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The Duty of the Israeli Police to Warn a Suspect About His/her Right to Remain Silent Due to the Israeli Basic Law on Human Dignity and Freedom

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Abstract

Human dignity and freedom is a basic law, designed to protect the main human rights in the State of Israel. As its title makes clear, the law establishes human dignity and freedom as the fundamental values from which the human rights protected in the Basic Law are derived. According to Section 28(a) of the Israeli Arrest Law (Criminal Procedure Law, 1996) the officer in charge of a police station is required to hear the command's messages before deciding whether to keep him in custody or to release him, that is, before they hear his words, the officer must warn that he is not obliged.

Keywords: Israeli Basic Law: human dignity and freedom, the right to remain silent, Israeli police.

1. Basic law: Human dignity and freedom – Introduction

Basic law: Human dignity and freedom is a basic law, designed to protect the main human rights in the State of Israel. As its title makes clear, the law establishes human dignity and freedom as the fundamental values from which the human rights protected in the Basic Law are derived, which was accepted as the "Book of Human Rights" of Israeli law. There are no protected clauses in the basic law, and the Knesset can change it with a simple majority. The law was enacted at the end of the days of the twelfth Knesset, on March 17, 1992.

According to the opinion of certain jurists and many of the judges of the Supreme Court, led by President Aharon Barak, the establishment of this basic law and the basic law: of freedom of occupation started the constitutional revolution, because the Knesset (Israeli parliament) gave these two basic laws a supra-legal status, according to which the court has the authority to declare the nullity of a law that contradicts these basic laws. According to this claim, with the enactment of these basic laws, there was a fundamental change in the status of human rights in Israel. This approach is reflected in the rulings of the Supreme Court, which over the years canceled about 22 acts of legislation that contradicted these basic laws. Other jurists, including former president Moshe Landoi, oppose this view (Gavizon, 1998).

From the very beginning of the State of Israel, the need to enact laws protecting human rights has been discussed. Discussion in the Constitution, Law, and Justice Committee in July

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1949, Prime Minister David Ben-Gurion presented his position that there is a place for fundamental laws in various fields, but they should not be given a legal status different from that of any other law (*Davar*, 1950).

In the early 70s of the 20th centuries, Knesset member Binyamin Halevi from the Gahal party initiated the enactment of the Basic Human Rights Law (*Davar*, 1971). In 1974, the law passed in the Knesset on its first vote, and the legislative process did not continue (Schwartz & Galily, 2016).

With the establishment of the 23rd Israeli government, which was a government of national unity, at the end of 1988, the Minister of Justice Dan Meridor established a team to formulate a proposal for the "Basic Human Rights Law." In April 1989, the team's proposal was presented to the government, which approved it (Hamari, 1989). The proposal included armor to the law so that it can only be changed by a two-thirds majority of the members of the Knesset. In November 1989, the bill was passed in preliminary reading. The Likud's support for the bill infuriated the ultra-orthodox factions. The Agudat Israel faction withdrew from the coalition and the Shas and Agudat Israel began to discuss with the "alignment" the establishment of a narrow government headed by Shimon Peres, Likud, the religious parties, and the right-wing parties led by Yitzhak Shamir (Rahat, 1989).

The narrow government was presented to the Knesset on June 11, 1990, and as part of the coalition agreements, the Likud faction committed not to advance the law without the consent of its coalition partners (session of the Israeli Parliament, June 11, 1990).

