HCJ 2838/95

Chaim Greenberg and 7 others

v.

1. The Katzrin Local Council and 3 others

2. Golan Heights Regional Council

3. Head of the Katzrin Local Council

4. Head of the Golan Heights Regional Council

5. Minister of the Interior

6. Golan Heights Communities Association

The Supreme Court Sitting as the High Court of Justice

[May 11, 1997]

Before Deputy President S. Levin, Justices E. Goldberg, D. Dorner

Petition to the Supreme Court sitting as the High Court of Justice

Facts: The Katzrin Local Council and the Golan Heights Regional Council allocated monies, from the fiscal year 1992 and onwards, to the Golan Heights Communities Association. The purpose of the Association was, *inter alia*, to endeavor towards the establishment of additional communities in the Golan Heights. In furtherance of this purpose, the Association conducted protest and lobbying activities intended to ensure continued Israeli sovereignty over the Golan Heights. Petitioners, residents of Katzrin and the Golan Heights, contested the constitutionality of these allocations, asserting that the local and regional councils could not proceed against the foreign and defense policies of the national government.

Deputy President S. Levin

Held: The Court held that the local and regional councils could not take action regarding issues in the national sphere, which had no connection to local interests. The Court held, however, that the issue of continued Israeli sovereignty over the Golan Heights, aside from its national significance, was also of unique local significance. As such, it was constitutional for the councils to allocate monies to further this goal.

Petition denied.

Legislation Cited:

Local Councils Ordinance
Local Councils Ordinance-1941
Municipalities Ordinance
The Golan Heights Law-1981
Municipalities Ordinance [New Version]
Local Councils Ordinance [New Version]
Foundations of the Budget Law-1985

Israeli Supreme Court Cases Cited:

[1] HCJ 122/54 *Axel v. Mayor of Netanya*., IsrSC 8 1524.
[2] HCJ 489/94 *The Municipality of Kiryat Ata v. Mr. Yitzhak Rabin—Prime Minister and Minister of the Interior*, (unreported case)
[3] HCJ 5445/93 *Municipality of Ramle v. Minister of the Interior*, IsrSC 50(1) 397.
[4] HCJ 594/89 *Arava Regional Council v. National Planning and Building Council*, IsrSC 44(1) 558.
[5] HCJ 609/82 *Pantomp Overseas (1981) Ltd. v. Investment Center*, IsrSC 38(1) 757.
[6] P.L.A. 265/89 265/89 *Ravi v. Elections Clerk for the Local Committee, Jaljoulia*, IsrSC 43(4) 437.
[7] HCJ 337/81 *Metrani v. Minister of Transportation*, IsrSC 37 (3) 337.
[8] HCJ 3716/94, *Raz v. Mayor of Jerusalem*, (unreported case).
[9] HCJ 757/84 *The Association of Daily Newspapers in Israel v. The Minister of Education and Culture*, IsrSC 41(4) 337.
[10] HCJ 72/55 *Mendelson v. Municipality of Tel-Aviv-Jaffa*, IsrSC 10 734.
[11] Cr. App. 217/68 *Izramax Ltd*. v. *State of Israel*, IsrSC 22(2) 343.

[12] HCJ 87/60 *Kriboshi v. Ramat Gan Municipality*, IsrSC 14 1015.
[13] HCJ 155/60 *Elazar* v. *Mayor of Bat Yam*, IsrSC 14 1511.
[14] HCJ 161/52 *The Refinery Company of the Land of Israel v. The Rishon LeTzion Municipality*, IsrSC 7 13.
[15] P.L.A. 5817/95 *Rozenberg v. The Ministry of Building and Housing*, IsrSC 50(1) 221.
[16] HCJ 287/71 *Daabul* v. *Ramat Gan Municipality*, IsrSC 26(2) 821.

Israeli District Court Cases Cited:
[17] DC (Jerusalem) 3471/87 *The State of Israel* v. *Kaplan*, 1988 IsrDC (2) 265.

United States Cases Cited:
[18] *United States v. Pink*, 315 U.S. 203 (1942).

