In the Supreme Court sitting as High Court of Justice

HCJ 3091/99

Before: President (Emerita) D. Beinisch
Justice E. Arbel
Justice E. Rubinstein

Petitioner: Association for Civil Rights in Israel

v.

Respondents: 1. The Knesset
2. Government of Israel

Attorney for the Petitioner: Adv. Dan Yakir
Attorney for the Respondents: Adv. Osnat Mendel

Judgment

Justice E. Rubinstein:

1. This Petition concerns the repeated extension of the declaration of a national state of emergency under section 38 of Basic Law: The Government (hereinafter also: the Basic Law).

General Background

2. As we all know, since the founding of the state, Israel has been under a state of emergency that was originally declared by virtue of sec. 9 of the Law and Administration Ordinance, 5708-1948. It has since continued by virtue of the various amendments to Basic Law: The Government, eventually sections 49-50 of the Basic Law, and ultimately the current source of authority under sec. 38 of the Basic Law:

> "(a) Should the Knesset ascertain that the State is in a state of emergency, it may, of its own initiative or, pursuant to a Government proposal, declare that a state of emergency exists.
>
> (b) The declaration will remain in force for the period prescribed therein, but may not exceed one year; the Knesset may make a renewed declaration of a state of emergency as stated.
>
> (c) Should the Government ascertain that a state of emergency exists in the State and that its urgency necessitates the declaration of a state of emergency, even before it becomes possible to convene the Knesset, it may declare a state of emergency. The declaration's validity shall expire upon 7 days from its proclamation, if not previously approved or revoked by the Knesset, pursuant to a decision by a majority of its members; should the Knesset fail to convene, the Government may make a renewed declaration of a state of emergency as stated in this subsection.
>
> (d) The Knesset and Governmental declarations of a state of emergency will be published in *Reshumot* [the Official Gazette]; should publication in *Reshumot* not be possible, another appropriate manner will be adopted, provided that notification thereof be published in *Reshumot* at the earliest possible date.
>
> (e) The Knesset may at all times revoke the declaration of the state of emergency; notification of its revocation will be published in *Reshumot* (sec. 38 of the Basic Law).

The Basic Law limited the declaration of a state of emergency to a period of one year. That is a conceptual statement that expresses hope, but that grants authority for extension in recognition of reality. The current state of emergency was extended by the Knesset on May 25, 2011, to remain in effect until May 25, 2012, and I am afraid that, conceivably, this extension will not be the last, despite the obvious aspiration that such extensions will become unnecessary. In addition to the provisions of the Basic Law, the Knesset Rules of Procedures (following amendment no. 52 which came into effect on March 16, 1998) include instructions as to the decision-making procedure required prior to a declaration of a state of emergency (chap. 7 of the Knesset Rules of Procedure). The declaration of a state of emergency grants the competent authorities extensive emergency powers designed, according to their titles and headings, to protect state and public safety, and to maintain essential services in times of need (sec. 39 of the Basic Law). The declaration has two operative effects: the first is the authority to make emergency regulations, and the second is the granting of force to legal arrangements that are contingent upon a declaration of a state of emergency (specific laws and authorities, such as the Commodities and Services (Control) Law, 5718-1957, a pivotal statute in terms of back-to-work orders in cases of strikes in the essential public services sector; the Powers of Search (Emergency) (Temporary Provision) Law, 5729-1969; Emergency Regulations (Control of Ships) (Amendment) (Extension of Validity Law), 5733-1973; and other statutes addressed in the hearings, as detailed below). Thus, the declaration of a state of emergency has had, and continues to have real implications for many of the state's legal arrangements.

