

The Israeli Association of Judges reply to the Questionnaire on the impact of the COVID-19 Health crisis on the Rule of Law and the activity of the Judiciary in Israel

Question number 1:

What are the main problems the Judiciary experienced at a general level in your country as a consequence of the legal reforms approved in order to cope with the COVID-19 pandemic?

The main problems that the Judiciary faced derived from the will to insure the rule of law and access to Justice during these times. The goal was to maintain public peace in the light of the restrictions while gradually allowing a safe return to activity.

The main issues were:

- How to guarantee detainees and prisoners' rights during Detention Extension Hearings and Criminal Cases, where transportation of prisoners poses potential exposure to the virus and eventual spread to detention centers and jails.
- How to prevent over crowdedness while awaiting hearings; in the court building and halls, and elevators.
- Consideration of at-risk populations such as judges, lawyers and parties in determining the dates of hearings.

Question number 2:

Did the legal reforms approved in your country in order to cope with the COVID-19 pandemic affect Rule of Law and Human Rights principles? If any, pls. enumerate them.

As of March 15, 2020 a formal state of emergency was declared in the court system and labor tribunals (as notified by the Director of the Administration of Courts and the President of the Labor Tribunals). Guidelines were given as to which procedures would continue to be heard by the Judiciary (with expansions dated April 24, 2020 and May 10, 2020).

At that time, the government published their declaration for a state of emergency defining different measures enacted to cope with the health crisis. These rulings dealt with various facets of coping with the new corona virus outbreak and involved limiting certain freedoms such as rights of travel, privacy rights, freedom of occupation and certain particular basic rights related to criminal procedure: State of Emergency-Enforcement of National Health

(New Corona Virus)(Quarantine and various rulings)2020; Emergency Regulations -(new corona virus-Restriction of Activities)2020; Emergency Regulations (prevention of entry of visitors and lawyers to detention centers and prisons)2020; Emergency regulations (Limiting of workers in the workplace)2020; Emergency Regulations (Detention hearings) (Use of technology in criminal hearings)2020;Emergency Regulations (special holidays for prisoners)2020; Emergency Regulations (New Corona Virus) (Limited Areas)2020.

Regarding the work of the Judiciary it should be noted that as soon as a State of Emergency was declared, regulations were published setting out the type of hearings that would continue to be heard at the courts. Although many hearings were put off due to the crisis (many at the request of the sides to the case), the work of the courts continued.

In addition, the Supreme Court sitting as the High Court of Justice continued its regular schedule during the crisis. The High Court in fact worked intensively during this period due to many petitions pertaining to human rights that were infringed upon due to the emergency regulations and restrictions.

A case in point was the petition made by residents of the city of Bnei Brak against a governmental decision to declare the city a Limited Area for 6 days in order to prevent the spread of the virus, this petition was eventually denied (HCJ 2435/20 Leventhal Vs Prime Minister 7/4/20). A similar decision was given to a petition by residents of Jerusalem against a full lockdown for 3 days in their area (HCJ 2491/20 Ramon Alon Community Center Vs. Government of Israel, 14/4/20)

Another decision of note was a petition against the decision to allow the Security Services to use technological means to gather information about individuals that were diagnosed with COVID 19 as a means to combat the spread of the virus (HCJ 2109/20 Ben Meir Vs Prime Minister, 26/4/20) .

On the question regarding the use of technological means by the Security Services in matters that are non-security related, the court granted that the government is entitled to authorize the security services to act in areas not narrowly defined as security, but in a wider "national security" consideration. National Security would need to be defined as "a severe and immediate danger to the citizens and residents of the State or to the workings of State". As the danger moves further away from the narrow definition of security the onus of proof is on the government to show just cause of severe and immediate danger that would warrant the use the Security Services to deal with the threat. The court defined that the Corona crisis is such a threat.

The Supreme Court gave weight to the fact the role of the Security Services would be time limited. It was noted that the urgency of the situation that led the executive branch to take this approach (without going via central legislation) would lessen as time passed. In this case, a few weeks went by during which a substantive discussion could have been held at parliament leading to legislative decisions. The Supreme Court was adamant that the issue is not merely a technical one but rather is an issue pertaining to core principles of democracy, wherein such decisions are better made by the representative elected body of the people and not by the executive branch.

The verdict of the Supreme Court also discussed the infringement of privacy rights due to the government's actions, and also the issue of freedom of expression (one of the petitioners was the Journalists Union), and how phone surveillance impacts on journalists immunity. As expected, the petition was accepted, and as of the 30th of April 2020, the government could no longer authorize General Security Services to act as before unless this was anchored in legislation first.

Within the framework of this hearing (HCJ 2109/20) there were arguments against the use by the police of location tracking (via cellphone markers) of persons required to be in quarantine. The government notified the court that they will request legislation allowing the continuation these powers, but since the legislation did not materialize, the emergency orders expired on the 22nd of April 2020, and were not renewed.

