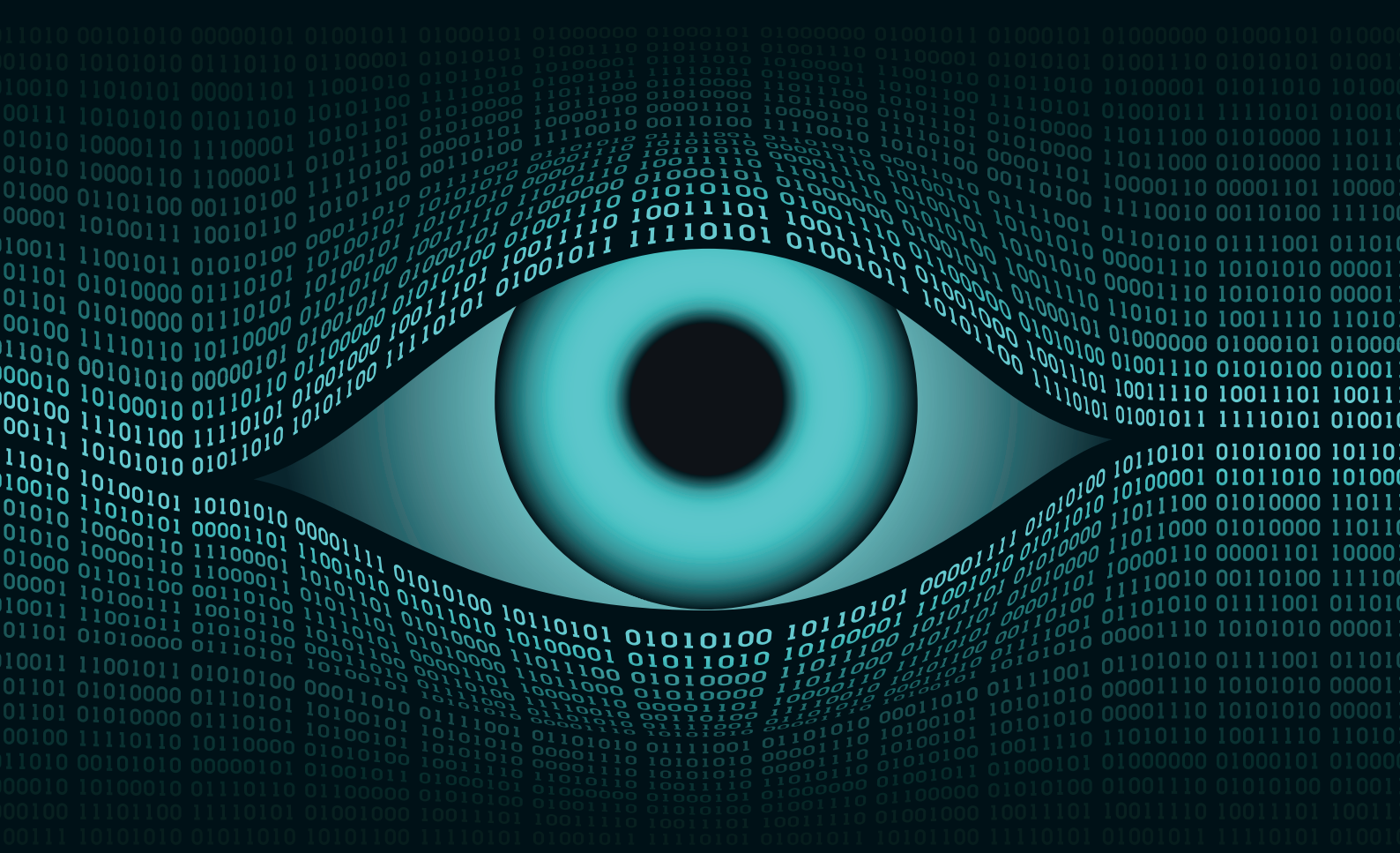


# De jure

The Buchmann  
Faculty of Law Magazine

October 2020



## I KNOW WHAT YOU DID LAST SUMMER

Prof. Michael Birnhack, recipient of the 2020 Zeltner Prize,  
is concerned about the Israeli government's approach  
towards privacy during the COVID-19 crisis | p.6

➔ The Future Face of the Faculty | p.5

➔ Online Clinics | p.10

# Message from the Dean

Welcome to De Jure, the magazine of the Buchmann Faculty of Law at Tel Aviv University.

