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JUDGMENTS

Access to the Labour Courts in Israel during the Covid-19 Crisis

Lilach Lurie* and Reut Shemer Begas**

Abstract

The article examines access to the labour courts in Israel during the Covid-19 pandemic, focusing on the first year of the crisis. It shows that the labour courts managed to deliver the same number of judgments and decisions in 2020 as they did in previous years. In order to keep open during the crisis and to enable access to justice the courts made use of three main tools: (a) technological tools, (b) awarding precedence to the most important and urgent proceedings, and (c) social distancing regulations.

Key words: Labour courts — Covid-19 — access to justice — Israel

1 Introduction

At the end of 2021 the International Labour Organisation (ILO) published a report entitled 'The Response of Labour Dispute Resolution Mechanisms to the Covid-19 Pandemic'. The report — which is based on data from 84 countries — found that although most of the institutions remained open, either partially or fully, during the Covid-19 crisis, the continuation of services was somewhat disrupted, which may have had a negative impact on access to labour justice.[1]

Fulfilling the principle of access to justice has been at the focus of law and society literature for several decades.[2] The ILO designates achieving access to justice as a top priority.[3] Access to justice is an essential element of the rule of law. Barriers to access reinforce social exclusion.[4] This article explores the obstacles that employees in Israel faced during the Covid-19 pandemic when they needed to attend the labour courts, and the efforts of court administrators and the Minister of Justice to mitigate these obstacles and enable access to justice in times of great difficulty. The article focuses on the first year of the crisis. The Covid-19 crisis increased the need for labour justice. Indeed, many new labour conflicts

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[1] International Labour Organisation (ILO) *The Response of Labour Dispute Resolution Mechanisms to the Covid-19 Pandemic* (2021).

[2] D Rhode *Access to Justice* (Oxford University Press 2004).

[3] E Colàs-Neila & E Yélamos-Bayarri 'Access to Justice: A Literature Review on Labour Courts in Europe and Latin America' ILO working paper (2020) https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/labour-law/WCMS_749827/lang--en/index.htm.

[4] ibid 3.

arose during this period when workers faced unemployment risks as well as health risks and wage reduction. These conflicts spilled over into the Israeli courts, which faced legal questions regarding payment for workers in quarantine; payment for teachers who teach online; dismissal of pregnant women; and questions regarding the right of an employer to request its workers to get vaccinated or test for Covid-19.

While the Covid-19 crisis increased the need for labour justice, it also raised several obstacles in the way of potential plaintiffs. First, in several cases, court hearings were delayed due to sickness or the quarantine of one of the parties, their attorneys, or the judges themselves. Second, as will be explained below, the Israeli government in several ways restricted access to the courts due to health considerations. At the same time, during the crisis, court administrators and the Minister of Justice made several efforts to facilitate labour justice. More specifically, several proceedings were held via audio-visual means and efforts were made to make the physical space inside the labour courts a secure environment.

These new challenges instigated by the Covid-19 crisis are ubiquitous in much of the world. Still, Israel provides an interesting case study on how labour courts functioned through this period for several reasons. First, as compared with other countries, the labour courts in Israel managed to stay open through most of the crisis, thus perhaps providing a positive learning opportunity for other jurisdictions. Second, Israel did not suffer the worst consequences of the crisis, allowing the state to focus energy and resources on mitigating the difficulties facing the legal system, which in other, less fortunate, jurisdictions might have been ignored as a lesser problem due to the larger-scale health crisis.

The article proceeds as follows. The first part outlines the major limitations that plaintiffs faced with regard to entering courts during the Covid-19 crisis. The second part discusses the main labour disputes that occurred in Israel at that time. The third part provides empirical data concerning the labour courts' activity during the pandemic as well as collective agreements that were signed by the social partners. The fourth part describes the labour courts' activities during the various periods of lockdown in Israel. The fifth part examines two major procedures that were implemented in Israel in order to make the labour courts accessible and which may be applicable with regard to future emergency situations: making the physical space inside the labour courts a safe environment and conducting proceedings via video-conferencing. The last part concludes and raises the question whether some of the changes that were made during the Covid-19 pandemic in order to enable plaintiffs to access the courts are here to stay.

2 Access to Courts during the Covid-19 Crisis

Fulfilling the principle of access to justice and closing the gap between law in the books and law in action have been at the focus of literature on

law and society for several decades.[5] Many scholars have written about the challenges that plaintiffs in general and employees in particular face when they try to claim their legal rights. In their well-known article, Felstiner et al[6] wrote about the barriers that plaintiffs face when they wish to access courts. Their article studied the emergence of disputes, specifically the barriers that plaintiffs face before entering legal institutions. According to the article, in order to address legal institutions plaintiffs have to go through three stages: (1) naming — saying to oneself that a particular experience has been injurious; (2) blaming — attributing an injury to the fault of another individual or entity; and (3) claiming — voicing the grievance to the person or entity believed to be responsible and asking for some remedy.[7]

The literature demonstrates that plaintiffs face many barriers that make it difficult for them to negotiate these three stages. The first barrier is lack of knowledge. People often do not know that they are entitled to several rights. Even if they do know, several cognitive biases may prevent them from claiming their rights. Moreover, legal proceedings are time-consuming and expensive. Lack of economic resources serves as a major barrier to those who are most in need of legal relief.[8] Language is another major barrier for migrant plaintiffs.[9] Research conducted in the US and Europe found a low rate of enforcement of migrant employment rights in labour tribunals.[10]

Indeed, the specific problem of achieving access to justice and dispute resolution in the context of labour disputes has long been at the focus of employment law scholars.[11] Access to justice is an essential element of the rule of law. Barriers to access reinforce social exclusion.[12] The ILO designates achieving access to justice as a top priority.[13] For example, principle 13 of the ILO's general principles and operational guidelines for fair recruitment[14] states that: 'Workers, irrespective of their presence or legal status in a state, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of

[5] Rhode n 2 above.

