

ISRAEL

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I INTRODUCTION

Three years have passed since a chapter on the status of art and cultural property law in Israel was published, in the inaugural edition of *The Art Law Review*. In the interim, Israel, like the rest of the world, has experienced the devastating effect of the covid-19 epidemic on the public consumption of art and the corresponding consequences on artists' livelihood. In addition, increasingly over the past few years, and particularly so since November 2022, Israel has been roiled politically and culturally. One aspect of this polarisation has been an increasingly sharp sea-change in the relationship between governance and the world of culture. Given the central place that culture typically holds in Israeli civil life – in the first edition we reported that Israel has the most museums per capita in the world,² including the Israel Museum, one of the leading encyclopedic museums in the world³ – this change has significant impact on the entire sector. Finally, the unprecedented terrorist attack by Hamas on 7 October 2023, and the unfolding war in its wake, have caused a further realignment and reassessment of the Israeli cultural space, a process that is, as of this writing, in only its very nascent form but will likely have a significant impact for years to come. In addition to the direct impact on the field of Israeli art, Hamas's massive terrorist attack, and the Israeli response, have raised important questions regarding art and cultural property in the context of public international law: the murder and kidnapping of Israeli artists (among other civilians) by Hamas terrorists, reports of damage caused to public art installations by Hamas terrorists, reports of damage caused to cultural heritage sites in Gaza in the wake of Israeli attacks targeting Hamas, and the possibility of damage to cultural heritage sites in Israel by the indiscriminate firing of rockets by the Hamas and Hezbollah terrorist organisations.

There remains no central source recording art traded in Israel. As is typical to most countries, while transactions in immovable property must be registered,⁴ there is no similar requirement for chattel. Transactions in any movable property can, in fact, be registered

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² Fifty-nine of more than 200 museums are recognised according to the definition of the Museums Law, 5743-1983, SH 1084 p. 113 (as amended). See also List of Museums Recognized by Law, Israeli government, at https://www.gov.il/he/departments/general/list_of_museums_recognized_by_law (in Hebrew).

³ The Israel Museum, Jerusalem, at <https://artsandculture.google.com/partner/the-israel-museum-jerusalem>. See also 'The Largest Art Museums In The World', WorldAtlas, at www.worldatlas.com/articles/the-largest-art-museums-in-the-world.html.

⁴ Land Law, 5729-1969, Section 7(a), SH No. 575 (as amended), p. 259.

through the Mortgage Registry;⁵ however, its use for this purpose is voluntary, and rare. Galleries tend to emphasise contemporary Israeli art and Judaica, while also selling international art that often comes into their possession through the sale of estates.

In this last year, three contemporary Israeli artists were among the 500 best-selling artists internationally at auction: Doron Langberg, Tal R and Ron Arad, together accounting for 39 artworks sold for a combined total of almost US\$2.18 million.⁶ In terms of the number of artists, this is similar to the situation in 2020, when three Israeli artists were also represented in the same list: Tal R, Seth Price and Michal Rovner. However, there has been a significant decrease in revenue generated, as in 2020, 389 works by those three artists were sold for a combined total of US\$14,022,855.⁷ In 2021, only Tal R was included in this list, with 32 works sold for a total of US\$535,796.⁸

Contemporary Israeli artists have also been represented in the non-fungible token (NFT) phenomenon of the past few years. Of particular note has been the sale of NFT works by Gal Yosef through the Eden Gallery in February 2022, reportedly selling 12,000 NFTs for over US\$12 million dollars.⁹

II YEAR IN REVIEW

The year 2023 was a seminal and chaotic year in the arts in Israel, reflecting trends in Israeli society generally. The attempts at ‘judicial reform’ (by its proponents) or ‘judicial revolution’ (by its opponents), brought social and cultural tensions to a boil, resulting in massive demonstrations over many months, up until the 7 October Hamas terrorist attack and the ensuing war. This division of society largely into two well-defined and inimically opposed camps also had its impact on the field of culture generally and art particularly. Members of the governing coalition repeatedly attempted to advance legislation that would impinge on freedom of expression,¹⁰ while members of the art establishment almost universally took an active part in protesting against the government’s plans to weaken the judiciary and further empower the executive branch.¹¹ These efforts also took on an artistic bent, with various highly-charged art installations installed in public spaces – some of which were vandalised or destroyed by members of the opposing political camp.¹²

5 Mortgage Law, 5727-1967, Section 4(3), SH No. 496 (as amended), p. 8.

6 The 2023 Contemporary Art Market Report, 27th ed., artprice.com, October 2023.

7 The 2020 Contemporary Art Market Report, 24th ed., artprice.com, October 2020.

8 The 2021 Contemporary Art Market Report, 25th ed., artprice.com, October 2021.

9 ‘Meta Eagle Club by Gal Yosef’, Eden Gallery News, at <https://www.eden-gallery.com/news/meta-eagle-club-by-gal-yosef>.

10 At least 16 of 141 proposed laws by members of the coalition that had been put forward as of 25 March 2023 dealt directly with limitations on freedom of expression. See <https://www.ynet.co.il/news/article/byensl9gn>. This effort has renewed since war broke out on 7 October 2023, with a recent government-sponsored bill even asking to turn even the viewing of Hamas and ISIS-propagated social media content – including videos of terrorist acts – into a criminal offense (see War Against Terror Bill (Amendment No. 9 and Temporary Provisions), 5784-2023, at https://fs.knesset.gov.il/25/law/25_ls2_3501291.pdf).

11 ‘The artists against the legal reform: “Unbridled legislation will lead to the banning of a work that does not go well with the government”’ (in Hebrew), Maya Nahum Shachel, Calcalist, 8 February 2023, at https://www.calcalist.co.il/local_news/article/bjkrcepo.

12 ‘The “Fortress of Democracy” installation, which was established in the Galilee by opponents of the legal revolution, was vandalized’, (in Hebrew), 26 September 2023, at <https://www.ynet.co.il/news/article/b1ow91el6>.

