CA 6860/01

Abdalrahman Mussah Hamadah

v.

1. Israel Auto Insurance Fund
2. Avner—Auto Insurance Association

The Supreme Court sitting as the Court of Civil Appeals
[November 28, 2002]
Before Justice T. Strasberg-Cohen, Justice E. Rivlin and Justice A. Grunis

Appeal to the Supreme Court, from the judgment of the Tel Aviv/Jaffa District Court.

Appeal dismissed.

For the appellant—Tzabar Gur
For the respondents—Alon Belga and Lior Amalia

JUDGMENT

Justice T. Strasberg-Cohen

Facts

1. On October 31, 1990, appellant was shot and injured while driving through the streets of Gaza City in a car insured by respondent no. 1, an Israeli insurance company. Appellant was taken to Shifa Hospital in Gaza. He was then moved to Soroka Hospital in Be'er Sheva, where he remained hospitalized for close to two months. Approximately seven years later, on October 12, 1997, appellant submitted a personal injury claim to the Tel Aviv/Jaffa District Court under the Road Accident

Victims (Compensation) (Gaza Strip) (Number 544) Order-1976 [hereinafter Compensation Order]. The court summarily dismissed the claim as being barred by the statute of limitations.

Judgment of the District Court

2. The district court ruled that, since the accident occurred in Gaza, the Compensation Order applied. The Compensation Order regulates road accidents claims in a manner similar to the Road Accident Victims (Compensation) Law-1975 [hereinafter the Compensation Law]. However, at the same time, the Compensation Order applies several sections from the Civil Wrongs Ordinance-1944 [hereinafter the Mandatory Ordinance], including the two year statute of limitations provided for in section 68(a) of the latter. The Court ruled that this two year prescriptive period should be applied, since section 27 of the Prescription Law-1958 provides that the latter would not affect any period of prescription fixed in any "other law." The Court saw the Compensation Order as an "other law" which provides for a particular prescriptive period. Thus, the court held that the Compensation Law does not apply despite the fact that the claim was submitted in Israel. As such, the court dismissed the claim.

Arguments

3. Appellant claims that the Compensation Order is not a "law," as defined by the Interpretation Ordinance (New Version) or the Interpretation Law-1981, and is not an "other law" as defined by section 27 of the Prescription Law. As such, section 27 should not apply, and the Mandatory Ordinance should not determine the prescription period. Appellant further asserts that the prescriptive period should be determined in accordance with Israeli law, which provides for a seven-year statute of limitations. Appellant also claims that under the Oslo Accords, and also due to the practice of the respondents, compensation claims under the Compensation Order may only be submitted in Israeli courts. As such, appellant claims, Israeli law should be applied. In Israel, the Mandatory Ordinance has been replaced by the Civil Wrongs Ordinance (New Version), and the prescription period in section 68(a) of

the Mandatory Ordinance has been modified by section 89 of the Civil Wrongs Ordinance. As such, courts in Israel determine the prescription period according to section 89 of the Civil Wrongs Ordinance.

In the alternative, appellant asserts that his injuries constitute "continuing damages." Under section 68(b) of the Mandatory Ordinance, where there are "continuing damages," the prescription period begins running only after the damages cease.

4. Respondents, for their part, agree with the judgment of the district court. They assert that it should not be possible, by shifting the venue of the claim, to revive a claim which has become time-barred in the locations where the accident occurred. They assert that the Compensation Order creates the appellant's right to compensation, and the Order also limits that right. The Order provides for a two-year statute of limitations. Moreover, as the claim was submitted in Israel, the Prescription Law cannot be applied. The Compensation Law is territorial and applies only to accidents which occurred within the State of Israel. Local law applies to an accident which occurred in Gaza, and that local law is the Compensation Ordinance. Respondents assert that this is a correct interpretation of the law, including the language of the Motor Vehicle Insurance Ordinance (New Version)-1970 and the relevant caselaw. Respondents claim that the fact that the Israeli courts have applied "local law" does not mean that the Israeli prescription period should be applied. This is because the Prescription Law is a general law which is overridden by the specific law of the Compensation Order. It is also the case under section 27 of the Prescription Law, since the Compensation Order is a "law," as defined by the Interpretation Ordinance, and should be seen as an "other law" which section 27 of the Prescription Law refers to.