The Petition and the Proceedings

3. Against this background, a petition was already filed in 1999, by which we were requested to order the repeal of the declaration of the national state of emergency at the time (which came into effect on February 1, 1999). The Respondent in the original petition was the Knesset of Israel. In brief, the Petitioners claimed there was no actual extreme situation that would justify the declaration of a state of

emergency. In their arguments, the Petitioners relied upon this Court's decision in HJC 6971/98, *Paritzky v. Minister of Interior*, IsrSC 53(1) 763 (hereinafter: the *Paritzky* case), in regard to barring the Knesset from enacting legislation in security or other emergency circumstances. The Petitioners further maintained that the consequences of the declaration continually compromise the rule of law, the separation of powers, and basic rights. It was also argued that the declaration of the state of emergency was made without authority, on the basis of irrelevant considerations, without a satisfactory factual foundation, and that it was unreasonable and inconsistent with the state's international obligations. In the Petitioners' view, proper emergency legislation – by virtue of it being legislation in extreme circumstances of distress – should allow state authorities to quickly adopt limited legal arrangements in relation to a concrete situation until the storm has passed. As opposed to this, the Petitioners argued that the Israeli emergency legislation, which they challenged, is characterized by creating an ongoing and unrestrained reality in this regard.

4. The Respondent's position was that the Petitioner did not lay an adequate foundation for revoking the declaration of a state of emergency, and thus there are no grounds for judicial intervention. The Respondent noted that we are dealing with a complex issue that should be treated with sensitivity and caution, and that even prior to the filing of the Petition, Israel had been gradually working toward changing the current state of affairs, such that security interests will be protected while the state of emergency will not continue. The Respondent explained that the Knesset recognizes Israel's unique security situation, as well as the need to afford the Government effective tools to contend with this state of affairs. At the same time, it was argued that the government agencies – led by the Ministry of Justice – are acting to reduce, as far as possible, reliance upon legislation that is contingent upon a declaration of a state of emergency, in order to create the legal infrastructure required for the revocation of the declaration. On the merits, the Respondent argued that the declaration is not inconsistent with the rule of law or the separation of powers. In realizing the Knesset's authority as a constituent

assembly to set the course of the existing arrangement in the Basic Law, there is awareness of the potential for harm and deviation, and therefore there are arrangements in regard to restricting the authority granted to the Government: the legislative branch's authority to declare a state of emergency, to invalidate the declaration at any time (secs. 38(a) and 38(e)), and to oversee the exercise of authorities through its subsidiary organs under the Knesset Rules of Procedures. These arrangements – so it was argued – provide a justification in principle for emergency legislation. In addition to all this, of course, the declaration is subject to judicial review. Additionally, the Respondent claimed that the arguments as to lack of authority are not grounded, and that the Petitioner erred in terms of the interpretation of the *Paritzky* decision, which addressed exercising the authority to promulgate emergency regulations and not the actual declaration of a state of emergency by the Knesset. Finally, the Respondent added that the declaration, itself, does not violate basic rights, and that it meets the tests of reasonableness and the state's international obligations.

5. An order nisi was issued on October 4, 1999, whereby the response must also include "updated information as to the steps taken in the area of legislation…". At the end of the hearing held on September 20, 2000, the Respondent's attorneys were requested to give notice of a "working plan and timetable on the subject of the Petition" within 90 days. In a supplementary notice dated January 21, 2000, an update was submitted as to the progress of the legislative processes that were mentioned in the Response to the Petition (however without a detailed plan). Pursuant to that, two further updated notices were submitted on June 14, 2001 and December 20, 2001.

6. This Petition originated in 1999, at a time of relative calm. But the situation quickly changed, since the fall of 2000, in light of severe terror attacks on Israel in the course of the events known as "the Second Intifada." In this period, and thereafter, several chambers conferences were held before President (Emeritus) Barak, and due to the security situation (at the time of the conference on March

