

Moran Svorai

On the Ground of Reasonableness in Labor Law

In 2023, as part of a legal reform, the Israeli parliament (Knesset) enacted the third amendment to the Basic Law: The Judiciary. According to this amendment, the court would no longer have the authority to review the reasonableness of decisions made by the government, the prime minister and other government ministers. Although the Supreme Court invalidated this amendment, the Article examines its potential effect on the labor market and employees' rights. Prior to its enactment, in the deliberations of neither the Knesset's Constitution, Law and Justice Committee nor the Knesset's general assembly, this effect was not discussed. In the Supreme Court ruling that followed and invalidated the amendment, only three judges out of 15 mentioned this potential effect, and their reference to this issue was brief and incomplete.

This Article seeks to fill the gap by expanding on this issue. I argue that if the third amendment had not been invalidated, it would have had a tremendous impact on the labor market, in three key aspects: (1) the ministers' authority to act as regulators and employer; (2) the minister of labor's authority to issue extension orders; and (3) the minister of labor and minister of justice's joint authority to appoint judges, particularly lay judges in labor courts. The main argument elaborated in the Article is that if the third amendment had not been struck down, then the elimination of the reasonableness standard from Israel's law would have minimized the courts' oversight over these aspects of administrative authority in labor law and could have been harmful to employees' rights.