We are on the threshold of what is expected to be a challenging year overshadowed by COVID-19, much like we experienced with the 2020 spring semester. I am grateful to faculty members, administrative staff, and students for their full cooperation and enormous effort in transitioning to remote learning, a significant undertaking that happened practically overnight. The Faculty took advantage of the summer break to enhance the online experience with equipment upgrades and additional training for faculty members. These improvements will enable integrated learning, with some students attending classes on campus, while others participating through remote learning. Of course, we look forward to a time when we can all return to our regular routine.

Over the past year, our students reached new heights of success. The Buchmann Faculty of Law has surpassed all other law schools in Israel in clerkship placements at the Supreme Court, and many other students have received highly sought-after clerkships. Three of our graduates were accepted to doctorate programs at Harvard University (out of a total of ten accepted worldwide), and one of our students was accepted to Yale University's Fox International Fellowship. These accomplishments attest to the Faculty's commitment to excellence and the exceptionality of our students. This commitment ensures first-rate legal education, and

bolsters a student community that includes all sectors of Israeli society.

The Faculty is also undergoing a period of robust development and expansion of cutting-edge programming. Our new master's degree program, headed by former Supreme Court Justice, Prof. Yoram Danziger successfully completed its first cycle. And, this year we will launch the Law & Computer Science B.A. Program, demonstrating anew the Faculty's ability to adapt and



innovate according to changing realities.

The scope and expertise of our faculty will receive a significant boost with the addition of several new members. Prof. Niva Elkin-Koren, former Dean of the Faculty of Law at the University of Haifa, will be joining us. We also welcome Dr. Rachel Friedman, a graduate of Harvard Law and the Edmond J. Safra Center for Ethics Fellowship Program at TAU, and Dr. Ofra Bloch, who recently completed her doctorate at Yale University. They

will be joined later this year by Dr. Uri HaCohen, who completed his doctorate at Berkeley Law.

The enormous confidence our generous supporters have in the Faculty is instrumental to its success. We are currently in the final stages of fundraising towards the expansion of the Faculty's premises with the addition of a new building, made possible by a generous contribution from Mr. Josef Buchmann. Over the years, Mr. Buchmann has been a steadfast supporter of Tel Aviv University, and in particular, the Faculty of Law, which is named after his parents. We are also grateful for the generous support of the Edmond J. Safra Foundation; in recognition of this support, the Edmond J. Safra Center for Ethics will find a permanent home in the Faculty's new building. We would also like to thank the Danon family for their generous contribution in memory of Raul Danon z"l, an Izmir-born industrialist who divided his time between Israel and Turkey. Sadly, Mr. Danon passed away in the spring; the auditorium located in the Faculty's new building will be dedicated to his memory. A special thank you to Adv. Rami Manoach for facilitating the connection between the Faculty and the Danon family. I would also like to thank the Zvi and Ofra Meitar Family Fund, and the Parasol Foundation Trust, for their longtime support, and to congratulate Shimonov & Co., a new member of our donor community.

**Happy and healthy new year!  
Prof. Sharon Hannes, Dean**

# Faculty News in Brief

➔ The Faculty of Law welcomes three new members: Prof. **Niva Elkin-Koren**, Dr. **Rachel Friedman**, and Dr. **Ofra Bloch**. Elkin-Koren is one of the leading Israeli researchers in the field of law and technology, and previously served as Dean of the Faculty of Law at the University of Haifa. Dr. Friedman, a graduate of Harvard Law School and Harvard's Department of Government (PhD), specializes on issues related to distributive justice, and completed her postdoctoral fellowship at the Faculty's Edmond J. Safra Center for Ethics. Dr. Bloch, a graduate of The Zvi Meitar Center for Advanced Legal Studies at the Faculty, returned after completing a doctorate at Yale University. Dr. Bloch specializes in the field of history and the theory of constitutional law, along with laws on discrimination and inequality.

