



April 16, 2020

To:
Members of Knesset
The Knesset

Dear Members of Knesset,

Re.: **Legislative Amendment – Use of Communications Data by the Police to Enforce Isolation Orders**

1. The following are the comments of the Association for Civil Rights in Israel (ACRI) to the proposed amendment to the Communications Data Law included in the memorandum **Criminal Law Proceedings Law (Enforcement Authorities – Communications Data) (Amendment No. 2) (Receipt of Location Data for the Purpose of Inspecting Compliance with the Isolation Instruction), 5780-2020.**
2. **The proposed law concerns the regulation of the Police's authority to receive the location data of a person required to remain in isolation, in a sample manner and without a judicial order.**
3. We will note from the outset that we oppose the proposed legislation and believe that it causes the extreme and disproportionate violation of human rights; moreover, its necessity has not been clarified.
4. As part of the struggle against the spread of the Coronavirus, the Government issued the **Home Isolation Order**, which orders the isolation of patients and those who came into contact with them (Public Health Order (Novel Coronavirus) (Home Isolation and Sundry Provisions) (Temporary Instruction), 5780-2020). Subsequently, on 16 March 2020, the Government issued emergency regulations empowering the Police to receive location data from the holders of a telecommunications license in a sample manner for the purposes of **supervising compliance with the obligation of isolation and for the purpose of an epidemiological investigation** (Emergency Regulations (Location Data), 5780-2020 (hereinafter: **the Police Regulations**)).
5. Following petitions submitted by ACRI, Atty. Shachar Ben David, and the Adalah organization, the Supreme Court issued an interim decree ordering the Government not to use the Police Regulations. The interim decree was nullified on 24 March 2020, following the Government notification concerning the legislative proceedings for the said amendment. As noted, the proposed arrangement regulates the Police's authority to receive the location data of a person obliged to remain in isolation, on a sample basis and without a judicial order.

6. Firstly, and further to the arguments we raised in the petition against the Police Regulations, we welcome the decision to regulate this matter in primary legislation. Emergency regulations are an antidemocratic tool – a necessary evil reserved solely for situations in which there is no other solution and no possibility to convene the Knesset.
7. Nevertheless, it would seem that no-one would disagree that the proposed legislative amendment entails the serious and ongoing violation of the right to privacy, and is liable to open the door to the seepage of information and its use for other purposes. A democracy is measured precisely in those situations when the public is frightened, exposed, and vulnerable. Exactly in such moments, it is vital to act in a considered and temperate manner, and not to take extreme steps except insofar as this is essential in order to protect public wellbeing and health.
8. The proposed amendment creates an **extremely exceptional supervisory authority** intended to allow the Police to assist the Ministry of Health in **enforcing isolation instructions**, with the goal of limiting the spread of the disease. However, precisely at times such as these, characterized by rapid and unpredictable developments, it is proper to examine repeatedly the basic assumptions and circumstances underlying the proposed arrangement.
9. From the outset, it has never been argued, let alone proved, that there is a broad phenomenon involving the violation of the conditions of isolation, and that it is possible to supervise those required to be in isolation solely by means of invasive monitoring technologies. The need for the proposed arrangement was doubtful even when the Government established it in the emergency regulations, and the developments since then have eroded still further the benefit it might offer. It might, perhaps, have been possible to understand the need for this when most of the population was continuing routine life, and only small numbers were sick and required isolation. Now, however, the streets of the cities are empty, and new emergency regulations have imposed an almost total curfew throughout the country. Moreover, the spread of the disease, the growth in the number of severe cases, and the terrifying scenarios we have seen from other countries, such as Italy and Spain, have all had a similarly significant regimenting effect as have these criminal sanctions and “visits” by Big Brother.
10. Furthermore, those few individuals who are interested in violating the isolation orders can do so, even if the law is approved, by leaving their homes without their cell phones or by hosting friends in their homes.
11. **Police reports show that, to date, the Police has undertaken enforcement operations against those violating an isolation order in just some 150 cases, while the number of isolation orders has so far exceeded 160,000, and there are currently some 40,000 people in home isolation. These are negligible instances that do not justify permitting mass monitoring of the location of Israeli citizens by the Police.**

12. We should note that the report the Police is required to forward in accordance with the proposed law does not include details enabling the Attorney General, the Knesset, and the general public to evaluate the benefit of the scrutinizing of location data. In order to provide a reliable picture, the report should include data on the number of instances in which it emerged that the location data requested or received were not those of the person required to be in isolation, as well as the number of instances involving **“inconsistency with the place of isolation”** (section 4A, subsections (F), (H), and (I) of the law following the proposed amendment), but in which it ultimately **emerged that the person had, in fact, remained in isolation, albeit in another location than that recorded at the Ministry of Health** (whether the inconsistency was due to an error by the Ministry of Health or an error by the person required to be in isolation, who observed the isolation instruction but did so elsewhere).
13. It is pertinent to note that, in addition to the moral principles that underlie human rights, their protection may also have invaluable social benefit. A democratic regime that respects the right to privacy and individual autonomy encourages personal responsibility and strengthens public trust – aspects that are particularly important during an emergency.
14. **In light of the above, ACRI urges the Members of Knesset to discuss the need for the proposed arrangement before discussing its details, and to reject the proposed law in its entirety.**

With sincere wishes

Gil Gan-Mor, Atty.

Avner Pinchuk, Atty.