[6] W Felstiner, R Abel & A Sarat 'The emergence and transformation of disputes: Naming, blaming, claiming ...' (1980) 15 *Law and Society Review* 631-654.

[7] ibid.

[8] Colàs-Neila & Yélamos-Bayarri n 3 above.

[9] K Griffith & S Gleeson 'The precarity of temporality: How law inhibits immigrant worker claims' (2017) 39 *Comparative Labour Law & Policy J* 111.

[10] C Barnard & A Ludlow 'Enforcement of employment rights by EU-8 migrant workers in employment tribunals' (2016) 45(1) *Industrial Law Journal* (UK) 1-28.

[11] L Dickens (ed) *Making Employment Rights Effective: Issues of Enforcement and Compliance* (Bloomsbury Publishing 2012).

[12] M Ebisui, S Cooney & C Fenwick (eds) *Resolving Individual Labour Disputes: A Comparative Overview* (International Labour Office Geneva 2016) 30.

[13] ibid.

[14] ILO *General Principles and Operational Guidelines for Fair Recruitment* (Geneva 2016).

their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.'

Access to justice in the context of labour law is becoming an acute problem around the globe mainly due to three processes. The first is the decline in union membership in most OECD countries. In contrast to individual workers, unions are able to gather and disseminate information through educational programmes and apprenticeship training or by informing members of their rights where a problem or issues arises.[15] Due to the decline in union membership, there is a growing need to find new enforcement mechanisms for employment rights.[16] The second process contributing to the growing problem of access to labour justice is the sharp rise in the number of individual employment disputes across the world and, as a result, a judgment overload or backlog.[17] The third process is the diffusion of informal employment practices combined with the phenomenon of a large share of the population employed in precarious conditions, which exacerbates mounting challenges. In its reports the ILO emphasises the importance of improving access to justice by learning from the experience of various countries.[18]

Employees face several barriers when they wish to sue their employer alone, without the assistance of an employee union. When they are still employed they wish to avoid being labelled negatively by their employer or to damage their valued relationship with it.[19] Fear of retaliation poses a significant barrier to workers exercising their employment rights and claiming statutory benefits.[20] Research shows that dismissed workers face barriers as well.[21] Workers who have left their job often want a recommendation letter from their previous employer. They do not want

[15] R Freeman & J Medoff *What Do Unions Do?* (Basic Books New York 1984).

[16] D Weil *The Fissured Workplace: Why Work Became so Bad for so Many and What Can Be Done to Improve It?* (Harvard University Press 2014).

[17] ILO 'Social dialogue: Recurrent Discussion under the ILO Declaration on Social Justice for a Fair Globalisation' Report VI, International Labour Conference, 102nd Session (Geneva 2013); Ebisui et al n 12 above 30.

[18] Ebisui et al n 12 above.

[19] F Milliken, E Morrison & P Hewlin, 'An exploratory study of employee silence: Issues that employees don't communicate upward and why' (2003) 40 (6) *J of Management Studies* 1453-1476.

[20] J Foster, B Barnetson & J Matsunaga-Turnbull *Fear factory: retaliation and rights claiming in Alberta, Canada* (2018) 8 (2) *Sage Open* 2158244018780752; M Galizzi, P Miesmaa, L Punnett, C Slatin & Phase in Healthcare Research Team 'Injured workers' underreporting in the health care industry: an analysis using quantitative, qualitative, and observational data' (2010) 49 (1) *Industrial Relations: A Journal of Economy and Society* 22-43; Milliken, Morrison & Hewlin n 19 above.

[21] B Goldman 'Toward an understanding of employment discrimination claiming: An integration of organisational justice and social information processing theories' (2001) 54 *Personnel Psychology* 361-386; B Dunford & D Devine 'Employment at-will and employee discharge: A justice perspective on legal action following termination' (1998) 51 *Personnel Psychology* 903-934; A Lind, J Greenberg, K Scott & T Welchans 'The winding road from employee to complainant: Situational and psychological determinants of wrongful-termination claims' (2000) 45 *Administrative Science Quarterly* 557-590.

to gain a reputation as 'troublemakers' and nor do they want their name published on the internet as plaintiffs who sued their previous employer.

All of these challenges were exacerbated during the pandemic. Plaintiffs and their representatives faced many challenges in reaching the courts. First, in many cases plaintiffs (or their representatives) were sick or in quarantine. Second, during significant parts of the period, schools were closed[22] and children, including very young children, were at home,[23] which made it more difficult for plaintiffs to reach court. Third, people at risk (the elderly, people with underlying conditions) were afraid to go to court and be exposed to many other people. Fourth, public transportation operated on a limited basis. Lastly, many plaintiffs faced economic hardship during the pandemic. While this economic hardship may have served as a catalyst to sue in several cases, it also made it more difficult.

A growing body of literature is now studying ways in which courts around the globe, as well as in Israel, have coped with the crisis.[24] A significant number of courts have made an urgent shift to online modes of operation in response to the Covid-19 pandemic.[25] The consequences of this shift are mixed and disputed. On the one hand, technological innovation provides for better access to justice and deals more efficiently with the problem of case overload and backlogs. On the other hand, writers and courts are concerned with the issue of how to safeguard the rights of vulnerable groups who may have particular difficulties with regard to the use of technology.[26] Moreover, the move to online courts poses a risk to the symbolism that helps maintain court legitimacy. Susskind, for instance, has previously observed that we must decide whether a court is a place or a service, and this question is more relevant now than ever.[27] Lastly, there is an important question with regard to public access to online courts, particularly the ability to maintain the public trial principle.[28] Several scholars have suggested that after the pandemic courts may have to deal with the repercussions of a dispute

[22] R Viner, S Russell, H Croker et al 'School closure and management practices during coronavirus outbreaks including COVID-19: a rapid systematic review' (2020) 4 *The Lancet Child & Adolescent Health* 397-404.