➔ Five faculty members were recently awarded prestigious research grants from the Israel Science Foundation (ISF), for research in various fields of law: Prof. **Hila Shamir**, Dr. **Doreen Lustig**, Prof. **Assaf Hamdani**, Prof. **Hanoch Dagan** and Prof. **Avihay Dorfman**.

➔ Prof. **Michael Birnhack**, with whom an interview is included



Niva Elkin-Koren (upper photo), Rachel Friedman, Ofra Bloch. New Faculty members

in this issue, won the Zeltner Prize for senior researchers for 2020.

➔ The Collier-Menmon Animal Rights & Welfare Program continues to push on tirelessly in support of our animal friends. In the past year, the program hosted Adv. **Steven Wise**, founder and president of the Nonhuman Rights Project, an organization working to change the legal status and integrity of animals worldwide. During his stay, Adv. Wise taught an elective course in animal rights jurisprudence. The course was widely popular among students. In addition, Wise shared expertise and strategies with the Environmental Justice and Protection of Animal Rights Clinic. The program also included the Collier-Menmon Animal Protection Law course, an elective taught by Adv. **Yosef Wolfson**; two conferences on animal law; and, research grants in animal law. The Collier-Menmon Animal Rights & Welfare Program is coordinated by Adv. **Amnon Keren**, and is generously supported by the Collier Foundation (UK) and Menmon Ltd. (Israel).

➔ In recent years, the intersection between law, science and technology has been intensifying.



## Faculty News in Brief

Accordingly, this year, the Faculty will launch an exclusive program dedicated to the study of law and computer science. This 4-year program, designed for a select cohort of students with exceptional admission grades, will award graduates with dual bachelor degrees in computer science and law.

➔ Among those accepted to Yale University's prestigious Fox Fellows Program for the next academic year is **Alaa Haj Yahia**, a student at the Faculty. Also, three of our graduates were accepted to Harvard University's doctorate program, out of a total of ten accepted worldwide.

➔ Pride filled the halls of the Faculty when we received the news that 12 of our students were accepted to clerkships at the Supreme Court.

➔ The Faculty continues to develop content that is innovative, captivating, and socially relevant and practical. Several new courses will be offered this academic year, including: "Defense Exports" (Dr. **Natalie Davidson**), "Legal Engineering of Inequality" (Prof. **Roy Kreitner**), "Fintech - Between Innovation and Regulation" (Prof. **Assaf Hamdani**), "Artificial Intelligence, Big Data and Law" (Prof. **Niva Elkin-Koren**), "Aspects of the Prosecution's Handling of Juvenile Delinquency" (Adv. **Orly**



Alaa Haj Yahia. On her way to Yale



Issi Rosen-Zvi. Law Stories



Roy Kreitner. New course

**Ben Ari**), "Transitional Justice in Places with Ongoing Conflict" (Dr. **Limor Yehuda**) and "Creative Writing for Law Students" (**Shay Aspril**). Within the framework of a clinical legal program, the "Knesset Clinic" will begin operating to combine academic instruction with practical work in the Knesset corridors. The Clinic will be headed by former member of Knesset, Dr. **Dov Khenin**.

➔ Within the coming months, a non-fiction book revealing behind-the-scenes glimpses into eleven groundbreaking Supreme Court judgments from the past 50 years, will be published by Am Oved Publishing House. The book, titled "Law Stories", includes adaptations of essays written by a number of prominent jurists, including the Faculty's Prof. **Nili Cohen** (Israel Prize laureate and the current president of the Israel Academy of Sciences and Humanities), Prof. **Aeyal Gross** and Prof. **Neta Ziv**. The editors of the book are Prof. **Issi Rosen-Zvi**, Prof. **Hila Shamir** and Adv. **Shay Aspril**.