25, 2003), the question was raised whether it would be appropriate to dismiss the Petition without prejudice. Since the Petitioner insisted upon maintaining the Petition, it was decided that "in light of the State's arguments as to the need for the declaration of a state of emergency to remain in force, and upon the recommendation of the Court, the Petitioner shall amend its Petition and consider the possibility of invalidating the declaration of a state of emergency even in the current security situation" (decision dated March 25, 2003). Following this decision, an amended petition was submitted on July 24, 2003, which almost precisely repeated the arguments made in the original petition, while additionally addressing the state of affairs that existed in the country at the time. On May 15, 2004, the Respondents' Reply was submitted (at this stage the Government of Israel was added as a respondent) arguing that the amended petition added nothing new. Moreover, beyond what the Respondents believed necessary for their reply, they emphasized the real security need and concern about creating a legal vacuum that would leave authorities without the means to respond to the rising wave of terrorism. The Respondents added that the legislature would continue to work toward completing the process of adjusting legislation that relies on the existence of a state of emergency.

7. Pursuant to the above, many decisions that maintained the Petition were handed down, allowing the Court to remain informed about developments. We did this on the assumption that, on one hand, the *current situation* could not be remain *unchanged*, and on the other hand, that the ability of the authorities to carry out their duties in protecting state security in regard to the *dynamic security situation* must be preserved. In parallel to the hearings and decisions in regard to the petition, the Knesset – primarily the Joint Committee of the Foreign Affairs and Defense Committee and the Constitution, Law and Justice Committee, which oversees the preliminary process for examining the Government's requests to declare a state of emergency (under the Knesset Rules of Procedures) (hereinafter also: the Committee) – continued to urge the Government's representatives to report on the progress of the procedures.

8. Thus, in a hearing before the Committee on May 29, 2006 (when a hearing was also held before this Court), a representative of the Ministry of Justice described progress in regard to more than ten statutes in civil areas of the law, and reported that the work plan for that year was fully accomplished (minutes of hearing of the Joint Committee, dated 4th Sivan, May 29, 2006). The report that was annexed to the update notice of May 25, 2006 by Adv. Yaacov Shapira, then director of counseling and legislation in the Ministry of Justice, reviewed the inter-ministerial work regarding emergency legislation. The report detailed that the Knesset passed the Powers for Protecting Public Safety Law, 5765-2005, which repealed the abovementioned Powers of Search (Emergency) (Temporary Provision) Law, 5729-1969; passed the Shipping (Foreign Vessels under Israeli Control) Law, 5765-2005, which repealed regulation 7A of the Schedule to the Emergency Regulations (Control of Vessels) (Consolidated Version) Law, 5733-1973; passed an amendment to section 32 of the Annual Leave Law, 5711-1952, in in a first reading. Several statutes, including the Apprenticeship Law, 5713-1953, the Youth Labour Law, 5713-1953, the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, the Firearms Law, 5709-1949, the Israeli Defence Forces (Equipment Registration and Mobilisation) Law, 5747-1987 were all in various stages of legislation (a draft law, a legislative memorandum, and so forth).

9. The Respondents continued to submit updating notices. On August 1, 2006, a hearing was adjourned for another six-month period. Our decision noted as follows:

> We believe the Petition should not be dismissed or denied, but neither should it be decided at this time. The issue is complex and sensitive. On one hand, contrary to the Petitioner's view, the state of emergency sadly persists, and the war on terror continues in full force. This cannot be disregarded. On the other hand, the declaration of a state of emergency has been used for legislation

> that could have long been replaced by balanced legislation, such as the Commodities and Services Control Law, 5718-1957, the Youth Labour Law, 5713-1953 and others, and the Ministry of Justice, and other government ministries, are aware of this, as is the Knesset. The result is that we are adjourning further hearings in the Petition. The Respondents shall submit supplementary notices within six months… (para. 6).

The last hearing before us was held on September 8, 2008. The Respondents' attorney then submitted updated data, which reflected more significant progress in the area of civil legislation. In our last decision (dated December 7, 2011) we held that:

> There has been progress in the legislative processes. A portion of the legislation that was contingent upon a state of emergency has been changed and amended, another portion of it is in various stages of legislation, and as for the remainder, there is an intention to address it […] Accordingly, the State's notice now reveals a willingness and ongoing commitment to readdress the dependence of vast legislation upon a state of emergency regardless of the existence of a pending Petition in this Court.

