

Israel: Participation of Victims of Terrorism in Criminal Appeals

March 2013



The Law Library of Congress, Global Legal Research Center
(202) 707-6462 (phone) • (866) 550-0442 (fax) • law@loc.gov • <http://www.law.gov>

Participation of Victims of Terrorism in Criminal Appeals: Israel

Ruth Levush
Senior Foreign Law Specialist

SUMMARY: Israeli legislation does not expressly recognize the right of crime victims, including those harmed by terrorism offenses, to participate at the appellate stage of criminal proceedings that are tried in either civilian or military courts.

In the absence of express authorization for participation of victims of terrorism offenses in the appeal process, the introduction of any new statements by victims during such proceedings is subject to general rules regarding the admissibility of evidence in the course of an appeal.

Based on rules laid down by Israel's Supreme Court in accordance with section 211 of the Criminal Procedure Law (Consolidated Version), 5742-1982, the introduction of new evidence in appeal proceedings is generally prohibited except under exceptional circumstances. Such circumstances exist when the new evidence is necessary in the interest of justice and could not have been located during the hearing in the lower court, and when its introduction is expected to result in a different outcome than that reached by the lower court. Allowing victims to participate by providing new statements during the appeal process is not likely to be in compliance with these requirements.

A search for court decisions has not identified cases where victims of terrorism attempted to intervene in appeals of criminal convictions or the sentencing of offenders.

I. Procedural Rights of Crime Victims in Criminal Trials

In 2001 the Knesset (Israel's Parliament) passed comprehensive legislation entitled the Rights of Victims of Crime Law, 5761-2001¹ (Rights of Victims Law). This Law provides victims of crime with various rights during the offender's criminal trial. Among other rights, victims are entitled to review the indictment, be informed of the progress of the trial, and express their opinions regarding the possibility of a stay of proceedings, a plea bargain, the release of convicts from incarceration, and a pardon. Additionally, the Rights of Victims Law establishes the right of crime victims to deliver a written affidavit to the investigative body or to the prosecutor regarding any harm caused by the offense, including bodily and mental harm, and harm to property. Once delivered, the victim has the right to have the affidavit presented to the court by the prosecutor during the defendant's sentencing hearing.²

The Rights of Victims Law, however, does not expressly recognize victims' rights to participate at the appellate stage of criminal proceedings. Such rights are similarly not expressly recognized

¹ Rights of Victims of Crime Law, 5761-2001, SEFER HAHUKIM (Book of Laws, the Official Gazette) No. 1782 p. 183.

² *Id.* § 18.

among those rights to which victims of terrorism are entitled under the Victims of Hostile Action (Pensions) Law, 5730-1970,³ as amended.

Trials involving terrorism offenses that are heard before military courts are conducted in accordance with the Military Justice Law, 5715-1955,⁴ as amended. According to this Law, the general rules of evidence that apply in criminal matters in civilian courts “are binding also in court-martials.”⁵

II. Presentation and Admissibility of New Evidence by Crime Victims at the Appellate Stage of Criminal Proceedings

The introduction of affidavits, statements, or expressions of opinion by victims of terrorism are rarely admissible at the appellate stage of criminal proceedings. In accordance with section 211 of the Criminal Procedure Law (Consolidated Version), 5742-1982,⁶ “[t]he court may, [during an appeal proceeding] if it considers it necessary to do so in the interest of justice, take evidence or direct the court below to take such evidence as it may direct.”⁷

A decision rendered on August 13, 2012, by Israel’s Supreme Court, sitting as a Criminal Court of Appeals, reiterated the general evidentiary rule that provides that the introduction of evidence in the course of an appeal process is an exception to the rule requiring litigants to submit all evidence to the court of first instance that hears the trial. Having reviewed earlier decisions interpreting section 211, the Supreme Court held that

when we try to determine whether to allow the introduction of additional evidence, we need to address three major considerations: first, whether the appellant had the ability to obtain the additional evidence during the hearing in the lower court; secondly, the interest of preserving the principle of the finality of decisions; third, the nature of the additional evidence and the probability that its introduction will result in changing the outcome reached by the lower court. . . . The objective of the exception regarding the introduction of evidence in the course of an appeal . . . is to ensure that the appellant was given a fair opportunity to defend himself and that he was not subjected to a miscarriage of justice.⁸