Another example of a decision in the human rights area was that of freedom of religion and practice (HCJ 2394/20 Be'Emunato Yichye vs. Prime Minister 16/4/20). The petitioners protested against emergency rulings wherein places of worship, and freedom to worship in a group setting were curtailed or stopped altogether. The Supreme Court's verdict understood that there is an infringement of rights in the emergency enactments, but as previous measures were deemed insufficient to prevent the contagion, in this case the "right to life" and public health must override, as a temporary measure the freedom to worship as before. The emergency enactments were therefore seen as binding by the court.

Some petitions actually caused a change in a decision of the executive branch before the hearings. A case in point was that of women in the workforce and dismissal during maternity leave.

Israeli law states that a pregnant woman, with a minimum 6 months of employment, cannot be dismissed from work without written permission from the Director for women in the workforce, at the Labor Ministry. The law protects women on fertility treatments, maternity or adoption leave, as well as women returning from maternity leave. (Women in the Workforce Law 1954). On the 6th of April 2020 emergency enactments were published which allowed for women in the above categories to be sent on unpaid leave without approval from the Labor Ministry (Emergency Regulation 2020, Issue 8461 page 1038).

After the forum for organizations for workers' rights submitted a petition to the High Court of Justice on 13/4/20, the emergency regulations were cancelled (on 17/4/20) and that concluded the matter.

Since giving its decision on the infringement of rights cases (HCJ 2109/20) the government has acted to fulfil its obligations on citizen and human rights in primary legislation, eliminating relevant emergency regulations. E.g., Law for Labor under Emergency Situation, limited statute (New Corona Virus) 2020, which was published on 11/5/20.

In summation, the decisions of government during the Corona crisis regarding civil and human rights receive swift treatment via petitions to the Supreme Court. Occasionally, filing a petition to the Supreme Court serves as a catalyst for the executive authority's action and the reduction of human rights violations.

Another aspect of the Court's dealing with the pandemic that should be addressed separately is in reference to criminal proceedings during the crisis. Infringements of rights of personal liberty of detainees, individuals that are held in custody but have not yet been convicted, finds expression in two main issues.

The first are emergency regulations published at the beginning of the crisis (Emergency Regulations (hearings and arrests) 2020 page 748) giving guidelines on the handling of extending detentions hearings using audiovisual technology to avoid travel from detention centers to Courts thereby minimizing potential contagion. Prisoners are not brought to the Courts and hearings take place using videoconferencing in the courtroom.

These regulations were inserted into the Criminal Procedures Law – Power of Arrest and Detention (1996), to allow the courts to hold detention hearings without the physical presence of the accused, but with his presence via technological media, visually or in audio (where visual media is unavailable).

Although this step is in place to guard the accused from unnecessary health risks it still poses an infringement of their rights as regulations often limit or deny contact between the defendant and his counsel. However, during the hearing the accused is able to be in contact with his attorney at any point, to give his version of events and to address the court in person.

Additionally, the Supreme Court established that requests by defendants on bail will in the first instance be held via videoconferencing (VCR 2510/20 State of Israel Vs. Anon 23/4/20). The second issue was the postponement of evidence hearings in criminal matters, even in cases where the defendant is under detention. This of course increases the duration of the trial and the length of the detention.

Question number 3:

As to the judicial organization of your country, what impact had the legal reforms approved in order to cope with the COVID-19 pandemic? More specifically, what were their effects on the powers of the Minister of Justice, Council for Judiciary, Heads of Courts, Heads of Prosecution Services, Judges, Prosecutors, Court Administrators, Court Managers?

The Israeli Judiciary and legal organizations have helped to deal with the Corona epidemic as follows:

On March 15, 2020, as part of the fight against the spread of the Corona epidemic, Justice Minister Amir Ohana declared a special emergency in the judicial system and halted much of the activities in the courts except for urgent matters. Thereby complying with the recommendation of the professional bodies in the Ministry of Health and in coordination with the administration of the court and the attorney general.

The Minister of Justice applied Regulations 3 to 5 of the Courts Regulations and Execution Offices (Special Emergency Procedures), 1991 (the "Regulations"), which a week earlier extended the Minister's powers under the Regulations to apply changes in the event of a health crisis. Until the amendment, the minister was allowed to freeze most of the court's work in the face of an emergency arising from a security situation, and now, following the amendment, may also do so "in a situation where normal living conditions in the state or some of them have been disrupted due to serious public health concern or natural disaster."

As a result of the declaration of the emergency, all bodies of the judicial system, including the courts, the Enforcement and Collection Authority, the Public Prosecutor's Office and the Public Defender's Office worked in an emergency format. During the special emergency, hearings were stopped except for urgent matters, such as: detention and bail hearings, administrative detention, urgent High Court petitions, offenses under the special emergency legislation, and urgent interim relief in civil matters.

The Court Administration set up a task force headed by the Director of Administration of Courts, Judge Dr. Yigal Mersel, for constant assessment of the developments and possible effects of the Corona virus on the judiciary's activities.