In March 1991, the chairman of the Constitution, Law and Justice Committee, Uriel Lin, and committee member, Amnon Rubinstein, agreed that they would try to enact basic laws on human rights. According to Rubinstein's proposal, he would dismantle the said proposal (proposed basic law: the basic rights of the person) to four separate fundamental laws: human dignity and freedom; freedom of occupation; freedom of expression; and freedom of association. All these laws were laid down as private bills by MK Rubinstein, and all were passed in preliminary reading. During the legislation, MK Lin decided not to try to establish a constitutional court, to ensure absolute observance of the law (Meeting of the Law, Constitution and Justice Committee of the Israeli Parliament, July 1, 1991), and to agree to the proposal formed between MK Yitzhak Levy and MK Amnon Rubinstein, whose values of Israel will be defined as the values of a Jewish and democratic state (Meeting of the Law, Constitution and Justice Committee of the Israeli Parliament, July 15, 1991). To weaken the position of the ultra-orthodox parties, freedom of movement and the right to choose one's place of residence were removed from the original proposal as absolute fundamental rights. He also added Article 10, which is the legal preservation clause from the Basic Law of Human Rights prepared by the Ministry of Justice. A legal preservation clause was added to the original version, which stated that there would be no impairment of the validity of legislation that existed when the Basic Law was adopted. Thus, it was guaranteed, for example, that it would not be possible to appeal the Validity of the legislation that separates the adjudication of marriage and divorce matters to the religious courts (Meeting of the Law and Justice Committee of the Israeli Parliament, 25.2.1992).

The heart of Basic Law: Human Dignity and Freedom naturally deals with the rights it protects. As the title of the law states, all these rights are derived from human dignity and freedom, as they are interpreted because the State of Israel is a Jewish and democratic state.

Section 9 of the Basic Law establishes an additional proviso for servants in the IDF, the Shin Bet, and the police. According to what is stated in this section, violation of the rights of those serving in these entities will not exceed what is required by the nature and essence of the service.

However, the absence of several essential human rights such as the right to equality, freedom of expression, freedom of religion, freedom of protest, freedom of association, and more is striking. Although these rights are given to the residents of Israel by general principles that existed even before the law was enacted, they are not protected by a basic law, and therefore they can be impaired and even canceled through a democratic process. Although the allowing of these rights outside the Basic Law was done consciously, there are jurists, led by Aharon Barak, who consider these rights to be derived from the right to respect, and even though the ruling of the Supreme Court on the subject is not yet consistent, some rights such as equality and freedom of expression, have been recognized as derivatives of respect in the number A lot of judgments from 1994 until today The supra legal status this basic law has a senior legal status, which is reflected in several sections. The section of the Basic Law states: "No one violates the rights according to this Basic Law except by a law appropriate to the values of the State of Israel, which is intended for a proper purpose, and to the extent that it does not exceed the need or according to the law of the law by an explicit authorization therein." This section, known as the "limitation clause", establishes the conditions for allowing legislation (or an administrative act) to limit a right enshrined in the Basic Law (for the meaning of this section, and in particular the conditions that allow legislation that infringes on the rights of this Basic Law, see the legal revolution entry). For example, regarding the eviction of Gush Katif, the Supreme Court of Justice ruled that the eviction-compensation law does violate human rights in the Basic Law but determined that the law meets the conditions of the restriction clause. Regarding the conditions of the restriction regulations, that "fair and proper payment – which is a condition for the rights of infringement of their proprietary rights" the court believed that several sections of the law infringing on the settlers' right to fair compensation are invalid (Israeli Supreme Court ruling, 2005).

Section 12 of the Basic Law protects the law against emergency regulations, stating that the government does not have the authority to change the Basic Law – and, by implication, to distribute the fundamental rights therein – through emergency regulations, as explained: "Emergency regulations do not have the power to change this Basic Law, to temporarily expropriate its validity or set conditions therein; however, when a state of emergency exists in the country under the validity of a declaration according to section 9 of the Government and Judicial Procedures Ordinance, 1948, it is permitted to establish emergency regulations by the section above that would deny or limit rights according to this Basic Law, provided that the denial or restriction be for a proper purpose and a period and to the extent that they do not exceed the balance." The protection against emergency regulations is not absolute and is subject to the considerations of the government and the Supreme Court (Friedman, 2013).