[23] M Yaish, H Mandel & T Kristal 'Has the economic lockdown following the Covid-19 pandemic changed the gender division of labour in Israel?' (2021) 35 *Gender & Society* 256-270.

[24] E Albin, I Bar-Siman-Tov, A Gross & T Hostovsky Brandes *Israel: Legal Response to COVID-19 in The Oxford Compendium of National Legal Responses to Covid-19* (Oxford University Press 2021); G Lurie 'Ministerial emergency powers over court administration in the Israeli judiciary' (2021) 12 (2) *International J for Court Administration*.

[25] T Sourdin *Judges, Technology and Artificial Intelligence: The Artificial Judge* (Edward Elgar 2021); Remote Courts Worldwide website: .

[26] T Sourdin, B Li & DM McNamara 'Court innovations and access to justice in times of crisis' (2020) 9 *Health Policy and Technology* 447-453.

[27] R Susskind *Online Courts and the Future of Justice* (Oxford University Press 2019).

[28] VP Hans 'Virtual Juries' Cornell Legal Studies Research Paper no 21-16 (2021) http://dx.doi.org/10.2139/ssrn.3860165; S Bandes & N Feigenson 'Virtual trials: Necessity, invention, and the evolution of the courtroom' 68 *Buffalo Law Review* (2020) 1275.

boom.[29] This possible 'dispute boom' makes the problem of access to justice even more acute.

3 Labour Disputes and Covid-19 in Israel

The crisis has given rise to new disputes between employers and employees. It has also created new challenges for dispute resolution techniques and the activities of the labour courts.

In 1969 Israel's legislator established its labour court system.[30] The system includes one National Labour Court and five regional courts. The courts have the power to decide disputes between an employer and an employee; parties to a collective agreement; employees and a benefit fund; employees and an employee organisation; employee organisations; and cases pertaining to the National Insurance Law and the State Health Insurance Law.[31]

In 1957, prior to the establishment of Israel's labour court system, the legislator enacted the Collective Agreements Law 5717-1957 and the Settlement of Labour Disputes Law 5717-1957. These two acts established the power of the chief labour relations officer to mediate labour disputes and to register collective agreements. During the crisis, some of the mediation procedures were converted to audio-visual means (such as the Zoom platform). In an interview, the chief labour relations officer reported:

'We were afraid it would be harder to mediate when not in the room together, not seeing all the body language and nuances. We were afraid it would be more tense, colder and alienating. But the truth of the matter is that it worked, and we learned to do it well. In some cases we decided to meet in-person, face to face, and it was also complex, because social distance and masks had to be maintained.'[32]

3.1 *Labour disputes during the Covid-19 crisis*

The Covid-19 crisis gave rise to several labour disputes in Israel, as elsewhere. One of the more important disputes to come before the National Labour Court was between the state of Israel and the Teachers' Association.[33] The state of Israel asked the court to oblige teachers (of tenth-grade students) and their union to continue to work until 1 July 2020 (instead of 20 June 2020). In Israel (as elsewhere) schools moved from in-person learning to virtual learning on 15 March 2020, and subsequently there were several types of interruptions to the school year.

[29] Sourdin et al n 26 above.

[30] G Mundlak *Fading Corporatism* (ILR Press 2007) 90-94.

[31] *Labour Courts Law* 5729-1969, 24-26.

[32] N Zvi-Cohen 'The number of labour disputes increased by 25%, but the number of collective agreements also increased by 20%' (2021) *Davar* https://www.davar1.co.il/284639/.

[33] *The State of Israel v The Teachers' Association* (2021) 46941-06-20 National Labour Court.

However, the court rejected the claim and ruled that the school year would end as initially scheduled (20 June 2020). The court explained that the employer (in this case the state) was not entitled to change collective arrangements and cancel teachers' vacation days on its own accord. In its ruling the court emphasised the importance of collective negotiation.

Another important labour dispute between employees and employers had to do with forcing pregnant women to take unpaid leave. During the pandemic many pregnant women were either dismissed or sent on unpaid leave.[34] According to Israeli law, in order to dismiss a pregnant woman an employer must receive authorisation from the Ministry of Labour.[35] At the beginning of the crisis, it was decided that employees who were sent on unpaid leave of at least 30 days would qualify for unemployment insurance if the other conditions required in law were met.[36] It was also decided that employers would be entitled to send pregnant women on unpaid leave without receiving permission from the Ministry of Labour.[37] On 17 April 2020, the state decided to cancel the governmental emergency regulations with regard to pregnant women (after several NGOs submitted two petitions to that effect to the Israeli High Court of Justice[38]).

A third dispute had to do with the question of who should pay for the days in which an employee was in quarantine during the Covid-19 pandemic. At the beginning of the crisis, on 4 February 2020, the head of public health services at the Ministry of Health issued a sweeping illness mandate for workers in quarantine. According to the mandate, workers who were obligated to be in quarantine were entitled to receive paid sick leave from their employers. Several employers' associations submitted a petition to the High Court of Justice against their obligation to make such payments. The court ruled that the state is not entitled to mandate employers to pay sick leave to workers in quarantine without specific legislation.[39] Following the judgment, the Israeli legislature enacted a special arrangement regarding payment to workers in quarantine, according to which employers will provide paid sick leave to workers in quarantine, but the state (the National Insurance Institute) will compensate the employers for their payment.