English Cases Cited:
[19] R. v. The Greater London Council, 19 Dec. 1984 (Q.B.) (unreported case)

Scottish Cases Cited:
[20] Commission for Local Authority Accounts v. Grampian RC, [1994] Scot. L.T.R. 1120.

Israeli Books Cited
[21] N. Ben Elia, Towards Differential Decentralization in Local Government (1995).
[22] Local Government in Israel (D. Eleazar & C. Kalchheim eds., 1987).
[23] 2 A. Barak Law and Interpretation: Statutory Interpretation (1993).
[24] E. Winograd, Laws of Local Government (1988).
[25] 1 I. Zamir The Administrative Authority (1996).

Foreign Books Cited:
[26] G.W. Jones & J. Stewart, The Case for Local Governme*nt* (2nd ed., 1985).
[27] D.M. Hill, Democratic Theory and Local Government (1974).
[28] S. Humes & E. Martin, The Structure of Local Government: A Comparative Survey of 81 Countries (1969).

[29] D.P. Currie, The Constitution of the Federal Republic of Germany (1994).
[30] L.H. Tribe, American Constitutional Law (2nd ed., 1988).

Foreign Articles Cited:
[31] L.J. Sharpe, *The Growth and Decentralization of the Modern Democratic State*, 16 European Journal of Political Research 365 (1988)
[32] G. Jones, *Conclusion: Implications for Policy and Institutions*, *in* Between Center and Locality: The Politics of Public Policy (S. Ranson et al eds., 1985).
[33] C. Kalchheim, *The Limited Effectiveness of Central Government Control over Local Government*, 7 Planning and Administration 76 (1980).

Miscellaneous:
[34] National Commission for Matters of Local Government (1981).

For respondents nos. 1-4—Avner Menosvitch, Asher Kula
For respondent No. 5—Osnat Mandel
For respondent No.6—Jonathan Bach

JUDGMENT

Deputy President S. Levin

1. On September 22, 1995, this Court decided, by a majority opinion, to reject this petition. The petitioners are residents of the Katzrin Local Council [hereinafter Katzrin] and the Golan Regional Council [hereinafter Golan] situated in the Golan Heights. Respondents 1 through 4 are Katzrin and Golan and their heads. Respondent number 5 is the Minister of the Interior; respondent number 6 is an association whose members are the representatives of thirty-two communities from all ends of the political spectrum. According to its articles, the association has the following two goals:

1. To act legally to maintain Israeli sovereignty over the entire area of the Golan Heights, in accordance with the Golan Heights Law;

2. To seek to influence the agencies of the Israeli Government, the Jewish Agency of the Land of Israel, the World Zionist Federation and the various movements, to establish and develop additional communities in the Golan Heights and to strengthen and expand existing communities.

Within the framework of its activities, respondent number 6 conducted a public campaign, entitled "A Giant Exhibition of the Golan," nationwide.

At the petitioners' request an *order nisi* was issued, subsequently restricted in scope during the course of deliberations, regarding their objections to the financial allocations made by Katzrin and Golan to the association between 1992 and 1994. During this time Katzrin allocated a total sum of 1,870,000 NIS and Golan allocated the sum of 6,500,000 NIS to the association. The allocation of funds made during these years received the approval of the Ministry of the Interior. Although, at the time of the filing of this petition, the 1995 national budget had not yet been approved, it was nonetheless clear at the time that the Ministry did not intend to authorize funding for that year, in light of the Attorney-General's legal opinion, outlined below.

On September 22, 1995, this Court decided to dismiss the petition by a majority opinion, with Justice Dorner dissenting. According to Justice Dorner, the petition should have been granted and the *order nisi* made final, beginning from the fiscal year of 1996. The Court did not make any order for costs.

