1 General Procedure

The court may, at any stage, transfer the proceedings to mediation if the parties have given their consent. The parties nominate the mediator with the court's approval. The mediation is carried out according to the agreement detailed in the addendum to the Mediation Rules, unless the parties agree in writing otherwise.

5.2.2 Advantages and Disadvantages of Mediation

A main advantage of mediation is that it helps parties reach solutions or arrangements which are satisfactory to both parties. This is unlike litigation or arbitration where usually only one party is satisfied at the end of the procedure. It should also be mentioned that due to the flexible nature of mediation, solutions reached through mediation procedures can be creative and unique. Another important advantage of mediation is that it is considerably quicker and less expensive than litigation or arbitration.

On the other hand, mediation can be problematic in such a way that it can enable parties to carry out "Evidence Fishing". Although all things said or given in a mediation procedure are supposed to be confidential and cannot be used as evidence in a trial, confidentiality is not strong enough. A party can always find a sophisticated and indirect way to use this information during a civil trial.

Furthermore, due to the voluntary nature of mediation, parties cannot be forced to mediate or negotiate.

Author

Michal Jacob
D. Mirkin & Co.
Tel-Aviv, Israel

E-mail michal@mirbar.co.il

Tel. +972 3 791 4700

To contact PLG

Julienne Laveaux
PLG Secretariat
PANNONE LAW GROUP E.E.I.G.
avenue de Sumatra 41
1180 Brussels
Belgium

Tel. +32 2 374 88 46

Fax: +32 2 374 90 61

E-mail plg@plg.be

www.plg.eu.com

Disclaimer

The contents of this article are intended to provide guidance only and should not be taken to constitute legal advice on specific problems. PLG cannot accept responsibility for this information or matters affected by subsequent changes in the law.

Readers are requested to direct their enquiries to the author(s) of the article.

© 2010 Pannone Law Group

