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The Effect of the Israeli Basic Law on Human Dignity and Freedom on the Use of Incriminating Evidence in Israeli Courts

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Abstract

Is there a place for a distinction between immunity from self-incrimination based on oral answers to questions asked by a person, and immunity from self-incrimination related to the delivery of documents held in a person's hand? Value considerations should be preferred over the assessment of the truth and its discovery, provided that these considerations are expressly fixed in the law, according to the provision of the Basic Law on Human Dignity and Freedom if a person's body is searched.

Keywords: Israeli Basic Law on human dignity and freedom, incriminating evidence, Israeli courts.

1. The confidentiality and silence regarding the disclosure of documents in front of the Israeli basic law of human dignity and freedom

According to the official documents, there are various distinctions. Is there a place for a distinction between immunity from self-incrimination based on oral answers to questions asked by a person, and immunity from self-incrimination related to the delivery of documents held in a person's hand? In the Hori case (Hori v. the State of Israel, 1981), the Honorable Judge Shamgar was required to make this distinction between answers to questions and the handing over of documents. His opinion was that immunity applies to both matters alike. Thus, he says that "the right to non-self-incrimination is nothing but the essence of the rule, and according to which no one is obliged to answer a question, if the answer to the question may be in it, in the opinion of the court, to lay the foundation for criminal prosecution of the person who answers the answer, this right also refers to the requirement for the presentation of documents and other movables. The provision of section 47 of the decree the evidence can be found in it to support the expansive interpretation of documents, and it is in speech that a person is not obliged to give evidence." And indeed, it will be seen" even written evidence is heard. In the following we will assume that this is indeed the law, to say that according to the Lagaziel case (State of Israel v. Zion Lagaziel, 1999), the immunity from self-incrimination can apply both to answers to questions and to the handing over of documents that are the product of his thought and creation of the person requesting delivery, but if the documents were not prepared by the person requesting delivery and their content is not the product of his thought and creation. So according to the Legaziel case (State of Israel v. Zion Legaziel, 1999), it was stated that a private and personal document prepared by the individual according to an obligation in law, confidentiality does not apply, as well as material that is regarding documents prepared by the Authority and reached from it to the individual, such

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documents are physically held by the individual, however according to their essence, content and origin they are not – except the photo paper itself – the property of the holder of them and the authority has the right to receive the documents which it owns A classification between private and public documents is required to establish that confidentiality does not apply to the documents in question.

Therefore, the person collecting the documents cannot defend against the handing over of the documents by claiming confidentiality against self-incrimination if it is a question of handing over public documents to the investigating authority. Therefore, the question in the present case is if we compel a defendant or suspect to bring the documents required of him and claim about them, for example, a claim of confidentiality, then the basic principle of the absolute right to silence protected by the Basic Law on Human Dignity and Freedom will be violated. First, bringing the document entails an admission that the document is in the suspect's possession, and sometimes this is enough to incriminate him. Second, raising the claim that the document may incriminate him is a breach of silence, and how can the suspect argue about the document without infringing his right to incriminate himself according to the ruling "Gilad Sharon" states that the line of logic shows that it is unthinkable to apply an absolute right to remain silent only to speech while regarding Documents, which may incriminate a person suspected of a crime, regarding which the suspect will not have the right to remain silent in the sit-and-don't test (Gilad Sharon v. The State of Israel, 2003). If we apply the provision of Section 47(a) of the Evidence Ordinance regarding the delivery of documents by a suspect or an accused, not the suspect's apprehension of self-incrimination will be sufficient. Still, he will be required to convince the court that this or that document contains an admission of the fact that it is one of the fundamentals of an offense", but this will inevitably violate the right to complete silence.