In order to avoid a collapse of his government, Prime Minister Netanyahu embraced a budget which passed in March 2023, in which, to fund his commitments to the ultra-orthodox and right-wing religious political parties, funding for mainstream cultural programmes such as museums and art schools was slashed by one-third, from approximately 150 million Israeli shekels to about 100 million Israeli shekels.¹³

The tension between private and public ownership of culturally significant assets continues unabated. The government and its ancillary institutions continue to promote a prioritisation of public interest in cultural assets over private ownership. The state continues to take a position of limiting private ownership of certain cultural properties, having intervened, or attempted to intervene, in a number of auctions over the last three years. In one case, the attorney general intervened in a lawsuit brought by the Jabotinsky Institute in Israel, a recognised public archive, against an auction house intending to sell a letter by Joseph Trumpeldor, an important pre-state figure, that had an archival stamp bearing the name of the current archive's predecessor institution. The attorney general argued that the letter had a 'public-national' character and its place was in a 'public archive belonging to the nation, rather than in private hands'.¹⁴ The court rejected this opinion, as well as establishing both that the archive had not provided sufficient evidence that the letter had been stolen (despite the clear marking of the letter with the archival stamp) and thus that the Archives Law¹⁵ did not apply in this case, and that the market overt rule in the Sale Law¹⁶ did apply in this case, thereby confirming that the seller had clear title to the letter.¹⁷ This ruling has been appealed to the Supreme Court, which has in the meantime issued an injunction forbidding any change in the disposition of the document until its final ruling.¹⁸ In another case, the attorney general intervened when a Polish consignor attempted to sell a set of tattoo stamps from Auschwitz at auction in Israel.¹⁹ In this case, the attorney general argued that 'public policy cannot condone the auction of such special and rare artifacts of this type, so directly related to the central elements of the Holocaust'.²⁰ The public uproar led to the cancellation of the sale, and the consignor eventually agreed to donate the stamps to Yad Vashem, at which time the case was dismissed.²¹ In yet another case, a court rejected the state's demand for an injunction barring the auction of a navigation control stick taken from an F-16 that was used

- 13 Comparison of the Budget of the State of Israel for the Administration of Culture (line item 19.42) for the 2023-2024 budget vs. the 2022-2023 budget. See <https://next.obudget.org/i/budget/001942/2024>.
- 14 Opening Motion (Jerusalem District Court) 48482-06-19 *Attorney General v. King David Auctions Ltd Auction House* (1 May 2021), Nevo Legal Database (by subscription, in Hebrew).
- 15 Archives Law, 5715-1955, SH No. 171 (as amended), p.14.
- 16 Sale Law, 5728-1968, SH No. 529 (as amended), p. 98.
- 17 Opening Motion (Jerusalem District Court) 48482-06-19 *Jabotinsky Institute in Israel v. King David Auctions Ltd Auction House* (27 October 2022), Nevo Legal Database (by subscription, in Hebrew).
- 18 Civil Appeal 8922/22 *Jabotinsky Institute in Israel v. King David Auctions Ltd* (6 February 2023), Supreme Court Decisions (in Hebrew), at <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/22/220/089/r02&fileName=22089220.R02&type=4>.
- 19 Civil Case (Tel-Aviv District Court) 6530-11-21 *Center Organizations of Holocaust Survivors in Israel v. Tzolman's Auctions* (filed 3 November 2021), NetHamishpat Court Database (in Hebrew).
- 20 Civil Case (Tel-Aviv District Court) 6530-11-21 *Attorney General v. Tzolman's Auctions* (10 November 2021), Appearances of the Attorney General, Ministry of Justice, at https://www.gov.il/BlobFolder/dynamiccollectorresultitem/holocaust_survivors/he/holocaust_survivors.pdf.
- 21 Civil Case (Tel-Aviv District Court) 6530-11-21 *Center Organizations of Holocaust Survivors in Israel v. Tzolman's Auctions* (14 March 2022), NetHamishpat Court Database (in Hebrew).

to bomb the nuclear facility in Iraq in 1981.²² The court rejected the state's contention that the stick was an important cultural property, given that when the stick was found faulty and taken out of use, it was sent by the state itself to be destroyed rather than being treated as having any value.

The question of public ownership of archival material and the expansion of the principle that cultural property is governed by different rules than private property has continued to make waves. In the most recent example, members of the well-known Sassoon family pressed a claim against the National Library, for return of the Sassoon family archive which had been deposited with the National Library's predecessor, the National and University Library. The family argued that the Library had not kept the terms of the deposit agreement, and demanded cancellation of the agreement and return of the collection. In the interim, in the 15 years between the original deposit and the demand for return, the Library had transformed into a government company established by law, and later had been declared a public archive. The National Library and the State Archivist argued that the Archives Law²³ prevented the disposal of archival material deposited in a recognised public archive to private hands, without the express extraordinary approval of the State Archivist, which was not forthcoming in this instance. In a special pleading arrangement authorised by the Jerusalem District Court, surrounding only the State Archivist's authority to make this decision, and that did not deal with the question of whether the deposit agreement had been violated and thus warranted its cancellation and the return of the collection, the plaintiffs argued that the State Archivist's decision amounted to an expropriation. The Jerusalem District Court,²⁴ and on petition the Supreme Court sitting as the High Court of Justice,²⁵ rejected this claim, affirming the *Vienna* ruling²⁶ that in cases of important cultural property the state has an interest in maintaining public access and holding of such materials, as expressed in the Archives Law – and that while such holding may limit certain rights associated with ownership, they do not constitute a taking, all the more so when the initial deposit was made knowingly and willingly. The court left open the question of whether the special rules governing cultural property would overcome a specific contractual obligation. A request for a rehearing before an expanded Supreme Court panel based on the argument that this decision formed a new precedent that had wide-ranging implications or was particularly difficult, was denied on the basis that the special pleading arrangement agreed to by the parties before the Jerusalem District Court rendered the question before the High Court of Justice theoretical, and thus its conclusions regarding the balance between cultural property and private property did not create a new precedent.²⁷

22 Civil Case (Center-Lod District Court) 62861-11-21 *State of Israel – Ministry of Defense v. Pentagon Auction House* (18 January 2022), Nevo Legal Database (by subscription, in Hebrew).

23 Archives Law (see footnote 13), at Section 14(a).

24 Civil Case (Jerusalem District Court) 36344-04-19 *David Sassoon v. The National and University Library at the Hebrew University* (filed 16 April 2019), NetHamishpat Court Database (in Hebrew).

25 High Court of Justice (Supreme Court) 7450/21 *David Sassoon v. Ruti Abramovich, State Archivist* (27 December 2022), Nevo Legal Database (by subscription, in Hebrew).

26 Civil Appeal (Supreme Court) 9366/12, *Israelitische Kultusgemeinde Wien v. Central Archives for the History of the Jewish People* (24 September 2015), Nevo Legal Database (by subscription, in Hebrew).