➔ Two of the Faculty's alumni were appointed to ministerial posts after the government was sworn in in May: **Avi Nissenkorn** as the Minister of Justice, and **Assaf Zamir** as the Minister of Tourism. Nine alumni of the Faculty are currently serving alongside them as Knesset members.



The Faculty future building and auditorium

## Into the Future: The New Face of the Faculty

➔ Construction will soon commence on the Faculty's new building (an article on the building's progress will appear in the next issue of De Jure). The new building, made possible with a generous donation by Mr. **Josef Buchmann**, will expand the Faculty's facilities along with the W.A. Minkoff Building, the David J. Light Law Library, and the Trubowitz Building, the Faculty's main hub and the first building erected on Tel Aviv University's campus. Mr. Buchman recently celebrated his 90th birthday. We are grateful for his generous support over the years, and wish him health, happiness and a hearty mazal tov! We would also like to extend our gratitude to Mrs. **Juliette Danon** for her generous donation in memory of her late husband, Mr. **Raul Danon**, an Izmir-born industrialist who divided his time between Israel and Turkey. Mr. Danon recently passed away; the auditorium located in the Faculty's new building will be named in his memory.



Birnhack. Could not have imagined the magnitude of privacy violations



## **"The Shin Bet's covert surveillance program is invasive, lacks transparency, and is a serious violation of privacy"**

**Prof. Michael Birnhack, the TAU Law's Associate Dean of Research and recipient of the 2020 Zeltner Prize, is concerned about the Israeli government's approach towards privacy during the COVID-19 crisis**

Prof. Michael Birnhack, one of Israel's leading scholars in the field of law and technology, has long been concerned by increasing privacy violations made by governments and corporations. Although threats to privacy have been an ongoing theme in the 21st century, Birnhack admits that he could not have imagined the magnitude of violations against Israeli citizens' privacy since the outbreak of COVID-19.

"The COVID-19 crisis presents us with many challenges, and poses a direct threat to personal privacy", Birnhack shared in an interview with "De Jure". "Data collection is needed for successful management of the pandemic - specifically for effective contact tracing - however, there are important caveats that must be considered: cultivating the public's trust in government and social solidarity are crucial in successfully managing COVID-19".

Birnhack, recipient of the 2020 Zeltner Prize for the Study of Law, is referring to the government's decision to adopt relatively radical measures to fight the virus: authorizing the country's internal Security Agency ("Shin Bet") to digitally track the movements of all citizens to trace their locations and track potential viral transmissions. Birnhack acknowledges the integral role that technology has in locating potential COVID-19 carriers, but questions the





**"Data collection is needed for effective contact tracing. However, there are important caveats that must be considered: cultivating the public's trust in government and social solidarity are crucial in successfully managing COVID-19".**

→ decision to authorize the Shin Bet to undertake this role; instead, he maintains that voluntary contact tracing technologies should be used, as is the practice in many democratic countries. The Ministry of Health did not oppose voluntary measures, and initially launched HaMagen, "The Shield", an application for smartphones that uses location data to determine if the user was at the same time and in the same place as a COVID-19 carrier (Birnhack volunteered and advised the Ministry on privacy aspects related to "The Shield"). However, "The Shield" was not efficient enough, and the Ministry later released an upgraded version, which collected not only locations, but proximity to other people, using Bluetooth signals, "The Shield 2". Despite the Ministry's attempts to position the application as the dominant contact tracing technology, the government doesn't appear to be ready to abandon the Shin Bet's more invasive tracing program. Birnhack doesn't see the logic in a strategy overseen by two different authorities, and clearly prefers the cessation of the Shin Bet's role in tracing viral transmission.