Therefore, until this stage, it is not possible to apply to a suspect or an accused the right to confidentiality as stated in section 47 of the Evidence Ordinance, but rather the absolute right to refrain from speaking, there is no doubt that the court must always take into account its considerations within the framework of that careful examination, the appropriate balances between the vital need and society In the eradication of crime and the basic rights of all citizens of this country to security and peace, and the rights of a suspect or an accused, whether they arise from the fundamental laws, or whether they originate from basic rights that according to the principles of criminal law and as the Honorable Judge Beinish says in the Smirak case (Smirak v. State of Israel, 1999) that in front of the suspect's and the accused's right to remain silent, the right to consult a lawyer and the right to a fair trial, there are important public interests such as fighting crime, protecting the security of the state and public peace, revealing the truth, and even the need to protect the rights of the crime victim who was harmed as a result of the act the criminal Therefore, a delicate and complex balancing act is required between a variety of competing rights, values and interests, in accordance with the values of our legal system and according to the limits of the limitation clause" and as stated by the Honorable Judge (retired) A. Barak (Barak, 1996) that whether we see the right to remain silent as a fundamental right Has constitutional status by a fundamental law: human dignity and freedom and an infringement of such a right must be done explicitly, so we will not ignore the distinction in the case law between "private" documents and public documents" however, and as noted by the Honorable Justice Strasberg-Cohen the ruling of Lagaziel (Lagaziel v. State of Israel, 2000), which says that the public documents "are" documents prepared by a person according to a legal obligation and the disadvantage does not apply when the documents held by the person are, in terms of their essence, the property of the authority and considering the classification of the documents, which Gilad Sharrach was required to provide to the police, as detailed at the time, it can be said that most of them are not "public documents" as defined and as the authority demanded at the time that they be handed over. In conclusion, it can be said that the suspect does have the right to refuse to hand over documents that are in his possession in an absolute manner Even if these documents do not incriminate him if they are private documents. As long as they are documents that do not harm the suspect's privacy against

self-incrimination, they must cooperate during the investigation, which the suspect does not have the right to avoid, and as far as the documents are concerned, the suspect only has confidentiality against incrimination self-exculpation by Section 47 of the Evidence Ordinance and according to its terms, but this disadvantage does not give the suspect, who has been ordered by a court order to produce documents, the right to ignore the order issued against him even if there are documents that he must produce to incriminate him then the suspect who wishes to argue against the order that it can be revealed against him what documents he has, must contact the court in order to be released from the obligation to produce the documents, and according to the Sharon case (State of Israel v. Gilad Sharon, 2003), the court will examine the documents in two stages that the claimant claims to be confidential, first the court must examine the existence of a fear of self-incrimination in each and every one of the documents for which the suspect is required to produce documents for which there is no fear of incrimination the suspect will be obligated to hand over them as he will be obligated and regarding documents for which such a suspicion exists regarding which the second step in this phase is carried out on a house – The court will consider whether, under the circumstances, it is appropriate to grant the suspect "confidentiality of use" so that certain documents will be removed from the disadvantage of self-incrimination, but the suspect will be assured that these documents will not be used as evidence against him in future legal proceedings. documents that are private and documents that are public, and as such are not covered under them. It should be noted that there is no obstacle to a discussion of the question of the incriminating potential inherent in every one of the documents being held in the capacity of the suspect only so that the prosecution will not be exposed either to the suspect's claims regarding the incriminating potential inherent in the documents or to the documents themselves before it was determined that the documents are not covered under the drawback

2. Invalidity of evidence collected in violation of the Israeli basic law of human dignity and freedom.

In this case, value considerations should be preferred over the assessment of the truth and its discovery, provided that these considerations are expressly fixed in the law, according to the provision of the Basic Law on Human Dignity and Freedom if a person's body is searched, as was done in the case of Vaaknin (Military Court of Appeals et al. v. Vaaknin, 1983), there will be a place To say that a search of a person's body or their body without internal penetration can be considered in a way and in circumstances where there is a serious injury to the dignity and modesty of the individual, and this is in serious violation of Sections 2, 7(a) and (c) and 8 of the Human Dignity and Freedom Law (Basic Law) (The Israeli: Human Dignity and Freedom, 1992) that a search while infringing on one's dignity and freedom is a violation of the basic principles of preserving human dignity and modesty, which are detailed in the Human Dignity Law. In other words, gathering evidence in an illegal manner that infringes on a person's freedom of his body and privacy does seriously infringe on the fundamental rights that the legislator wanted to anchor to against harm by the government authorities (Galily & Petkova, 2022).

Therefore, the question that arises in the circumstances of our case is whether the rule of disqualification of evidence is enshrined in fundamental law, then according to the Meir Pela case (State of Israel v. Meir Pela et al., 1993), which the Honorable Judge Ron Shapira states that without setting clear limits to the rules of disqualification, regarding evidence that was obtained illegally while Violation of human dignity, the judge believes that the Basic Law of Arrest and Freedom created constitutional rights for every accused or suspect and changed the balance point in examining the admissibility of evidence and the Basic Law requires emphasis on the evidence gathering procedure as it relates to the subjective characteristics of a particular accused.