27 Additional Hearing (Supreme Court) 2764/23 *David Sassoon v. State Archivist* (1 November 2023), Nevo Legal Database (by subscription, in Hebrew).

In the decision of the Supreme Court in *State of Israel v. Beham*,²⁸ given in May 2019, much was made of the formal distinction that the court made between private property and cultural property – including in our review here in the first edition. A less well noticed element of the decision was the ruling that in cases for restitution of chattel where the cause of action accrued before the passage of the Prescription Law²⁹ in 1958, there was no statute of limitations, in accordance with the Ottoman law in force prior to that date which did not address time limitations for chattel, as opposed to other types of property. This aspect of the ruling, which has not yet been addressed in academic writing or in further caselaw, is of interest with regard to claims for the restitution of Nazi-looted art which arrived in Israel in the period immediately after the Second World War and the declaration of statehood, and may prompt a change in the readiness of claimants to bring forward such claims, who have until now been hesitant for fear that they will be time-barred.³⁰

The conflict between freedom of artistic expression and the increasing emphasis on religious and nationalist sentiment continued to present challenges to artists, galleries and museums over the last few years at an increasing pace. As noted in the first edition, the Haifa Museum of Art displayed the Finnish artist Jani Leinonen's artwork *McJesus*, which depicts Jesus as a crucified Ronald McDonald. This was interpreted as sacrilegious and caused considerable turmoil in the local Christian community. Falling back on the argument that the work injured religious sensibilities, Haifa's mayor, Dr Einat Kalish Rotem ordered the museum, a municipal corporation, to remove the sculpture from display, as well as to display a number of other works behind opaque screens. An administrative appeal by the Association for Civil Rights in Israel was unsuccessful in overturning this decision, with the court ruling that while the party responsible for deciding on the content of the museum's exhibitions was the professional staff, the mayor had not only the right, but the responsibility to prevent injury to the sensibilities of the city's population, and that in the framework of her independent considerations she is to take into account her responsibility to prevent injury to sensibilities, while allowing the free choice to view, or not to be exposed to artistic content of one type or another.³¹

In Jerusalem, the municipality decided to terminate the use of one of its properties for the Barbour [Swan] Gallery, which had displayed artworks and conducted activities which were deemed controversial for the religious public and politically within city hall. An administrative lawsuit filed by the non-profit that ran the gallery was unsuccessful in overturning the municipality's decision to evict the gallery.³²

In an effort to further the agenda of religious parties that were part of the coalition in the municipality governing council, the Jerusalem municipality also implemented a new policy

28 Civil Appeal (Supreme Court) 8323/17 *State of Israel v. Beham* (20 May 2019), Nevo Legal Database (by subscription, in Hebrew).

29 Prescription Law, 5718-1958, SH. No. 251, p. 112.

30 For an expanded background on the concerns regarding time limitations for claims for Nazi-looted art in Israel, see Niv Goldberg, 'Nazi-Looted Art: What Israel Can and Should Learn from Germany' in *Art Antiquity and Law* 27:1 (1–16), April 2022.

31 Administrative Appeal (Haifa District Court) 67938-01-19 *Association for Civil Rights in Israel v. Dr. Einat Kalish Rotem* (10 February 2019), Nevo Legal Database (by subscription, in Hebrew).

32 Administrative Appeal (Jerusalem District Court) 22371-02-20 *Bar Kayma Foundation for Cultural Art Music and Peace v. Mayor of Jerusalem Moshe Leon* (26 March 2021), Nevo Legal Database (by subscription, in Hebrew).

which allowed for the municipality to contract with private vendors for the implementation of cultural events, without the need for a public tender process. In this case, an administrative appeal was successful in causing the cancellation of this policy.³³

In Ramat Gan, the opening exhibition of the revamped Ramat Gan Museum of Art included an artwork by the artist David Reeb entitled *Jerusalem*, which included the inscriptions Jerusalem of Gold and Jerusalem of Shit next to images of ultraorthodox Jews praying at the Western Wall. This work also caused a furore, fanned by the mayor who called it antisemitic, and who after conducting a Facebook survey ordered the removal of the work from the municipal museum. The artist and the Association for Civil Rights in Israel filed suit, at which time the mayor recanted, which led to the suit's dismissal, but insisted that the museum's board, appointed by the mayor, take up the decision.³⁴ The board decided that the artwork be removed from the exhibition. Many of the other artists participating in the exhibition also insisted on the removal of their works as an act of solidarity with Reeb. Ultimately, the museum, with its opening exhibition in tatters, closed its doors. The museum's new curator, Svetlana Reingold, who had also overseen the exhibition at the Haifa Museum of Art that included *McJesus*, resigned in protest of the mayor's actions and the museum board's decision. The museum remained closed for over a year.

This trend of externally applied censorship has apparently caused an increase in self-censorship at galleries and museums. In August 2023, the Tel-Aviv Museum of Art put up a sign at the entrance to an exhibition of the artist Roni Taherlev which explores the aging body, warning, in English, that 'The exhibition contains mature content and may not be suitable for all audience [sic]'. The Hebrew text was slightly different, omitting the word 'mature', thereby warning that the content may not suit any or all viewers. The Hebrew warning, that is more commonly read in Israel than the English one, was added presumably because of perceived (or claimed) cultural and religious injunctions, as opposed to concern for the maturity of the viewer. The museum even displayed the same warnings – with the same linguistic differences – on its website page promoting the exhibition.³⁵

i Trends in art law

There appear to be several concurrent trends in Israeli art law. The first, a continued development of the tension and balance between special rules for cultural property that increasingly take precedence over the standard laws which apply to private property. This is most aptly seen on the one hand in the Supreme Court decision regarding the Sassoon collection at the National Library and the district court proceedings with the intervention of the Attorney General regarding the Auschwitz tattoo stamps, which carefully expand the precedence given to the public interest in cultural property. At the same time, the courts have been wary of accepting every claim of such public interest and have restricted the government's attempt to overstep its bounds in regard to private property, as seen in the cases of the F-16 control stick and Trumpeldor's letter. At the same time, there appears to

33 Administrative Appeal (Jerusalem District Court) 6135-11-21 *Hitorrerut B'yerushalayim v. Jerusalem Municipality* (3 August 2023), Nevo Legal Database (by subscription, in Hebrew).

34 Administrative Appeal (Tel-Aviv District Court) 56535-12-21 *David Reeb v. Ramat Gan Mayor Carmel Shama Hacohen* (30 December 2021), Nevo Legal Database (by subscription, in Hebrew).

