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Police officers fine protesters during a protest in Tel Aviv, last year. Credit: Tomer Appelbaum

Israel News

## COVID Fines Handed to Israeli Protesters Were Unconstitutional, Top Court Rules

Israelis' right to protest was restricted during the country's coronavirus lockdown, but the High Court ordered all fines for violating distance limits be canceled



Netael Bandel

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The High Court of Justice ruled on Sunday that the government-mandated 1,000-meter (about 0.6 miles) limit on how far people could travel to a demonstration during the second lockdown was unconstitutional, and will therefore not be allowed again.

An expanded panel of nine judges, headed by Supreme Court President Esther Hayut, did determine that limiting the number of demonstrators was a reasonable measure, since it was meant to ensure social distancing. Speaking for himself, not the court, Justice Menachem Mazuz noted that “Prime Minister Benjamin Netanyahu should have refrained from taking part in making decisions on regulations relating to demonstrations directed against him.”

The majority opinion of eight of the judges determined that the location of a rally is a vital part of its message, “especially when it relates to the official residence of an elected official.” Thus, all the fines imposed on demonstrators who insisted on coming to demonstrate outside the official Jerusalem residence will be canceled. The state will refund people who have already paid these fines. This ruling came in response to petitions filed against an amendment to the law regulating authority issues during the pandemic, which allowed the imposing of restrictions on demonstrations during a state of emergency.

Hayut determined that the amendment to the law, under which these regulations were issued, is not unconstitutional because it allows for a limiting of the impingement on the freedom to demonstrate. Justice Noam Sohlberg determined in a minority opinion that there was no point in discussing a



wrote that this restriction was in force for only 13 days, when infection rates were soaring, and that the damage of a theoretical discussion on the constitutionality of this restriction outweighs any advantage such a discussion might have.

Mazuz asserted that the amendment by which these limitations were issued should be repealed due to an essential flaw in how it was instituted. Mazuz noted that the amendment was ratified in a nighttime telephone referendum among cabinet members, with the state not providing the court with the minutes of the debate that was held before the decision was made, or with the evidence provided to ministers before they made up their minds. He noted that there was no documentation of alternative options that were examined, as required by law. The majority opinion, in contrast, was that even though there were flaws in the process, there was no reason to disqualify the entire set of regulations.

Last October, the High Court of Justice instructed the state to explain why this amendment should not be repealed. The amendment, ratified by the Knesset in late September, allowed the government to prevent citizens from demonstrating wherever they wished and to set limits on the range demonstrators could travel, a distance that could be changed according to the status of the epidemic.

Based on the amendment, further regulations were set up in October for two weeks, limiting the range demonstrators could travel to up to one kilometer from their homes. According to the law, demonstrations could be restricted in



the future in times of “special emergencies” which include total lockdowns.

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Last January, Mazuz wondered aloud, in hearing a related petition, whether Netanyahu was in a conflict of interest when limiting [demonstrations against him](#). “We’ve noted that restrictions are imposed when there are specific demonstrations against the prime minister; announcing a state of emergency has a direct impact on demonstrations directed against him,” said Mazuz. “There is an elephant in the room. ... Is his dealing with this issue not disqualified due to conflict of interest?”

The Movement for Quality Government, which was one of the petitioners, said in response to Sunday’s ruling that “the right to demonstrate and the freedom to protest are part of the essence of a democracy wishing to survive, particularly in times of a constitutional and regime crisis. It’s unthinkable that a government that is in a conflict of interest is allowed to restrict the public’s right to protest against it, even through a sophisticated trick of restricting the range people can travel.”

The Black Flag movement said the ruling is “a painful reminder of the extent to which Netanyahu, a [person](#) accused of criminal wrongd is willing to shatter Israeli



Among other petitioners were the Association for Civil Rights in Israel, Adalah – the Legal Center for Arab Minority Rights, MK Eli Avidar (Yisrael Beiteinu), Brig. Gen. (res.) Amir Haskel, who is one of the leaders of the protest against the prime minister, and other organizations.

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