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Civil Wrongs (Liability of the State) (Amendment No. 5) (Filing of Claims against the State by a Subject of an Enemy State or Resident of a Zone of Conflict) Law, 5762 – 2002

1. Addition of articles 5B to 5E

In Hoq ha-Neziqin ha-Ezrahyyim (Ahrayut ha-Medina) [Civil Wrongs (Liability of the State) Law], 5712-1952¹ (hereinafter: **the principal law**), after article 5A, shall come:

5B. Enemy claims

(a) In this article –

“**enemy**” and “**terrorist organization**” have the same meaning as in article 91 of Hoq ha-Oneshin [Penal Law], 5737–1977.²

(b) Notwithstanding the provisions of any law, the state is not civilly liable for injury sustained by a subject of a state that is an enemy, or to a person who is active in a terrorist organization, or to a person who was injured at a time that he was acting as an agent of one of them, or on its behalf, except for an injury sustained in the kinds of claims or to the kinds of claimants set forth in the First Annex.

5C. Claims of resident of zone of conflict

(a) In this article –

“**zone of conflict**” means an area outside the territory of the State of Israel (in this law – area), which the Minister of Defense declared a zone of conflict, as set forth in sub-article (d);

“**the state**” includes an authority, body, or person acting on its behalf;

¹ Sefer ha-Huqqim 5712 [1952], p. 339; 5749 [1989], p. 16; Hazzza'ot Hoq 5757 [1997], p. 493.

² Sefer ha-Huqqim 5737 [1977], p. 322.

“**conflict**” means a situation in which acts of a military nature are taking place between the security forces and regular or irregular entities hostile to Israel.

- (b) Notwithstanding the provisions of any law, the state is not civilly liable for injury sustained by a resident of a zone of conflict as a result of one of the following –
- (1) an act that was done in the framework of a conflict or as a result of a conflict;
 - (2) an act that was carried out by the security forces in a zone of conflict, except for injury that is sustained in the kinds of claims or to the kinds of claimants set forth in the Second Annex.
- (c) (1) The Minister of Defense shall appoint a committee, which shall be authorized to propose, though the law does not so require, an exceptional payment to a claimant as to whom sub-article (b) applies; where it proposes an exceptional payment to a claimant pursuant to this sub-article, the committee shall set the amount of the payment.
- (2) The Minister of Defense, after consulting with the Minister of Justice, shall set forth in regulations the composition of the committee and its powers.
- (d) The Minister of Defense may declare a territory that he has designated a zone of conflict. Announcement of the declaration shall be published in *Reshumot*.

5D. Change in annexes by order

The Minister of Defense, after consulting with the Minister of Justice, and with the approval of the Knesset’s Constitution, Law and Justice Committee, may change by order the First Annex and the Second Annex.

2. Addition of article 9A

After article 9 of the principal law, shall come:

9A. Preservation of laws

The provisions of articles 5B and 5C shall not derogate from any defense, immunity, or provisions of exemption, given to the State of Israel by any law.

3. Provisions on commencement and applicability

The provisions of articles 5B to 5D of the principal law, in their wording in article 1 of this law, shall apply to an act that took place after 29 Elul 5760 (29 September 2000), except for an act as to which a claim was filed and the hearing of evidence thereon began prior to the time of publication of this law.

First Annex
(Article 5B(b))

A claim the cause of action of which is injury sustained to a person as stated in article 5B(b) while he was in custody of the State of Israel as a detainee or prisoner;

Second Annex
(Article 5C(b)(2))

1. A claim the cause of action of which is injury sustained by a resident of a zone of conflict as a result of an act done by a person serving in the security forces, provided that the said person was convicted of an offense for the said act by a conclusive judgment in a tribunal or court in Israel; in this matter “offense” excludes an offense the definition of which states that negligence is the *mens rea* necessary for its existence, or an offense that is of the kind of offenses for which strict liability applies (within the meaning of articles 21 and 22 of the Penal Law, 5737-1977³);
2. A claim the cause of action of which is injury sustained by a resident of a zone of conflict while he was in the custody of the State of Israel as a detainee or prisoner;
3. A claim the cause of action of which is the act of the Civil Administration or the Government, Coordination and Liaison Administration that is done outside the framework of conflict or as the result of conflict;

