



Adalah's Case List: Coronavirus and Human Rights

Petitions before the Israeli Supreme Court – 27 July 2020

Adalah filed 11 petitions before the Israeli Supreme Court (SCT) since mid-March 2020, three of which remain pending, in the areas of: (i) ensuring access to health care; (ii) promoting dignified life, and (iii) promoting the rule of law and separation of powers. Four of the 11 cases challenge the government's authority to continuously decree Emergency Regulations regarding the coronavirus epidemic without the oversight of the Knesset, and one case challenges a new law that gives the government sweeping powers to impose COVID-19 restrictions prior to the Knesset's approval.

I. Ensuring access to health care

1. Demanding isolation structures and a coronavirus action plan appropriate for Arab Bedouin women living in unrecognized villages in the Naqab

Adalah, on behalf of eight women's rights groups, the Regional Council for the Unrecognized Villages in the Naqab (RCUV), the Negev Coexistence Forum (NCF) and the Arab Center for Alternative Planning filed a petition to the SCT on 21 May 2020 against the Ministries of Interior, Health and other authorities, demanding suitable isolation conditions for Arab Bedouin women living in the unrecognized villages, in order to comply with Health Ministry recommendations during the coronavirus pandemic. The petitioners asked for temporary buildings to be placed in two unrecognized villages: Al Zarnooq, with about 5,000 residents and Al Zaarora with about 2,600 residents, and a plan to meet the needs of other villages, home to over 70,000 people. Adalah argued that the women do not have the conditions for isolation in their homes and that there are no suitable options for isolation in their villages, and that social norms prevent the women from staying in hotels outside their villages, as the state suggested. Without such isolation buildings, the women and their families remain without protection against the spread of the virus. Adalah supported the petition with affidavits from a Bedouin women's rights expert, and from a social worker, who conducted a survey of 67 Bedouin women in the two villages to identify their needs in this regard. The petitioners argued that the respondents' failure to provide suitable isolation centers violates the women's constitutional rights to the life and health, and that statutory law imposes an obligation on the state to provide preventive health services equally, which in this case mandates that special measures be taken to meet the needs of this distinct sub-group. On 24 June 2020, the SCT dismissed the petition without holding a hearing, and ruled that the problem raised in the petition is only theoretical. [PRESS RELEASE](#).

Case Citation: HCJ 3301/20, Adalah et. al v. Ministry of Interior et al.

2. Protecting prisoners in overcrowded Gilboa prison from coronavirus outbreak

Adalah filed an urgent petition to the SCT on 7 May 2020 demanding that Israeli authorities take all necessary actions to protect the 450 prisoners - classified as "security prisoners" by the Israel Prison Service (IPS), overwhelmingly Palestinians - being held in the overcrowded Gilboa prison from a COVID-19 outbreak. Overcrowding in Israeli prisons is a grave danger to the health and lives of prisoners and hinders any measures being undertaken to prevent the spread of the virus, especially directives relating to social distancing. Adalah argued that the IPS and the Public Security Ministry

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had failed to implement Health Ministry guidelines regarding the conditions required to prevent the spread of coronavirus among Palestinian prisoners in Gilboa Prison. Adalah also demanded that the IPS publish detailed information – in Arabic and on a daily basis – on the health status and conditions of the prisoners related to coronavirus, and any de facto measures that have been taken. To date, the IPS has not published any information on the situation of prisoners and coronavirus.

Following a hearing on 23 July 2020, the SCT ruled that Palestinian prisoners have no right to social distancing protection against COVID-19. This ruling is contrary to basic COVID-19 health practices employed by prison authorities around the world. The court accepted the state's claim that these prisoners are no different than family members or flat mates living in the same home, completely ignoring the fact that they are held under duress and that the IPS is responsible for their health and the conditions of their incarceration. The state's representatives provided the court with updated figures on the extent of the COVID-19 pandemic inside IPS facilities: 30 IPS employees and seven prisoners (include two security prisoners) are infected with COVID-19; and 489 IPS employees and 58 prisoners (including 10 security prisoners) are in quarantine. Adalah is considering the submission of a request for a second hearing before an expanded panel of justices in this case. [PRESS RELEASE 1 / PRESS RELEASE 2](#)

Case Citation: HCJ 2904/20, Adalah et. al. v. Israel Prison Service, et. al.