"It is critical to understand that the State simultaneously adopted opposing measures to achieve the same goal. On the one hand, there is the Shin Bet's covert surveillance program, which is invasive, lacks transparency, and its very existence is a serious violation of privacy. On the other hand, 'The Shield' serves the same purpose, but it is voluntary, transparent, and ensures greater protection of privacy. On the one hand, the message is that the Shin Bet is following you; and on the other hand, 'The Shield' transmits a completely different message: join us, believe us and have faith in us. This contradictory messaging undermines

public trust, and public trust is critical to successfully managing this crisis".

Government officials understood the damage to public trust; even Nadav Argaman, the head of the Shin Bet, was uncomfortable with the assigned task. The outcry led to the government claiming that it was imposing restrictions on the data collected. For example, data gathered was to be retained for a limited period, and could only be used to fight viral transmission. Despite the government's assurances, opponents of the Shin Bet's surveillance remain unconvinced, and foresee that its implementation will have knock-on effects; the public's temporary acceptance of the Shin Bet's tracing program for fighting COVID-19 may lead to public complacency in the event that the program becomes permanent.

Birnhack, along with a long list of other lawyers and activists have been vocal opponents of the program. Lawyer Shachar Ben-Meir was quick to file a petition with the Supreme Court to cancel the program. However, a panel of three justices did not meet the petitioner's expectations. In a late April ruling, Chief Justice Esther Hayut found that although the Shin Bet program does infringe on the right to privacy, it also has life-saving benefits. Further, Hayut ruled that in extreme circumstances in which there is serious and immediate danger to the

public, the authority granted to the Shin Bet at the onset of the COVID-19 crisis was warranted; but, due to the fact that the authority was handed to the Shin Bet through emergency regulations, further implementation could only be upheld through Knesset legislation. As such, in principle, Hayut ordered the suspension of the tracing program, but at the same time agreed to extend its validity if the Knesset began the legislative process required to officially implement the program. In July, the required legislation was passed.

The two other members of the panel, Justices Meltzer and Sohlberg, concurred with Hayut. However, Justice Sohlberg suggested that Hayut's remarks regarding the extent of privacy violations were extreme.

Sohlberg maintained that in the current era, when privacy rights are challenged and diminished in general, the Shin Bet's tracking program does not pose a significant risk, and in any case, the potential harm is marginal compared to its efficacy in eradicating COVID-19.

Birnhack believed that the Supreme Court didn't go far enough in its ruling, and in early July published an essay in which he argued that the Supreme Court preferred to engage in constitutional engineering rather than address concerns regarding the violation of privacy. In other words, the Supreme Court accepted that the Shin Bet surveillance program posed a violation to privacy enshrined in section 7 of Israel's Basic Law: Human Dignity and Liberty, and then examined whether this violation was proportional to the goal of tracing contacts. According to Birnhack, it would have been better if the Supreme Court had not opted for constitutional engineering, and instead for privacy engineering, by pointing to privacy by design, a technological-

regulatory approach that, in recent decades, has gained a foothold in the privacy discourse, and is now part of the binding duties of EU data protection law, namely the General Data Protection Regulation (GDPR). This approach requires developers of technologies to embed privacy protections in the technologies they design, at the outset.

A day after the essay was published, Birnhack's position was reinforced by the Ministry of Justice's Privacy Protection Authority (PPA); the PPA published a report that strongly opposed the tracking program, and recommended that the Ministry of Health's "The Shield 2" program be implemented instead. "The State's decision to use the Shin Bet - an organization mandated to prevent internal security threats - for the purpose of monitoring those who do not pose a security threat, and without their consent, is extreme", the report stated. "The PPA is aware of the critical need for tools to effectively locate those that have been in contact with infected individuals, for the purpose of curbing the spread of COVID-19. However, it is clear that COVID-19 will be with us for some time. The entire world is settling into a 'COVID-19 routine' that will be in place for months, and possibly years; it is essential to develop and implement proportional tools that can be used in the long term, whether infection rates are high or low (...) The PPA believes that currently there is a more suitable alternative, and that is 'The Shield 2'".