A fourth dispute had to do with the question of vaccination and masks in the workplace. Several court decisions dealt with questions regarding

[34] M Barnir 'The coronavirus destroyed employment laws and dismissals of pregnant women rose dramatically' (2020) *Globes* .

[35] *Employment of Women Law* 5714/1954, art 9.

[36] E Albin & G Mundlak 'Covid-19 and labour law: Israel' (2020) 13 (1) *Italian Labour Law e-Journal*.

[37] 'Emergency Regulation (New Corona Virus)' 6 April 2020 *Employment of Women Law.*

[38] *Suliman Toma v The Prime Minister* Petition to the HCJ 2486/2020 (submitted on 12 April 2020); *Wizo v The Prime Minister* Petition to the HCJ 2499/2020 (submitted on 13 April 2020).

[39] *Sal v The State of Israel* 1633/2020 HCJ.

the rights of employers to dismiss unvaccinated workers or prohibit them from coming to work. In the first case, an unvaccinated employee who worked as an assistant teacher refused to receive a vaccine or to present proof of a negative Covid-19 test once a week. Her employer refused to allow her to attend to school. The court ruled (in an interim decision) that the employer was entitled to prohibit her from attending to school.[40] In a second case, a large chain of grocery stores informed its employees that in order to be present at work they had to be vaccinated or provide a negative Covid-19 test every 72 hours. An unvaccinated cashier appealed to court against the employer's decision. The National Labour Court (in an interim decision) ruled that the employer was entitled to request its unvaccinated employees to provide negative Covid-19 tests. It also ruled that the employer should do whatever it could to find an alternative solution for the employee.[41] In a third case the court ruled (also in an interim decision) that the employer, the City of Netanya, was entitled to require its employee — who refused to get vaccinated or provide a negative Covid-19 test result every 72 hours — to take paid leave.[42] Lastly, in a further case the court dealt with the issue of a teacher who refused to wear a mask due to a medical condition.[43] The court ruled that the employer, the Ministry of Education, was entitled to require the teacher to teach online and to prohibit her from teaching in person.

4 Labour Courts and Collective Agreements during the Crisis — Empirical Data

Generally speaking, the labour courts in Israel kept functioning during the Covid-19 crisis almost as usual. In fact in 2020 (Table 1)[44] the number of judgments and decisions was 40 409, similar to the number of judgments and decisions in previous years. However, even though this was the case, there was a decrease in the number of plaintiffs in 2020 as compared with previous years (Table 2). While in 2019 plaintiffs brought 54 493 proceedings, in 2020 the figure was only 49 300.[45] This may indicate that plaintiffs faced barriers with regard to access to courts

[40] *Sigal Avisahy v Kokhav Yair* (21 March 2021) Labour Court (Tel Aviv) 42405-02-21, Nevo Legal Database; *Sigal Avisahy v Kokhav Yair* (10 April 2021) National Labour Court 3955-04-21, Nevo Legal Database.

[41] *Sigalit Fikshtein v Supersal* (13 April 2021) National Labour Court 22796-04-21, Nevo Legal Database.

[42] *Uri Chen v Netanya Municipality* (2 May 2021), Labour Court (Tel Aviv) 50749-02-21, Nevo Legal Database. See also *Philip Shmilovich v Mkorot* (9 August 2021) Labour Court (Tel Aviv) 42414-03-21, Nevo Legal Database (pursuant to the Labour Court decision the plaintiff announced that he would present, against his will, negative Covid-19 test results twice a week).

[43] *Or Shemesh v The State of Israel* (26 August 2021) Labour Court (Be'er Sheva) 58948-02-21, Nevo Legal Database.

[44] The numbers are based on a search in the Nevo Legal Database.

[45] Israel's Court Administration Annual Reports 2019 (2020) and 2020 (2021).

in 2020 due to the Covid-19 crisis (Table 2). Another possibility is that there was a decrease in claims due to the fact that many employment relationships were suspended (due to unpaid leave) and fewer workers were in paid employment.

Moreover, during 2020 there was also a decrease in the number of proceedings that the labour courts managed to complete. While in 2019 the number was 57 833, in 2020 they decided only 49 829 cases (Table 2).[46] This decrease can be explained by the decrease in the number of proceedings that were instituted in 2020 as compared with 2019 (see above). Indeed, during the last ten years the labour courts concluded more proceedings each year (except for one) than the number of proceedings that were instituted (Table 2).

Table 1: Labour courts – judgments and decisions 2011-2020

Year	Judgments and decisions
2011	56 125
2012	41 140
2013	42 354
2014	38 107
2015	37 959
2016	39 579
2017	41 922
2018	42 356
2019	40 394
2020	40 408

Data: Nevo Legal Database

Table 2: Labour courts – proceedings opened and closed 2011-2021

Year	Proceedings opened	Proceedings closed
2011	48 788	55 044
2012	49 536	52 627
2013	52 513	54 172
2014	55 412	54 148
2015	54 402	55 727
2016	57 807	58 166
2017	54 685	55 524
2018	54 980	56 303
2019	54 493	57 833
2020	49 300	49 829

Data: Israel's Court Administration Annual Reports 2012 to 2020.