3. Access to coronavirus testing for Palestinians living in Jerusalem behind the Separation Wall

Success: In response to Adalah's urgent SCT petition submitted on 8 April 2020, Israeli health authorities opened clinics and testing centers via the Clalit HMO in the Shuafat refugee camp and Kufr Aqab neighborhoods starting on 14 April 2020. A clinic was also opened in Silwan. Later, drive-in centers were opened, as requested in the petition, at the entrance of both Kufr Aqab and the Shuafat refugee camp so that the residents of the area could be tested without the need to cross the checkpoint into Jerusalem. [PRESS RELEASE](#)

Adalah filed the urgent SCT petition, in coordination with the Civic Coalition for Palestinian Rights in Jerusalem, demanding coronavirus testing for Palestinians living in Kufr Aqab, the Shuafat refugee camp and adjacent neighborhoods. 150,000 Palestinians with Israeli-issued Jerusalem ID cards who live in these areas located beyond the Israeli separation wall have no access to coronavirus testing. Officially these neighborhoods are part of the jurisdiction of the Jerusalem Municipality, and thus, the Israeli Health Ministry is responsible for the ensuring the health and well-being of these residents. The Palestinian health ministry is not allowed to give them any services. The petition was filed on behalf of Adalah, the Chairman of the Northern Neighborhoods Committee (Kfar Aqab), four residents of Kfar Aqab, and four NGOs in the Shuafat refugee camp: the Palestinian Child Center, the Feminist Center, the Al Quds Association for Training and Special Education, and the Youth Center. [PRESS RELEASE](#)

Case Citation: HCJ 2471/20, Adalah et al. v. Ministry of Health

4. Access to coronavirus testing for Arab Bedouin citizens of Israel living in the Naqab

Adalah filed an urgent petition to the SCT on 1 April 2020 demanding that the state establish coronavirus drive-in test centers for Bedouin villages in the Naqab (Negev) or, alternately, a mobile testing center. Adalah also called for allocation of additional ambulances in Naqab as current emergency medical vehicles were only sufficient to provide partial services. Petition filed on behalf of Adalah, the High Follow-Up Committee for Arab Citizens of Israel, the Arab Doctors Association in the Naqab, the NCF, and the RCUV. The state responded to the petition citing certain medical criteria and need, and Adalah replied. On 14 April 2020, the Court dismissed the petition ruling that it did not

want to intervene in the allocation of resources. However, two of three justices stated that since the allocation of resources is not clear and dependent on daily developments, the state should consider if circumstances oblige it to provide more tests to Bedouins living around Roads 25, 31 and 80 (failing to also note Road 40). Further, the Court wrote that based on the state's response from 5 April, it appears that there are more solutions for Naqab residents. [PRESS RELEASE](#)

Case Citation: HCJ 2359/20, Adalah et. al. v. The Prime Minister

II. Promoting dignified life

5. **Demanding equitable emergency budgets for Arab towns in Israel to mitigate severe COVID-19 financial damages**

Success: Adalah, on behalf of the National Committee of the Heads of Arab Local Authorities in Israel, filed a petition to the SCT on 10 May 2020 demanding equitable budgets for 68 Arab municipalities to mitigate financial damages caused by the coronavirus crisis. On 7 April 2020, the Knesset amended the Basic Law: State Economy to approve an emergency budget allocation, but the government provided aid to local councils for loss of commercial municipal taxes without considering the loss of residential taxes, resulting in discrimination against Arab municipalities. Arab towns, in which more than one million Arab citizens of the state reside, lack industrial zones and business complexes, and the bulk of their income comes only from residential property taxes. According to these formulas, Arab municipalities were slated to receive **just 1.7 percent** of aid provided to all municipalities nationwide, while Arab citizens comprise **20% of the population**. Adalah argued that this budget criteria would lead to severe economic harm and to a potential financial collapse of Arab towns, jeopardizing the provision of essential public services. After filing the petition, officials from the Ministries of Interior and Finance held talks with the National Committee, and throughout this process, Adalah continued to provide to legal advice. Ultimately, the authorities agreed to increase budgets to Arab towns to an amount almost equivalent to that which was demanded in the petition, and the Knesset Finance Committee confirmed NIS 200 million (or US \$57.2 million) as a result of this legal action and the petition was withdrawn. [PRESS RELEASE.](#)

Case Citation: HCJ 2936/20, The National Committee of the Heads of Arab Local Authorities v. The Prime Minister, et. al.