2. The duty of the Israeli police to warn a suspect about his right to remain silent due to the Israeli Basic Law on Human Dignity and Freedom

According to Section 28(a) of the Israeli Arrest Law (Criminal Procedure Law, 1996) the officer in charge of a police station is required to hear the command's messages before deciding whether to keep him in custody or to release him, that is, before they hear his words, the officer must warn that he is not obliged. Saying something that could incriminate him because anything he says may be used as evidence against him and his refusal to answer the questions may strengthen the evidence against him that the prosecution will have, which states that evidence can be considered admissible if it was given out of goodwill and freely because on the one hand the interrogated in a face-to-face position with a law enforcement officer, he should not be afraid of him or rely on promises that he is sure will be kept if he confesses and for this purpose, this will change the possibility of his silence. A warning is unnecessary when the suspect has a conversation with a member of Kl', things that the detainee utters of his own free will and without being required and interrogated except as a volunteer.

On the other hand, it should be noted that, as a governmental authority, it must show fairness to those being investigated, unfortunately as far as the exercise of their rights is concerned, this obligation is derived, because it is prevented from denying the presentation it made to the subject regarding the copyrights, if the subject relied on this presentation and changed his situation for the worse, on – Yes, even when the interrogated person has not been formally warned that he is suspected of committing a crime, he may receive the right to remain silent if he is presented with evidence that he believes he has committed a crime, the absence of a warning regarding the right to remain silent is a justification for disqualifying the defendant's statements or the order, which is familiar with all legal methods of law. This way of warning both in American law and in Canadian law and not in Canada, the first legal hearing, in Canada called THERENS, which dealt with the disqualification of evidence that was obtained recognized that the accused was given the right to consult with a lawyer, and was not fully explained to him his rights, and he gave information to the police that he knew was available to him. The right of silence is his right, and he was not aware that he should not waive this right (Therens, 1985), that is, it is of utmost importance that the accused and the accused be aware of the rights available to them, during their interrogation, and that there is no need to waive these legal rights unless they wish. and (Collins, 1987) it should be noted that according to Y. Kadami (1999) it can be said that the fundamental right is confidentiality against self-incrimination from which the right to remain silent is derived, that is, the right to remain silent during the investigation finds its legislative expression in the provisions of Section 2(2) of the Criminal Procedure Ordinance. (testimony) which exempts the interrogated person from giving incriminating answers, as well as in section 47(a) of the Evidence Ordinance (new version) exempting a person from providing evidence that constitutes an admission of a crime that he is accused of or may be accused of.

It should be noted that the warning given during the investigation is nothing more than a tool to ensure that the suspect is aware of his constitutional right to remain silent and it was introduced into the law of our country through the "Judges' Regulations" in England until the enactment of the Criminal Procedure Law (Enforcement-Arrest Powers) 1996 (hereinafter the Arrest Law) and before that it was It has any anchoring in legislation, acceptance of legislative anchoring in section 28(a) establishes an obligation to give the person nominated for arrest an opportunity to speak after being warned that he is not obliged to do so, hence due to the obligation there is room to say that the violation of the obligation does not automatically lead to the disqualification of the confession and depends on the circumstances of the investigation. D. David Belhanis (David Belhanim that the State of Israel, 1999) stated that the non-existence of the warning is among the other considerations considered by the Beit HaShet, when it discusses the question of the admissibility of the acknowledgment.

According to the Odeh case (State of Israel v. Odeh Arad, 1997) it was said that as a consequence of the right to remain silent, the police were assigned the duty to clarify the right to the accused and to warn him, before he gives any information to the police, that he does not have to say anything and the absence of a warning has the effect of damaging the information which the accused gives to the police during his investigation, since it cannot be said that an accused who is not aware of his rights has consciously waived, out of free will, his right not to say anything and an accused who is not aware of his rights cannot waive them, that is, providing information to the police by the accused should only be done after the accused has expressly waived, knowingly and of free will about his right to remain silent. Therefore, as long as the accused is not aware of his constitutional rights to remain silent, it cannot be claimed that he has waived confidentiality against self-incrimination because as long as the set of rights of the interrogated has not been ascertained, he cannot correctly edit the voice of interests when deciding whether to provide information to the police. Under these circumstances, the police must inform the interrogated person in custody of his rights before any statement is taken from him, if no warning was given, the constitutional duty imposed on the police and the investigating authority has not been fulfilled.