Accordingly, participation of crime victims in the appeal process by submitting an affidavit testifying to the harm they suffered as a result of the crime, or by expressing their opinion on the possibility of overturning a conviction, decreasing or increasing penalties, etc., may in principle be admissible only if such evidence is considered by the court to be essential for the prevention of a miscarriage of justice, and if it complies with the above-cited requirements. Considering the

³ Victims of Hostile Action (Pensions) Law, 5730-1970, 24 LAWS OF THE STATE OF ISRAEL (LSI) 131 (5730-1969/70).

⁴ Military Justice Law, 5715-1955, 9 LSI 184 (5715-1954/55).

⁵ *Id.* § 476.

⁶ Criminal Procedure Law (Consolidated Version), 5742-1982, 36 LSI 35 (5742-1981/82).

⁷ *Id.* ch. F: Appeal, § 211.

⁸ CrimA 3578/11 Supreme Court, *Strok v. State of Israel* ¶¶ 89–90 (Aug. 13, 2012), THE STATE OF ISRAEL: THE JUDICIAL AUTHORITY, <http://elyon1.court.gov.il/files/11/780/035/i05/11035780.i05.pdf>, (translated by author, R.L).

objective of allowing new evidence primarily to ensure the appellant's right of defense, it is unlikely that the Court would admit new statements by victims that have not been introduced during the initial trial.

As previously mentioned, evidentiary rules in criminal matters before civilian courts equally apply in military courts.⁹ Moreover, in accordance with the Military Justice Law, 5715-1955, as amended, a decision of the Military Court of Appeals concerning an appeal from a lower military court is appealable to the Supreme Court, subject to authorization. Such authorization may be granted by the lower court decision or by the President of the Supreme Court or his deputy.¹⁰ The Law provides that authorization for an appeal will not be granted except for a legal question involving matters of "importance, difficulty or innovation."¹¹

III. Participation of Victims of Terrorism in Postconviction Proceedings

A search for Israeli court decisions involving victims of terrorism requesting to participate in postconviction proceedings has identified cases where victims attempted to stop proceedings for the release of persons convicted of security offenses, including terrorist activities, as part of prisoner exchanges.¹² However, no cases were identified in which a victim attempted to intervene in the appeal of the offender's conviction for terrorism offenses.

⁹ Military Justice Law, 5715-1955, § 476, LSI 184 (5715-1954/55).

¹⁰ *Id.* § 440I(a).

¹¹ *Id.* § 440I(b).

¹² See, e.g., HCJ 7523/11 Almagor-Association of Victims of Terrorism v. Prime Minister (Oct. 17, 2011), STATE OF ISRAEL: THE JUDICIAL AUTHORITY, <http://elyon1.court.gov.il/files/11/230/075/n05/11075230.n05.pdf>, where petitioners petitioned the Supreme Court sitting as a High Court of Justice (not as a High Court of Appeals) to void a governmental decision and presidential pardons enabling the release of 1,027 Palestinian prisoners in return for the release of the Israeli soldier Gilad Shalit, who had been kidnapped and held by Hamas. For a summary of the decision, see Ruth Levush, *Israel: Supreme Court Reviews Prisoner Exchange Deal with Hamas*, GLOBAL LEGAL MONITOR, LAW LIBRARY OF CONGRESS (Oct. 21, 2011), http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402858_text; see also, Ruth Levush, *Prisoner Swap Deals Under Israeli Law*, IN CUSTODIA LEGIS (Nov. 16, 2011), <http://blogs.loc.gov/law/2011/11/prisoners-swap-deals-under-israeli-lawhats-the-worth-of-one-life-prisoner-swap-deals-under-israeli-law/>.