In accordance with State assessments that were held from time to time and the updated Ministry of Health guidelines regarding the Corona virus, the Director of Administration of Courts issued updates on the conduct of the judiciary. For example, it was decided to conduct detention hearings in the presence of defense attorneys but in the absence of detainees. It was decided that in courtrooms throughout the country, a space of at least 2.5 meters would be kept between the judging booth and the first row of benches in the audience. Moreover, all judicial training scheduled for May was canceled, as well as any organizational events planned in the near future that are not related to court hearings.

The Director of Administration of Courts also used the powers assigned to him in the regulations and set additional types of matters to be discussed in the courts during this period, with a view to balancing the right of access to the courts and the need for compliance with the Ministry of Health's guidelines to maintain public health and safety. In addition, the Court Administration has formulated an emergency work procedure in the face of the Corona pandemic.

The Presidents of the different Courts determined the urgency of petitions to the High Court and of temporary remedies in civil matters for holding hearings during the emergency period; and determined, with written and recorded reasons, which proceeding on the permitted list should not be heard, and which proceedings not on the list should be heard.

Court judges ruled on various aspects of the Corona epidemic (e.g. canceling reports given to citizens about breach of isolation rules, health and resource allocation, etc.), ruling in accordance with the government's position and refraining from interfering with government decisions, by emergency regulations and Public Health Ordinances.

The Chief Clerk of the Courts, in coordination with the President of the Court, determined the identity of the essential employees who were permitted to work either in the Courts or alternatively at home. The Clerks were responsible for supervising the work of these essential workers in the workplace and at home in accordance with the instructions of the State Commissioner. The Chief Clerk secretariat's role was also to publish and ensure compliance with the Ministry of Health guidelines in the workplace as they were updated from time to time.

Question number 4:

As far as Court activity, Court proceedings and trials are concerned, what was the impact of legal measures adopted? Pls. provide relevant information distinguishing between civil, criminal and administrative cases.

Criminal cases- in the first phase, hearings were held for urgent issues including detention extensions as well as trials relating to detainees that are under arrest until the completion of the proceedings. The vast majority of these procedures were heard via videoconferencing - which contributed to the relatively quick incorporation and development of technology for legal purposes. In addition, there were additional grounds allowed for the release of detainees, where appropriate offenses were involved- given the possibility of contracting the Corona virus. In the later stages, the hearings were also opened with regard to less urgent matters that could be promoted via the medium of video conferencing.

Civil cases- in the first stage, no hearings took place. In the later stages, it was determined that non-evidentiary hearings could be held with respect to civil cases opened by 31/12/2018. It was recently decided by the Court Administrator that in view of the end of the declaration of the state of emergency on May 5, 2020, all cases, including evidentiary files, could be heard. The judges were also asked to schedule a second afternoon shift one day a week. Another effect was to postpone all deadlines set for compliance, both by legislation and by court orders. During this time, the court judges worked from home through the court net system.

Administrative cases - urgent petitions were submitted to the Supreme Court sitting as the High Court of Justice. The District Courts also heard urgent administrative petitions, urgent administrative appeals, matters relating to detention of prisoners in the light of the Corona crisis, and extradition petitions were discussed.

Question number 5:

Did “urgent” cases receive a different treatment and in this framework? Was a special legal definition or specification of “urgency” introduced for Court proceedings and trials?

On January 1991, the State of Israel enacted Regulations for Civil Procedures in a Special State of Emergency.¹¹ These regulations define a special state of emergency as **“a situation in which ordinary life in the country or a part of the country has been disrupted because of a security situation, the real threat of severe injury to public health, or a natural catastrophe.”**

The regulations further stipulate that the Minister of Justice has the authority to declare a “special state of emergency” (Regulation 2[a]). So long as this declaration is in effect, hearings can be held only on matters specifically set forth in Regulation 3(a), this concern: arrests, urgent petitions to the High Court of Justice, felonies under legislation relating to the special state of emergency and urgent temporary relief in civil matters (including urgent execution official matters).

Regulation 3(e) further authorizes the Administrator of the Courts (and, for the Labor Courts, the President of the National Labor Court) to publish a declaration additional matters that can be heard in the Courts so long as the Minister of Justice’s declaration is in effect.

On 15 March 2020, in coordination with the Director of Administration of Courts, the Minister of Justice signed a declaration regarding the application of the Regulations for Civil Procedures in a Special State of Emergency for the Magistrates and District Courts. Subsequently, the Minister of Justice signed three additional declarations regarding the application of the Regulations for Civil Procedures in a Special State of Emergency for all Courts in Israel, including the Supreme Court, commencing 16 March 2020 and until 17 May 2020.