In this article,

“Civil Administration” has the same meaning as in the Implementation of Hoq Yissum ha-Heskem bidvar Rezuat Azza we-Ezor Yeriho (Hesderim Kalkaliyyim we-Hora'ot Shonot) (Tiqqune Haqiqa) [the Agreement on the Gaza Strip and the Jericho Area (Economic Arrangements and Miscellaneous Provisions) (Legislative Amendments) Law], 5795 - 1994⁴;

“Government, Coordination and Liaison Administration” has the same meaning as in Zaw Haqamat Minhelet ha-Mimshal, ha-Te'um weha-Qishshur (Ezor Hevel Azza) [the Order Establishing the Government, Coordination and Liaison Administration (Gaza Region)] (No. 110), 5755 – 1994;

4. A traffic accident has the same meaning as in Hoq ha-Pizzuyim le-Nifge'e Te'unot Derakhim [the Compensation of Victims of Traffic Accidents Law], 5735 – 1975⁵, in

³ Sefer ha-Huqqim 5737 [1977], p. 322.

⁴ Sefer ha-Huqqim 5755 [1994], p. 326.

⁵ Sefer ha-Huqqim 5735 [1975], p. 234.

which a vehicle of the security forces is involved, the registration number of which or the identity of the driver of the vehicle at the time of the accident is known, except where the accident occurred incidental to operational activity of the vehicle or to the hostile action of the injured person against the state or against the civilian population;

5. Property damages caused to a vehicle following a traffic accident has the same meaning as in the Compensation of Victims of Traffic Accidents Law, 5735 – 1975, even if bodily injury was not sustained in the said accident, provided that the other conditions set forth in article 3 are met.

Explanatory Notes

Preface

This proposed bill arranges the state's exemption from liability for injuries sustained by the subject of an enemy state, or a person who is active in a terrorist organization or a person who is injured while acting as an agent of one of them or on its behalf (hereinafter: **enemy subject**), and for injury sustained by a resident of an area outside the territory of the State of Israel, which the Minister of Defense declares to be a zone of conflict (hereinafter: **resident of zone of conflict**).

Since 29 Elul 5760 (29 September 2000), the State of Israel has been engaged in a prolonged conflict of a military nature between the security forces and regular or irregular entities hostile to Israel, taking place both inside the state and in zones of conflict, which are located outside its territory.

The conflict is characterized by the use of firearms, suicide bombings, and other acts of terror against Israeli security forces and citizens; in the past two years, hundreds of Israeli citizens and soldiers have been murdered, and thousands wounded. The State of Israel has been carrying out many actions intended to prevent acts of terror and hostility, and has attacked those fighting against it and threatening the well-being of its residents. In the framework of these actions, person and property of residents of the zone of conflict have been injured.

The accepted rule is that, during armed conflict between nations, each side bears its injuries and cares for its injured; citizens of Israel who have been injured since the outbreak of the conflict do not have, as we know, a real chance to sue for compensation for their injuries from the persons responsible, and they are compensated by the state as victims of hostile actions, while residents of the zone of conflict are presently able to file tort claims against the state. Thus, the state bears liability both for the injuries sustained by its citizens and the injuries sustained by residents of the zone of conflict. A situation in which the state bears the injuries of its citizens, and, while acting in the framework of its duty to ensure their safety and to

prevent hostile entities from injuring and harming its citizens, also for injuries sustained as a result thereof – is improper, and some of the most properly administered countries in the world prevent the creation of such a situation.

It seems that injuries as a result of the hostilities should not be handled by the ordinary torts law, and that the proper way to resolve the problem of compensation for these injuries is by special arrangement, outside the ordinary torts law (for certain aspects of this issue, see CA 5964/92, *Bani 'Uda v. The State of Israel*, (not yet published, judgment given on 20 March 2002)).