35 For the English-language website, see <https://www.tamuseum.org.il/en/exhibition/roni-taharlev-not-light-other-light/>; for the Hebrew-language website, see <https://www.tamuseum.org.il/he/exhibition/roni-taharlev-not-light-other-light/>.

be an increasing trend towards governmental censorship and political control of public, and particularly municipal, museums, which seems to be having a spillover effect onto the major national museums. It remains to be seen whether the art community's reaction to the government's attempt at the 'judicial reform' will cause another shift in this trend. It is also too soon to gauge how the war, its attendant rise in social cohesion and its yet-unknown aftershocks will make their mark on these issues.

As noted, there seems to be an increasing trend towards censorship of controversial content being exhibited in museums. The cases described above join other instances of threats by politicians and office holders to reduce or terminate funding to publicly funded cultural institutions, particularly theatres and filmmakers, perceived to be critical of the state and a nationalistic narrative. A particularly bold attempt was made by the Ministry of Culture and Sport to adjust funding criteria for theatrical and music groups depending on whether they performed (increased funding), or did not perform (decreased funding), in Judea and Samaria (or, in other terminology, Jewish settlements in the occupied territories). These criteria were rejected by the High Court of Justice as violating the concepts of equality and non-discrimination in public funding.³⁶ While the High Court of Justice has in the meantime largely held back these attempts, the government's attempt to both shackle the court's ability to review government policy, as well as to stack the court with sympathetic judges – two of the primary aims of the attempted 'judicial reform' – raise questions about the court's future independence and ability to protect artistic expression should the government's efforts succeed.

One further trend is the continued growing occupation with finding solutions to Nazi-looted art in Israel. The last two years have seen both the first lawsuit ever filed against an Israeli museum for the restitution of Nazi-looted cultural property,³⁷ the publication of the first academic articles dealing in depth with an analysis of Israeli jurisprudence in this field,³⁸ and the formulation of a draft proposed bill to regulate specifically the fields of provenance and restitution of Nazi-looted art in public museum collections.³⁹ While given the current government's complete focus first on its judicial 'reform' and now the war, it seems unlikely that the draft proposed bill will be brought to the Knesset any time soon. On the other hand, given the likely across-the-board support the bill would engender, it might be taken on for purely political reasons to provide the government with a semblance of popular parliamentary success. While the first lawsuit against an Israeli museum in this field was, ironically, filed and is being argued in New York, it seems reasonable to assume that further claims, filed in Israel, will not be far off.

It is also expected that the convergence of art and technology, particularly artificial intelligence and blockchain, will take on larger significance in challenging the art world and the legal frameworks that surround it. While the future of NFT issues remains clouded in controversy, following the worldwide decline in NFT values, it is clear that the use of

36 High Court of Justice 7647/16 *Association for Civil Rights in Israel v. Minister of Culture and Sport* (13 May 2020), Nevo Legal Database (by subscription, in Hebrew).

37 *Barzilai v. Israel Museum*, 2022 NY Slip Op 22814(U); *Eli Barzilai v. Israel Museum*, 2022-05442, Appellate Division, 1st Dept.

38 Goldberg (see footnote 30).

39 Draft Proposed Bill: Nazi-Era Looted Art Provenance Research and Restitution Law 5783-2023, Section 3, in Report of the Team for Regulation of Provenance Research for Cultural Property Looted During the Holocaust and Found in Israel, Israel Ministry of Justice, April 2023, pp. 94, 96, at <https://govextra.gov.il/media/huylrghf/reprot-2023.pdf>.

blockchain in a wide variety of art-related applications will only expand with time. This could be, as with NFTs, the emergence of new markets for new types of art property, but can also relate to the authentication of physical-world artworks and the tracking of both tangible and intangible qualities such as location, ownership and intellectual property rights. Artificial intelligence has already led to worldwide concerns regarding both the violation and the definition of intellectual property rights, as well as regarding the market value of non-AI artworks. There is no reason to believe that these worldwide trends will pass over Israel without leaving their mark. What might be different in Israel is the government's current apparent incapacity to quickly employ resources to consider the consequences of these trends and formulate strategies for doing so. Continuing government dysfunction might leave Israel far behind in dealing with these new technologies from a regulatory perspective, possibly leaving Israel at a significant disadvantage with regard to Europe and North America.

ii Notable art-related transactions, litigation and legal changes

It is difficult to precisely follow the performance of the art market in Israel, as there is no central database that compiles these figures. However, it is possible to cautiously extrapolate from general economic data and the performance of Israeli art in the international market. As noted in Section I, sales of Israeli art at auction have decreased significantly in terms of both sheer volume as well as revenues. Between covid-19, the political upheaval in Israel and now the Israel–Hamas war, revenues from tourism have taken a deep hit, including in the consumption of Israeli art. One striking example of this is the closure of the Eden Gallery's Jerusalem location, at a time that the gallery was expanding internationally and enjoying unprecedented success with NFTs.

In the first edition of this publication, we noted that at the time of our writing, a petition to the High Court of Justice had been filed to stop the auction of a major part of the collection of the LA Mayer Museum of Islamic Art at Sotheby's London, and a preliminary hearing held. It can now be reported that following several months of negotiations conducted at the behest of the court, the parties were able to reach a settlement which provided for the return of all the objects that had been deaccessioned and exported to the museum's collection, and sponsorship of the museum by the Qatari Al Thani Foundation for a period of 10 years, in an effort to stabilise the museum's finances. No less important than saving the museum's collection, the court recognised that the petition 'raised legal and moral issues of importance as it relates to the sale of museal collection items that are of cultural, historical and economic value, and the need to regulate this subject in all its facets.'⁴⁰ Perhaps the most notable art-related litigation of the last two years was the filing of a lawsuit in New York by the heirs of Dr Ludwig Marum for the restitution from the Israel Museum of the Birds' Head Haggadah, the oldest known complete illuminated Haggadah, dating from circa 1300 CE. Because of concerns that despite its public commitment not to do so the museum would argue for dismissal under the statute of limitations, and that there was no basis for understanding how Israeli courts would deal with such a precedential lawsuit, the heirs decided to file this first-of-its-kind lawsuit against an Israeli institution in New York, which has a more established track record in this field. Indeed, the Israel Museum did argue for dismissal on a

40 High Court of Justice 7847/20 *Hashava Foundation v. Minister of Culture and Sport* (25 March 2021), Nevo Legal Database (by subscription, in Hebrew).

variety of grounds, including time limitations, laches and forum inconveniens. The museum having prevailed in the first instance with dismissal based on forum inconveniens, the heirs have appealed and the case is set to be heard before New York's First Appellate Division.

