

Punishment for Drunk Driving in Israel: An Empirical Perspective

Abraham Tennenbaum*

Abstract

The legislative requirement, and the clear guidelines of the Supreme Court based on it, set a minimum punishment of two years of driver's license revocation for drunk driving. Is this punishment applied in practice?

To answer this question, we examined three sources: first, the preliminary study conducted by Moyal and Eisenstadt based on a sample of nearly 1,200 cases of individuals indicted for drunk driving; second, the *Net ha-Mishpat* computer system of Israeli courts, where we checked all the relevant files between 2010-2014; and third, the survey we conducted among attorneys who specialize in traffic laws, whom we asked to describe the punishments based on their experience. The results, despite the differences between the sources, were remarkably similar. On one hand, the legislator and the Supreme Court decreed a mandatory minimum punishment that cannot be deviated from; on the other hand, the lower courts are not implementing it. This state of affairs is not right.

In the second phase we sought to find out why the minimum punishment is not implemented in practice. To this end, we examined the procedure for the enactment of the minimum punishment and interviewed jurists dealing with traffic law-retired judges, defense attorneys, and prosecutors.

The data indicate that the minimum punishment has been enacted as a one-time, draconian legislation, without appropriate testing and consultation. As a result, all players-traffic judges, prosecutors, and naturally, defense attorneys and the defendants themselves-believe that the punishment is disproportionate and unjust. Note that because of the severity of the minimum punishment, testing procedures have become difficult and complicated. As a result, drunk driving trials became protracted and time-consuming.

The combination of these factors created a shared interest for all parties in circumventing the minimum punishment through lenient plea bargains, which are reached in cooperation between the prosecution, the defense, and apparently the courts. Plea bargains have been reached because the minimum punishment seemed disproportionate and unjust to the parties involved, and because the process was long and complicated. As a result, the main victims of the minimum punishment are defendants standing trial in absentia, and defendants without representation, usually of the low socio-economic status, who failed to circumvent the minimum punishment.

These results are consistent with the many studies about minimum punishment carried out worldwide. Our study presents the agreement and the differences between our results and the

* Dr. Abraham Tennenbaum is a retired judge of the Jerusalem General Court.

I would like to thank Jonathan Shneur, Anat Horowitz, Eyal Zamir, Yossi Rivlin, Esther Tafta and Avital Chen for their helpful comments on an early version of this paper, and Dr. Michal Rotenberg, head of the Laboratory of Toxicology and Pharmacology at Tel-Hashomer Hospital, and the Israel Police (the Freedom of Information Unit) for their assistance in obtaining the relevant data. I am also grateful to members of the editorial board of *Moznei Mishpat* for their comments and assistance, as well as to reviewers of the journal. Special thanks to Shomron Moyal and Mimi Eisenstadt, who readily shared with me their data and helped me greatly with their comments. The responsibility is, naturally, all mine.

situation worldwide, and discusses the relation between our findings and the common goals of the Penal Code, asking whether the reality advances the stated goals.

In light of the findings, we recommend concrete steps to change the situation in Israel in order to address the problematic findings. We propose to replace the minimum punishment with a gradual and proportional punishment, and at the same time simplifying the testing procedures. We also propose a mechanisms that significantly reduces the harm to drivers from disadvantaged populations.