In order to understand better the influence of the Covid-19 crisis on the activity of the labour courts in Israel, we also looked at differences between months. We found that while during the first lockdown (March-May 2020) there was a sharp decrease in the number of judgments and

[46] ibid

decisions, the courts compensated for these months during the rest of the year (Table 3). Lastly, we also examined the number of collective agreements that Israel's social partners signed in 2020 as compared with previous years. As noted above, the labour courts' power extends to collective disputes — disputes between employee unions and employers or an employers' association. While these disputes may be resolved by courts or through mediation, they may also be resolved through collective negotiation and collective bargaining agreements. We found that the number of collective agreements that were signed in 2020 was especially high. Indeed, 2020 featured the highest number of collective agreements during the last ten years (Table 4). While in 2020 the social partners in Israel managed to sign 490 collective agreements, in 2019 only 385 collective agreements were signed and in 2017 only 345 (Table 4).[47]

Table 3: Labour courts – judgments and decisions 2020

Month	Judgments and decisions
January	3 442
February	3 181
March	3 267
April	1 750
May	2 994
June	3 944
July	3 691
August	3 102
September	3 319
October	3 140
November	4 143
December	4 435

Table 4: Collective agreements 2011-2020

Year	Collective agreements
2011	408
2012	381
2013	374
2014	332
2015	331
2016	385
2017	345
2018	378
2019	385
2020	490

Data: Ministry of Labour Collective Agreements Database

Moreover, the month with the highest number of collective agreements during 2020 was May (Table 5). The first lockdown in Israel ended at the end of April 2020. May 2020 was therefore a time when employers and employee unions had to think about safe ways to open the workplace

[47] The data was taken from the Minister of Labour Collective Agreements Database .

and bring the workers back to the office. It was also when employers began to dismiss workers who up until then had been on unpaid leave.

Table 5: Collective agreements in 2020

Month	Collective agreements
January	45
February	22
March	39
April	27
May	66
June	44
July	32
August	46
September	41
October	32
November	36
December	60
Total	490

5 Labour Court Activity during the Various Periods of Lockdown

Coronavirus was declared a contagious disease in Israel on 27 January 2020 by the Minister of Health on the grounds that it posed a grave danger to public health.[48] On 2 February 2020, the director-general of the Ministry of Health publicised an order mandating 14 days' quarantine for any person arriving from China and anyone who had come into contact with a coronavirus patient.[49] On 17 February 2020, the order was amended and quarantine directives were issued regarding those arriving in Israel from additional countries as well, later to be extended, mandating quarantine for anyone returning from abroad or who had been in close contact with a coronavirus patient.[50]

In the middle of March 2020, a general lockdown was declared in Israel, which required the legal system in very short order to prepare to deal with two contrary interests: protecting public health and the health of those working in the legal system, and keeping the legal system functioning during a time of lockdown and uncertainty.

The need for the labour courts to continue functioning stemmed from the fact that, as elaborated above, in Israel they not only deliberate over

[48] The declaration was made in accordance with para 20(1) of the Public Health Ordinance 1065/1940 (20 December 1940).

[49] Public Health Ordinance (2019 Novel Coronavirus) (home isolation) (temporary order) 5780/2020 (2 February 2020).

[50] Initially the regulation referred to countries in the Far East in Public Health Ordinance (2019 Novel Coronavirus) (home quarantine and various orders) (temporary order) 5780/2020 (17 February 2020). Later the list was extended, quarantine being mandated for anyone arriving in Israel from any country abroad.

collective disputes and individual disputes, but also provide necessary, sometimes urgent, relief to the poorest sectors of the population in the areas of social security (national insurance) and healthcare services (the 'basket' of health services and subsidised medications). For all practical purposes, in Israel these matters fall under the sole authority of the labour courts.

5.1 *Start of first lockdown — 15 March 2020*

A state of emergency and general lockdown was declared in Israel on 15 March 2020, as a result of which most of the legal system's workers were placed on forced leave, while judges and registrars and a small proportion of judicial branch workers were defined as essential workers and continued working. In the first stage of full lockdown, most of the judges' and registrars' work was performed from their homes. Throughout the lockdown period, they fully addressed all submitted requests, thanks to the 'Net Hamishpat' system — software that enables a paperless judicial process.[51] In recent years, all judges and registrars in Israel have been connected from their homes to the system. The system enables lawyers as well as unrepresented parties to submit requests or comments from afar.

Shortly after the start of the first lockdown, emergency regulations were introduced to adapt the routine of life in the emergency period to the severe restrictions imposed in every sphere of life, which were intended to halt the swift spread of the coronavirus.[52] These emergency regulations set severe restrictions on going out into public areas by limiting movement to 100 metres from people's homes.

Nonetheless, the emergency regulations explicitly excluded legal proceedings from these restrictions. Regulation 2(6) determined that despite the prohibition on leaving one's home and going into the public domain, the restriction would not apply to anyone required to leave their home for the purpose of a legal proceeding. These regulations initially took effect seven days from the date of their promulgation, and were extended from time to time over the course of the first lockdown.

To prepare for a situation in which urgent hearings were held in the labour courts in the course of a lockdown period with severe restrictions on going out into the public domain, it was necessary for the regulations to determine the list of proceedings that would be defined as essential and be held regardless of the lockdown period, on the understanding that there were cases that could not be postponed.

The emergency regulations, which enabled the activity of the labour courts system during the Covid-19 crisis, have their origins in the

[51] D Menashe 'A critical analysis of the online court' (2017) 39 *University of Pennsylvania J Int'l L* 921, 928.

[52] Emergency Regulations (new coronavirus – restriction of activity) 5780/2020 (21 March 2020).

regulations that were issued in 1991, during the First Gulf War, when activities in large parts of Israel were paralysed following SCUD missile attacks launched from Iraq.[53]

When the regulations were initially drawn up, no-one imagined it might be possible for a national state of emergency unrelated to security to be declared, and for that reason the definition of a special state of emergency referred only to war and 'a situation in which the ordinary routines of life in the state or in part of it are disrupted due to the security situation'.

