

The Israeli Protection of the Coastal Environment Law
- A Step Towards Sustainability -

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I. Introduction

Israel is about two-thirds the size of Belgium and is slightly smaller than the US state New Jersey but is home to almost 6.3 million inhabitants. It has one of the highest population densities in the world, with an average of 294 people per square metre. Over half of the population lives in the Mediterranean coastal strip. It is, therefore, not surprising that the use of the shore is subject to conflicting interests.

In order ensure that also the coming generations can still enjoy the coastal environment the Israeli legislator promulgated the "Protection of the Coastal Environment Law" in 2004. Its stated aims are 1. To protect the coastal environment, its natural and heritage assets, to restore and preserve them as a resource of unique value, and to prevent and reduce as far as possible any damage to them; 2. To preserve the coastal environment and the coastal sand for the benefit and enjoyment of the public, for present and future generations; 3. To establish principles and limitations for the sustainable management, development and use of the coastal environment.

For the first time, the principle of sustainability has been clearly introduced into an Israeli law.

II. Prohibitions

To obtain these goals, first of all the Law requires the competent authority to issue permits for acts in the coastal environment only under the condition that any damage to the coastal environment is minimised, except for cases the Planning and Building Law applies to the respective permission procedure. In addition, the Law also addresses the public and prohibits damage to the coastal environment or carrying out any act that might damage it. This prohibition, too, is limited to cases where the person did not act in accordance with a legally granted permit , licence or approval, or not in accordance with its conditions, or - in the case of an act or use that does not require a permit – where the person did not act in accordance with the statutory land

use plan applying to that site, or where the act that damages or is likely damage the coastal environment is not necessary in order to enable the implementation of the permit, license, approval or plan mentioned.

The Law requires that if a person is allowed by permit, licence or approval given by a competent authority to damage the coastal environment, he will have to take steps as determined by the permit, licence, approval or plan to restore the coastal environment and to return it, to the greatest extent possible, to its former state.

III. What does "damage to the coastal environment" mean?

Under the law the coastal environment is considered one integral unit which extends from 12 miles inside Israel's territorial waters to 300 metres inland.

"Damage to the coastal environment" is defined by the Law as "any manmade activity in the coastal environment, [...] that causes a *significant change* to natural processes or preservation of the coastal environment", including:

- Damage to the existing ecosystems
- Damage to beach rock, natural caves and cliffs, sand dunes and stream-mouths
- Damage or change to the interface between the sea and the land
- Damage to the natural flow and movement of coastal sand and seawater
- Endangering or causing damage to habitats of flora or fauna species, and to their capability for reproduction in the coastal environment
- Damage to heritage and antiquities sites, as defined in the Antiquities Law, located in the coastal environment

III. Open public right of way

One of the essential provisions is Article 5 which assures in principle an open public right of way along the entire length of the shore area. Of course, also this walkers' right may be limited because of security or other reasons, e.g. in the area of a port or national park, or the existence of national infrastructure. One of the limitations is rarely found elsewhere in the world: the right of free access is restricted in the case of beaches that are open "temporarily or permanently for bathing of men or women only".

IV. Offences and penalties

Offences against provisions of the Protection of the Coastal Environment Law can result in those held responsible facing a fine up to USD 85,000 or 6 months' imprisonment. In addition, the Law provides that if a corporation or one of its

employees commits an offence the presumption will be that the corporation employee did not fulfill his/her obligations unless it is proven that he/she did everything in his/her power to fulfill the obligation.

V. The interpretation of the Law by the courts

As the "Protection of the Coastal Environment Law" is a young piece of Israeli legislation, it is hard to predict how big its impact will be on the decisions of authorities and courts. In disputes about buildings on the shore, the Law is likely to give the court legal tools in addition to the provisions of the Law on Planning and Building.

Two recent court decisions however examine and discuss the respective disputes in the light of the Protection of the Coastal Environment Law.

One is the decision of the Administrative Court of Haifa on 14 August 2005 in the matter Hof Galia – Company for Development and Construction Ltd. and others vs. The Planning Committee of the District of Haifa. In this case, the court confirmed the decision of the district committee for planning and building not to allow the construction of a fuel station 120 metres inland, although the shore area is defined in the law as the area up to 100 metres inland. This court decision establishes the concept that not only the shore area should be protected from construction, but so also should the coastal environment, which includes an area 300 metres from the shoreline.

In the second case, the owner of a restaurant and other parties had illegally built various buildings on the shore of Caesarea which is a popular site because of its antiquities, its Roman port and beautiful beach. After opening a criminal file against the responsible persons, the authority agreed a deal with them, according to which they had to pull down the buildings and to pay a fine.

The Haifa Magistrate Court did not agree with this plea bargain. It condemned the exploitation of the natural resources of the shore and the coastal area referring to the Public Trust Doctrine. In its decision, it quotes the above-mentioned goals of the Protection of the Coastal Environment Law. The court points out that the Law does not have a direct impact on the field of building and planning but that its principles are nevertheless relevant in every dispute related to the shore. It stresses that the coastal area is a "unique national asset", serves, above all, the public and that the law obliges to preserve the shore as a natural resource. The court underlines that the closer the constructions are to the water the stricter the rules have to be. It calls the

shore in dispute a "singular natural pearl" and requests the authorities to guard the values of nature and culture, not to abandon them.

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