



The Supreme Court constituted in High Court of Justice

**High Court 2951/19
High Court 4657/19**

Before: **Honorable Judge I. Amit**
Honorable Judge M. Mazoz
Honorable Judge D. Minetz

Petitioner in the High Court 2951/19 - The multi-sector smoking enterprise

Petitioner in the High Court 4657/19 - Forum Importers and Manufacturers of vaping Products at the Tel Aviv Chamber of Commerce

AGAINST

**Respondent 2 in the High Court 4657/19
and respondent 1 in the High Court 2951/19: Israeli Knesset**

**Respondent 1 in the High Court 4657/19
and respondent 3 in the High Court 2951/19: Ministry of Health**

Respondent 2 in the High Court 2951/19: The Government of Israel

Respondent 3 in the High Court 4657/19: Knesset Economics Committee

**Respondent 4-5 in the High Court 2951/19: Yedihot Haharonot Ltd.
Ha'aretz Newspaper Ltd.**

Petition for probation

Date of the meeting: November 25th 2019

Representing the petitioner in the High Court 2951/19
 (The multi-sector smoking enterprise): Laywer Afi Michaeli

Representing the petitioner in the High Court 4657/19

(Forum Importers and Manufacturers of vaping Products at the Tel Aviv Chamber of Commerce): Lawyer Renato Yarak;
Lawyer Ehud Yarak;

Representing the respondent 1 in the High Court 4657/19
and the respondent 2-3 in the High Court 2951/19
(Ministry of Health): Lawyer Amari Epshtein;
Lawyer Liron Hopepled

Representing the respondent 2-3 in the High Court 4657/19
and the respondent 1 in the High Court 2951/19
(Knesset Economics Committee): Lawyer Nitzan Plitman

Representing the respondent 5-4 in the High Court 2951/19
(Yedihot Haharonot and Ha'aretz newspaper): Lawyer Paz Mozer;
Lawyer Shira Brik-Haimovitch

Representing who is asking to join as a
"Friend of the Court"
(Doctors Association): Lawyer Ruthie Hostbesky

Veredict

Judge M. Mozez:

1. Issues of two petitions, for the law on restriction of advertising and marketing of tobacco products (Amendment No. 7), 2010 (from now on: Law amendment), Which was accepted in the Knesset on December 31, 2018 was published in the Law Book on January 8, 2019. The amendment to the law made extensive adjustments to the law prohibiting advertising and restricting the marketing of tobacco and smoking products, 1983 (from now on The Original Law) And includes imposing restrictions and prohibitions on advertising and marketing of various types of smoking products, including vaping products (electronic cigarettes). The intention of the amendment to the law, as stipulated in the purpose section, is:

“The purpose of this law is to protect public health, and in particular the health of minors, by establishing prohibitions, restrictions, and obligations regarding the advertising and marketing of smoking products, including the prohibition of advertising for smoking products and restricting actions that may encourage or facilitate the use of smoking products, and through providing information to the public, all due to the strong and deadly damages caused to health due to the use of smoking products.”

2. The petitioner in the High Court 4657/19, the Forum Importers and Manufacturers of vaping products at the Tel Aviv Chamber of Commerce (from now on: the Forum) also attacks the prohibition of restrictions on vaping products. The main argument in the petition is that vaping products are less harmful than tobacco smoking products, and they are a proper substitute for regular smoking, and we should encourage regular smokers to switch to vaping. Therefore, it is argued. There is no justification for imposing prohibitions and restrictions on the advertising of vaping products, and imposing such restrictions is an violation, for no proper purpose and to the extent necessary, to the property and freedom of occupation of the forum members. It should be noted that alongside this petition, another similar petition was filed by Jewel Labs & Products Inc. (High Court 1532/19), but the petitioner withdrew the petition on November 21, 2019, just days before hearing the petitions.

On the other hand, the petition in the High Court 2951/19, of the multi-sector smoking enterprise (from now on The Enterprise) attacks the (partial) exclusion of the amendment of the law of printed newspapers from the ban on the publication of tobacco products and smoking products. The Enterprise claims that this exclusion violates the right to life and health of the public and does not comply with the limitation clause. It was also alleged that the amendment to the Law on this matter was defective because it was affected by the position of Deputy Minister of Health, affected as a conflict of interest.

3. The petitions submitted comprehensive and detailed responses by the Knesset and the government, detailing the factual and normative background of the amendment to the law, and a detailed reference to the claims in the petitions. The position of the Knesset and the government is that the petitions should be rejected as not establishing any constitutional grounds that may justify the court's intervention in the Knesset's law. For the Knesset and the government's position, the amendment to the law was enacted for a proper purpose of reducing the material damage of smoking to various types, and is a proportionate and proper balance between the various considerations and interests.