Concomitantly with the Minister of Justice’s declaration, the Director of Administration of Courts and the President of the National Labor Court issued a list of the types of additional issues that could be heard in the Courts and Labor Courts so long as the Minister of Justice’s declaration was in effect. The types of issues were altered and expanded in accordance with the challenges that arose around the outbreak of the coronavirus. The lists

¹¹ Court and Execution Office Regulations (Procedures in a Special State of Emergency), 1991; Labor Courts Regulations (Procedures in a Special State of Emergency), 1991.

of these approved matters were published by the Spokesperson of the Courts System on the website of the Israeli Judicial Authority.² Thus, for instance, it was ruled that the Supreme Court would hear urgent appeals in criminal, civil and administrative cases. The other Courts were also instructed to hear scores of different urgent criminal and civil issues which encompassed family matters, juvenile cases, traffic and local issues. The Labor Courts were instructed to hear, inter alia, collective disputes and proceedings involving the National Social Security Institute on matters concerning ensuring income, unemployment payments, and other welfare payments.

The public was thereby permitted to submit, to all the Courts, proceedings from within the lists of the said issues, and the Courts were allowed to hear them. Nevertheless, it is important to stress that under Regulation 3(d) of the Regulations for Civil Procedures in a Special State of Emergency, the Presiding Judge of a Court can – for reasons that would be recorded – rule not to hear a certain proceeding falling within the issues permitted to be heard in emergency situations, or to hear a certain proceeding that is not on the above lists.

It should be noted that for purposes of holding urgent hearings in the Israeli Courts, the Director of Administration of Courts has provided instructions regarding safeguarding public health and preventing the spread of the coronavirus.

Question number 6:

Did the amount of money and, more generally, the value at stake in the case play a role in the treatment of it?

The answer to that is no. The criteria for hearing hearings by the court system are set by the Director of Administration of Courts as part of the "Notice of the Director of Administration of Courts -the types of matters that will be discussed in the courts according to the court regulations and enforcement bureaus (Special Emergency Procedures), 1991".

In an order issued by the Director of Administration of Courts, the types of matters to be decided in the various courts were determined according court level and by the subject matter. In the Supreme Court, all the petitions were referred to the High Court of Justice; urgent appeal proceedings in criminal, civil and administrative matters; as well as urgent proceedings that are determined by a single presiding judge.

² See for example <http://www.gov.il/he/departments/news/spokemanmessage150320>.

District and Magistrates Courts discussed urgent matters on a variety of issues: criminal, civil, administrative. Emphasis was placed on urgent hearing of all matters relating to temporary remedies, urgent administrative matters between persons and the Authority, domestic violence and threatening harassment procedures under the Remedies Act for the Treatment of Persons with Disabilities. Emphasis was placed on dealing with minors in the various courts, and urgent procedures related to traffic matters.

It should be emphasized - that although the legal system has declared the state of emergency, the criteria set out have allowed regular services to be provided to the public by the judges, in particular on matters between the citizen and the State and on the subject of urgent remedies. It should also be emphasized that at the Supreme Court sitting as High Court discusses all petitions filed during the emergency period were heard without limitations.

The types of matters discussed before the legal system have been expanded from time to time in light of a gradual exit from the emergency.

Claim amounts did not constitute a criterion in determining the types of matters discussed.

Question number 7:

As far as criminal cases are concerned, did cases concerning arrested defendants receive a different treatment?

1. Due to the Covid -19 virus a vast amount of orders, regulations and by-laws were passed concerning criminal cases and procedures. It is clear that most of the regulations and amendments in the law related to cases concerning arrested defendants and therefore these cases were mostly affected in comparison to civil cases and other procedural matters.
2. As mentioned in detail regarding question 5 above, further to the Court and Execution Office Regulations (Procedures in a Special State of Emergency), 1991; enacted in January 1991, regulations were passed specifically for the Covid-19 virus. These regulations define a special state of emergency as **“a situation in which ordinary life in the country or a part of the country has been disrupted because of a security situation, the real threat of severe injury to public health, or a natural catastrophe.”** The regulations further stipulate that the Minister of Justice has the authority to declare a **“special state of emergency”** (Regulations 2[a]), and that so

long as this declaration is in effect, hearings will be held only on matters specifically set forth in regulation 3(a), which concerns, amongst others, arrests and arraignments.

3. It should be noted that section 3(d) stipulates that notwithstanding subsection 3(a), the President of a Court may decide not to hear matters listed in section (1) (1-5) or hear a certain matter not listed in section (a) (1-5) with cause.
4. Section 3(e) stipulates that the Director of the Administration of Courts or the Director of the Enforcement System may accordingly add extra matters, which can be heard in courts and chambers to be published according to the manner as set forth in section 2(c) of said regulations.
5. Further to the Covid -19 outbreak, the Director of the Administration of Courts established instructions regarding matters to be heard in all of the Israeli courts, issued on the 15th of March 2020.
6. These instructions included:
 - Hearing urgent criminal matters as well as appeals submitted before the 31st of December 2018 in the Supreme Court of Israel.
 - Criminal cases in the District Courts level including various orders pertaining to criminal proceedings
 - Hearing of pretrial testimony, appeals further to Magistrate Courts
 - Rulings that fall under urgent matters to be heard in the state of emergency
 - Applications regarding the refraining of enabling a suspect or one arrested to meet with his attorney
 - As mentioned in subsection 2(a)(8) – a hearing in a criminal matter, excluding a hearing according to chapter E' section E "**Verifying Guilt**" as set forth in the Criminal Proceedings Law [Combined Version] 1982, except for a hearing according to sections 169 and 170 (a) preface, (which allows the continuation of hearing upon completion of testimony or if one agrees to the facts' arguments may be completed regarding the charges (169) or if one is not able to be tried according to laws regarding ones mental capacity, the hearings will be stopped unless their lawyer requests to continue or if the court rules to do so (170(a)).