Respondents also claim that if the Compensation Order is not "Israeli law"—but rather "foreign law"—its statute of limitations should be construed as a substantive—not procedural—law which, under private international law, apply in an Israeli forum. This is a basic legal approach in common law countries. Appellants also complain of the growing phenomenon where compensation claims concerning accidents which occurred in Judea, Samaria or Gaza [hereinafter the Area], and

which involved residents of the Area, are submitted to the courts in Israel in an attempt to use the Israeli statute of limitations. Due to the security situation in the Area, this prevents the proper investigation of the relevant facts. Thus, respondents assert, as a matter of appropriate policy, the prescription period set in Israeli law should not be applied.

The appeal here focuses on the prescription of a personal injury claim submitted in Israel by a party injured in a road accident which occurred in the Area, where the car was insured by an Israeli company.

The Statute of Limitations

5. In 1976, approximately one year following legislation of the Compensation Law, the military commander issued orders regarding compensation for victims of road accidents—Order no. 544 in Gaza and Order no. 677 in Judea and Samaria. Like the Israeli Compensation Law, these orders established no-fault causes of action for victims of road accidents. They also established a statutory fund for the compensation of the victims of road accidents. The Compensation Order includes comprehensive regulations, which are essentially identical to the regulations of the Compensation Law and, in certain matters, refers to the Mandatory Ordinance. In one case, the orders refer to section 68 of the Ordinance, which deals with the statute of limitations:

> 68. No action shall be brought for any civil wrong unless such action be commenced –
>
> (a) within two years next after the act, neglect or default of which complaint is made, or
>
> (b) where the civil wrong causes fresh damage continuing from day to day, within two years next after the ceasing thereof…

The period of prescription in claims regarding personal injury caused by a road accident is, under section 68 of the Mandatory Ordinance, two years. The period of prescription in Israel, in contrast, under section 5 of

the Prescription law, is seven years. Which law applies to the case at hand: the two-year prescription period of the Mandatory Ordinance or the seven-year prescription period of the Israeli Prescription Law? Before examining this question, I will devote some space to the normative status of the Compensation Order and to the source of the authority of the military governor who issued the order.

Status of the Military Governor in the Area

6. The status and authority of the Israeli military governor of an area under military control are derived, first and foremost, from customary international law. *See* G. von Glahn, *The Occupation of Enemy Territory* 27 (1957); 2 L. Oppenheim, *International Law* 432-34 (7th ed.). Article 43 of the Hague Convention Regarding the Laws and Customs of War on Land-1907 [hereinafter Hague Convention] grants authority to the military governor and even obligates him to act to "restore" and "ensure," as far as possible, "public order and the safety" of the residents of the area. *See* HCJ 302/72 *Hilu v. Israeli Government* IsrSC 27(2) 169; HCJ 606/78 *Saliman Tofif Oyev v. Minister of Defence* IsrSC 33(2) 112; HCJ 390/79 *Doykat v. Israeli Governement* IsrSC 34(1) 1; HCJ 69/81 *Abu Atya v. Commander of the Region of Judea and Samaria* IsrSC 37(2) 197, 309; HCJ 393/82 *Jamit Askhan Almaalmon Altaonya Almahduda Almaolya v. IDF Commander in the Region of Judea and Samaria* IsrSC 37(4) 785; HCJ *Tha v. Minister of Defence* IsrSC 45(2) 45. On the authority of this obligation the governor acts to regulate the lifestyle and welfare of the residents of the area. *See* von Glaht at 436-37; Oppenheim, at 33-34.