The contribution of this Petition and of the Petitioners to motivating legislative procedures over the years was significant. Still it seemed at the time that the continuation of the proceedings should be reconsidered, and thus we asked the Petitioners to notify the Court whether they wished to insist upon the Petition. As a result of this decision and an additional updating notice from the Respondents, the Petitioner notified the Court (on February 1, 2012) that in light of the infringement of basic rights and the principles of democratic government as detailed in the amended Petition, and the fact that, in over a decade, the legislative processes have not come to an end, the current declaration of a state of emergency

must be revoked (while staying the revocation for a period of six months in order to allow the necessary preparations to be completed).

10. In summary, there have been twelve hearings on this Petition, and upward of thirty decisions, which led the Respondents to repeatedly provide answers as to the progress of legislative processes and the reexamination of the matter.

Discussion and Decision

11. Upon review, we have come to the conclusion that the Petition has exhausted its purpose, although, indeed, the work has not been completed. We believe that the state authorities must be allowed to act toward concluding the legislative processes, which the Petitioner helped to advance by its Petition. Indeed, this Petition was worthy, and its core message was not delivered in vain. However, as we noted in the decision dated August 1, 2006, we cannot ignore the fact that Israel has not yet come to its safe haven. Indeed, Israel has enjoyed, and continues to enjoy extended periods of relative security, but the winds of war have never quite calmed, and sadly that relativity persists. This is not the place to elaborate in regard to attacks by air and by land, from the north and the southwest, resulting in loss of life and property, or to elaborate on the relentless threats from our enemies near and far. Even in looking back over the period that this Petition has been pending before Court, we see that the Israeli reality was and continues to be sensitive and complex, and does not permit depriving the state authorities of necessary emergency powers. The Second Lebanon War, Operation "Cast Lead", the recent events of the revolutions referred to as the "Arab Spring" in neighboring countries, the acts of Hamas and threats by Iran and Hezbollah are ongoing reminders of the security situation. Long ago, Justice Yitzhak Kahan explained:

> As stated, the provisions of the Arrests Law came to replace the provisions of the Defence (Emergency) Regulations in regard to arrests and deportations. The preamble of the bill stated that "in the

> stage of siege in which the State has been since its founding, we cannot forego special means that would ensure proper defence of the state and the public in the face of whomever conspires to annihilate it.' According to section 1 of the Law, it is in force when there is a declared state of emergency under section 9 of the Law and Administration Ordinance, 5708-1948. As known, this state of emergency has been ongoing for over thirty years, and who knows how much longer it may continue. This fact of the ongoing state of emergency requires, on one hand, restricting the emergency measures undertaken by the State in order to defend its existence, such that, to the extent possible, these measures do not violate civil rights, but on the other hand, the fact that the state of emergency persists for well-known reasons and circumstances, points to the fact that, throughout its existence, the State of Israel has been in a situation that is difficult to compare to that of any other state" (ADA 1/80, *Kahana v. The Minister of Defence*, IsrSC 35(2) 253, 257).

This was said over thirty years ago, yet in every generation we face existential threats. As Justice Hayut explained in the first half of the previous decade:

> The armed struggle waged by the Palestinian terrorist organizations against the citizens of Israel and its Jewish residents requires a proper response. It requires the adoption of all the measures available to us as a state, in order to contend with the security risks to which the Israeli public is exposed as a result of this terrorist activity. Enacting laws that will provide a response to security needs is one of those measures, and this is the purpose of the Citizenship and Entry into Israel Law.… The difficulty in taking risks in matters of security and matters involving human life is clear and obvious and *it increases in times of crisis and*

> *prolonged danger that necessitate making the security measures more stringent and inflexible* (HCJ 7052/03, *Adalah Legal Center for Arab Minority Rights in Israel v. Minister of Interior*, IsrSC 61(2) 202, paras. 3-4 of the opinion of Justice E. Hayut (Emphasis added – E. R.)
> [English: http://versa.cardozo.yu.edu/opinions/adalah-legal-center-arab-minority-rights-israel-v-minister-interior]).