III ART DISPUTES

i Title in art

In the case of an unwritten contractual agreement between two partners – one funder and one art expert – to cooperate in the purchase and resale of Chinese artworks, the court ruled that on dissolution of the contractual partnership, the art expert's claim to receive his portion of the partnership in-kind in the guise of an equivalent pro-rata portion of the artworks could not stand where the nature of the business partnership and the business acumen of the partners indicated that a written contract would normally have been called for, and where there was no other concrete evidence that distribution-in-kind had been agreed upon.⁴¹

In another case, the Tel-Aviv District Court rejected a claim regarding ownership of 30 large artworks from the estate of the artist Menashe Kadishman, whence the claim was based on an unwritten alleged contract.⁴² The plaintiff claimed that the artist in his lifetime promised that investors who the plaintiff recruited to support the artist would not lose their investment and would receive large paintings. Despite the fact that contracts for chattel do not require the element of writing, the fact that there was no contract in writing, and that the evidence that existed did not on its own support the contention that the artist during his lifetime made a binding commitment to compensate the investors with large paintings, and the fact that in the meantime the artist had passed away, made it impossible to ascertain his true state of mind. Therefore, given the artist's death, it was impossible to validate a transaction that had not occurred during the artist's lifetime.

The author is also aware of an ongoing complex estate-related title dispute regarding multiple works of art between certain heirs of the estate and a major Israeli museum. Substantive claims have been made that the museum deliberately and knowingly misappropriated from the estate important artworks to which it was not entitled. Among the more serious claims are that the museum later sold some of these works to which it did not, allegedly, have legal title.

More generally speaking, the new draft proposed bill regarding provenance research and restitution of Nazi-looted art in Israel, if adopted, will place a new obligation on all recognised museums to investigate title in their artworks which are known or suspected to have been looted during the Nazi era. The criteria for suspicion are broad and generally comport to those defined in the guidelines governing the work of restitution committees in Europe.⁴³

Regarding looted antiquities, however, Israel has had an embarrassing period, with perhaps the most embarrassing issue being the items deposited at the Israel Museum by Michael Steinhardt, which were seized by the Manhattan District Attorney's office as part of a wide-ranging investigation into Steinhardt's ownership of numerous items of looted cultural

41 Civil Case (Tel-Aviv District Court) 63632-11-18 *Yehonatan Zaltzman v. Ofer Levin* (16 July 2023), Nevo Legal Database (by subscription, in Hebrew).

42 Civil Case (Tel-Aviv District Court) 18084-07-17 *Yaakov Abergil v. Ben Zion Kadishman* (24 August 2022), Nevo Legal Database (by subscription, in Hebrew).

43 Draft Provenance Research and Restitution Law (see footnote 33),

property.⁴⁴ Steinhardt still serves as honorary chairman of the American Friends of the Israel Museum, and his wife is co-chairman of the AFIM Board of Directors.⁴⁵ One consequence of this fiasco was the renewed raising of Palestinian voices laying claim to artifacts found outside of Israel's 1948 armistice lines, but held by the Israel Antiquities Authority or deposited in various Israeli museums.⁴⁶

ii Nazi-looted art and cultural property

There have lately been several significant developments in Israel in the area of Nazi-looted art and cultural property. The first, as noted above, is the lawsuit brought by the heirs of Dr Ludwig Marum against the Israel Museum for the restitution of the Birds' Head Haggadah.⁴⁷ The suit revolves around an early fourteenth-century Haggadah privately held by the Marum family in Karlsruhe, Germany, prior to the rise of the Nazi regime. The head of the family, Dr Ludwig Marum, was a Jewish attorney and also an outspoken Social Democrat and anti-Nazi member of the Reichstag. Shortly after the orchestrated burning of the Reichstag by the Nazis in 1933, he was arrested, publicly paraded and then sent to a concentration camp, where he was murdered one year later. Shortly after his murder, most of his family fled to France, while one daughter remained to close down the family apartment. During this tumultuous period, the Haggadah was removed from the family's possession, under unknown circumstances. After the war, the Haggadah was brought to Israel by a Jewish refugee who had, prior to fleeing to Switzerland, also lived in Karlsruhe. Shortly after his arrival to pre-state Israel, he sold the Haggadah to the Bezalel Museum, which was the Israel Museum's predecessor institution, in circumstances which imply that he did not know the origin or true nature of the Haggadah. The heirs in their lawsuit claim that this was an illegitimate sale and that title never passed to the museum, and that the heirs at the time did not approve of the museum's claim to title. In addition to the suit's significance because of the important artifact in question, the suit is also significant for its primacy as the first Nazi-looted art restitution lawsuit against an Israeli institution. However, it presents an anomaly in Israeli law, given that it was filed and is being tried in New York, because of concerns that such a lawsuit would not receive a fair hearing on the merits in Israel.

The second significant development is the work of the Interoffice Team for Regulation of Provenance Research for Cultural Property Looted During the Holocaust and Found in Israel, led by the Custodian General in the Ministry of Justice and incorporating staff from many of the government offices with certain responsibilities for this issue. After working for about two years, including round-table discussions with relevant stakeholders throughout Israeli society, the Team published on Holocaust Martyrs' and Heroes' Remembrance Day in April 2023, their final report,⁴⁸ which provided a historical analysis of the issue and the (lack of a) legal framework for dealing with it in Israel. The report included a draft proposed

44 Naama Riba, 'The Masked Dealer: The Future of U.S. Billionaire Michael Steinhardt's Looted Artifacts at Israel Museum', *Haaretz* (12 Januar 2022), at <https://www.haaretz.com/israel-news/2022-01-12/ty-article-magazine/.highlight/israel-museum-presents-three-of-u-s-billionaire-michael-steinhardts-looted-works/0000017f-e5d7-dc7e-adff-f5ff5a720000>.

45 Leadership, American Friends of the Israel Museum, at <https://www.afimnyc.org/leadership/>.

46 'Palestinians claim to be ignored in U.S. deal on stolen antiquities', *ynet* (28 February 2022), <https://www.ynetnews.com/travel/article/ryh92lcg9>.

47 *Barzilai v. Israel Museum* (see footnote 32).