The Doctors Association in Israel (The Medical Federation of Israel) asked to join as a "friend of the court" to petition the forum to support the position of the Knesset and the government. In its approach - which is based on professional opinions and position papers attached - the amendment to the law is important and essential for the protection of public health, and there is no justification for its repeal.

The publishers of Haaretz and Yedioth Haharonot print newspapers sought to join in the petition as part of the enterprise, in support of the partial exclusion of the printed press from the prohibition on advertising of smoking products.

4. Having long heard the arguments on the part of all parties and in examining the great deal of material submitted, we have argued before the parties that we do not believe that the petitions assume a factual or legal basis, even if, above, constitutionally to intervene in the validity of the amendment to the law.

5. After a consultation, the forum official announced that the forum was returning to his request and requested that no expenses be incurred under the circumstances. Therefore, we reject the petition in the High Court 4657/19. In the trial, the petitioner will incur reduced expenses - to respondent 1 (Ministry of Health) of NIS 5,000, and the same amount to respondent 3-2 (income).

As for the petition of the enterprise - in the High Court 2951/19

6. The attorney general announced that his client stands by his request. Therefore, our decision is required.

7. After hearing and hearing the arguments of the parties orally, we concluded, as stated, that the petition does not establish any constitutional grounds for intervention in the amendment to the law. Let us clarify briefly.

8. The amendment to the law, among other things, prohibits the advertising of smoking products, while setting a number of exceptions. Another of the exceptions is the "printed newspaper" advertisement, but this is subject to the following restrictions:

"(a) The advertisement is not in a newspaper, section or newspaper supplement intended primarily for children and teenagers up to the age of 18 or primarily dedicated to health, sports, entertainment, recreation or leisure;

(b) The newspaper shall publish, in addition to the advertisement for smoking products, an advertisement regarding the smoking damage and an explanation or other message on this subject, in the language in which the newspaper is published and in the same size area as the advertising area, including the warning area under section 7; however, such an ad may not be placed alongside an advertisement if all of the following are true:

- (1) The ad will be published in the same portion or insertion of the same page number as the advertisement was posted and no later than seven days from the date it was posted;
- (2) The advertisement was published on Friday or on a holiday evening - the advertisement will be published on one of these days (section 4 of the Amendment Law).

9. The issue of the partial exclusion of the printed press was discussed at length in the Knesset Economic Committee's deliberations, and the considerations for this exclusion were also presented to the Knesset plenum when approving the bill on the second and third reading. This exclusion was worded as follows: Because the main purpose of the law is to restrict advertising to smoking products that may encourage young people and minors to start using smoking products, and because young people are less exposed to print newspapers, the partial exclusion of print journalism, while imposing severe restrictions, will have limited impact the purpose of the law; On the other hand, given the difficult situation of the print press, which does not dispute its importance in a democratic society, there is a fear of a significant violation of its robustness as the ban will be applied to it fully, which would harm its income from advertising. It should be noted that representatives of the Ministry of Justice at the Economic Committee hearings as well as legal advice to the Knesset expressed their legal position that in light of the above considerations, there was no legal impediment to the Council's exclusion from the printed press.
10. In the comments made by the Knesset and the government, the initiative also claims, among other things, that the petition does not establish any constitutional violation of the law, as the law has tightened the boundaries on printed press advertisements used before its legislation, and in any case, the amended law cannot be said to be the source of the alleged violation. It is also alleged that this is in fact a petition to order the Knesset to pass a law (A law that would exacerbate the restrictions on the printed press), which is consistently negated by this court's ruling. It has never been asserted that a constitutional right "not to have a health issue" has never been recognized as the petitioner's claim. Finally, it is argued that the partial exclusion of the printed press complies with the provisions of the limitation clause.
11. These arguments by the Knesset and the government are generally acceptable to us, and we do not see any need to elaborate on this, since we believe that the exclusionary provision in question is in any way clear of the provisions of the limitation clause.
12. We will note that we do not see a need to argue petitioner's claim of conflict of interest, because the petitioner did not bother to attach the deputy minister as respondent to the petition to allow him to respond to these claims, and because we do not believe that this claim can have an effect on its validity of the Amending Act. Recall that the Amending Law was submitted as a motion for a legislative bill and was approved by the Knesset by a large majority in three readings, after no less than eight discussions of the Knesset Economics Committee, during which the issue of the exclusion of the printed press was discussed and reasoned as stated.

13. Which is why we decided to dismiss the petition.

The petitioner will incur expenses of NIS 4,000 for each of the respondent groups - respondent 1 (Knesset), respondents 3-2 (government) and respondents 4-5 (Ha haretz and Yediot Ha haronot).

Today, November 26th, 2019

Judge

Judge

Judge

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