And recently, as Justice Melcer summarized, specifically in a situation of relative calm:

> The above reveals that, in contrast to the impression regarding the relative quiet which the Petitioners claim exists – the Palestinian terrorist organizations, including those active in the Judea and Samaria Area, constantly attempt to initiate and execute painful attacks in the heart of the State of Israel. In order to execute attacks in the form of mass murder…" (HCJ 466/07, *MK Zehava Galon – Former Chair of the Meretz-Yahad Party v. Minister of Interior*, IsrSC 65(2) 44, para. 13 (hereinafter: the *Citizenship Law* case) [English summary: http://versa.cardozo.yu.edu/opinions/gal-v-attorney-general-summary]).

This also arises clearly from both unclassified and classified materials presented to this Court in many security-related cases.

12. As opposed to this, as we discussed throughout the proceedings here, there can be no justification for the use made over the years of the declaration of a state of emergency in situations that required balanced, up-to-date legislation that was not emergency legislation. This was also our approach in narrowly construing the authority to issue supervision orders under the Commodities and Services Control Law, 5718-1957, under which many orders were issued (as was mentioned in the

Petition as one of the central difficulties resulting from the current situation). In this regard, see the words of (then) Deputy President Agranat, from nearly half-a-century ago:

> [I]t would be well for the Minister possessing the power to consider seriously whether the said state really requires the exercise thereof in this or another concrete situation. … it is desirable that those matters requiring regulation without any connection to the dangers stemming from the state of emergency should be regulated by ordinary legislation of the Knesset which is not necessarily intended for a state of emergency … it would be well for the Ministers to exercise sparingly the broad and drastic powers granted them in the Control Law… (CrimA 156/63, *Attorney General v. Oestreicher*, IsrSC 17(3) 2088, 2096 [English: http://versa.cardozo.yu.edu/opinions/attorney-general-v-oestreicher).

In this regard, see also HCJ 344/89, *H.S.A. – International Trade Ltd. v. Minister of Industry and Trade*, IsrSC 44(1) 456; HCJ 266/68, *Petach Tikvah Municipality v. Minister of Agriculture*, IsrSC 22(2); HCJ 2740/96, *Aziz Shansi v. Supervisor of Diamonds*, IsrSC 51(4) 481; and see and compare in regards to the military censorship under the Defence Regulations, HCJ 680/88, *Schnitzer v. Chief Military Censor*, IsrSC 42(4) 617 [http://versa.cardozo.yu.edu/opinions/schnitzer-v-chief-military-censor].

13. As noted, we are called upon to examine whether there are grounds for our intervention in the authority's declaration of a state of emergency at present. We are persuaded that under the present circumstances, and in light of all the steps taken, our intervention is no longer necessary at this time, without barring our doors before future petitions, as may be required. As I noted in another case:

> Naturally, the role of a court such as this is, at times, to serve as a "babysitter" of sorts to state authorities (HCJ 5587/07 *Uziel v. Property Tax and Compensation Fund* (unpublished)), in order to supervise the following of the provisions of the law and to realize human rights. It seems that in this case, the Petition served as a catalyst for activity of various kinds… This certainly bore certain fruits, and it seems that we can now conclude the adjudication of this Petition, while taking note of the Respondents' commitments (HCJ 1527/06, *Movement for Fairness in Government v. Minister of Transportation* (unpublished) para. 12.)