There is an additional normative source of authority, which stems from the fact that the military governor of the Area is an Israeli government authority. This stems from the Proclamation in the Matter of Law and Government (Judea and Samaria) (Number 2), promulgated on June 7, 1967, which grants legislative and administrative authority regarding the Area to the IDF commander in the Area. It provides that such authority shall be exercised by the commander, or by whoever acts on his behalf. *See* section 3(a) of the Proclamation. An examination of the legislative activities of the governor demonstrates that they accord with

government policy and are often influenced by Israeli statutes, at times even identical to them. Professor A. Rubenstien states:

> The regional commanders are military officers who answer to the Chief of Staff and the Minister of Defense. The person responsible for legislation is the Coordinator of the Activities, who is subject to the Minister of Defense. Legislative actions or orders must be approved by the civil government system, and often the initiative itself comes from the Coordinator of Activities or the Minister of Defense. Occasionally, the initiative, or the approval, is given by the government itself. In effect, the regional commanders are the executive arm of governmental policy. Furthermore, the various "headquarter officers" stationed at regional headquarters, and who represent the various government ministries, are the official extensions of the government ministries.

See A. Rubenstien, *The Shifting Status of the Administered Territories*, 11 Iyunei Mishpat, 439, 451-52. In another context, Justice I. Zamir stated:

> The Foreign Minister, responsible for foreign policy, speaks in the name of the state… The IDF commander in the region of Judea and Samaria, who also acts on behalf of the government, speaks in the name of the state in all matters regarding the territory in that area. Both voices are voices of the state.

HCJ 2717/96 *Wapah Ali v. Minister of Defence* IsrSC 50(1) 848, 855.

7. Thus, the normative source of the authority of the military governor in the Area is twofold—it stems from customary international law as well as from Israeli law, in that the governor acts as the arm of the Israeli government. In this regard, Professor I. Dinstien writes:

> The authority of the legislative Jordanian authority has been suspended, and the Israeli military commander acts as a substitute for it, subject to the limits placed upon him by international law. He possesses legislative authority for the West Bank. However, from the perspective of Israeli constitutional law, the military commander continues to be a part of the executive branch, and his actions are subject to the judicial review of the Supreme Court sitting as the High Court of Justice, just like the actions of the Chief of Staff and the Minister of Defense, who are appointed over him…. In my opinion, the legal status of the legislative acts of the military commander, from the point of view of the Supreme Court of Israel**,** does not differ from the legal status of any administrative regulations promulgated by the executive branch. In both situations, the High Court of Justice may embellish upon it… It can be appreciated that the twofold nature of the military commander as both supreme legislator, from the perspective of the territories, and as an executive authority subject to rules and regulations, from an Israeli perspective, raises difficulties of both practical and theoretical natures.

I. Dinstien, *Judicial Review Over the Activities of the Military Government in the Administered Territories*, 3 Iyunei Mishpat 330, 331-32 (1973). It seems that the above paragraph, which concerned judicial review of the actions of the military commander, also applies to questions of private law.

This Court, in a number of decisions, has addressed the duality which characterizes the status of the military governor. We have held that this duality requires the governor's orders to conform to the requirements of both international and Israeli law. *See* HCJ 302/72 *Id.*; HCJ 606/78 *Id.*; HCJ 390/79 *Id.;* HCJ 60/81 *Id.*, at 230-232; HCJ 393/82 *Id.*.

8. How does the normative duality of the governor affect the status of the orders he issues? The cases I have cited, in which the Court implemented a dual test for the examination of the governor's orders,

concerned administrative petitions which examined the actions and activities of the governor. This is not the case here, where we are being asked to determine the normative status of the governor's orders in a civil proceeding before an Israeli court. In such a situation, should we consider the governor's orders as "foreign law" or "Israeli law"? The answer to this question will affect the prescriptive period which applies to a right created by the Compensation Order, the Mandatory Ordinance or the Israeli Prescription Law. If we conceive of the governor's order as "foreign law," the question will be examined in light of the principles of private international law which apply to the implementation of foreign law in a local forum. On the other hand, if we conceive of the governor's orders as Israeli law, we must refer to section 27 of the Prescription Law which states that it will not apply where the matter is specifically regulated by another law. I will discuss each of these possibilities.