With the emergence of a new state of emergency in the wake of the coronavirus, on 15 March 2020 the definition of a state of emergency was amended to include additional cases unrelated to security as follows: 'a situation in which the ordinary routines of life in the state or in part of it are disrupted due to the security situation, due to a real apprehension of severe harm to public health, or due to natural disaster'.[54]

Regulation 2(c) of the Procedural Regulations in a State of Emergency stipulates that in a national state of emergency, only proceedings in types of matters of which the president of the National Labour Court has been given official notice can be held. Accordingly, shortly after the regulations were issued, the president gave official notice determining which proceedings would be conducted in the National Labour Court and in the regional courts during the lockdown period.[55] The notice determined that the National Labour Court would hear urgent collective disputes, as well as appeals and requests to appeal that the National Labour Court president or her deputy had decided needed to be heard due to their urgency. Temporary relief matters would be heard as well.

As regards the regional labour courts' activity in five districts in Israel (Haifa, Nazareth, Tel Aviv, Jerusalem and Be'er Sheva), a detailed list of proceedings under their authority was publicised. The list included urgent collective disputes, workers' suits for payment of wages, requests for temporary relief, hearing of witnesses' preliminary testimony, proceedings under the National Health Insurance Law 1994, and under the National Insurance Law (consolidated version) 1995, including proceedings regarding the fulfilment of minimal rights of income guarantee, unemployment benefits, special services allocations, and relief allocations.

Although it would not have been surprising if the legal system, like most of Israel, had fallen into paralysis upon entering the first lockdown, data published by the judicial branch shows that already in the first week

[53] Labour Court Procedural Regulations in a State of Emergency 5751/1991 (24 January 1991).

[54] The amendment to the was publicised upon the start of the lockdown on 15 March 2020.

[55] Announcement by the president of the National Labour Court concerning the types of matters that will be deliberated in the labour courts under the Labour Court Procedural Regulations in a State of Emergency 5751/1991 (15 March 2020).

of lockdown 40% of the cases scheduled for that week took place.[56] This data indicates that efforts were made as far as possible to ensure as extensively as possible that the legal system, including the labour courts system, could hear urgent proceedings, while 'ordinary' proceedings scheduled to be held could be postponed due to the lockdown.

5.2 *End of first lockdown – 27 April 2020*

Immediately after the first lockdown, there was a significant rise in the labour courts' scope of activity, as the courts re-allowed entry to their premises under strict rules and procedures: filling in of a health questionnaire by visitors, taking the temperature of anyone arriving to the court, mask-wearing requirements, limiting the number of people in elevators, and marking off-limits seating places to maintain social distance between individuals. These restrictions applied to both the court rooms and the waiting areas. In the court room, plexiglass barriers were set up between the podium and the audience, as well as between the judge, the typist and the public representatives and between the lawyers.

On 27 April 2020, the president of the National Labour Court announced an expansion of the list of proceedings that would be held in the labour courts even during lockdown periods. The list was indeed expanded significantly, particularly concerning urgent social security proceedings vis-à-vis the National Insurance Institute. It was determined that the National Labour Court would discuss all appeals under the National Insurance Law, that the regional courts would also discuss appeals against decisions by medical committees (which are statutory bodies that discuss appeals against decisions taken by physicians of the National Insurance Institute), and that proceedings would be held in all types of law suits against the National Insurance Institute submitted by 31 December 2018.[57] On 10 May 2020, the president's announcement was again amended and the list significantly expanded, in such a way that the labour courts' activity in all spheres returned almost fully to routine operation.[58]

On 23 July 2020, the Law of Special Authorities for Contending with Coronavirus was enacted in Israel, which determined in primary legislation the rules and restrictions regarding a person's presence in

[56] A Filo, head of the judicial branch's spokesperson's department, 'The Activity of the Courts in the Course of the Coronavirus Crisis – Situation Report – 20 March 2020' https://www.gov.il/he/departments/news/spokemenmessage20032020.

[57] Amendment no 2 of the announcement by the president of the National Labour Court concerning the types of matters that will be deliberated in the labour courts under the Labour Court Procedural Regulations in a State of Emergency (28 April 2020).

[58] Amendment no 3 of the announcement by the President of the National Labour Court concerning the types of matters that will be deliberated in the labour courts under the Labour Court Regulations (procedural rules in a special state of emergency) (8851 5780 5613 (10 May 2020)).

public areas.[59] The law stipulates that the government is authorised to set regulations restricting activity in the public domain. Alongside that, however, paragraph 7(*a*) of the law provides several qualifications meant to ensure, among other things, the continued functioning of the judicial system. Paragraph 44 of the law states that its stipulations shall not apply to the courts and the labour courts and that judges and registrars of the courts and the labour courts shall be exempt from a series of restrictions set in the law's stipulations and regulations regarding their entering public areas for the purpose of their work.

In order to allow the participants in proceedings to attend court, paragraph 7(*a*)(1)(*k*) of the law stipulates that leaving one's home to participate in a judicial proceeding is one of the exceptions to the restrictions on going into public areas. Similarly, paragraph 15(*a*)(2) stipulates that someone living in an area in which restrictions have been imposed due to the coronavirus is authorised to leave the restricted area in order to participate in a judicial proceeding to which the person is party. Paragraph 12(*d*)(2)(*b*) stipulates that such a person will not be required to provide a negative coronavirus test result, or a certificate of recovery from the disease, even if the person is required to enter a special tourism area and those entering are required to present a negative test result or certificate of recovery.

The adaptations, designed to create a secure physical environment for those going to work in the court system were implemented by means of special regulations issued by the director of the courts under the Law for Contending with Coronavirus about half a year after the pandemic broke out.[60] In the regulations mask-wearing was mandated throughout the court area, but nonetheless the court was given the authority to order the removal of masks in the court room in appropriate cases, including where mask-wearing might make it more difficult to exact testimony. The regulations also stipulated that those in court should maintain as much as possible a distance of at least two metres between each person, and approved seating places were designated in the courtrooms.

Through the legislation thus consolidated, the judicial system in Israel prepared for future rounds of lockdown, while regulating the system's functioning and providing the authority in law and regulations to continue providing services to the public in need of them.