In short, and generally speaking, the evidentiary trial itself will not be heard during the state of emergency period.

7. On the Magistrate level, requests for orders regarding various criminal proceedings can be submitted, as well as various applications. However evidentiary trials will not be heard as mentioned above but subject to indictments submitted before the 31st of December 2018, criminal proceedings against arrested defendants including those under electronic surveillance and released defendants under restricted conditions including house arrests even if charges were submitted after the 31st of December 2018. Nevertheless, hearings regarding verdicts and sentencing can be held.
8. A second set of instructions given by the Director of the Administration of Courts were published on the 10th of May, 2020. These are more or less the same regarding criminal proceedings and cases commencing as of the 12th of May 2020.
9. In addition to those instructions which are the basis regarding criminal case hearings, mentioned above, many State of Emergency Regulations were passed directly regarding arrested defendants, see below.
10. State of Emergency Regulations (Withholding Visitors and Attorneys at Jails and Detention Centers), 2020. These regulations grant the Minister of Internal Affairs, the authority not to allow attorneys and visitors to meet with arrested defendants held in jails and detention centers. This measure comes to safeguard the defendants, other prisoners and the public. These regulations also maintain, that if a defendant is denied to meet his attorney he will be able to do so via telephone calls which will be conducted in complete privacy, as long as if the defendant is not designated as a security prisoner. The regulations do allow exceptional cases in which said visits could be allowed. Said restraints do not follow if the defendant is in court where he can meet with his attorney in such a manner as approved as not dangerous to health.
11. State of Emergency Regulations (Arresting Hearings), 2020 maintains that the Criminal Proceedings (Enforcement Authority – Arrests) Law, 1996 Law will be amended. Judges should use their discretion whether or not to arrest a defendant taking into consideration that the defendant might not be present in future hearings due to the virus, and should also take into account the possibility that the defendant might be infected by the virus if imprisoned. Section 3 of these regulations states that

regarding an application to extend the imprisonment period the hearing will be held without the defendant being present and shall take part in the hearing via technical instruments. This regulation requests to also amend the arresting procedures. If a defendant is sick with the virus or in confinement and seclusion (as a cautionary measure), he shall be deemed as not able to attend his hearing due to health considerations. However, it is maintained that if the defendant is not physically present in court, his attorney must be physically present in court in order to represent him and if the defendant is without an attorney, the courts must appoint him one. These amendments were extended on the 24th of April, 2020 by law till the 8th of June, 2020.

12. On the 21st of March 2020 State of Emergency Regulations (Limiting Number of Workers in Order to Decrease the Exposure of the New Corona Virus) 2020 limited the amount of workers throughout the nation including the Israeli Court System. The regulations stipulated for instance that there can be no more than 10 people or 30% of the workers at a work place (going by the higher number between the two), the place of work must spread and distance the employees one from another as much as possible. Although these regulations state that these restrictions do not apply to the courts, the police and the prison wardens, it continues as practice. Other regulations still apply, such as the necessity to seclude workers and those who were exposed to the virus or might be exposed at home.
13. On the 25th of March, 2020 State of Emergency Regulations (Early Release Committee Hearings) 2020 were approved stipulating that according to discretion, hearings can be held solely on the basis of written arguments provided that all parties are given the chance to reply to the application to shorten a prisoner's sentence. In all other cases, no hearings will be held at this time, except regarding certain matters such as: applications regarding early release due to health reasons; or in the case were the postponement will not enable hearing the application before the prisoner reaches 2/3 of his sentence; or the prisoner breached his conditions to be released or due to another offense. A hearing can be scheduled during this period by special permission granted by the Chair of the panel who must also state the reasoning for such. The prisoner may not physically be at the hearing but will be in contact with the panel with his attorney present and can take part in the hearing through technical measures. The Chair has the authority to hold a hearing without the prisoners' attorney present but via technical measures enabling to hear all

parties' voices and images if possible. The Director of the Administration of Courts can also approve hearings through technical measures (visual and audio) and in the event such technical measures are unavailable, the hearing can be held by phone.

