

Applicants: **Peshe Brook and 48 others**

v.

Respondent: **Ministry of Health**

Attorneys for the
Petitioners: Yossi Chessakov, Adv., Rafel Shushan, Adv.

Attorneys for the
Respondent: Sigal Avnon, Adv.

Leave for appeal on the decision of the Administrative Affairs Court, Mercaz-Lod (Judge O. Shwartz) in AP 239763-03-20 of March 22, 2020

Decision

Before Justice U. Vogelmann

1. The matter before me is a request for leave to appeal the decision of the Administrative Affairs Court, Mercaz-Lod (Judge O. Shwartz) of March 22, 2020, denying a request for an interim order by the Applicants, elderly persons residing in the Malben Geriatric Hospital in Rishon Lezion (hereinafter: the Geriatric Center or Center), submitted with their petition against the decision of the Ministry of Health (hereinafter: the Ministry) to remove the residents of the Center in order to convert it into a center for coronavirus patients. In their request for an interim order, the Applicants argue that uprooting them from their familiar environment, at their age in in their state of health, will inflict severe harm, and therefore, their removal should be prevented until a decision is rendered on their petition.

2. In weighing the likelihood of the petition's success, the court noted that the Applicants did not challenge the Ministry's authority to order the conversion of the Center, but rather the manner of its exercise of discretion. The court found that from that perspective, the likelihood that those arguments might succeed were not great, inter alia, in view of the exceptional circumstances of the spread of the coronavirus, which require speedy preparations and immediate actions for the allocation of hospitalization options in addition to those of the general hospitals. As for the balance of interests, the Applicants presented an expert opinion (hereinafter: Dr. Seidenberg's opinion), which point out the reasonable fear that transferring the Applicants, in their state of nursing care, will lead to a deterioration of their condition, and found that their transfer to alternative geriatric facilities was unquestionably undesirable. However, the court addressed the current, vital need to use the Center's buildings to hospitalize persons who had contracted the coronavirus, and the importance of using the Center's buildings, which comprise 360 beds (of which only 68 are currently used for nursing-care patients). It was further noted that the affidavit submitted by the Director of the Geriatrics Division of the Ministry of Health, Dr. Irit Laxer (hereinafter: Dr. Laxer) provides details of the Ministry's plan for evacuating the Applicants, which includes an alternative facility that is prepared for the orderly intake of each of the Applicants, along with measures for achieving a solution acceptable to their families. In view of the said cumulative considerations, the request for an interim order was denied.

3. This leads to the request before me, in which the Applicants argue that they and their families were not afforded the right to be heard, and that they were promised that those who so desired would be permitted to remain in the Center. In essence, the Applicants argue that the court erred in regard to the authority, inasmuch as they cannot be transferred under an "emergency procedure", but rather, only in accordance with the provisions of sec. 20(2)(i) of the Public Health Ordinance, 1940 (hereinafter: the Public Health Ordinance). It is further argued, in this regard, that the Ministry's decision to place persons suffering from the coronavirus in the Center violates the terms of the lease for the land upon which it is built. The Applicants further argue that Ministry representatives are not working with their families, as claimed, and no weight is being given to their preferences. They claim that the opinion they submitted should be given utmost weight in regard to the difficulties involved in their transfer, given their medical state, and that there are less harmful alternatives for the hospitalization of coronavirus patients, such as hotels.