14. The State's last update, dated November 29, 2011, mentioned the establishment of a special taskforce in regard to the declaration of the state of emergency, which began operating on June 22, 2009, and supervises the progress of the governmental work toward unlinking legislation from its reliance upon the declaration of a state of emergency. Additionally, the last update detailed the ongoing legislative processes in many areas – and we shall again make particular note of the matter of the orders issued, *inter alia*, under the Commodities and Services Control Law, 5718-1957. According to this last update, out of the 160 orders that were in force, some 91 orders have been rescinded during the period that the Petition has been pending, and out of the 69 remaining orders, dozens are expected to be revoked in the near future. This issue was the most painful of all emergency arrangements, in light of the tenuous link between many orders and their origin in matters of emergency. In this area, too, we see the light at the end of the tunnel.

15. We would note that a number of legislative processes have come to their conclusion over the years in which this Petition has been pending. For example, the Emergency Regulations Extension (Control of Vessels) Law (Consolidated Version), 5733-1973, was replaced by two new pieces of legislation: the Shipping (Foreign Vessels under Israeli Control) Law, 5765-2005, and the Shipping

(Offenses against International Shipping Safety and Sea Facilities), 5768-2008. Another law that is destined for completion is also under legislation (according to the last update, the Shipping (Security) Law Memorandum, 5768-2008, was published and in currently being prepared as a bill). Additional bills passed their first reading, and others are in various legislative stages whose purpose is to repeal or amend existing legislation in order to disconnect the historical link, the validity of which has been gradually reduced, between them and the declaration of a state of emergency.

16. At the same time, we have been notified that the legislative processes have penetrated the margins of the hard core of the emergency legislation. A report from the Counseling and Legislation Department of the Ministry of Justice, dated May 19, 2011, stated that the Combating Terrorism Bill, 5771-2011, is in its initial legislative stage and is intended to replace the Prevention of Terrorism Ordinance, 5708-1948, and to amend the Emergency Powers (Detention) Law, 5739-1979, as well as other emergency laws. In this context, a memorandum was recently published regarding the amending of the Defence (Emergency) Regulations, 1945 (hereinafter: the Defence Regulations). As we know, the Defence Regulations were promulgated during the British Mandate for Palestine by the Mandatory Authorities as a means for grounding the powers of the High Commissioner (sec. 6 of Palestine (Defence) Order in Council, 1937, and included provisions regarding many areas, including arrest and deportation, seizure and confiscation of properties by the government, adjudication and penalties in civilian and military courts, military censorship, imposition of taxes, and more. These regulations were incorporated into Israeli law after the Mandate ended, by virtue of section 11 of the Law and Administration Ordinance. These Defence Regulations, despite their name, constitute primary legislation, and their validity *is not contingent* upon the existence of a declaration of a state of emergency. However, the above move seems to indicate, once again, a mindset and understanding on the part of authorities that the time has come to do away with vestiges of emergency legislation that has accompanied us since the

establishing of the state, and that, of course, seems in part to be anachronistic and even draconian after 64 years.

17. We should further bear in mind that this Court does not, as a general rule, substitute its discretion for that of the competent authorities. This rule is of greater force when we are concerned with a dynamic, unpredictable security reality. I have previously had the opportunity to say:

> For years we have been in a fluid situation, shifting sands, which as judges we do not know how to assess correctly. The Hamas takeover of Gaza… long periods of fire on Sderot and the towns around Gaza, the agreement between Hamas and Fatah (from April 2011) whose significance we cannot know, and the events that were termed the "Arab Spring" (beginning in December 2010). Do we have the capability to determine their security significance better than the security agencies and the Government? In my view, the answer to this cannot be in the affirmative. Indeed, this is temporary legislation – and so it should be – in order that it be closely reconsidered from time to time. But, unfortunately, temporary is not short, due to many unknown factors and rapid changes" (the *Citizenship Law* case, para. 43).