14. Similar regulations were passed on the 25th of March, 2020 regarding Punishment Review Committee Hearings under Martial Law. Emergency State Regulations (Arrests Hearings in Military Courts) 2020 was signed on the 17th of March, 2020 pertaining to the Military Courts and Emergency State Regulations (Withholding Visitors and Attorneys to Military Prisons and Detention Centers) 2020 was signed on the 19th of March, 2020. Various orders were given regarding the above matters in Judea and Samaria as well.
15. State Emergency Regulations (New Corona Virus) (Arresting a Suspect When the Suspects Investigation Cannot Advance) 2020 approved on the 26th of March, 2020 the amendment of the Criminal Proceedings Law (Authority to Enforce and Arrest) 1996. Accordingly, if by law the suspect falls under one of the arresting requisites he may still be arrested despite a health hazard due to the Covid-19 virus not enabling to further the investigation at that time due to health concerns. The judge will also take into account the severity of the charges and assess when the investigation may be resumed.
16. On the 27th of March, 2020 State Emergency Regulations (New Corona Virus) (Special Vacation for Prisoners), 2020 was approved and accordingly, under certain circumstances the Police Commissioner or high ranked Prison Officer can approve granting a prisoner a special vacation of up to 30 days and the prisoners sentence will not be extended due the vacation. The prisoner must be an Israeli citizen, sentenced to up to 4 years and the remainder of his sentence cannot exceed 30 days. The prisoner must not have been sentenced for sex crimes, severe crimes of violence or security crimes against the State.
17. Emergency State Regulations (New Corona Virus) (Observers Quota Under Electronic Surveillance) 2020 was signed on the 2nd of May, 2020. Accordingly, the quota number of observers will stand at 1,000 during the emergency state. The number needed to be changed due to the increase of the use of electronic surveillance vis a vis confinement at prisons.

18. Emergency State Regulations (The Presence of Detainees and Prisoners in Courts) 2020 was signed on the 17th of May, 2020. Accordingly, the amount of prisoners brought daily to the courts will be subject to the health restrictions. The President Judge of each court will decide in advance who shall be brought to court and regarding which criminal proceedings and cases. Those not physically brought to court will take part in the hearings through electronic measures and if a video conference system is not available, contact with the court will be via telephone. Testimony can be heard at this stage and the President of the Court will take into account various factors in order to choose who will be brought to court. This will take into account, for instance, defendants who have been arrested for a long period of time, give priority to the first arrest hearings, hearings involving minors etc. The Court's President's discretion is very limited but can stray from the list set forth in section 2 of the regulations only under special circumstances and subject to Emergency State Regulations (New Corona Virus) (Conducting Criminal Proceedings Hearings by Technical Measures) 2020 signed on the 24th of March, 2020. The President must find a vital and urgent need to have the arrested or prisoner present in the hearing and such that postponing the hearing will cause detrimental and significant damage. When the court requires face to face hearings, it must receive the relevant parties' response as well as the Prison Service's reply. Another important requisite is that testimony and the major trial can be conducted via video conference or telephone only subject to all of the parties' consent. There is one exception: that if the court finds a reason that a hearing must take place without consent, the hearing can be held without the defendant's physical presence as long as two conditions are met- The hearing cannot be postponed and the hearing can take place with technical measures not harming the defendants' rights.

Question number 8:

“What was the impact of such legal reforms on legal deadlines and procedural timeframes?”

Pursuant to Israel's Regulations for Civil Procedures in a Special State of Emergency (referred to in response to Question 5 above), Israeli Courts can continue to be active, even if in a restricted manner. Obviously, coping with the Coronavirus has imposed various difficulties on litigants and attorneys in submitting pleas and arguments on dates fixed by law or whose submission is fixed by Court Decisions. In order to respond to difficulties deriving directly from the state of emergency, Regulation 4 of the Regulations for Civil

Procedures in a Special State of Emergency states that the days of the emergency situation are not to be taken into account in actions pursuant to civil procedures, whether customary, as fixed by legislation, or by Court decision. In other words, the regulation “freezes” the timeframe for submission of Court pleas, and the computation of days resumes upon termination of the special emergency situation. It is nevertheless important to stress that where a Court has issued a judicial decision ordering a certain court plea to be submitted on an exact date, the Court’s decision must be complied with unless an extension is granted (also retroactively). The latest Israeli Supreme Court rulings³³ have stated that against the background of the severe disruption of public life during the present special state of emergency, a liberal approach should be adopted when examining requests for postponements deriving from the special state of emergency.

It should also be noted that under Regulation 5 of the Regulations for Civil Procedures in a Special State of Emergency, payment of a fee that must be effected before a legal proceeding can begin is to be postponed until the Minister of Justice’s declaration of a state of emergency is no longer in effect, unless the Court has ruled otherwise.

It is thus clear that once the special state of emergency has ended, the Israeli Courts will be confronted with a very heavy schedule of proceedings whose submission has been postponed due to the pandemic.

Question number 9:

What is the role played in your country by IT, e-filing, smart and remote working in the management of cases as an effect of legal measures approved in order to cope with the COVID-19 pandemic? To what extent these measures are applicable also to the activity of Public Prosecutors?