6. **Cancelling emergency regulations allowing the dismissal of pregnant women from employment with a permit from the Labor Ministry**

Success: Adalah, on behalf MK Aida Touma Sulieman (Joint List), the Chairwoman of the Knesset's Special Committee on Welfare and Labor Affairs, filed an urgent petition to the Israeli SCT on 12 April 2020 against the Emergency Regulations that were approved on 6 April 2020. These regulations allow employers to put pregnant women, women undergoing fertility treatments, and women on maternity leave and 60 days after their return to work, on unpaid leave without obtaining a special permit from the Labor Ministry, in violation of The Employment of Women Law – 1954.

On 17 April, the Israeli government cancelled this emergency regulation, and contended that after the dismissal of these women from their jobs, there was no longer any need for it. On 19 April, the Knesset and the State Attorney's Office sought the dismissal of the petition without a court hearing. However, Adalah demanded to proceed with the hearing, emphasizing that about 4000 women were harmed by the illegal regulation. At the end of full-day SCT hearing held on 20 April 2020, the SCT ordered the Israeli authorities to appear before the Knesset's Special Committee on Welfare and Labor Affairs on 27 April to determine solutions for these women. The Committee began its work and examined a few solutions, after questioning representatives of the Ministry of Welfare and the

National Insurance Institute. [PRESS RELEASE](#) 1 (14 April), [PRESS RELEASE](#) 2 (20 April), [PRESS RELEASE](#) 3 (22 April)

Case Citation: H CJ 2486/20 MK Aida Touma Sulieman and Adalah v. The Prime Minister (Court joined H CJ 2499/20, The Women’s International Zionist Organization (WIZO) et al. v. The Prime Minister)

7. Demanding distance learning, education rights for 50,000 Bedouin pupils in the Naqab

Adalah filed a petition to the SCT on 5 April 2020 demanding access to computers and internet for children in unrecognized and newly-recognized Bedouin villages in Naqab (Negev) region in order to enable them to learn during the coronavirus period. Thousands of Palestinian Bedouin children in Naqab (Negev) villages are not connected to electricity or internet, and most do not have computers. Since school was closed on 15 March due to the coronavirus, their right to education has been denied. The petition was filed on behalf of Adalah, the Follow-up Committee for Arab Education, the RCUV, the National Association of Arab Parents' Committees for Education, the NCF, Hamleh - The Arab Center for Social Media Development, and five children living in the unrecognized villages. The Court ordered the state to respond by 26 April, and then granted an extension of time, which Adalah opposed, until 5 May. The right-wing organization, *Regavim*, sought permission to submit an *amicus curiae* legal opinion against the petitioners' demands. The SCT held a hearing on 20 May 2020, and while thousands of Bedouin children have not returned to school, the court dismissed the petition because the government declared a return to school. The SCT recommended that the petitioners pursue their claims with the new Education Minister and if not resolved within three months, to return to court. Some of the schools that serve these children contend that they cannot reopen because they cannot meet the Health Ministry's guidelines, while others are located in coronavirus "hot spots" where schooling has not resumed. [PRESS RELEASE](#)

Follow-up: On 9 July 2020, Adalah sent a letter to the Education Minister and other Israeli authorities, following the Education Ministry's announcement on 8 July regarding the return to studies in the coming school year 2020-2021. The ministry proposed three different tracks of in-school, small group learning, remote learning and a combination of both methods. In light of our Supreme Court petition and the new announcement, Adalah, on behalf of the Follow-up Committee for Arab Education and the RCUV, demanded that Israeli authorities take immediate actions to make education – both distance learning and classroom studies subject to Health Ministry social distancing directives – accessible to children living in Bedouin villages in the Naqab.

Case Citation: H CJ 2398/20, Adalah et. al. v. The Prime Minister, et. al

8. Demanding the right to counsel for prisoners

Adalah, Addameer: Prisoner Support and Human Rights Association, and Attorney Abeer Baker petitioned the Israeli SCT on 26 March 2020 demanding the cancellation of emergency regulations that ban prisoners held by Israel from meeting with lawyers and families; and demanding access to telephone communications. A hearing was held on 2 April 2020. As the court did not issue any decision following the hearing, on 20 April Adalah submitted a motion for a temporary injunction, and a request for an "order to show cause" and for another hearing. On 22 April, the SCT asked the state and the IPS to reply to two suggestions: if the IPS would allow a prisoner to contact his/her family if: (1) he/she was diagnosed or sick or in quarantine; and/or (2) for Ramadan. The court did not issue any question or ruling regarding meetings or phone calls with attorneys. On 3 May, the state replied to the court's suggestions; they agreed and accepted the suggestions, excluding 90 prisoners from Gaza. The court did not issue any suggestions or a ruling regarding meetings or phone calls with attorneys. Another hearing was held on 27 May and Adalah continued to demand an injunction freezing the regulations.