2. The petitioners claim that Katzrin and Golan acted beyond the scope of their authority by allocating the funds in question to the

association. Thus, they argue, the constitutive statutes of Katzrin and Golan empower them to act for the promotion of the economic, social, and cultural welfare of their residents—and nothing more. Accordingly, the petitioners submit that Katzrin and Golan lack the authority to deal with political matters of national significance, such as the question of a potential withdrawal from the Golan Heights, which is the subject of heated public debate, even among the residents of the Golan Heights themselves. The sole issue raised by the petitioners before the Court was the question of authority *per se*, rather than the question of how this authority was used. The latter question was raised only during oral pleadings. As such, we will address only the former issue at this juncture.

On May 16, 1995, when the petition was still pending, the Attorney-General submitted an opinion, regarding the issue now at bar, to the Minister of the Interior. His report opined that Katzrin was not authorized to allocate funds to the association. In his view, under the current statutory arrangement, the authority to deal with foreign policy and security matters is the exclusive province of the government and the legislature. By contrast, the local authorities are restricted to acting at the municipal, not the national, level. In the Attorney-General's own words, "the local authority has neither the obligation nor the authority to assist the residents of another local authority, or to support institutions not within its boundaries, which do not directly serve it or its residents." The association's struggle to promote and preserve Israeli sovereignty over the Golan Heights, said the Attorney-General, is of national, as opposed to local, significance. While it is true that the residents of Katzrin will be directly affected by any decision taken regarding the Golan Heights, "the municipal council is nonetheless not the body that was elected or empowered to deal in foreign and defense matters on behalf of these residents."

In response, Katzrin, Golan, their chairpersons and the association all argue that the allocation of funds to the association was in fact legal. They argue that the aim of developing the Golan, like any other action aimed at maintaining Israeli sovereignty over the Golan, is a legitimate

goal, which the council heads were elected to promote. While they agree that the issue of Israeli sovereignty over the Golan is an issue of national significance, they nonetheless point to the unique local aspects of the issue, upon which the fate of the residents of the Golan depends. Furthermore, they claim that this is a matter of self-preservation, which will determine the fate of the Golan residents. As such, Katzrin and Golan are entitled to exercise their inherent authority in order to ensure their continued existence.

3. The statutory framework relevant to the petition is the following: section 146 of the Local Councils Order (A)-1950 and section 63 of the Local Councils Order (Regional Councils)-1958 [hereinafter Regional Councils Order]. The relevant part of section 146 of the Local Councils Order provides as follows:

> The council is empowered, having regard for the Minister's instructions, and to the extent that no statutory provisions are infringed, to act in any matter concerning the public within the council precincts, including the following powers:
>
> 1. To maintain order, good government and security;
>
> 2. To ensure the development of its precincts, to promote the economic, social and cultural well-being of all or any of its residents;
>
> 3. To serve as trustee or guardian for any public matter;
>
> 4. To establish and maintain public structures and to complete public works.

Section 63 of the Regional Councils Order is essentially similar to section 146 and the opening clause of the former is identical to the opening clause of the latter. For the purpose of both of these sections, primary emphasis must be placed upon the authority "*to act in any matter concerning the public within the council precincts*" (emphasis added).

Both chapter 12 of the Local Councils Order, as well as chapter 12 of the Regional Councils Order, set out provisions for the budget's preparation, which requires authorization from the Local or Regional Council, respectively, as well as from the Minister of the Interior.

In light of the above, it is incumbent upon us to determine whether the allocation of monies to the association was indeed within the scope of these powers, and, for our purposes, whether it falls within the meaning of the words emphasized above. In fact, as Ms. Mandel accurately asserted, on behalf of respondent 5 and the Attorney-General, the wording of sections 146 and 63 is flexible enough to accommodate both the position of the petitioners and the position of respondents 1 through 4 and the association.

The state does not claim, from a semantic perspective, that it is impossible to bring the position of the petitioner within the scope of the statute's language. Instead, it submits that the test for defining the scope of the powers in question is functional rather than literal. Thus, it claims, the council is authorized to deal only with local matters, not with national political issues, typically dealt with by the national government. This gives rise to the question of which law applies to hybrid issues which involve both national and local aspects. With regard to these, Ms. Mandel proposes that the legal test should look to "the issue at the crux of the matter," as opposed to looking towards the "the issue's implications for the local residents." The issue at the crux of our discussion relates to the matter of sovereignty over the Golan Heights, which is a national matter. As such, this precludes the councils from interfering, even when a decision on the issue may be fateful for the residents of Katzrin and the Golan.

