

The Constitutionality Index of Administrative Detention

Aharon Mishnayot

In the battle against the phenomenon of terrorism, one of the means employed by the State of Israel, as by other countries, is the administrative detention of individuals suspected of terrorist activity. This involves the negation of freedom through the issuance of an order by an administrative body, relying on confidential information that is not entirely disclosed to the suspect, in a process which severely impedes the suspect's ability to defend himself against the allegations. Although the process is open to legal supervision, it still involves the negation of freedom by an administrative authority without a juridical decision. The purpose of this article is to propose a methodological aid using comparative methodology. Critical comparison to similar legislation can assist both in identifying the constitutional difficulties with administrative detention based on present law, and in proposing an alternative statutory solution that is less harmful to the individual.

The proposed methodology assumes that there has to be harmony among parallel legislations that are similar both in objectives and in the means of achieving these objectives. Thus, it is possible to compare the directives of similar laws, in order to minimize the violation of basic rights, with the lowest possible infringement levels that exist in one of the laws in the reference group.

