

Abstract of lecture: Class Actions and Vulnerable Populations

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The CLASS ACTION LAW 5766-2006 (hereinafter: **"the Class Action Law"** and/or **"the Law"**) was enacted in Israel in 2006. The purpose of the said law is presented in section 1 of the law:

1. The purpose of this Law is to prescribe uniform rules on the submission and conduct of class actions, **in order to improve the protection of rights and to advance thereby** especially the following:

(1) **To give substance to the right of access to Courts, inclusive of individuals that find it difficult to access said Court;**

(2) To enforce the Law and deter from its violation;

(3) To provide appropriate relief to persons damaged by Law violations;

(4) To handle actions efficiently, fairly and comprehensively.

Today, almost 10 years after the enactment of the Class Action Law, it might be an appropriate time to examine whether the purpose of the Class Action Law is indeed fulfilled nowadays, and in particular, whether the Class Action Law and the courts enforcing said law, are doing so in such way that the Class Action Law is harnessed in order to aid Vulnerable Populations.

It could be argued that today there is an overuse of the Class Action Law in Israel, as a result of the economic incentive, to apply for an approval of a class action, in combination with the "Israeli character". It could be further argued, that said massive overuse, led to a situation in which the Class Action Law became practically insignificant in advancing vulnerable populations, and as a consequence one of the main purposes of the Class Action Law, the fact, is not fully fulfilled.

An example to the abusive use of the Class Action Law, in Israel, can be seen in an application for approval of a class action, brought before the Israeli court, alleging that the law of prevention of smoking in public places was breached, seemingly an adequate claim, but a closer look at the application reveals that the application alleged that the breach of the law was carried out by an actor on a stage playing a part in a play which required smoking for a few seconds (said application was obviously rejected by the court).

This nature of plaintiff conduct, has led to the unfortunate result that the courts in Israel have become suspicious and careful in the process of allowing a class action to be

heard and in the process of validating a class action compromises. Said tendency by the courts makes it even more difficult for vulnerable populations to reach the court for assistance.

On the other hand it can be argued that, we must not dismiss the social value of the Class Action Law just yet, as the influence and true effect of the Class Action Law on vulnerable populations in Israel must be examined over time.

We believe that a proper use of the Class Action Mechanism might lead to a meaningful and significant change which may aid vulnerable populations on their struggle for social change.

A classic example of such proper use of the Class Action Mechanism was brought about in a landmark case which changed the face of the American society (and not many know that it began as a class action). "The Brown v. The Board Of Education case", was a class action filed by a number of African American parents who enrolled their children to elementary schools and said enrollment was rejected by the board of education in their state. The class action claim brought by the plaintiffs was that the board of education was discriminating the children by relaying on the "separate but equal" policy. To this day the Brown case is a landmark case which is known for playing an important role in the process of social change and promoting of vulnerable populations in the United States.

Can it be expected that in Israel a similar process will occur over time?

Today in Israel no similar case with regard to the intensity and impact on society can be seen. Some attempts have been made, for example an application for a class action alleging discrimination of the Arab community in security checks in the Israeli air-port was filed, but said application was rejected by the court.

However, some initial successful use of the Class Action Mechanism, in order to promote vulnerable populations, can be seen in Israel.

One positive example of successful application for a class action brought before the Israeli court and eventually was accepted, in a case of social importance for promoting vulnerable populations, was an application for a class action, submitted by a pregnant woman, alleging discrimination by a potential employer in a job hiring process (said class action was later settled) and there are few additional examples.

Said cases can be seen as first signs of future social changes through the important Mechanism of Class Action. Hopefully someday we will have our own Brown case.