In such a case, and since the suspect is not himself, the eliciting of any kind of confession from him, whatever its scope, must be seen as a violation of the constitutional right that justifies the disqualification of the evidence, and according to the Pashad Steven Smirk (Steven Sirk v. the State of Israel, 1999) it was determined that the access that occurred In the ruling, it is worth a warning in itself, how to disqualify it as long as it is proven that the notice was given out of goodwill and freely, that the interpretive trend arising from the Basic Law on Human Dignity and Freedom requires a renewed examination of the balance between the rights of the accused and the need to protect the public interest, then it appears that accordingly there may be circumstances in which the suspect's absence of a warning will lead to the disqualification of a confession he gave during the investigation. However, a blanket disqualification rule should not be established in this regard. To summarize the anchoring in the Basic Law of the rights of a suspect or accused in the criminal procedure, we learn from the constitutional anchoring of the right to liberty according to Section 5 of the Basic Law.

Hence the scholar Emanuel Gross in his article (Gross, 1996) claims that the rights of the suspect and the accused in the criminal proceedings have, therefore, received the status of constitutional rights and according to (retired) judge A. Barak (Barak, 1996) who says that the right to remain silent is a constitutional right, and an infringement of the right to remain silent can only be done In the place where the tests in the Basic Law were held, and such an injury that is not appropriate according to the Basic Law. An appropriate constitutional sanction should be established because today, a violation of a constitutional right in a way that does not meet the tests of the Basic Law justifies the disqualification of evidence obtained as a result of this violation. And according to Pashad Odeh (State of Israel v. Adnan Orat, 1997) it can be said that the disqualification of the evidence in the absence of a warning symbolizes the social price that society is willing to pay in order to preserve the protected constitutional value, so in order to guarantee the fundamental rights, legitimizing the violation must be prevented in which by the government authorities and the legal system that tries to harm the right to remain silent and self-incrimination and confidentiality against self-incrimination which is entrenched, that it will not be possible to maintain the constitutional right if the legal system is willing to sacrifice for the purpose of obtaining a conviction in a criminal trial and the rejection of the evidence obtained without giving a warning is necessary in order to protect the values the constitutionalists (MAPP V. OHIO, 1961), because in the absence of a constitutional sanction, constitutional rights such as the right to remain silent have no meaning.

The constitutional change that followed the enactment of the Basic Laws is not a mere rhetorical change. It should also be a practical change in the application area of the entire criminal procedure. That is, the constitutional change there should be one who expresses in practice the fact that the right to freedom is currently at the top of the pyramid of norms, and it is necessary to express the supreme status that society currently gives to this right. Because as it was said in the Alice Miller case (Alice Miller v. Minister of Defense, 1994) that constitutional rights have a price high expressing the protection and equality of constitutional rights of great value, because society's willingness to pay the price, in order to protect the fundamental right, should be expressed in the fact that obtaining a conviction in a criminal trial will be subject to the basic norm that society establishes as a norm, that is, that obtaining a conviction cannot be done while infringing on the right The foundation of the right to remain silent: and confidentiality against self-incrimination, and ensuring this goal can only be expressed by way of disqualifying evidence obtained as a result of a violation of constitutional rights of non-self-incrimination, because there is no doubt that with the development of Israeli constitutional theory in light of the Basic Law, human dignity and freedom exist There are clear standards for the disqualification of evidence that Israeli jurisprudence tests according to which when the violation of the fundamental right is such that it exceeds what is required in section 8 of the Basic Law, the evidence will be disqualified, while a proportional violation will not justify the disqualification and only on grounds of constitutional rights.

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