The Order as Foreign Law—Private International Law

9. The relationship between Israel and the Area is not a relationship between two independent sovereigns. There is the sovereign country of Israel, on the one hand, and administered territory, on the other. This Court, in dealing with the orders of the military governor has presumed them to be "foreign law." *See* CrimA 831/80 *Tzoba v. State of Israel* IsrSC 31(2) 169; CA 300/84 *Abu Atya v. Arbatisi* IsrSC 39(1) 365; C.App. 4716/93 *Nablus Arab Insurance Co. v. Abed Zrikat* IsrSC 48(3) 265; Crim.A. 8019/96 *Amir v. State of Israel* IsrSC 53(4) 459, 477. For the sake of argument, under the assumption that the governor's orders are foreign law, choice of law in the matter of prescription is determined in accordance with the rules of private international law, to which I now turn.

When a matter which involves foreign law comes before a local forum, the rules of international law provide that procedural rules shall be in accordance with the law of the forum, while substantive rules shall be in accordance with foreign law. In Israel, questions of prescription are procedural issues. As such, it would seem that the laws of the forum should be used. Such is not the case, however, where foreign law creates a comprehensive system of regulation which includes provisions that regulate the realization of those substantive rights. Where the legislation

grants substantive rights and includes provisions which limit their realization—even procedural provisions—the system of regulation should be applied in its entirety. In such circumstances, the procedural provisions should be construed as inseparable from the substantive provisions, such that the procedural provisions become an integral part of the foreign substantive law. Even if one finds that the provisions remain procedural despite their being part of the general substantive system of regulation, a plaintiff who desires to rest his claim upon foreign law should not be allowed to select part of those regulations while ignoring others. He cannot choose those provisions which are beneficial to him, while ignoring those which are to his detriment. Such a result is dictated by both common sense and proper legal policy. This is the case here: where foreign law creates a cause of action for the realization of substantive rights and simultaneously sets out a specific limitations period for their realization, the local forum's procedural rules of prescription will not apply.

10. The proposal for the Choice of Law Act-1987, written by Professor A. Levontin, is a clear expression of this approach. This proposal was not legislated. However, there is no reason not to adopt its approach and apply it in the appropriate contexts, through judicial interpretation. Section 50 of the proposal, the section relevant to the matter at hand, provides:

> (7) In examining a right granted by foreign law, and in realizing such a right in Israel, the prescription provisions of the law that set out the right should be taken into account. Where foreign law provides for a specific prescription period for the enforcement of a particular right, it is presumed that the foreign law intended that this specific period should apply even when the proceedings regarding that right occur outside the country of that law, including Israel.
>
> Where foreign law provides a general procedural period of prescription, it is presumed that the foreign law only intended that period to be binding in proceedings occurring within that country.

The explanatory notes of the proposed provision state:

> Where foreign procedural prescription has been attached to a particular right, and only to that right, it should be assumed that something inherent in the nature of that right led the foreign legislator to specifying a period of prescription for it. In such a case "it is presumed that the foreign law intended that it should apply even when the proceedings regarding that right are taking place outside of the country of that law, and in Israel.

Explanatory Notes to the Choice of Law Act, Ministry of Justice Publishing-1987, p.91.

The approach I set out above is apparent in the proposed law and the explanatory notes. According to this approach, a prescription period which is attached to a particular right shall be applied in every state in which the realization of the substantive right is requested, even where the prescription provision is, at the outset, procedural. This approach is not unique to Israel. It has been adopted in the common law countries, whether through legislation or through caselaw.