In the practical sphere as well, the claims filed against the state raise problems of proof, so much so that the state is unable to defend itself by means of the regular legal tools appropriate in ordinary tort disputes. In light of the large number of incidents that have taken place in the conflict, and the large number of actions carried out in its framework, a great burden, to put it lightly, would be placed on the state to investigate – both as regards liability for the incident and the amount of damages – the allegations regarding the involvement of the security forces in the incident or the action alleged. This difficulty arises, in part, because of the frequent replacement of troops, the lack of access to and cooperation by Palestinians make it impossible to verify and challenge the testimonies, including expert opinions and medical documentation submitted by plaintiffs.

This proposed bill distinguishes between liability of the state in tort claims for injuries sustained as a result of its actions by a resident of a zone of conflict, and injuries sustained by a person who is the subject of an enemy country. Regarding the former, the state will be exempt from liability in tort when the injury is sustained in the framework of the conflict or as a result thereof, or as the result of an act done by the security forces in the zone of conflict (except for an act listed in the Second Annex). However, it is proposed, in exceptional cases, that payment be made to a resident of a zone of conflict for injuries he sustained as stated in Article 5B(b), by a committee that the Minister of Defense will establish for that purpose. Regarding injuries sustained by a subject of an enemy country, the state will be exempt from civil liability except for the injuries listed in the First Annex (Article 5B(b)).

Regarding the proposed Article 1

Regarding the proposed Article 5B

It is proposed that, despite the provisions of any law, the state of Israel will not be civilly liable for injuries sustained by the subject of an enemy state; however, it is proposed that the State of Israel will not be exempt from liability for injuries sustained by the subject of an enemy state while he was held in custody by the state as a prisoner or detainee.

Regarding the proposed Article 5C

It is proposed that, despite the provisions of any law, the State of Israel will not be civilly liable for injuries sustained by a resident of a zone of conflict, where the injury is sustained as stated in sub-article (b). The state will not be exempt from liability for injuries sustained by a resident of a zone of conflict as a result of an act done by a person serving in the security forces, provided that the said person was convicted of an offense for doing the said act by a conclusive judgment of a tribunal or court in Israel; in this matter, "offense" excludes an offense the definition of which states that negligence constitutes the *mens rea* needed to establish the offense, or an offense that is one of strict liability according to its meaning in the Penal Law; or as a result of a traffic accident, or property damage to a vehicle sustained in a traffic accident, or other acts or omissions, that are unrelated to the conflict. It is further proposed that the exemption for liability of the state will not apply to injuries sustained by a detainee or prisoner while in the custody of the State of Israel.

Also, the bill proposes to empower the Minister of Defense to appoint a committee, the composition and powers of which will be set forth in regulations, that will be authorized to propose a payment in exceptional cases, though the law does not so require, to a plaintiff who is a resident of a zone of conflict who sustained injuries as a result of an act as stated in sub-article (b), and to fix the amount of the payment (sub-article (c)).

It is proposed to empower the Minister of Defense to declare that a particular area, which is located outside the territory of the State of Israel, is an area in which events of a military character are taking place between the security forces of the State of Israel and regular or irregular entities hostile to Israel, i.e., a zone of conflict (sub-article (d)). The intention is that the area defined as a zone of conflict will not include areas of Israeli settlement.

Regarding the proposed Article 5D

It is proposed that the Minister of Defense will be allowed, following consultation with the Minister of Justice, and with the approval of the Knesset's Constitution, Law and Justice Committee, to change by order the First Annex and the Second Annex.

Regarding the proposed Article 2

It is proposed to establish that the provisions of the said articles 5B and 5C will not derogate from any defense, immunity, or exemption given to the State of Israel by any law.

Regarding the proposed Article 3

It is proposed to establish that the provisions of Article 1 of the proposed bill will apply to acts that took place after 29 Elul 5760 (29 September 2000), except if the hearing of evidence on the claim began prior to the date of the publication of this law.