

## **The Coronavirus Crisis in Israel: When an Epidemic Meets a Political Crisis**

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**Like most countries today, Israel is in a state of emergency due to the coronavirus pandemic. This situation requires taking far-reaching steps to contain the spread of the disease. Moreover, the coronavirus crisis broke out at the height of a political crisis in Israel that has continued for over a year, with a transitional government in place following turbulent elections. States of emergency challenge a democratic regime at any time, but the combination of the health crisis and the political crisis has increased fears among some of the public that under the guise of the state of emergency, steps will be taken, beyond what is required by the situation that undermine Israeli democracy. While in times of emergency it is possible to justify steps that restrict basic civil rights such as freedom of movement or the right to privacy, it is important that this be limited to the necessary minimum. Furthermore, the extensive power given to the government in times of emergency underscores how vital it is to maintain effective oversight of the government and ensure that it is subject to the rule of law. In this respect, the decision by outgoing Knesset Speaker MK Yuli Edelstein, with the encouragement of figures in the government, to blatantly defy the High Court's ruling is especially worrisome.**

### **Restrictions on Movement**

From the beginning of the crisis, various restrictions were imposed on the movement of civilians, and over the weeks these were tightened. At first, the restrictions were imposed by means of an order made under the authority of the Public Health Ordinance, after the declaration by the Minister of Health that the virus was a dangerous infectious disease. Later, the restrictions were imposed under the authority of "emergency regulations." This is secondary legislation that the government can institute in a state of emergency "in order to protect the state, the public's safety, and maintain vital supplies and services." It is possible insofar as a state of emergency was declared in Israel in 1948 and has not been canceled since then. If such emergency regulations are not extended by Knesset legislation, they can remain in force for a period of up to three months. According to the Basic Law: The Government, there is no requirement to receive the Knesset's approval to institute emergency regulations. However, these regulations must be presented to the Foreign Affairs and Defense Committee, and the Knesset has the power to review and even cancel

the regulations. According to the Basic Law: Human Dignity and Liberty, rights granted in this basic law can be denied or limited by emergency regulations, provided that this is done for a worthy purpose and only for a period and an extent that do not exceed the required.

Restrictions of movement, and even a general lockdown, are necessary steps that have been taken in many countries around the world, including Western democracies, in order to contain the pandemic. While the emergency regulations are a measure that should be used sparingly, it is a necessary tool under the circumstances, in light of the urgency and the difficulty of passing proper legislation without a functioning Knesset. The restrictions themselves seem reasonable, and it is clear that ongoing in-depth discussion is taking place regarding their extent. The fact that an exception allowing participation in demonstrations was included displays an understanding of the importance of maintaining democratic values, even in a time of emergency, and of maintaining a proper balance. That said, parliamentary oversight of the regulations, as required by the Basic Law, is of critical importance.

### **Geolocation Means and ISA Capabilities**

The government has published two regulations that enable the location and tracking of infected people and people who are required to be in quarantine. Emergency Regulations – Location Data (the Police Regulations) granted the police the authority to receive from cellular providers geolocation data on patients and people who are required to be in quarantine without needing a court order, including for the purpose of supervising the implementation of quarantine orders, and even for criminal proceedings against those violating a mandatory quarantine. This authority exists in Israeli law for the prevention of a serious crime, to discover a serious criminal offender, or to save lives in urgent situations. The emergency regulations constitute an expansion of this authority to the enforcement of quarantine.

Emergency Regulations – Granting the Israel Security Agency (ISA) the Authority to Aid in the National Effort to Reduce the Spread of the Novel Coronavirus (the ISA Regulations) enables the use of the ISA for location of infected people and those suspected of being infected, and for transfer of technological information to the Ministry of Health to enable measures to reduce the spread of the virus. There was an attempt to act under the authority of the ISA Law, which allows granting the ISA the authority to act in areas not defined in advance by the law when the government determines they are essential to Israel's national security, subject to the approval of the Knesset committee that oversees the agency. This attempt did not succeed, as the discussion in the committee was cut short by the expiry of the Knesset's term. Therefore, it was decided to grant the ISA this authority by means of the emergency regulations.

High Court petitions were filed against these regulations. Some focused on the severe violation of privacy and the claim that they exceed what is necessary. Others focused on the lack of parliamentary oversight. While the final judgment in these petitions is still pending, the court, in a hearing that took place, conditioned the continued use of the regulations on the existence of parliamentary oversight. In addition, it required that suitable primary legislation be advanced, rather than continuing to rely on the emergency regulations as the source of authority. The state is indeed working to implement these requirements. The government subsequently received the approval of the Knesset committee to apply the ISA Law and has canceled the ISA Regulations. A proposed bill has also been introduced to grant the police the authority provided in the Police Regulations, enabling these to be canceled once this law is enacted.

It is imperative that the use of such steps be limited to emergency situations such as the current situation, and that the precedent created does not whet government "appetite" to use ISA capabilities to track Israeli civilians for other purposes in the future. The concern over the development of a "big brother" phenomenon is a genuine concern, as this is a powerful tool in the hands of governments. Therefore, it is not surprising that in the vast majority of democratic states such measures have not been used. The most prominent exception is South Korea, which employed geolocation capabilities to identify potentially infected people, under the authority of designated legislation for addressing epidemics. In several other Western states, geolocation has been carried out using tracking apps, resembling the Ministry of Health's Hamagen App, but only with the consent of the tracked individuals.

Despite the severe violation of privacy, these steps may be justified as long as they provide a significant response that cannot, as the state has contended, be achieved via less invasive means. In this respect, it is important that the regulations contain internal limitations and safeguards to prevent the use of information for purposes other than the declared purpose of preventing the spread of the virus, and that the Attorney General is involved in instituting the procedures for implementing them. In order to ensure that ISA resources and the ability to track citizens are not misused, parliamentary oversight, which began following the court ruling, is of the utmost importance. Furthermore, supervision of the implementation of the regulations by legal advisers and the possibility of judicial review are key means of protection against the misuse of the regulations. This again emphasizes how vital it is to maintain the independence of these bodies.

### **Parliamentary and Judicial Oversight of the Government**

The use of far-reaching powers under the authority of emergency legislation demands the existence of close parliamentary oversight as well as rigorous judicial oversight. It is therefore regrettable that in the current reality, actions were taken that undermine the

standing of the Knesset and the courts. The decision by outgoing Knesset Speaker Yuli Edelstein not to allow the Knesset to elect a new Knesset Speaker, for political reasons, despite the request by a majority of the Knesset's members, is a decision that weakens the standing of the Knesset and its ability to fulfill its role of overseeing the government.

Even more serious was MK Edelstein's decision, with the backing and support of the Justice Minister and other government ministers, to blatantly ignore a binding ruling by the High Court. This is an unprecedented act. A senior official ignoring a binding ruling severely undermines the rule of law. This will hopefully remain an isolated event and not constitute a precedent for additional incidents of governmental figures ignoring binding High Court rulings. Opening these floodgates would severely endanger the rule of law – a fundamental basis of any democratic regime. If this happens, the list of coronavirus victims might include Israeli democracy.

### **Conclusion**

In a time of emergency, such as the current one, it is possible to justify steps that restrict basic civil rights, including the freedom of movement or the right to privacy. However, it is important that this be limited to the minimum extent. Furthermore, it is essential that the government be subject to effective oversight, both on the part of the Knesset and on the part of a professional and independent court system. Far-reaching powers in the hands of the government, along with failure to maintain the rule of law and respect court decisions, create a tangible danger to democracy and, as a result, to the rights of every person in the country.