Comparative Law

11. The federal structure of the United States, which is comprised of autonomous states, has provided rich ground for the discussion of choice of law questions. Over the years, both legislative rules and caselaw have developed to deal with conflicts between the laws of the states, especially with regard to the issue of prescription. The problem was a result of the traditional approach, which perceived statutes of limitations as procedural. This encouraged "forum shopping." In order to prevent this phenomenon, two main rules were formulated. The first, a product of case-law, relates to statutes of limitations of a sister-state as foreign substantive law. This rule provides that when a statute creates any sort of obligation and limits that obligation by a particular period of prescription, the court will perceive the prescription period as accompanying that

obligation in any court in which the obligation is claimed, even where prescription is procedural. In this regard Justice Holmes stated in *Davis v. Mills,* 194 U.S. 451, 454 (1904):

> [C]ourts have been willing to treat limitation of time as standing like other limitations and cutting down the defendant's liability whenever he is sued. The common case is where a statue creates a new liability and in the same section or in a same act limits the time within which it can be enforced, whether using words of condition or not…. It is merely a ground for saying that the limitation goes to the right created and accompanies the obligation everywhere.

The second rule is statutory, and involves the adoption of "borrowing statues." The foreign law is borrowed and drawn into local law. In this way, the prescription period of the state of the substantive law is applied by the forum handling the claim. E. F. Scholes and P. Hay explain:

> As noted, the traditional (procedural) characterization of the Statue of Limitation may encourage forum-shopping. Two exceptions are designed to alleviate this problem. The first exception is a judicial creation: when the foreign limitation is intended to extinguish the right and not only to bar the remedy, it will be considered to be "substantive"… The courts invariability limit the substantive characterization to limitations of rights created by statute. The limitation is considered to be "built-in"… The second exception to the traditional rule… It takes the form of "borrowing statutes enacted by most jurisdictions". The typical "borrowing statute" provides that the cause of action will be barred in the forum if it is barred where it arose, accrued or originated.

E. F. Scholes & P. Hay, Conflict of Laws 60-62 (2nd 1992). (For additional judgments dealing with the case-law rule *see* Scholes & Hay, 60, nn. 2-4. For additional judgments regarding the system of "borrowing statutes" see *Heavner v. Uniroyal,* 305 A.2d 412 (N.J. YEAR?); *Henry v. Richardson-Merrell.*, 508 F.2d 28, 32 (3d Cir. 1973); *Allen v.*

Volkswagen of America, 555 F. 2d 361 (FORUM 1977).

12. Thus, in American Law, the traditional common law approach, which provided that the law of the forum would apply with regard to statutes of limitation, was abandoned. Instead, it was determined that foreign statute of limitations would apply. A similar approach may be found in Scottish and Australian caselaw. *See* Dicey & Morris, The Conflict of Laws 185 (12th ed. 1992). England has also abandoned the traditional common law approach. After years of criticism of the traditional rule, a committee was established to examine the application of foreign law in English courts. In 1984 the Foreign Limitations Periods Act was legislated. This law regulated the application of prescription in a conflict of laws situation. It provided that, in dealing with a claim under foreign substantive law, the foreign period of prescription would be applied. The English prescription period would only apply in cases where English substantive law applied:

> The Act was based on the recommendations of the Law Commission. It adopts the general principle, subject to an exception based on public policy, that the limitation rules of the *Lex Causa* are to be applied in England. English limitations rules are not to be applied unless English law is the *Lex Causa* or one of two *Leges Causae* governing the matter.

Dicey & Morris, 186-87. *See also* J. D. McClean, Morris: The Conflict of Laws 386-87 (4th ed. 1993); Cheshire North, Private International Law 79-81 (12th ed. 1992).