**"Privacy is a complex and elusive issue"**

Following his graduation from the Buchmann Faculty of Law more than two decades ago, Birnhack completed a doctorate in freedom of

**"For decades we have been accustomed to minimizing human rights when they conflict with other crucial issues, such as national security. So, in this instance, when all priorities are taken into consideration, privacy loses out to the 'sanctity of life'".**

expression and copyright law at New York University. After returning to Israel, he joined the Faculty of Law at the University of Haifa, where he and Prof. Niva Elkin-Koren co-founded and managed the Haifa Center for Law & Technology. In 2007 he joined TAU Law. He is currently the Associate Dean for Research, and the Director of the S. Horowitz Institute for Intellectual Property in memory of Dr. Amnon Goldenberg, and until recently, also the Director of the Parasol Foundation International LL.M. In addition to his academic work, he is considered an expert on issues related to privacy in the public sphere. He appeared before the Knesset's Foreign Affairs and Defense Committee during discussions on the Shin Bet's tracking program, and recently co-founded the NGO, "Privacy Israel". The organization, established in response to the implementation of the Shin Bet program, aims to represent the public in Knesset debates on privacy issues. The group recently warned of additional concerns regarding the Shin Bet's program that may harm Israeli exports; they contend that the European Union has recognized Israel as a country with adequate protections for personal information since 2011. This recognition has enabled many Israeli technology companies to provide their services in Europe with relative ease. However, following the

implementation of a series of laws and regulations in recent years that conflict with accepted principles of information privacy, including internal security policies and Shin Bet surveillance, the trade of information and technologies between Israel and the E.U. may revert a decade.

"Technology is progressing rapidly, and business models that are based on processing personal information have become more sophisticated. Europe has led this development, and from a legal standpoint, Israel has maintained its position. However, the right to privacy is declining in Israel, and this puts ties between Israeli businesses and the EU at risk. If the Europeans rescind the recognition given to Israel a decade ago, it will be very unpleasant economically and politically".

**The public is aware that the Shin Bet's tracking program is drastic and infringes on individual rights. However, it seems that the question of whether or not there is a risk to privacy has become a marginal issue, since the public is currently occupied with other concerns: employment and health.**

"I think Israelis are very concerned about privacy, but it is a complex and elusive issue; it is difficult to recognize when an infringement of rights is taking place. Research has shown that people value privacy, although they aren't consistently aware of it, nor understand the intricacies involved. In addition, for decades we have been accustomed to minimizing human rights when they conflict with other crucial issues, such as national security. So, in this instance, when all priorities are taken into consideration, privacy loses out to the 'sanctity of life'. Sohlberg's position reflects this approach".

# Minority Report

4 short monologues on how the coronavirus crisis is affecting the Faculty's legal clinics

## Dr. Yuval Livnat, Adv. Anat Ben Dor and Adv. Irina Rozina

Refugee Rights Clinic



Anat Ben Dor

“The coronavirus crisis forced the Clinic to shift to remote work. However, this style of working is not ideal for asylum seekers, and significant challenges arose. Intake interviews with new clients are complex; they touch on sensitive issues and may require translation services. The absence of face-to-face interviews makes it hard to build trusting relationships, and the completion and transfer of required forms and documentation is difficult; protecting personal privacy and information is problematic when

communication takes place over the telephone or on Zoom. During this period, the refugee and asylum seeker community faces a major economic crisis. Israeli citizens are supported by a social safety net. Asylum seekers are not eligible for this support and have legitimate fears that they will be unable to pay rent and feed their children. In light of this harsh reality, April's Supreme Court ruling overturning the “Deposit Law” that authorized the expropriation of 20% of an asylum seeker's monthly earnings, provided some relief. This decision came three years after the Clinic, in cooperation with Kav LaOved, filed the Supreme Court petition arguing that the deposit violated the workers' legal rights, including their fundamental right to dignity. The Supreme Court ordered that funds be returned. The Clinic's students, along with volunteers from Kav LaOved, helped asylum seekers to complete the required forms and open bank accounts, so their deposits could be returned”.

