

The Prohibition of Sex in Workplace Supervisory Relations: Between the Protection of Autonomy and the Regulation of Authority

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This article offers a new interpretation of the offense of prohibited intercourse within workplace supervisory relations under Israel's Penal Law. While the offense has often been portrayed as intended to protect victims' sexual autonomy, this article explores a different, anti-corruption rationale, which is manifest in recent case-law. Moving beyond the protection of individual autonomy, this interpretation considers the public (or semi-public) interests of regulating workplace authority and securing the proper functioning of the workplace. Drawing on the distinction between core offenses and regulatory offenses in criminal law, the article further considers the regulatory character of employing an "abuse presumption" in the adjudication of prohibited intercourse in the workplace, and discusses the normative implications of adopting a regulatory-style, relaxed burden of proof, while maintaining a relatively high, core-style level of punishment for the offense.

for it, has been heightened. The article examines two cognitive biases the board is prone to being affected by – anticipated regret (or regret aversion) and status quo bias. These are separate and different biases, yet their combined effect makes each one stronger. The status quo bias is intensified (for better or worse) especially when there is no option of regret, and deviating from the status quo carries with it potential regret. In the case of early releases, the meaning of this effect is a preference for keeping prisoners incarcerated, as opposed to the “active” decision to release them. Keeping prisoners incarcerated diminishes the possible regret potential of the Committee members, since they are not troubled by the possibility that the prisoner may return to crime. In the article, we explain why the board members are especially susceptible to these cognitive failures, creating a structural obstacle to the implementation of the Dorner Report’s decision without the complementary mechanisms to overcome these failures. These failures make it clear that when debating whether to release a prisoner or keep him in prison, the board will prefer to keep him incarcerated.

In light of these failures, we suggest considering reforms that will enable the board to better fulfill its original purpose and the Dorner Report’s conclusion. The first proposal is to adopt the dissenting opinion in the **Skolnik** case, to narrow the scope of Article 10(a), and perhaps even replace it with an explicit provision according to which the public interest or faith in the judiciary may not be taken into consideration.

Our second suggestion concerns the data presented to the board. The environmental circumstances of the specific prisoner must be stressed, using surveys and data regarding the prisoner’s community and the effect of his incarceration on his family and close environment.

Our third suggestion is to create a platform in which release decisions (and rejections) will be gathered, in order to collect statistics regarding the main grounds on which release requests are denied, and in order to enable review and reflection on the board’s activity.

In accordance with these principles, the article compares the process of criminal arrest, which was regulated in The Criminal Procedure Law (Enforcement Authority – Arrest) 5756-1996, and the process of administrative detention as regulated by The Emergency Powers (Detention) Law 5739-1979. The assumption is that since the law of arrests was passed after the legislation of Israel's Basic Law: Human Dignity and Liberty, various protective mechanisms were built into the codex of criminal law to reduce the violation of the suspects' basic rights to the bare minimum, as per the statutory principles grounded in the Basic Law. One can therefore make inferences about administrative detention from the criminal arrest codex, as the former is based on a law that was passed in the late 1970s, prior to the passing of the Basic Law.

The article identifies 15 legislative parameters in the criminal arrest process and examines the extent to which they exist in the administrative detention process, according to tests that were established in rulings by Israel's Supreme Court, when examining the suitability of new laws, based on the limitations clause of Israel's Basic Law: Human Dignity and Liberty. Gaps between the two processes (criminal process and administrative detention) were found in seven parameters. The article presents several proposals to reduce the excessive infringement of the rights of suspects in these parameters, without hindering the preventive objective of the administrative detention. The article ends with a suggestion for a statutory alternative, intended to completely eliminate the use of administrative detention, while making it possible to attain the objectives of administrative detention by means of a judicial process, within the framework of the criminal arrest codex, which facilitates better protection of the rights of suspects.