1. As mentioned above, Emergency State Regulations (New Corona Virus) (Conducting Criminal Proceedings Hearings by Technical Measures) 2020 was signed on the 24th of March, 2020. Accordingly, if the Minister of Justice declares that we are in an emergency situation, the above regulations will apply.

³ Petition 1223/20 British Airways Plc v. “Success” – Association for the Promotion of a Fair Society and others (16.3.2020).

2. As stated, in said regulations, if an arrested defendant or prisoners' presence is required in court, the Prisoners Service will hold hearings via technical measures, audiovisual at real time, and if picture and sound will not be available the hearing must be held at least by sound (audio). This is done in order to minimize as much as possible harm to the arrested defendant or prisoner.
3. The President of the Court has discretion to order the prisoner to be physically brought to court if the President feels that his presence is necessary and in absentia hearings detrimental to his case. This is after receiving the parties' replies.
4. The hearing will be held as long as the prisoner's lawyer will be physically present in courtroom, and if the detainee does not have counsel one will be appointed for him. The attorney will also be given the chance to talk to his client before, during and after the hearing if necessary.
5. The hearing will be set up as much as possible in a way that the arrested defendant sees his lawyer, the judge and the prosecutor subject to technical constraints.
6. The Emergency State Regulations (The Presence of Detainees and Prisoners in Courts) 2020 was signed on the 17th of May, 2020, as mentioned in question 7 above are newer regulations regarding the use of technical measures instead of having the detainees' physical presence in court.
7. Emergency State Regulations (The Presence of Arrested and Prisoners in Courts) 2020 was signed on the 17th of May, 2020. Accordingly, the amount of prisoners brought daily to the courts will be subject to the health restrictions therefore decreased in number than usual. The President Judge of each court will decide in advance who shall be brought to court and regarding which criminal proceedings and cases they will attend. Those not physically brought to court will be connected to audiovisual means and if this is not available, a telephone connection with the court must be arranged. Testimony can be heard at this stage and the President of the Court will take into account various factors in order to choose who will be brought to court, for instance those who have been arrested for a long period of time, first arrest hearings, hearings involving minors etc. The Court's President's discretion is very limited and can stray from the list set forth in section 2 of the regulations only under special circumstances and subject to Emergency State Regulations (New Corona Virus) (Conducting Criminal Proceedings Hearings by Technical Measures) 2020 signed on

the 24th of March, 2020. The President must find a vital and urgent need to have the arrested defendant or prisoner present in the hearing. This is under circumstances where postponing the hearing will cause detrimental and significant damage and when the courts feels that it needs to see the detainee face to face, this is after receiving the parties response as well as the Prison Service's reply. Another important requisite is that testimony and the major trial can be conducted via video conference or telephone only subject to all of the parties' consent. There is an exception being that if the court finds due reasoning that a hearing must take place without consent, the hearing can be held without the defendant's physical presence under two conditions; the hearing cannot be postponed and the hearing can take place with technical measures not harming the arrested defendants' rights.

8. Court management made extensive use with multiple party applications like Zoom and Skype in order to holds meetings from tens to hundreds of judges during the Covid-19 virus period. Our Judges Training and Educational Programs Center organized many sessions regarding the wellbeing of judges during this period and educational lectures as well. Each individual courts also held meetings with the Zoom application. However, the judges were informed on the 19th of May, 2020 that due to the fact that Zoom conversations are not yet secured, judges should refrain from mentioning sensitive matters while in Zoom sessions and apply special guidelines when using Zoom or Skype as set by the court administration.
9. Our courts have a computerized paperless court and filing system, "**Net HaMishpat**", where lawyers can electronically submit applications and can file statement of claims and other pleas in writing remotely from their offices. All judges in Israel are connected to the system from their homes, therefore in times of curfews or limitations to certain area, all judges were and are able to handle all of their cases (except for hearing them) making decisions and judgements remotely from home.
10. The Corona virus also made it difficult for lawyers to approve and confirm their clients' signatures on affidavits necessary in order to submit written testimony and applications and responses. Therefore regulations were passed confirming submission of unsigned affidavits to be approved in court at a later period.

11. Another example not related to case management or technical measures to assist in hearings is how IT effected legal measures approved in order to cope with the COVID-19 pandemic is the Emergency State Regulations (Enabling the General Security Service to Assist in a National Effort to Reduce the Outbreak of the New Corona Virus), 2020. These regulations allow the General Security Service (an Israeli Domestic Intelligence Service) to gather all technical data and information regarding the whereabouts and movement of each and every individual in possession of a cell phone. The data is transferred to the Ministry of Health. This was approved in order to try and pin-point individuals who might have contracted the Covid-19 virus or been in proximity to someone carrying the virus. People were notified through their phones when and where they were potentially exposed to the virus and thus were instructed to get examined accordingly. Naturally, there were many arguments stating that this IT measure was a grave infringement of one's rights but was passed in order to protect the public's safety.

To what extent these measures are applicable also to the activity of Public Prosecutors?