Since mid-June, the Knesset has been considering a new law authorizing the Minister of Public Security to ban visits of family members and lawyers for one year.

On 19 July 2020, Adalah submitted a response to the SCT following the state's update to court. The IPS claims that the visiting situation regarding lawyers has returned to normal but in fact, it is imposing many additional restrictions. For example, no lawyers' visits are permitted unless a court hearing for the prisoner is scheduled within 14 days; the visits are allowed for one hour only – in case the prisoner is due to attend an evidentiary hearing, it is rarely possible to review the relevant material and make the necessary preparations during this time; attorneys are only allowed to visit one prisoner per day, which constitutes a serious limitation, since prisons are situated in distant locations and it is very time-consuming to conduct such visits. In the past, lawyers would often visit multiple prisoners in a single day. Following court hearings, the state is slightly modifying the rules to make them more acceptable, however, the SCT has not enforced the fundamental right to access to counsel, despite the risks posed to prisoners' health by the COVID-19 virus. Case pending for four months, awaiting decision. [PRESS RELEASE 1](#) / [PRESS RELEASE 2 \(against proposed law\)](#)

Case Citation: HCJ 2282/20, Attorney Abeer Baker, et. al. v. The Prime Minister (case pending) (joined with HCJ 2280/20 Nawal Ghanem et. al v. Israel Prison Service) (case pending)

III. Promoting the Rule of Law and the Separation of Powers

9. Challenging the sweeping powers afforded to the government to impose COVID-19 restrictions prior to Knesset approval

On 13 July 2020, Adalah petitioned the SCT against a new Israeli law which gives the government sweeping powers to impose COVID-19 restrictions on the public prior to Knesset approval. According to the new law, which was enacted on 7 July, parliamentary oversight of any such government-imposed restrictions may now only be carried out retroactively, up to 13 days after they are announced by the government. Adalah argued in the petition that the Israeli government's need to respond to urgent, dynamic situations does not justify the violation of the principle of separation of powers, nor does it allow the government to bypass the Knesset as Israel's supervisory legislative authority. Further, the regulatory mechanism detailed in the new law allows parliamentary intervention only after a considerable period of time following the imposition of government restrictions. This is insufficient to ensure the protection of citizens against excessive and inappropriate use of abusive government measures liable to violate their constitutional rights. Adalah also highlighted the potential danger of enforcing government-imposed criminal offenses that are liable to be retroactively overturned. This usurpation of authority could lead to unjustified punishment and violate the principles of the rule of law. [PRESS RELEASE 1](#) ; [PRESS RELEASE 2](#)

Case Citation: HCJ 4819/20, Adalah v. The Knesset, et. al. (case pending)

10. Challenging the power of the executive to issue emergency regulations

The Joint List and Adalah filed a petition to the SCT on 5 April 2020 maintaining that the government had no authority to issue Emergency Regulations to confront coronavirus pandemic and that all actions must be conducted via legislature in accordance with the Basic Law: The Government. Immediately after filing the case, the SCT gave the state 14 days to respond. However, on 6 April, the AG informed the Prime Minister that, in his view, there were constitutional problems with the government's continuous approval of Emergency Regulations regarding the coronavirus, and that it contradicted the rule the law. [PRESS RELEASE](#) (6 April) The SCT held a hearing on this case before an expanded panel of five justices on 7 May 2020. While the court criticized the government's continued use of emergency regulations, even noting that it impossible to know what the law is as the publication of the regulations is often delayed, it did not issue any decision to date, over three months since the filing of the petition. On 9 July, the AG submitted a notice of progress regarding

relevant legislative processes underway (e.g., the consideration of the comprehensive “Novel Coronavirus Law”, which passed on 23 July).