5.3 *Second lockdown – 29 September to 15 October 2020*

A second lockdown was imposed in Israel from Yom Kippur (the holiest day of the year in Judaism) until the day after the Sukkot holiday (another important Jewish holiday), thus embracing the entire high holidays

[59] Law of Special Authorities for Contending with the New Coronavirus (emergency regulation) 5780/2020 (23 July 2020).

[60] Regulations for Special Authorities for Contending with the New Coronavirus (restrictions in the courts system) (temporary regulation) 5781/2020 (23 September 2020).

season in Israel, for which reason the court system went into recess. In accordance with the emergency regulations, the Sukkot vacation in the judicial system was extended until the end of the lockdown, and in parallel the summer recess was shortened by three weeks.[61] This declaration of the extension of the recess in the judicial system made it unnecessary to hold certain proceedings in the lockdown period obviating the need to re-publicise a list of special proceedings that would be held in the course of the lockdown.

At the end of the second lockdown period the courts returned to full operation. From that date onward, the labour court has not been required to order any cancellations of proceedings due to the coronavirus. Nonetheless, the system has had to deal with requests for the cancellation or postponement of proceedings coming from parties to a proceeding as a result of going into quarantine, catching the disease, or belonging to a high-risk group. Later, when the educational system opened up, this was also due to the need for parents to supervise children in quarantine.

Throughout the period proceedings took place in the labour courts, with strict regard for the instructions to protect public health in public areas, and in accordance with the instructions dubbed the 'Purple Mark', a standard that allows public facilities that meet a series of conditions to operate. To enable the system to function optimally, far-reaching changes were instituted also in the secretariat's activity, including encouraging all attendees of the labour courts to transition to submitting documents from afar and communicating with the court not by physical attendance, but through electronic measures.

5.4 *Third lockdown – 27 December 2020 to 7 February 2021*

The third lockdown was imposed in Israel just before the beginning of the year 2021. Despite its length, as regards the judicial system it was very different from the previous lockdowns in that the system continued to operate fully, after a long process of adaptation and preparation between lockdowns in keeping with the Purple Mark format.

In parallel with the end of the third lockdown, a wide-reaching, unprecedented vaccination campaign began, which led to fully 60 per cent of the Israeli population being vaccinated within only a few weeks, with an emphasis on the elderly, enabling a full return to ordinary routine. However, in August 2020 over one million people remained unvaccinated for various reasons, including people who refused to be vaccinated.

[61] Labour Court Regulations (recesses) (temporary regulation) 5781/2020 determined that the Sukkot recess would be extended to 10 October 2020 (8779 5781 22 (24 September 2020)). On 7 October 2020 the temporary regulation extended the Sukkot recess until 15 October 2020 (8809 5781 104 (7 October 2020)). It bears mention that even before that it was determined that in order to limit the backlog created in the labour courts system the summer recess would be shortened, to begin on 8 August 2020 instead of on 21 July 2020 (Labour Court Regulations (recesses) (temporary regulation) 5780/2020 (1 June 2020)).

It is therefore still necessary to address the needs of unvaccinated people, and in the judicial system the understanding has grown that it must prepare for any possible scenario in the future, including another full lockdown. The chosen solution has been to create a technological network that operates both in lockdown periods and in ordinary times, and which allows proceedings to be held without the parties being present in court, by developing and upgrading technological means which until now have not been widely used in the judicial system.

6 Making Labour Court Activity Accessible and Ways to Deal with Future Emergency Situations

The technological adaptations implemented in the courts, including the labour courts, can be divided into two types. The first type relates to adaptations intended to make it possible to conduct judicial proceedings in the labour courts in the presence of both parties, or when one party cannot physically attend court due to quarantine or a lockdown imposed in their area; the second type constitutes adaptations intended to make it possible to conduct judicial proceedings without the parties being present in court, the deliberations being held from afar by the parties and their attorneys, with only the judge sitting in the courtroom and directing the proceeding by technological means.

6.1 *Making the physical space inside the Labour Court a secure environment*

For a number of months the judicial system operated in keeping with the Purple Mark standard, even after the arrival of vaccines and the issuance of the 'Green Mark', which lifts the restrictions on movement for those who provide a certificate of vaccination or of recovery from the disease. The Purple Mark means that in the courts there are no restrictions as regards going into the courtroom for someone who does not present the Green Mark, as opposed to other public places such as hotels or airports, where it is necessary to present a negative coronavirus test or the Green Mark, which indicates that the person has been vaccinated or has recovered from the disease. Similarly, in the labour courts there are no strict restrictions on the number of people allowed to be in the courtroom itself, but nonetheless it has been determined that the number of people allowed to be there who are not the litigants themselves will be set in accordance with the size of the room. The Purple Mark did not last long and soon after it was launched it was abandoned, with the Green Mark being preferred.

In cases where a proceeding involving many participants needs to be held, the court is authorised to order that the proceeding be held through visual attestation, such that some of the participants stay in adjacent court rooms to the one where the judge is presiding and can watch the proceeding and take part in it via the television screen.

A mechanism for exacting testimony from afar is set in the civil procedural regulations, which allow the hearing of testimony via video conferencing in the territory of the state of Israel or outside it subject to several conditions stipulated in the regulations.[62] Among other things, the requirements call for there to be machinery in the court room making it possible to see and hear witnesses in the course of their testimony, by means of a central screen in the court room and a personal screen for the judge. It was further determined that the director of the courts is authorised to update the technical requirements pertaining to the necessary technical equipment.

