

HCJ 2109/20

HCJ/2135/20

HCJ 2141/20

Petitioner in HCJ 2109/20:

Shachar Ben Meir, Adv.

Petitioner in HCJ 2135/20:

The Association for Civil Rights in Israel

Petitioner in HCJ 2141/20:

Adalah – The Legal Center for Arab Minority Rights in Israel

v.

Respondents in HCJ 2109/20

1. **Prime Minister**
2. **Government of Israel**
3. **Israeli Security Agency**
4. **Israel Police**
5. **Ministry of Health**
6. **Attorney General**
7. **Ministry of Justice Privacy Protection Authority**
8. **Knesset**
9. **MK Gabi Ashkenazi**

Respondents in HCJ 2141/20:

1. **Prime Minister**
2. **The Government**
3. **Israeli Security Agency**
4. **Israel Police**
5. **Ministry of Health**

Respondents in HCJ 2141/20

1. **Prime Minister**
2. **Israeli Security Agency**
3. **Israel Police**
4. **Ministry of Health**

Attorney for the Petitioner in HCJ 2109/20: *Pro se*

Attorneys for the Petitioner in HCJ 2135/20: Dan Yakir, Adv., Gil Gan-Mor, Adv.

Attorney for the Petitioner in HCJ 2141/20: Hassan Jabareen, Adv.

Attorney for Respondents 1-7 in HCJ 2109/20 & Respondents in HCJ 2135/20: Reuven Eidelman, Adv., Shosh Shmueli, Adv.

Attorney for Respondents 8-9 in HCJ 2109/20: Avital Sompolinsky, Adv.

The Supreme Court sitting as High Court of Justice

Before: President E. Hayut, Deputy President H. Melcer, Justice N. Sohlberg

Petitions for order nisi and interim order

Decision

1. These three petitions challenge the Government's decision to promulgate two sets of emergency regulations: (1) Emergency Regulations (Authorization of the Israel Security Agency to aid in the national effort to limit the spread of the new corona virus), 5780-2020 (hereinafter: the ISA Regulations); (2) Emergency Regulations (Location Data), 5780-2020 (hereinafter: the Police Regulations). The regulations permit the collection, processing and use of "technological data" of persons who have contracted the new corona virus (hereinafter: the virus), in order to combat the spread of the corona epidemic.

2. In a hearing on the petitions today – March 19, 2020 – serious legal issues were raised concerning – inter alia – the absence of parliamentary oversight of the process of promulgating the regulations and the manner of their implementation, as well as constitutional questions that require examination.

3. The petitions in HCJ 2135/20 and HCJ 2141/20 were filed immediately prior to the time set for the Respondents to submit their response to the petition in HCJ 2109/20, which had been filed on the previous day. That being the case, the Respondents did not have sufficient time to prepare their written response to the arguments raised in these two petitions prior to the hearing. The Respondents requested that we permit them to submit a supplementary response in this regard. In view of the urgency of the matter, we order that it be submitted by Sunday at five p.m. In their supplementary response, the Respondents will address the following fundamental questions:

(a) Does the declaration of a state of emergency under sec. 38 of [Basic Law: The Government](#) also relate to emergency situations that do not arise from security concerns?

(b) Can the Israel Security Agency be granted authority to act in areas that do not concern state security by virtue of sec. 7(b)(6) of the Israel Security Agency Law, 5762-2002?

(c) Does sec. 39(d) of [Basic Law The Government](#), which states: “Emergency regulations may not [...] infringement upon human dignity”, impose an absolute restriction upon violating the right to human dignity, or is such a violation subject to the conditions established under sec. 12 of [Basic Law: Human Dignity and Liberty](#)?

4. At this stage, we are making an interim order, stating:

- A. As regards the ISA Regulations – if by noon on Tuesday, March 24, 2020, the Knesset does not establish the relevant committees for parliamentary oversight of these regulations, no use may be made of the authorities granted thereunder from that date until the issuance of another decision.
- B. Without derogating from the above sec. A., the ISA Regulations will be implemented at this stage *exclusively* for the purpose of locating persons who were in the vicinity of persons *with a positive laboratory result for nCoV*, and in accordance with the classified directives presented to us *ex parte*, with the consent of the Petitioners, which were approved by the Attorney General.
- C. If a decision is made to impose a general closure before Tuesday, March 24, 2020, it will be possible to reexamine the need for implementing the authorities under the ISA Regulations and the compatibility of the interim order with that situation.
- D. At this stage, and until another order, there shall be no implementation of the authorities granted under the Police Regulations. In this regard, we would note that in the hearing before us, the Respondents informed the Court that, at this stage, the procedure mentioned in sec. 4(A2) of the Criminal Procedure (Enforcement – Authorities Telecommunication Data) Law, 5768-2007) (hereinafter: the Telecommunication Data Law), which was added to that law by virtue of the Police Regulations, had not been completed. Therefore, these regulations have, in any case, not been implemented. It was further explained that, at this stage, there is no

intention to make use of the authorities granted to the police under these regulations by virtue of sec. 4(A1)(1)(a) of the Telecommunications Data Law.

5. When the material mentioned in para. 3, above, has been collected, we will decide upon the how these all these petitions shall proceed.

Given this day, 23 Adar 5790 (March 19, 2020).