On 21 July 2020, Adalah submitted an urgent, detailed motion to SCT asking the court to deliver a decision in this case. Adalah argued that as there is continuing ambiguity and legal uncertainty regarding questions concerning the rule of law and the separation of powers in emergencies under the Basic Law: The Government, which are relevant to Knesset legislative processes underway, it is imperative for the court to rule.

Case Citation: HCJ 2399/20, Adalah and the Joint List v. The Prime Minister (case pending)

11. Challenging the legality of Shin Bet (GSS) cellphone surveillance of citizens, both coronavirus patients and the location of persons who were in their vicinity

Success: The Joint List and Adalah submitted a petition to the SCT (18 March) against the Prime Minister, the Shin Bet, Israeli police, and Health Ministry demanding the cancellation of Emergency Regulations authorizing the police and the Shin Bet to track and monitor the location data of Israeli citizens via their cellphones, those who are coronavirus patients and persons who were in their vicinity. Adalah argued that the government had no legal authority to decree these Emergency Regulations, without the Knesset, pursuant to the Basic Law: The Government, and that the regulations disproportionately violated the constitutional rights of citizens. Following a SCT hearing, Adalah achieved a *partial success* in that the SCT issued an interim injunction limiting these practices, and on 19 March, the Knesset resumed its activities and established an oversight committee to examine and supervise the implementation of these measures. The court on 24 March cancelled the injunction based on the AG’s claim that the state fulfilled the courts’ orders. [PRESS RELEASE 1](#) (18 March), [PRESS RELEASE 2](#) (19 March)

The Joint List and Adalah filed an amended petition to the SCT (5 April) demanding the cancellation of Emergency Regulations authorizing the police to exploit the cellular location data of Israeli citizens; the amendment to Emergency Regulations expanding the powers of the Shin Bet to participate in the national effort against coronavirus; and the government’s 31 March 2020 resolution which extends the Shin Bet’s powers under the General Security Services Law (2002) to gather private information on Israeli citizens and residents as part of efforts to combat the coronavirus pandemic. A hearing on the petition was held in the SCT on 16 April 2020. The case was the first to be broadcast live on the Supreme Court’s website [PRESS RELEASE 3](#) (5 April)

On 26 April, the SCT decided on the petition, accepting Adalah’s argument that the GSS Law does not allow the government to authorize the Shin Bet to extend their actions beyond those relating to national security. Thus, there was no legal authority for the Israeli government to use the Shin Bet for surveillance of citizens during the coronavirus pandemic, and that the government and the Shin Bet must be subject to the rule of law. This decision is a milestone as, for the first time, the Court recognized restrictions on the Shin Bet’s powers pursuant to the GSS Law (2002). However, although the Court recognized the illegality, it also gave the government and the Knesset time to propose and pass specific legislation on this matter, and during this interim period, the Shin Bet was allowed to continue to act. **The Supreme Court’s decision ([Hebrew](#)) ([English](#))**

On 30 April, the Knesset Subcommittee for Intelligence and Secret Services voted to approve a governmental decision authorizing the Shin Bet to continue the program for another week. Adalah sent a letter to the Committee Chairman, the AG and others on the same day protesting that the government’s extension of the program and the subcommittee’s approval of it does not amount to the beginning of a legislative process and directly contradicts the 26 April Supreme Court ruling. A new bill to amend the GSS Law and to allow the continue of tracking by the Shin Bet has been proposed and is being considered by the Knesset.

Update: In early July, the Knesset passed interim legislation allowing the Shin Bet to resume phone tracking of people who were in close contact with coronavirus patients, and on 20 July 2020, the Knesset approved a further new law in this regard, which remains in effect until January 2021. Under the new law, if cases top 200 a day, the Cabinet can allow the Health Ministry to use the Shin Bet's cellphone tracking capabilities. Each Cabinet decision is valid for 21 days, and can be extended according to the rate of infection. The law also requires the Health Ministry to respond within 24 hours to appeals by people sent into quarantine based on the Shin Bet's data, following intensive public criticism of its accuracy.

Case Citation: *HCJ 2109/20, Adv. Shahar Ben Meir v. Knesset; HCJ 2135/20, ACRI v. Prime Minister, HCJ 2141/20, Adalah and the Joint List v. The Prime Minister, et. al and HCJ 2187/20, The Journalists' Union in Israel v. Prime Minister)*

Read: [Adalah's paper: Initial analysis of the Shin Bet coronavirus cellphone surveillance case](#)