This method of exacting testimony by video makes it possible to conduct proceedings in the courtroom even when one of the litigants or witnesses is unable to attend the proceeding due to coronavirus restrictions (eg, quarantine or lockdown). All the other parties do attend the hearing and bring with them a desktop computer, which can be connected to the television screen in the courtroom. In such a case the proceeding is conducted by means of a programme such as Skype, and it falls on the parties to check beforehand that the technical equipment is in working order.

6.2 *Proceedings via video-conferencing*

The coronavirus pandemic accelerated the use of video-conferencing for proceedings. Proceedings are conducted from afar, with the parties not in attendance physically but participating via video-conferencing. As mentioned earlier, this is possible due to the technological infrastructure of the Net Hamishpat system. With the addition of a new application, the system allows the secretariat to create a link, which makes it possible to connect to a video-conference proceeding being conducted by the court.

The coronavirus pandemic thereby contributed to the creation of a long-distance conferencing mechanism, unique to the labour courts, which even today serves for proceedings in the area of the National Insurance Law, mainly appeals against decisions by medical committees, in which no testimony is heard and the proceeding is conducted on the basis of arguments by the litigants' attorneys, as is the case in administrative appeals. These proceedings, which are conducted by means of video-conferencing, represent an efficient mechanism for emergency situations, with minimum disturbance to the public or litigants who have been waiting for months for a proceeding that may have been postponed during the lockdowns, because both parties could not attend.

Nonetheless, there are still a number of obstacles making it difficult to realise the full potential of video-conferencing in the labour courts. The

[62] Regulation 72 of the New Civil Procedural Regulations 5779/2018 (11 October 2018). The regulation was adopted in the amendment to Regulation 129 of the Labour Court Regulations (procedural rules) 5752/1991 (31 December 2020).

major one is the lack of access for people who are not represented by lawyers, since proceedings can be conducted only from lawyers' offices or homes, where the necessary means to connect to the Net Hamishpat system are available. This of course is an obstacle throughout the judicial system, but in the labour courts, whose very raison d'être is to meet the needs of the most deprived people, be they migrant workers or welfare recipients supported by the national insurance system, it seems to be a more formidable obstacle. This difficulty has been partially resolved by several means. First, the National Insurance Law stipulates that the Ministry of Justice (through the Legal Aid Bureau) must provide legal assistance (free of charge) for plaintiffs who sue the National Insurance Institute. Second, employee unions (such as the Histadrut) and NGOs (such as the Workers' Hotline) represent workers in the Labour Court pro bono. Third, during the lockdowns, judges conducted proceedings in several collective disputes by telephone (instead of video conferencing). Lastly, according to the law, claims for wages as well as other core labour rights are completely exempt from any fee. So, at least theoretically, there is accessibility and it costs nothing to conduct the legal proceedings.

Despite the difficulties and obstacles involved in conducting proceedings in this way, undoubtedly the coronavirus pandemic contributed to a technological revolution in the judicial system, which hopefully in the future will help reduce the overload caused by the postponement and cancellation of proceedings in the coronavirus era —the end of which, for now, cannot be foretold. It is therefore still too early to know how and to what extent video-conferencing will change the way in which judicial proceedings are conducted in the labour courts.

7 Concluding Remarks: What does the Future Hold?

This article shows that the Covid-19 crisis gave rise to new disputes and therefore a great need for a functioning labour court. Indeed, it seems that times of crisis only increase the demand for labour dispute tribunals or courts. This is especially true in Israel where the labour courts system is in charge not only of individual and collective employment disputes, but also has to resolve disputes regarding social security and healthcare rights.

Perhaps due to this acute need, as shown in this article, the labour courts in Israel indeed kept working throughout the crisis, enabling access to the courts and justice despite the challenges. This was accomplished primarily by three means: (a) technological tools — the Net Hamishpat system and virtual proceedings — were utilised by the courts throughout the crisis; (b) the courts made managerial decisions, awarding precedence to more important proceedings that were not disrupted even under the most severe lockdowns; (c) social distancing regulations were imposed in the courts. While some of these tools had been partly used before, the extent of the use of technology was novel, as demonstrated by the

acquisition of new technological tools that enabled such use. It remains to be seen what this means for the future. How will the knowledge and access to these technological tools shape labour courts' proceedings? What will the impact be of these tools on the public seeking labour justice?

The article further shows that during the crisis there was a rise in the number of collective agreements signed between employee unions and employers. This finding may incline towards the conclusion that in Israel the social partners were involved in resolving collective disputes through negotiation. Such a practice of a negotiated conclusion to labour disputes is in line with ILO recommendations for social dialogue during the Covid-19 crisis.[63]

Lastly, it remains an open question whether technological innovation and virtual courts provide more or less access to justice and courts. On the one hand, our article shows that Israel's labour courts system managed to function similarly to previous years. Our research therefore confirms the literature about the potential of virtual courts to reduce overload and to provide access to plaintiffs seeking relief for labour rights' infringement. On the other hand, in Israel virtual proceedings are currently unavailable to unrepresented parties, thus potentially providing less access to courts for poorer people. However, as explained in the article, the barriers for unrepresented parties are lowered somewhat by several means, including pro bono representation in cases regarding the National Insurance Law (without means tests) and in other cases (subject to income tests). Empirical data shows that plaintiffs opened fewer cases than in previous years. While this may indicate a problem of access to justice during the Covid-19 pandemic, alternatively it may indicate there have been fewer disputes due to the temporary suspension of employment relations during the crisis.

[63] ILO 'Policy Brief: The Need for Social Dialogue in addressing the Covid-19 Crisis' (2020a) https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/briefingnote/wcms_743640.pdf; ILO 'Policy Brief: Peak-level Social Dialogue as a Governance Tool during the Covid-19 Pandemic: Global and Regional Trends and Policy Issues' (2020b) https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/--dialogue/documents/briefingnote/wcms_759072.pdf.