48 Report of the Team for Regulation of Provenance Research for Cultural Property Looted During the Holocaust and Found in Israel, Israel Ministry of Justice (see footnote 34).

bill that would establish a new legal framework requiring all recognised museums to conduct provenance research on artworks known or suspected of being looted during the Nazi era, and requiring the transfer of information regarding those artworks to the Custodian General who will attempt to find the heirs to facilitate a restitution. The bill would also eliminate the statute of limitations and the market overt rule for claims for this type of property. The new proposed legislation has various lacunae, such as a very limited definition of what qualifies as an artwork for the purposes of the law (such as excluding Judaica), the requirement that only recognised (and not private) museums (or other art-holding institutions) must engage in such research, lack of a definitive budgeting mechanism, and others.

A third significant development is the growing academic interest in Israel in Nazi-looted art and cultural property. In the last three years, several courses have been introduced at Tel-Aviv University and Haifa University introducing law students, art history students and Holocaust studies students to the field of provenance research and Nazi-looted art. Tel-Aviv University has offered a course in conjunction with the University of Bonn. The first academic article addressing Israeli jurisprudence specifically in this field was published.⁴⁹

iii Limitation periods

When special limitation periods may apply

As noted above, while still not applied, if the new draft proposed legislation regarding Nazi-looted art were to become law, claims for the restitution of such property would be exempt from all limitation periods.

Recent cases or litigation that address time limitation issues

As noted in Section II, the Supreme Court, in the case of *State of Israel v. Beham*,⁵⁰ confirmed as precedent that there is no statute of limitation for restitution of chattel where the cause of action accrued before the entry into force of the Prescription Law in 1958. This may open the way for claims regarding Nazi-looted art that found its way to Israel before that date.

iv Alternative dispute resolution

The new draft proposed legislation regarding Nazi-looted art would create a new mechanism for the pursuit of restitution claims. Claimants would register a claim with the Custodian General, who would make a determination trying to incorporate the elements of a just and fair solution. Both the claimant and the museum could appeal the Custodian General's decision to a special appeals committee, and this last would be appealable to the district court.⁵¹ The Minister of Justice would also be authorised to establish other alternative dispute resolution mechanisms.

49 Goldberg (see footnote 30).

50 *State of Israel v. Beham* (see footnote 24).

51 Draft Provenance Research and Restitution Law (see footnote 33), Section D.

IV FAKES, FORGERIES AND AUTHENTICATION

As at the time of writing, a case involving purported fakes, allegedly worth some €2 billion, is winding its way through the Israeli courts. According to press reports⁵² and public court documents,⁵³ Nicol Raidman, a well-known Israeli personality, sued Itzhak Zarug in the summer of 2021 for fraudulently entering into a contract to cooperate in the sale of a collection of reputedly valuable artworks in his possession, which later – allegedly according to experts that Raidman hired – turned out to be unable to be authenticated and thus unsalable. Despite statements that she had already spent millions dealing with the collection, Raidman has limited her claimed damages to 1 million Israeli shekels, because of the cost of court fees dependent on claim size. Efforts by Zarug to force Raidman through a court order to return the artworks to his possession from their storage in France failed when, despite Raidman's agreement in principle, he disputed the court's instructions to pay half of the storage fees to date. Efforts to resolve the case through mediation and an out-of-court settlement seem to have failed, and pending any further developments, it appears at this time that the case will proceed once the courts return to a normal schedule after the war.

In 2004, the Antiquities Authority, after launching a criminal investigation into the sale of allegedly fake antiquities pressed criminal charges of the same against the antiquities dealer Robert Deutsch and others.⁵⁴ After being found not guilty on all charges, Deutsch filed a tort suit to the value of 12 million Israeli shekels against the Antiquities Authority and the State Prosecutor's Office for damages as a result of negligence in pressing charges.⁵⁵ In 2019, the district court dismissed these claims on the basis that the investigating authorities had sufficient evidence to bring Deutsch to trial for each of the six charges against him, such evidence including expert witness testimony, in addition to the testimony of expert antiquities dealers, that some or all of the antiquities relating to the charges were fakes; that his own testimony regarding the degree of his participation in the sale of and profit from these antiquities was inconsistent, and contrary to other witnesses; that in his case as an expert in antiquities he was to be held to the presumption established in the Antiquities Law⁵⁶ that an antiquities dealer who offers for sale an item as an antiquity, is barred from pleading that he did not know that the item is not an antiquity; and that the lower court found that there was enough evidence to proceed to trial rather than immediately dismissing the charges against him.

52 See, for instance, Avi Sedrina, 'Nicol Raidman against the art collector: "The works he offered me are fake"', N12 (21 August 2022), at https://www.mako.co.il/news-law/2022_q3/Article-ece151d4ac1c281027.htm.

53 See Civil Case (Herzliya Magistrate Court) 42001-08-22 *Nicol Raidman v. Itzhak Zarug* (filed 18 August 2022), NetHamishpat Court Database (in Hebrew); and Petition to File Civil Appeal (Tel Aviv District Court) 13682-10-22 *Itzhak Zarug v. Nicol Raidman* (20 October 2022), NetHamishpat Court Database (in Hebrew).

54 Criminal Case (Jerusalem District Court) 482-04 *State of Israel v. Oded Golan and Others* (14 March 2012), Nevo Legal Database (by subscription, in Hebrew).

55 Civil Case (Tel-Aviv District Court) 56700-11-13 *Deutsch v. State of Israel – Antiquities Authority* (25 October 2019), Nevo Legal Database (by subscription, in Hebrew).

56 Antiquities Law, 5738-1978, Section 20, SH No. 885 (as amended), p. 76.

V ART TRANSACTIONS

i Private sales and auctions

The last few years have seen a significant number of cases in which private sellers, consigners and auction houses have been caught selling materials found to be stolen from public entities – usually either archives, or Jewish community institutions dissolved consequent to the Holocaust. Some of these instances have been brought to trial,⁵⁷ some have been resolved after the issuance of temporary restraining orders,⁵⁸ and others have been resolved between the injured party and auction house or consigner – sometimes under public pressure – but without need for recourse to the judicial system.⁵⁹

ii Art loans

In a recent case where artworks loaned by an artist to a cultural institution were damaged or lost during the period of the loan, the court ruled against the institution for damaging certain works, but did not accept the artist's contention that the institution lost some of the artworks that purportedly went missing.⁶⁰ Because the loaning artist did not, at the time she transferred the artworks to the borrowing organisation, provide the organisation with a list of the loaned artworks, the court ruled that there was no way to evaluate her claim that some of those artworks disappeared. While non-museum cultural institutions are not held to the standards promulgated in the Museums Law⁶¹ and the Museums Regulations,⁶² including the requirement to list each work entered into the collection whether by acquisition or loan,⁶³ this judgment nevertheless seems lacking in not expecting that a cultural institution should take an inventory of the incoming artworks upon the acceptance of such a loan.

