

Bill for prevention of damage to the State of Israel through boycott (2011)

Definition

1. In this law, “boycott of the State of Israel” - deliberate avoidance of economic, cultural or academic ties with a person or other party, solely for reason of his/her/its relation to the state of Israel, to any of its institutions or to any area under its control, which could cause them economic, cultural or academic harm.

Boycott – a civil wrong

2. (a) Anyone who publishes a public call for a boycott of the state of Israel, and its content and circumstances may reasonably be expected to lead to a boycott, and the publisher is aware of this possibility - is committing a civil wrong and the law of Tort [new version] shall apply to him/her.

(b) Regarding Section 62a of the law of Tort [new version] causing breach of contract by calling for a boycott of the state of Israel shall not be seen as sufficient justification.

(c) If a court finds that a wrong has been committed under this law, it shall be permitted to order the party committing the wrong to pay compensation independently of actual damage done (exemplary damage). When determining the sum of compensation the court shall take into account the circumstances of the wrong, its severity and its scope.

Regulations regarding restrictions on participation in a tender

3. The Minister of Finance is permitted, pending authorization by the Constitutional Committee of the Knesset, to set regulations regarding restrictions on participation in a public tender, due to undertakings made by a party making an offer to participate in a boycott of the state of Israel, including undertakings not to purchase products or services produced or provided in the state of Israel, in any of its institutions or in an area under its control.

Implementation

4. The Minister of Justice is appointed to implement this law.

Explanatory notes

The aim of this law is to prevent damage caused by the phenomenon of boycotts imposed on various parties due to their relation to the state of Israel. The boycotts are liable to damage trade, cultural or academic activities of the target of the boycott and to cause it grave damage, both financial and reputational.

In order to prevent such damage, we have proposed that conscious publication of a public call for imposition of a boycott on any party due to its relation to the state of Israel shall be considered a civil wrong to which Tort law shall apply, i.e., that will enable receipt of compensation due to the damage done by the wrong. It is already

possible today to sue for damage caused by a boycott, in suitable circumstances, due to the wrong of breach of contract or the wrong of negligence. The bill aims to define a new civil wrong that shall apply even in cases that do not fall under these wrongs and will enable persons or parties damaged as a result of boycott imposed on them due to their relation to the state of Israel to sue for damages.

Grounds for suit under this new civil wrong shall be a public call for boycott, in circumstances in which it is reasonable to expect that such a call will indeed cause imposition of a boycott. Moreover, the person committing the wrong will be required to be aware of his conduct and of the possibility that the call will lead to imposition of boycott.

As with other civil wrongs, it will be possible to sue for compensation for damage that was actually caused to the target of the boycott. In addition to the general regulations of the law of Tort, we propose that the court be allowed to set exemplary damages too, if the circumstances justify this.

Moreover we propose that the Minister of Finance set restrictions on participation of parties who have undertaken to participate in boycotts of the state of Israel in public tenders. The bill does not relate to the decisions of individuals whether and from whom they should purchase products and services, but deals with organizing for deliberate withholding of ties from persons or parties, solely due to their relation to the state of Israel.

When preparing the bill for 2nd and 3rd readings the Constitutional Committee shall discuss other aspects of the phenomenon of boycotts and will examine the possibility of defining a criminal violation (cf US Federal Law Export Administration Act, 50 U.S.C (1979), which sets out prohibitions due to trade restrictions or boycotts, imposed or supported by states against states friendly to the US or against citizens of the US).

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