To conclude this section, I find the approach articulated above to be acceptable. I am of the opinion that, where Israeli courts are dealing with a matter involving foreign law, and the applicable foreign substantive law provides for a specific period of prescription, the prescription period should be construed as a substantive provision. Alternatively, the prescriptive period should be construed as an integral part of the foreign law. This suffices to determine that, in so much as the Compensation

Order is foreign law, the appellant's claim has become time-barred, and should be dismissed.

The Order as "Law" or "Other Law"

13. I shall now turn to examine the other approach before us, which perceives the military governor as an Israeli authority. According to this perspective, the order has been promulgated by an Israeli authority. As such, the issue of prescription, as well as the Compensation Order itself, should be examined as Israeli law, and the issue would be governed by the Prescription Law. Section 27 of the Prescription Law provides that it does not affect a prescription period that is provided for in another law:

> 27. This law shall not, unless otherwise expressly therein provided, affect any period of prescription fixed for a particular matter in any other law…

If the Compensation Order is an "other law," which provides a distinct prescription period, that period will apply. On the other hand, if the Compensation Order is not an "other law," the prescription period provided in section 5 of the Prescription Law will apply. More specifically, the "other law" would be the Mandatory Ordinance which the Compensation Order refers to.

14. The Prescription Law does not define the term "other law" in section 27, and there is no caselaw on the matter. In the cases regarding section 27 which have come before Court, all of the relevant legislation has been Israeli legislation. *See, e.g.*, CA 419/71 *Menorah Re-Insurance v. Nomikus* IsrSC 26(2) 527; CA 33/72 *Fromin & Sons v. Director of Customs and Excise Taxes* IsrSC 28(2) 459; AD 36/84 *R. Tychner v.Air France French Airways* IsrSC 41(1) 589. This is not the case here, where the position of the possible "other law" is characterized by the dual status of the issuer of the order.

In interpreting the term "other law," we turn to the Interpretation Ordinance. This is because the Interpretation Law does not affect the definitions contained section 1 of the Interpretations Ordinance regarding

statutes and administrative orders which were enacted before the Interpretation Law came into effect. For such matters, the Interpretation Ordinance governs. The Compensation Order and the Prescription Law were enacted prior to the Interpretation Law. Therefore, the relevant statute is the Interpretation Ordinance, which contains the following definition of a "law":

> "law"—any law or regulation, whether passed before the commencement of this Ordinance, or after it;
>
> "regulation"—any regulation, rule, bylaw, proclamation, order, direction, notification, notice or other document, issued by any authority in the State of Israel or in Israel.

Can the Compensation Order, which was issued in the Area, be considered an "order" issued by "any authority" in "Israel", which is included in the definition of a "regulation" that is "law"? The answer to this question is not simple. We must examine the essence of the order, as well as its connection to Israeli law. As stated, the normative source of the governor's orders, including the Compensation Order, is Israeli. This is a result of the military governor's position as an organ of the Israeli government. Regarding the status of the governor as part of the executive branch, and the derivative status of his legislation as secondary legislation of the executive branch, see *supra* para. 7.

7. With regard to the status of the legislator in the Area as an extension of the executive branch of the government, Professor Rubenstein writes:

> Anyone who deals with law in the Area immediately notices the vast disparity between the reality and the legal fictions which disguise it. One obvious legal fiction is that the military commander is the legislator for the Area….. In fact, the regional commanders are actually the executive arm of government policy….For all practical purposes, they are actually an extension of the government.

Rubenstien, at 452. In the same spirit, Justice Kedmi is of the opinion that, with regard to judicial notice, defense legislation in the Area has the same status as domestic Israeli law:

> With regard to judicial notice, defense legislation in the Area is subject to the same rules as Israeli legislation. The "legislator" in the Area is the long arm of the Israeli executive branch…. Considering the dual status of the legislator in the Area—Israeli, on the one hand, and local, on the other—our courts may regard defense legislation as if it were internal secondary legislation which applies only in the Area.