4. I believe that the test proposed by the state is of no assistance in the case at bar. First, applying this test would mean that restrictive clauses should be read into the language of sections 146 and 63, such as clauses that read "provided that the matter is not one of national significance." I see no justification for doing so in this case. Second, the

test itself seems to put the cart before the horse. In other words, it simply presumes that dealing with matters of national significance cannot be regarded as "a matter concerning the public in the council precincts." By the same token, the opposite approach could be taken, by which: "a matter concerning the public in the council precincts" is within the council's power even if "it has implications on the national level." Third, the concrete question, which we must address, is whether the councils are empowered to allocate funds to the association. The issue is restricted to the question of allocating funds for financing various activities and does not extend to the political decision regarding the fate of Katzrin and Golan, which are without any doubt within the exclusive jurisdiction of the national government. The proposed test does not assist us in ruling as to whether the two jurisdictions, local and national, can be concurrent.

5. The litigants also acknowledge that the words "to act in any matter concerning the public in the council precincts" do not authorize the council to act in any matter whatsoever. Instead, such actions must serve a local interest. Local or regional councils are not empowered to declare war or conduct diplomatic relations with a foreign state, or to deal with matters of exclusive interest to other local authorities. While this principle is clearly obvious, its concrete application to various practical circumstances nonetheless often seems to raise difficulties. This is particularly true since there is almost no activity in the public sphere that does not involve both local and national interests:

> Central and local interests are intertwined and impinge on each other in most of the services of local government…Any attempt to divide services into local or national services would impose artificial categories into which services had to be fitted, leading to a weakening of local government by passing over to the centre services in which there was a significant local interest.

J. Stewart & G.W. Jones, The Case for Local Government 80 (2d ed., 1985) [26].

What are the criteria for delineating the relations between the central government and the local authorities in the State of Israel, and how should these criteria be applied to the concrete issue at hand. Both the petitioners and the state presented a hierarchical model, under which the local authority derives its power from the central authorities. They both assumed that there is a clear dividing line between the local sphere, within which the local authority functions, and the national sphere, which is the exclusive province of the central government. The councils and the association, on the other hand, presented a more dynamic model of relations, according to which the local authority can also act in matters having national implications, provided that they also directly and specifically affect their residents and, *a fortiori*, when the matter relates to the very survival of the public within the council's jurisdiction. It is therefore possible to speak of two poles regarding the desired model of relations between the local and central governments. At one extreme lies the hierarchical, centralizing model, and, at the other extreme, the autonomous, decentralizing model. An intermediate model, would see the two governments as being mutually interdependent.

The last few decades have witnessed a worldwide trend, characterized by a shift from the centralizing model to the decentralizing model. This trend is most prominent in the so-called developed world, even in those countries with a tradition of centralization, such as France. *See* N. Ben Elia, *Towards Decentralization in Local Government* 7 (1995) [21]. This phenomenon is rooted in ideological, logistic and fiscal considerations as well as in the urbanization processes that accelerated after the Second World War. *See* L.J. Sharpe, *The Growth and Decentralization of the Modern Democratic State*, 16 European Journal of Political Research 365 (1988) [31]. The author presents significant data indicating a decrease in the central government's relative portion of total governmental expenditure.

6. A number of reasons can be cited in support of strengthening local government at the central government's expense. *See* D.M. Hill *Democratic Theory and Local Government* 222-24 (1985) [27]; G. Jones,

Conclusion: Implications for Policy and Institutions, *in Between Center and Locality: The Politics of Public Policy* 311-12 (S. Ranson et al eds., 1985) [32]; Sharpe *supra.* [31], at p. 373*;* Jones & Stewart *supra.* [26] at 5-7, 116; S. Humes & E. Martin, *The Structure of Local Government: A Comparative Study of 81 Countries* 32-33 (1969) [28]; Ben Elia *supra.* [21], at 22, 29-30.