It is no longer possible to examine the evidence-gathering procedure with objective measures only, and emphasis must be placed on the subjective aspect that refers to the nature of

every defendant as well as the unique data of each investigative event. Therefore, it can be said that evidence that was obtained or collected during a serious violation of a person's dignity and modesty can be rejected as admissible, according to the Supreme Court's Code of Conduct and in light of the circumstances of the specific case under discussion, and as it was established in the Mizan case that an instruction received from a violator suspected of a crime by trickery is not rejected Or even an act of deception (Mizan v. The Ombudsman, 1955), that is, according to the Court of Justice, there is no activity on the part of the authorities that use measures to issue a guilty plea in order to infringe on the right not to incriminate oneself, since he has and there is the possibility of maintaining the right to remain silent, as claimed by Judge Bach in the Biter case (Moshe Biter v. the State of Israel, 1987) that limits must be set for the use of means of violating the right to remain silent, therefore the compilation of false and fabricated documents exceeds the permitted scope.

There is a significant difference between not revealing the truth or even telling an untruth to the interrogator and misleading him by putting together false documents that claim to be real evidence. In other words, there is a danger here, because every straw will break. If the police and the prosecution are allowed to "fabricate" a false certificate regarding the results of a fingerprint test, then there is no preventing that, tomorrow, fingerprints themselves will be falsified, as well as elastic tests, post-mortem tests of bodies, witness statements, pieces on checks and other documents, etc.

It does not seem to me that a ruse that takes such an extreme and blatant form is legitimate, and there is even no intention to ultimately hide the details of the ruse from the court. The fairness in it, and as a rule that is practiced to this day, is that the court does not reject evidence that was obtained in an unfair or illegal way, that is, the touchstone is to a large extent the evidentiary power of the evidence, whose admissibility is tested as the evidentiary power and significance of the evidence increases and the tendency to reject becomes smaller Evidence due to defects in the way it was obtained, that is, the examination of the evidence by way of the admissibility test and if the evidence is free and obtained voluntarily as required by Section 12 of the Evidence Code, that is, from here we come to the general conclusion that the invalidity of evidence obtained in violation of human dignity rests on the question of whether he had the ability to choose of the interrogated and as the Supreme Court says in the Kiel case (Kiel v. the State of Israel, 2000), which stated that it is of great importance whether the accused gave his confession under the influence of pressure exerted on him or whether he gave his statement out of good and free will and if the former is Gerber there will be a tendency to disqualify the evidence but this question You will wake up in front of the various factors and what are the factors taken by the Authority, in order to deny the free will of the interrogated while harming his dignity and freedom which is enshrined in the Basic Law of Human Dignity.

Therefore, we see and conclude that a confession obtained by trickery while harming human dignity may be admissible, but that certain circumstances and how it was obtained will affect its weight and reliability, certainly that there are circumstances to question their reliability, that is, the very use of investigative tricks that harm a person's dignity does not in itself rule out the confession of the accused but Its admissibility is examined in light of your free will and his freedom to deliver his incriminating statement, and if there was an extreme injury to his dignity and free will in light of the fundamental law of human dignity and freedom, then there will be a consideration regarding the acceptance of the evidence. And as the Honorable President (retired) A. Barak states in the Yakovowitz case (Yakobowitz v. the State of Israel, 1998), he says that by paying attention to the totality of the evidence one can conclude that it is indeed possible to establish testimony in favor of the accused as long as it does not have explicit backing that indeed proves the innocence of the accused, faded despite the violation of privacy that contradicts the fundamental principles enshrined in the Fundamental Law of Human Dignity and Freedom. From this, it can be said that regarding the evidence obtained in violation of the right against self-

incrimination, the method of Judge A. Barak (Barak, 1995) which says that Israeli jurisprudence has rejected the theory of the fruits of the poisoned tree, that is, in my opinion, and according to Barak's method, the right to remain silent and the right to not self-incriminate part of a person's dignity or a part of his freedom, and there is room for changing the approach that rejected the principle of the fruit of the poisoned tree, and his freedom which is enumerated in Section 4,7 of the Fundamental Law on Human Dignity, otherwise the right of the suspects and the accused will be emptied of it. before the court to make a proper balance between the considerations of the specific accused whose dignity and freedom are balanced considering the fundamental law of human dignity against the protection of the public and the security of the state which seeks to mitigate the danger of suspects and accused persons.

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