Crim.A. 8019/96 *Amir, Id.*

15. The core of the Compensation Order is identical to the Compensation Law. This Court construes the Compensation Order with an eye to its clear and strong connection to Israeli law. The Deputy President, Justice S. Levin, has stated that the normative source of the Compensation Order is Israeli, and that the order draws its principles from the Israeli Compensation Law. He states:

> The issue of liability in a road accident, including the question of a definition of a "road accident," is regulated in the Area by the orders of the military governor, in accordance with the principles of absolute liability and appropriation of cause, while the normative source of the legislation is Israeli, through the military governor.

C.App. 3003/96 *The Arab Insurance Company Inc. v. Amro* 55 Dinim Elyon 926. *See also* C.App. 4716/93 *Shechem Arab Insurance Co. v.Zrikaat* IsrSC 48(3) 265, 272-73 (Levin, D.P.)

The combined effect of the normative status of the governor and the strong connection of the Compensation Order to Israeli law, is that when this Court deals with such orders, it may conceive of them as Israeli law.

It seems to me that this order may be seen as an "order" included in the definition of a "regulation" which is "law," as such is defined by the Interpretation Ordinance. Therefore, although from the international point of view the governor's authorities are rooted in the principles of customary international law, when the governor's orders come before an Israeli court, they may be seen as Israeli.

16. Even if the Compensation Order should not be construed as a "law," as defined by the Interpretation Ordinance, it may perhaps be seen as an "other law," as that term is used in section 27 of the Prescription Law. The term "other law" is not defined by the law. It is unclear whether the term "other law" only covers that which is "law," as defined by the Interpretation Ordinance, or whether the term "other law" may be interpreted more broadly. No one claims that the governor's order is not law. The dispute is with regard to the question of the normative nature of the order—whether it is foreign law or Israeli law. The combined effect of the status of the governor as an Israeli government organ together with the clear connection between the Compensation Order and Israeli law, leads to the conclusion that the Compensation Order may be seen as included within the Interpretation Ordinance's definition of the term "law" or the term "other law" as it is used in the Prescription Law. Consequently, the Compensation Order should be used in order to determine the applicable prescription period. The prescription period should thus be set at two years, in accordance with the Mandatory Ordinance, to which the Compensation Order refers.

Continuing Damage

17. The appellant raised an alternative argument, which should be addressed briefly. Appellant argues that section 68(b) of the Mandatory Ordinance should be applied to his appeal. This section provides that where the civil wrong causes "continuing damage," the prescription period shall not begin until the cessation of the damage. Appellant claims that his damage has not ceased, that his wounds continue, that his medical condition is not final, and that "only the opinion of doctors appointed by the court" can assess "his medical condition." This claim, however, which was argued only weakly before this Court and the district court,

has not been grounded in a factual basis made in the statement of claim which would establish that we are dealing with "continuing damage." The fact that the appellant was physically injured and that he has not yet healed does not toll the prescription period. The claim that he has not yet healed, even if it is true, does not suffice to create "continuing damage." We have ruled several times that the prescription period commences with the occurrence of the injury and the initial damage, provided that it is not negligible. The prescriptive period does not begin to run from the time of the stabilization of the victim's medical condition or with the submission of a doctor's statement of opinion. We are aware that the claim is being summarily dismissed before the parties have had the opportunity to present evidence. However, the statement of claim submitted by the appellant does not offer a factual basis for his argument.

18. In conclusion, I have found that the claim is barred by the applicable statute of limitations, and that the appeal should be dismissed. This conclusion is the result of an analysis of both the alternatives presented for the question at hand, whether the order is seen as "foreign law," or as "law" as defined by the Interpretation Ordinance, or as "other law" as defined by the Prescription Law.

Therefore, the appeal should be dismissed, since two years time has passed since the occurrence of the road accident in which the appellant was injured. Under the circumstances there is no order for costs.

Justice E. Rivlin

I agree.

Justice A. Grunis

I agree.

Appeal dismissed, as per the opinion of Justice T. Strasberg-Cohen.
March 26 2003