Incoming international loans of cultural objects regularly take advantage of the Loans of Cultural Objects Law⁶⁴ that allows the Minister of Justice to decree that a loan is protected against legal action in Israel. It appears that the Minister has never declined to promulgate a requested decree. The attendant regulations allow for the requesting museum to publish a webpage with the loan items for which the decree is requested. However, a review of the published decrees on the Ministry of Justice website, which include links to the corresponding museum websites, indicates that many of the links are broken or that the webpages no longer exist. It also appears that certain of the decrees were approved contrary to the letter of the law,

57 See, for instance, Civil Case (Tel-Aviv District Court) 1730/05 *State of Israel v. Bialostotsky* (24 April 2019), Nevo Legal Database (by subscription, in Hebrew).

58 The author is aware of at least three such cases between 2018–2022, and was involved in two of them.

59 See, for instance, Itamar Eichner, 'Following international pressure: the ancient 'Memorial Register' that disappeared in the Holocaust, was removed from auction', *ynet* (28 July 2021), at <https://www.ynet.co.il/judaism/article/ry7zbr0u>. The author is aware of at least six such cases between 2021–2023, and was involved in four of them.

60 Civil Case (Tel-Aviv Magistrate Court) 5090-10-16 *Esther (Esti) Mayer v. Havatzelet Cultural and Educational Institutions of the Shomer Hatzair* (31 December 2019), Nevo Legal Database (by subscription, in Hebrew).

61 Museums Law, 5743-1983, SH 1084, p. 113.

62 Museums Regulations, 5745-1984, KT 4638 p. 397.

63 Museums Law (see footnote 57), at Section 3(1)(c).

64 Loan of Cultural Objects (Restriction of Jurisdiction) Law, 5767-2007, SH 2085 (as amended), p. 137.

which requires that the foreign loaning party be a 'cultural institution' (a body dedicated to education, culture, science, art or a similar purpose),⁶⁵ whereas some of the approved decrees were apparently given for loans originating from foreign private collections.

iii Cross-border transactions

Following the travesty of the export of a large part of the collection of the Museum of Islamic Art for intended sale at Sotheby's London, and the Hashava Foundation's petition to the High Court of Justice which managed to stop the auction and engender the return of the items to the museum's collection, the Antiquities Authority revamped some of the export regulations for cultural property that comes under the Authority's province.⁶⁶ The conditions for export and re-export of antiquities were dramatically tightened, with among other controls, that only recognised museums and the National Library now being allowed to import and re-export antiquities that were not originally imported for commercial purposes. In an embarrassing and highly publicised faux-pas, the Antiquities Authority blatantly did not follow its own regulations when exporting highly valuable antiquities intended for temporary display at the White House, which in the end never occurred, and which were later found to have been removed to former president Donald Trump's Mar-a-Lago property.⁶⁷

Tax considerations

The proceeds from the commercial sale of art are generally taxable under the same regime as all other commercial goods.⁶⁸ The question of whether the sale of an antiquity by a collector is considered a commercial sale for income tax purposes was recently adjudicated.⁶⁹ The Tel-Aviv District Court found, contrary to the position of the income tax authority, that an antiquity that was privately held by an amateur collector for the purpose of non-commercial personal enjoyment, was 'chattel held for private enjoyment' and thus, even when sold to a museum abroad for substantial profit (over US\$1 million), was not taxable under the Income Tax Ordinance, either as an 'incidental transaction of a commercial nature'⁷⁰ or as capital gains.⁷¹ Thus, no income tax need be paid on such a transaction.

In relation to covid-related assistance grants, it was found that commercial sales by Israeli residents of artworks abroad to foreign entities are assumed to be exempt from Israeli value added tax (VAT), unless proven otherwise as requiring VAT at a zero per cent level. Accordingly, income from such sales cannot be used to demonstrate a reduction in income

65 id., at Sections 2, 3.

66 'Notice of Antiquities Authority Policy Regarding Provision of Permit for the Export of Antiquities from Israel Which Were Imported to Israel for the Purpose of Exhibition to the Public', Israel Antiquities Authority (9 December 2022), at <https://www.antiquities.org.il/pdf/exportnotice.pdf> (last accessed 5 November 2023).

67 Anjali Huynh, 'Trump to Return Ancient Coins and Lamps to Israel's Antiquities Authority', *New York Times* (25 July 2023), at <https://www.nytimes.com/2023/07/25/us/politics/trump-israel-antiquities.html> (last accessed 5 November 2023).

68 Income Tax Ordinance (New Version), 5721-1961, SH No. 366 (as amended), p. 60.

69 Tax Appeal (Tel-Aviv District Court) 29712-02-19 *Yevdayev v. Income Tax* (15 November 2022), Nevo Legal Database (by subscription, in Hebrew).

70 Income Tax Ordinance (see footnote 65), at Section 2(1).

71 id., at Section 89.

levels that qualifies the business for the assistance grants.⁷² While the assistance grants in question were limited to the period during which the covid state of emergency was in place, it is quite possible that a similar formulation will be used to provide assistance grants in future states of emergency. This is of particular importance at the time of writing, as the authorities are currently formulating the parameters for emergency assistance for the duration of the Israel–Hammas war – which are likely to be similar in form to those instituted during the covid state of emergency. Galleries and other art-sales businesses in locations impacted by the state of emergency, and that sell abroad, would be well advised to consider their tax reporting strategies during this period accordingly.

In another case, the court ruled that where artworks are sold between companies in a consolidated business, and the purchasing company stops doing business immediately thereafter, it is clear, unless proven otherwise – for instance through an articulated business plan to sell the artworks through auctions, galleries, etc. – that the purchase was not for the purpose of a tax-liable commercial transaction, and thus the purchasing company cannot deduct the transaction tax on the purchase.⁷³ Therefore, the selling company is liable for the transaction tax on the sale. Furthermore, in the same case, the court ruled that for the basis of the tax liability, a sudden and precipitous drop in value of the artworks in one year – which would lead to considerably lower tax liability – and particularly in the case of consolidated businesses, needs to be supported by external, objective evidence.

iv Art finance

In the case of an insurance claim following damage to an art collection in a house fire, the court ruled that in the case of an art collector who has a large collection of valuable items, there exists a presumption that in purchasing the insurance policy and paying the associated premium, the collector intended to provide insurance coverage for the entire collection, even if there were certain items that, presumably by mistake, were not specifically indicated in the policy.⁷⁴ Unless the insurance company could successfully contradict this presumption, it would be required to include the loss of value of such items in its payout.