12. Public Prosecutors, have home computers connected to their systems, and they also make use of applications like Zoom and Skype in order to hold meetings and professional and educational programs during the Covid-19 virus period. Having the need to receive all parties consent in order hold testimony hearings via technical measures does complicate matters, where the defendant does not consent to an IT hearing, it will take more time to complete a case adding on more work for the Public Prosecutors and the courts as well.

13. However, it is the Defense Attorneys whose work is substantially impaired further to the State of Emergency Regulations (Withholding Visitors and Attorneys to Jail and Detention Centers), 2020. Attorneys are not able to physically meet their clients, cannot prepare themselves in a proper way for various court hearings including those that do not need their clients consent to have hearings which do not include in situ testimony. We have many cases in which defense attorneys have not yet physically met with their clients behind bars for the past 2 months starting from the beginning of the Corona Virus outbreak and in some instances physically met with their clients the arrested defendants only once.

Question number 10:

What is the role played by your Association in the drafting of such legal reforms? Was your Association consulted by the Government before adoption of the aforesaid measures?

The role of the Association of Judges during the Corona crisis was particularly significant in relation to changes in the working conditions of the judges. The chair of the association was in constant contact with senior officials in the Administration of the Courts throughout the period and consulted daily on this matter.

Shortly after the outbreak of the crisis, the Minister of Justice declared a 'special emergency' following which it was decided to reduce the number of hearings. The Director of the Administration of Courts published instructions regarding what types of matters would be heard.

As a result, it was decided to transfer most of the judges to work from home, and a detailed plan for judges on duty was established in each court. On these matters, the Court's management consulted with the Judges' Association and asked for its position on a possible change in days of vacation and sabbaticals that are guaranteed to the Judges under their regular employment conditions. This took into consideration the decline in the number of days the judges were present in court during the special emergency period.

The Chair of the Association convened the members of the Association for an online meeting to make an informed decision on the matter. In the end, a temporary arrangement was decided whereby for each week of work from home, the judge will be reduced to two sabbatical days. This arrangement was agreed upon by the Court Administration and was put into practice.

Another significant point in which a comprehensive consultation was held with the members of the Association was regarding the question of shortening the courts' summer recess period. The President of the Supreme Court and the Director of the Administration of Courts offered to shorten the recess with the goal of allow hearings of cases which were delayed during the Corona crisis. They contacted the Association to take a position on the matter, and after online meetings where various considerations were discussed, the Association concurred with this proposal. The Director of the Administration of Courts is currently addressing a letter to the Minister of Justice, urging him to advance an amendment to the Temporary Order Regulations (Recess) Act 1983 and the Labor Court Regulations (Recess Act, 1984) to shorten the period of limitation and fix it for two weeks instead of six weeks.

Regarding the other legal reforms enacted during the Corona crisis, and in particular with regard to the instructions of the Director of the Administration of Courts regarding the types of matters to be discussed in the special emergency courts (provisions mentioned in our answers to the previous questions). The Presidents of the various courts and the members of the Association in general, requested that these be discussed so as to provide their opinion. The range of answers were taken into account in the Director of the Administration of Courts final instructions.

As for the second part of the question, has the government consulted with the Association? **The answer is negative. There has not been any consultation of the government with the Israeli Association of Judges.**

Question number 11:

Did the Government consult the High Council for the Judiciary and/or other judicial institutional instances or representatives before adoption of the aforesaid measures?

Yes. There were regular consultations between government officials and the judiciary. After the Minister of Justice declared the state of emergency and determined the types of matters to be discussed in the courts during the crisis, the Director of the Administration of Courts published the "Director of the Administration of Courts directive on the matters to be discussed in the Courts according to the Regulations of the Courts and Execution Offices (Special Emergency Procedures), 1991".

The Administration of Courts maintains a regular and close relationship with the chair of the Association regarding the working conditions of the judges to ensure continued service to the public on a continuous basis, despite the emergency.

The Court Administration has been in regular contact with the Ministry of Health for the purpose of establishing hearing procedures and establishing procedures for maintaining the health of the litigants, lawyers, employees and judges.

The Court Administration was in regular contact with the Ministry of Justice regarding the emergency conditions. The court administration also has regular contact and coordination with the Bar, for example, regarding the relief of filing of affidavits due to the guidelines for closing and keeping distance. The court administration has also coordinated and liaised with the prison service and the police to find solutions for the use of advanced technological means that will allow for proper hearings while preserving the rights of detainees and prisoners and maintaining their health.

Question number 12:

What is the attitude of Bar Associations and Lawyers vis-à-vis such legal reforms?

Regarding the interaction between the judiciary and the bar association, no serious disagreements have arisen concerning the balance between the will to insure public health and the will to gradually return to court activity.

At the moment, the main issue is the future of the fixed seasonal break by Judiciary from July 20th until September 5th.

The Israeli Association of Judges agreed on shortening the seasonal break to only two weeks (instead of 6 weeks) and now are waiting for the Bar Association stance on the matter.