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Prof. Barnea: The agreements between Perry and his clients are fair and even favored them. Perry requests the inclusion of an expert opinion in the appeal he filed with the Supreme Court concerning his conviction and the sentence handed down against him

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The court ruling convicting attorney Israel Perry in the German pensions affair ignores the fact that from an economic perspective the agreements between Perry and his clients were fair, and even favored them. This is the determination by a senior economist, Prof. Amir Barnea, in the expert opinion Perry filed with the Supreme Court, a copy of which has reached Globes.

Perry appealed his conviction of the theft of 320 million German marks and his sentencing to 12 years in prison (which has been postponed). Represented by attorneys Weinroth and Israel Wolnerman, Perry claims in his appeal that he was convicted of stealing money from 9,000 clients, even though not one of them complained that his money was stolen and even though no proof was presented that they had not agreed to transfer the money to him.

In the appeal, filed with the Supreme Court, Perry argues that the Standard Contracts Court approved his agreements with the clients and determined that the [insurance] premium charges were reasonable and nondepriving, and that they appropriately reflect the insurance risk assumed by Perry and the Organization for the Implementation of the Israel-West Germany Social Security Treaty (via which he operated).

Now Perry is asking the Supreme Court to allow him to append the appeal with Prof. Barnea’s expert opinion, which also determines that the premiums collected from the clients reflect the risk he assumed - in other words, that Perry did not steal any money from his clients.

“Economic fairness”

Barnea, who was assisted by actuary Yitzhak Blass, who advised Perry during the formulation of the German pension plan, claims that the court’s decision focuses only on the propriety of the manner in which the charge for the life insurance premiums was set in advance, but “lacks any economic evaluation, which is essential to understanding the need for charging in advance. This need is derived from the complicated and irregular structure of the transaction.”

This complicated structure, according to Prof. Barnea, stems from the institutional and marketing restrictions imposed on the process for implementing the pension and from the fact that most of the clients chose the pension plan option without any personal investment (but rather via obtaining credit for the payment of the premiums). “This special structure creates an unusual reality with results than could, on a superficial level, appear to be unreasonable,” Prof. Barnea claims.

According to Perry, the District Court based its ruling on this unreasonable appearance as proof that the clients were harmed, even though the transaction, vis-à-vis the clients, was fair and economically sound.

“I did not find any detailed economic examination of the documents between the entrepreneurs and the clients in the court ruling,” says Barnea. “Charging the clients in advance for the expenses was reasonable and fair,” among other reasons, in light of the credit risk assumed by the entrepreneurs.

The pricing of the program was also reasonable and fair, according to Barnea. He says that ostensibly, charging a client in advance for insurance that exceeds the sum being insured seems absurd. However, he adds, the full release of the client from any payment, including insurance premium, is also unusual. When the charge for the insurance premium in advance relies solely on the money to be received from pension payments, there is a real risk, in addition to the fact that the clients’ age when they joined the plan was high, and some were not in good health.

Virtual sum

Barnea believes that the court erred when it defined the entire sum that clients were charged in advance for the insurance as an asset in the hands of the collector (Perry). There is a fundamental difference between the sum charged and its value for redemption purposes," a difference "sufficient to conclude that the sum charged cannot be defined as an asset, as was determined in the court's decision. In this context, it is difficult to understand the conviction for theft, which stems from the charging of the clients' premiums in advance."

"Treating the entire charge as a deposited asset," continues Barnea, "ignores the fact that most of that sum is a phantom asset. I do not know if there is a precedent for defining a phantom asset as a deposited asset that can be stolen."

Barnea notes that he does not know why Perry and the organization chose to conceal the fact that the insurance premiums were paid to a company he controlled and not to a separate insurance company. It is obvious, however, that the clients only benefited from this. "Does a client of a car rental company care if the insurance is external? In practice, services equivalent to external insurance were provided and it is possible they were even more favorable."

Barnea compares this to a situation in which the insurance agent receives an insurance premium from a firm, and instead of passing it on to the insurance company, he deposits with the firm the insurance sum it would receive if any damage is caused. If there is no damage, the agent takes the sum back from the firm. From the firm's perspective, states Barnea, there is no importance to the question of whether the premium was transferred to the insurance company or not. The firm is actually better off, as it is not dependent on the insurance company's reservations or its solvency.

Perry feels that the exemption clause relieving survivors from paying the debt in the event of the client's death, is equivalent to depositing the sum of the damage in the firm. Still, "the court ruling does not examine the economic significance of the exemption, but rather only the wording, and therefore errs in its examination of the fairness of the deal from the clients' perspective."

Barnea believes that the exemption clause, according to which the loans would be considered repaid upon death, is preferable from the client’s perspective than the life insurance clause in a standard insurance contract, according to which the insurance company will clear the credit balance in the event of death. This is because the former is not dependent on the cause of death or the solvency of one of the parties to the transaction. (C.A. 1784/08).