VI ARTIST RIGHTS

i Moral rights

While some of the cases described in Section VI.iii also included claims and relief for the violation of the artists' moral rights, there were no new developments in this area.

ii Resale rights

This is not applicable in Israeli law per se, but there is also no limitation on the formulation of contractual terms that would allow artists to demand such rights as part of a sale contract.

72 Corona Affairs Appeal 2067-21 *Dvir Gallery v. Tax Authority* (28 February 2022), Nevo Legal Database (by subscription, in Hebrew).

73 Tax Appeal (Tel-Aviv District Court) 66208-02-19 *OM Economic Services Ltd v. Director, Tel-Aviv and Center VAT* (11 November 2020), Nevo Legal Database (by subscription, in Hebrew).

74 Civil Case (Tel-Aviv Magistrate Court) 50120-02-18 *Flor v. Call Insurance Company Ltd* (29 June 2022), Nevo Legal Database (by subscription, in Hebrew).

iii Economic rights

The Copyright Law provides for fair use exceptions to the artists' exclusive economic rights, including the fair use exception for journalistic reporting.⁷⁵ However, this exception was limited in a recent case in which Yediot Aharonot, a news publisher that prints a daily newspaper as well as an online news website used uncredited and unlicensed photographs to supplement their reporting in three articles. Two of the articles were published online on the news website which derives advertising revenue; the third article was published in a holiday edition of the print newspaper. The court held that this fair use exception did not hold, because of the commercial nature of the publications and the use of the photographs to promote the publisher's commercial interests.⁷⁶ In another recent case, the court dealt with copyright infringement through the commercial use of a derivative work of a two-dimensional photograph of a three-dimensional ceramic.⁷⁷ Here, the court in ruling against the infringing company, in addition to finding a primary infringement in the copying from a three-dimensional to two-dimensional work, raised the question of whether or not the photograph was itself a work of art in which the photographer had independent intellectual property rights, and answered in the negative. While this was a secondary finding and not the primary thrust of the ruling, the photographer was not a party to the lawsuit, and the ruling was given at the lowest instance, a magistrate's court, it raises the question of whether Israeli courts will move to adopt the principle raised in the *Bridgeman* case in the United States,⁷⁸ whereby, because they lack originality, exact photographic copies of images would not, in and of themselves, be eligible for copyright protection. If so, this would signal a serious reversal in Israeli copyright protection, as up to this point independent copyright in photographic reproductions has been recognised.

VII TRUSTS, FOUNDATIONS AND ESTATES

The lack of estate tax does not incentivise the use of trusts or foundations for economic purposes. However, there is a budding interest in the use of public or mixed trusts to maintain and care for deceased artists' legacies. Among other factors, while the number of museums per capita in Israel is the highest in the world, most of these are private museums dedicated to single artists or very narrow subject matter. Public museums in Israel generally are very selective in accessioning artworks and there is an increasing quantity of artworks residual to the estates of deceased professional artists, the appropriate disposition of which is difficult. However, this practice is still extremely exceptional – there are only five such public trusts dedicated to the preservation and exhibition of an artist's estate in Israel at

75 Copyright Law, 5768-2007, Section 19, SH No. 2119 (as amended), p. 38.

76 Civil Case (Tel-Aviv Magistrate Court) 25210-11-21 *Shmuel Rachmani v. Yediot Aharonot* (26 March 2023), Nevo Legal Database (by subscription, in Hebrew).

77 Civil Case (Haifa Magistrate Court) 29296-07-20 *Ayelet Hochhauser v. Sonigo International Shipping, Packing & Moving Ltd* (25 January 2023), Nevo Legal Database (by subscription, in Hebrew).

78 See *Bridgeman Art Library v. Corel Corp.*, 36 F Supp. 2d 191 (S.D.N.Y. 1999).

this time.⁷⁹ Additionally, estate planning for artists is not a well-developed field in Israel, occasionally leading to significant issues in the effective fulfilment of what are actually the artists' substantive wishes.⁸⁰

VIII OUTLOOK AND CONCLUSIONS

Art law as a field is slowly taking its first steps as an established field in Israel. The introduction of provenance research and restitution courses in Israel's academic institutions is an important start in this direction. The first few years evidence that these courses are very popular. In general, the issue of restitution of Nazi-looted art is gaining traction, with several important advances in the last two-to-three years. However, despite the very positive step in the formulation and publication of the draft proposed bill to regulate provenance research and restitution, the proposed law nevertheless has some significant lacunae, and more importantly the government's inability to act because of its entire focus on its judicial reform plan, and now the Israel–Hamas war, does not bode well for the bill to actually come before the Knesset and be voted into law anytime in the near future.

Over the past number of years, Israeli courts have started to develop a methodical approach and philosophy to the question of public policy relating to cultural property. This has been echoed by the positions taken by the attorney general in a variety of cases. If this course will continue in its current direction, it appears that while the public interest in cultural property will continue to pre-empt private property rights in clear-cut cases, the courts will continue to challenge the state or other public institutions when they have demonstrated negligence or incompetence in their own treatment of the said cultural property.

The question of political intervention in public funding of the arts and in decisions of what is appropriate to exhibit is a major concern for the art community in Israel, and it is unclear in what direction this issue will move. Israel's current government is its most right-wing yet, and the plethora of bills over the past year asking to limit freedom of expression is a worrying sign for those to whom artistic expression is of fundamental importance. The question of whether the Prime Minister and his government will survive politically after the current war is one of the biggest political questions being asked at this time, and the answer will indubitably colour the direction in which artistic freedom is viewed and treated by the state.

Israel has been of late, and continues to be, in a state of great flux and turmoil. This turbulence is evident in the public and legal discourse about the arts, and it appears unlikely that this will change anytime soon.

79 Public Trusts - Art, Ministry of Justice (in Hebrew), https://www.guidestar.org.il/search-hekdeshot?CLSS_Main_Classification_Num=11&CLSS_Secondary_Classification_Num=1105 (last accessed 30 October 2023).

80 See, for instance, High Court of Justice (Supreme Court) 1660/23 *Talia Bogen v. Registrar of Charitable Trusts* (24 April 2023), Nevo Legal Database (by subscription, in Hebrew).

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