First, there is the democratic argument, according to which broadening the powers of the local authorities allows citizens to take an active role in the management of their own affairs, which gives them a sense of partnership in the determination of their fate. As local government is more accessible than the central government, each citizen's influence increases correspondingly.

Second, strengthening local government increases the division of powers between the various governing centers. This, goes the argument, prevents the concentration of power in the hands of the central government and constitutes a safeguard against arbitrary behavior on its part.

Third, conferring power upon local government emphasizes the uniqueness of each particular constituency. This allows for flexible government, which is sensitive to the particular needs of each individual community. From this point of view, it is preferable that each constituency address its own concerns, as opposed to a situation in which these are the product of rigid national planning, uniformly imposed across the country.

Fourth, broadening the powers of the local authorities is said to increase efficiency by alleviating some of the burden on the central government and encouraging local initiative.

7. A process of decentralization has also occurred in Israel, though not necessarily as a result of an intentional policy decision. Instead, it seems to have been the product of practical and historical circumstances.

During the British Mandate, local government was given much importance, this being the only sphere in which the inhabitants of the Land of Israel could exert any influence over their own lives. On one hand, the British Mandatory Government encouraged this trend, as stregthening local government enabled it to minimize the services it was forced to provide to residents. On the other hand, the Mandatory Government subjected local government to strict scrutiny by way of the Local Councils Ordinance-1921, later replaced by the Local Councils Ordinance-1941 and the Municipalities Ordinance-1934. These statutes were all based on the English principle of *ultra vires*, according to which local authorities, as creatures of statute, do not enjoy any powers beyond those explicitly conferred upon them by statute. According to this doctrine, they are unable to act beyond the confines of their statutory powers.

When the State of Israel gained its independence, a centralizing model came to characterize the relationship between local and central government. This was primarily the result of immediate circumstances that necessitated concentrating government in the hands of a single body, capable of setting the national agenda. Such an approach was also the fruit of a political culture suspicious of local autonomy. Under this patriarchal approach, local government was perceived as simply the sub-contractor of its central counterpart. In the aftermath of the Six Day War, however, and particularly after the Yom Kippur War, national authority was weakened as public attention and interest began to increasingly focus on local and regional issues. Yet another factor contributing to this process of decentralization was the population expansion in urban centers and the rise of capable and ambitious local leadership. Indeed, during that period, local leadership evolved from being the passive agent of the central government into its strategic partner. Consequently, the tendency today is to view the relationship between the central and local government as complex and multi-dimensional. *See Local Government in Israel* 10, 22-23 (D. Eleazar & C. Kalchheim eds., 1987) [22]; Ben Elia *supra.*[21], at 8-10.

In 1976, the Israeli government decided to establish a National Commission for Matters of Local Government (known as the Zanbar Commission), whose report was submitted in 1981. In its report, the Commission emphasized that the State of Israel had evolved from its various communities, and should not dominate them through an overly centralized national government. Similarly, it pointed out that Jewish political culture had traditionally adopted the principle of division of power between various levels, thereby providing a basis for the "right to local government." Thus, the Commission determined that the desirable model for the relationship between local and central government was not the hierarchical model or the center-periphery model, but rather a model based on a tapestry of interwoven relations, in which the state as well as local authorities coordinate, each deriving its authority from the people. While it is the central government that determines the structure of this tapestry, the local authorities nonetheless remain responsible for carrying out their duties within that framework. In addition, the Commission concluded that the system of governance is composed of both the national and the local government; the goal of the local authorities is to represent their residents and to ensure their physical, cultural and spiritual welfare, in conformity with the objectives of the State of Israel; the local authorities' status is equal to that of the government in spheres of activity common to both; when supplying public services, the authorities must consider both national interests and the given locality's specific needs, as well as the wishes of its residents. The proposal that suggested abolishing the *ultra vires* doctrine was rejected. It was, however, suggested that the local authorities be granted a broader mandate, specifying only general categories of authority within which the local authorities would be empowered to perform any action. National Commission for Matters of Local Government [34], at 13-15, 20. *See also Local Government in Israel supra* [22] at 23-24, 12, 24, 35-36; C. Kalchheim, *The Limited Effectiveness of Central Government Control over Local Government*, 7 Planning and Administration 76 (1980) [33].