4. In its response, submitted on March 23, 2020, in accordance with my decision of the previous day (but due to a problem in the Court secretariat, it was delivered to me only in the late hours of the night), the Ministry argues that no cause was shown for intervention in the Administrative Affairs Court's decision. It is argued that the claims in regard to the lease from the Rishon Lezion Municipality (the Municipality) are not the focus of this proceeding, and in any case, it was decided in another proceeding, to which the Municipality was a party, that there are no grounds for preventing the use of the Center's buildings for the hospitalization of coronavirus patients, even under the assumption that the Municipality's arguments are justified (CC (Magistrates Rishin Lezion) 42014-07-19 *Rishon Lezion Municipality v. State of Israel* (March 12, 2020)). It was further argued that the State holds authority, by virtue of its auxiliary authority, to move patients from one institution under its administration to another. The State argues that the decision was the result of relevant, professional considerations, in view of the vital need to use the Center in the framework of the preparations for addressing the State's current health crisis. It was emphasized that it is Dr. Laxer's professional opinion that the immediate evacuation of the residents of the Geriatric Center is critically necessary, and that they cannot be permitted to remain even in some of the buildings after the Center is populated with coronavirus patients. In this regard, it was noted that places like the Geriatric Center are intended for a coronavirus population that is different from that being sent to hotels, which primarily comprises young, independent patients. As opposed to that, the State intends to use the Center and its 360 beds for the hospitalization of older coronavirus patients with preexisting conditions, and coronavirus patients with mild symptoms who have a prognosis of increased severity, and who require close supervision and more intense treatment.

5. In its response, the State noted the detailed plan that had been prepared for the placement of each of the Applicants (except for five, four of whom are no longer living, according to the Respondents data, and one who is not listed as a patient at the Center), the principle parts of which were outlined in a table appended to the response. It was argued that the plan provides a solution for every resident of the Center, including those who are not parties to this proceeding, and that the new placements meet the Ministry of Health's standards, and some are of a standard higher than that of the Center. The State explained that the admitting facilities are prepared to receive the expected patients, and that the required coordination of their transfer (including the transfer of medical records, and strict observance of the Ministry of Health directives for their transfer to the

new placement) are carried out in advance between representatives of the Ministry, the Center, and the admitting facility. It was further noted that individual discussions were held with the Applicants' families in order to arrive at an agreed solution, that the families were given the opportunity to choose the facility to which their relative would be transferred, and that the Ministry continues to examine additional solutions that might benefit the Applicants so as to ease their adjustment. It was also explained that even after the patient's transfer, transfer to any place the family might choose would be considered, to the extent possible, as is customary.

Parenthetically, I would note that the parties did not present arguments in regard to the Court's jurisdiction *ratione materiae* to address the petition under sec. 5(1) and Appendix I to the Administrative Affairs Courts Law, 5760-2000. Given that, and the urgency of the subject matter, I saw no reason to address that matter in this decision.

6. After reviewing the request for leave to appeal and the response to it, I have arrived at the conclusion that the request should be denied for lack of a cause for intervention in the decision of the Administrative Affairs Court. As was explained in detail above, in its response, the State explained the efforts that had been invested in finding appropriate solutions for the Applicants, and the detailed preparations for the transfer process. I was also presented with a table that includes a concrete solution for each of them (along with a declaration that such a solution also exists for residents who are not party to this proceeding). Indeed, as explained in Dr. Seidenberg's opinion, it cannot be denied that transferring the Applicants presents great difficulties for them, and for their health conditions, which are not the best. The Administrative Affairs Court was also aware of this, as explained in its decision. But under the circumstances, and in view of the spread of the coronavirus in the state, there is a public need of the first order to prepare for the hospitalization of people suffering from the virus, whose number is sadly growing every day. To that end, the Ministry seeks to evacuate the Applicants, 44 among 68 residents of the Center, at this time, while maintaining a dialogue with their family members in order to arrive at an optimal solution. Therefore, despite the problems that were described, which I do not take lightly, the balance of interests tilts in favor of the Ministry of Health, which seeks to use the Center's 360 available beds for the hospitalization of corona patients who require a higher level of supervision than that required for patients sent to hotels or other such places. For this last reason, the Applicants' argument that there are less harmful alternatives cannot be accepted. I would further note in regard

to the authority to make the decision that is the subject of the petition, the Applicants pointed to sec. 20(2)(i) of the Public Health Ordinance, which authorizes the Director General of the Ministry to order, in the circumstances set out therein, the seizure of buildings or land for the purpose of setting up temporary hospitals (under the conditions established therein), and argued that the conditions for its application had not been met. Without deciding upon those arguments, I am of the opinion that those arguments would not suffice to change the result of the balance that the Administrative Affairs Court struck among the various, relevant considerations.

The request is therefore denied. Under the circumstances, there is no order for costs.

Given this day, 28 Adar 5780 (March 24, 2020).