## Adv. Liad Strolov and Adv. Yael Havassy

The Clinic for the Rights of Holocaust Survivors and the Elderly



Yael Havassy

“The coronavirus crisis has significantly impacted our clinic. Firstly, the way we work with clients and students changed entirely after we transitioned to online rather than in-person meetings. This is particularly challenging for older clients that are unfamiliar with Zoom and other technologies. In addition, since the elderly population faces the greatest risk from the coronavirus, many are suffering from side issues caused by the crisis such as intense loneliness; inaccessibility to caregiver services; threats of eviction from nursing facilities due to an increased demand for space to care for COVID-19 patients; restrictions on movement in public housing facilities; and of course, restrictions barring them from returning to work under the current emergency regulations”.

## Dr. Eran Tzin and Adv. Amnon Keren

Environmental Justice and the Protection of Animal Rights



Eran Tzin

“At the beginning of the crisis, the Clinic offered support for animal welfare organizations and activists struggling with challenges arising from the imposed lockdown; the Clinic helped to map crucial issues, formulate strategies, and provided legal advice and representation, as needed. A key aspect of the Clinic's activities was ensuring ongoing routine care of animals in various facilities (e.g. sanctuaries, shelters, etc.) since severe restrictions on activity and movement limited the possibility of providing them with food and vital veterinary care. The Clinic appealed to the Ministry of Health and other relevant parties, requesting that those caring for animals be exempted from emergency regulations, including in areas heavily affected by the virus. Furthermore, we requested that measures preventing harm to animals be an integral part of any national plan to deal with the crisis. Our efforts, in combination with public pressure, were successful and led to the requested policy changes. The Clinic also succeeded in canceling fines given to individuals while caring for animals, despite their compliance with emergency regulations. These are concerned and caring citizens who volunteered and used their own funds to care for animals, even though they faced financial difficulties due to the crisis”.

## Adv. Irit Ulman and Adv. Idit Zimmerman

Workers' Rights Clinic



Idit Zimmerman

“At the onset of the pandemic, it was clear that regulations regarding labor law and social security would be greatly affected. Israel opted to deal with the widespread closure of workplaces by increasing and extending unemployment benefits. As the numbers of unemployed continued to rise, those of us working in the field were occupied with unprecedented challenges to labor law resulting from the crisis. From the outset, the Clinic collaborated with various organizations to ensure that workers' rights were protected. In early April, we learned that the government passed emergency regulations eliminating the requirement for employers to obtain a permit prior to sending female employees under protection (e.g.

during pregnancy, maternity leave, etc) on furlough, as stipulated by the Employment of Women Law. We submitted an urgent petition to the Supreme Court on behalf of a group of organizations, demanding that the regulations be repealed; the petition argued that the process by which the regulations were passed were flawed, and that the regulations caused disproportionate harm to women. Following the petition's submission, and prior to a hearing at the Supreme Court, the regulations were annulled.

The crisis also created increased challenges for foreign caregivers working with the elderly, due to severe restrictions imposed on their movements. Since there is an increased risk to the elderly, family members often placed severe restrictions on the movements of in-home caregivers. Although their fears may have been warranted, severe restrictions could result in infringements on human rights and workers' rights (e.g. freedom of movement, loss of days off, etc.). The Clinic, in cooperation with the Clinic for the Rights of Holocaust Survivors and the Elderly, appealed to policy makers to ensure that the rights of caregivers and the elderly people they support were protected”.





**De jure**

The Magazine of the  
Buchmann Faculty of  
Law at Tel Aviv University

**Chief Editor:**  
Shay Aspril

**Translation:**  
Erica Goldberg

**Graphics:**  
Michal Gizbar

**Cover photograph:**  
Shutterstock

**Back cover photo:**  
Nir Kutz Architects

<https://en-law.tau.ac.il> |  
[deanlaw@tauex.tau.ac.il](mailto:deanlaw@tauex.tau.ac.il)