18. In conclusion we will state that although we welcome the progress, the work is far from completion, and the pace of change is not satisfactory. The State declared long ago the need to change the current situation and to decouple existing legislation from the declaration of a state of emergency. It must complete this task, and the sooner the better. In this context, as in many others, the security situation takes a toll on Israeli democracy: "Israel combats a situation that may be the most difficult [among other democratic states – E. R.]; it attempts to do as best it can, even if this is not perfect, and supervision is regularly necessary" (*Public Law in Times of Crises and Days of War* (2002), in PATHS OF GOVERNANCE AND

LAW (2003) 16, 20 (Hebrew)). But the cost, as stated throughout this proceeding, is not inevitable in all contexts. There is progress, although the pace can be improved. Much remains to be done, but at this time we must allow the competent authorities to complete the process, with the understanding that what commenced over ten years ago should reach its near conclusion. Israel is a normal country that is not normal. It is normal because it is an active democracy where basic rights, including liberties such as freedom of speech, independence of the courts and legal counsel are preserved and protected. It essentially fulfills its purpose as a Jewish and democratic state. It is not normal because the threats to its existence have yet to be removed. It is the only democratic state that exists under such threats, and its relationship with its neighbors, too, has yet to be arranged, notwithstanding peace agreements with Egypt and Jordan and some agreements with the Palestinians. The struggle against terror persists and will likely continue for the foreseeable future. We do not yet sit every man under his grape vine or fig tree. The "road to normalcy" suffices to ask that emergency legislation be adapted to a 64 year old democracy. The challenge is to design a legal system, even in this regard, that contends with the normal aspect and the abnormal aspect as one. This goal is achievable. It is not in Heaven.

19. In conclusion, the order nisi shall be rescinded and the Petition dismissed, subject to the foregoing.

Justice E. Arbel:

I concur.

President (Emerita) D. Beinisch:

I concur with the conclusion reached by my colleague Justice E. Rubinstein, whereby we should, at present, rescind the order nisi because the Petition has exhausted itself and should be dismissed subject to what is stated in paragraph 18 of his opinion, and in view of the possibility to return to this Court should there be no progress in regard to the emergency legislation.

Over the course of the many deliberations and hearings that we held in this case, we found it practical to separate the declaration of a state of emergency from the use made of this state and the extensive legislation dependent upon its continuation. The state of emergency has persisted since the inception of the State of Israel, and following Basic Law: The Government, its extension requires annual reconsideration by the Government and the Knesset. The state of emergency declared under law is, to a large extent, the result of a policy conception, and of status evaluations by the Government and the Knesset. For historical reasons, the approach regarding the state of emergency led to an inappropriate scope of legal mechanisms that need not be addressed here. Sadly, to this day, no proper framework has been established to express the appropriate relationship between a concrete state of emergency and the possibility of granting the executive tools to act in such circumstances. The Petition, in its various incarnations, remained pending only because we saw the undisputed inadequacy of the long trail of legislation that followed the declaration of a state of emergency since the State's inception. There is only a tenuous connection between a significant portion of legislation – which comprises orders and regulations issued decades ago in reliance upon the existence of a state of emergency – and the state of emergency. This Court addressed this as early as some 50 years ago, as was noted in the opinion of my colleague E. Rubinstein. This Court also addressed the need to oversee the separation of the extensive emergency legislation from the framework of a declaration of a state of emergency in the areas of economics and consumer affairs, and even in matters of security. We noted this the past, as well as in our decisions on this Petition.

As noted, there was no dispute between the Parties as to the need to disconnect this legislation from the historical declaration of a state of emergency, so that the legislation in the relevant fields stand on its own independent feet, in accordance with proper legislative procedures. This process, as revealed from the updates we received, is taking place, although too little and too slowly. In this regard, I concur in the position of my colleague as expressed in para. 18 of his opinion, and I can only express my hope that the proper legislative processes will continue without the need for the intervention of this Court.

Decided in accordance with the opinion of Justice E. Rubinstein.

Given this day, 16 Iyar 5772 (May 5, 2012)