Today, the local authority functions as a quasi-political community, assuming a wide variety of functions, reaching beyond the functions

traditionally associated with municipalities and local government. The control exercised by the central government in Israel is weaker than is commonly assumed.

8. Adopting the decentralizing model to define the powers of a local authority still does not provide an answer to the specific issues at bar. Indeed, under this model also, it is conceivable that a particular matter of national importance may not fall under the local government's powers, despite the specific implications it may have for residents of a given locality. In effect, Israeli case law has yet to provide an unequivocal answer to the question of which law governs those activities of the local authority which are of both local and national significance.

The cases of HCJ 122/54 *Axel* v. *Mayor of Netanya* [1], at 1524 and DC (Jerusalem) 3471/87 *The State of Israel* v. *Kaplan* [17], involved local bylaws that infringed on the freedom of occupation (by prohibiting the sale of pork) and on the freedom of conscience (by failing to allow places of entertainment to remain open on the Jewish Sabbath). In these instances, the Court held that the local authorities were not competent to legislate on these matters, in light of their national character. Such issues of national significance could only be regulated via legislation based on a comprehensive overview of the public's general needs. Even so, it should be noted that those cases did not deal with matters of any special, distinct significance to the local residents of the localities concerned. On the other hand, where the issues involved were of national concern, but the local factor was the dominant one, the Court deemed the local authorities competent to regulate the matter. To this effect, see HCJ 489/94 *Kiryat Ata* v. *Yitzhak Rabin—Prime Minister and Minister of the Interior* [2]; HCJ 5445/93 *Municipality of Ramle* v. *Minister of the Interior* [3] (changing the territorial jurisdiction of the authorities) and HCJ 594/89 *Arava Regional Council* v. *National Planning and Building Council* [4] (regarding the establishment of the relay station "Voice of America").

The only case cited by the association involving an issue similar to the one at bar was in the Scottish case *Commission for Local Authority*

Accounts v. Grampian RC, [1994] Scot. L.T.R. 1120 [20]. The question there was whether a local authority had jurisdiction to fund a campaign in favor of the establishment of a Scottish parliament. The text of the relevant statutory provision in that instance was the following:

> A local authority may ... incur expenditure which in their opinion is in the interest of their area or any part of it or all or some of its inhabitants.

The court there held that:

> It is enough to open up the subject for consideration by the local authority that the expenditure may be in some way, although not directly or exclusively, in the interests of the area or its inhabitants.

Id,. at 1125. It was decided that the issue of whether or not to establish a Scottish parliament falls within the scope of the local inhabitants' particular area of interest since:

> The way in which the government is carried on generally, and the extent to which that will affect the functions of government to be performed locally within the local authority, may indeed be a matter of legitimate concern to the inhabitants of that area .... The desirability or otherwise of such an assembly or parliament is a matter of political controversy. But that fact itself does not mean that it cannot be in the interests of the area or of its inhabitants… to contribute to the discussion.

Id., at 1126. To my mind, however, the conclusion reached by the Scottish court in that instance is not the appropriate one for our purposes, even though the general approach adopted there may guide us. The issue of whether to establish a separate Scottish parliament was not of special interest to the residents of the particular locality, as distinct from the interest of the residents of other localities across Scotland.

9. In light of the local councils' extensive powers under either the decentralized or the intermediate model, it seems to me that the appropriate criteria for assessing whether a local or regional council is authorized to fund an activity with national ramifications, is to ask whether the activity in question is of specific interest to the local residents, beyond the matter's national ramifications. Clearly, the central government's scrutiny over the activities of its local counterpart should ensure that national interests are not sacrificed to narrow, local interests. Likewise, central supervision should also guarantee minimum uniform standards in order to prevent social inequality and also ensure that the local authorities function properly. This having been said, when the local authority is functioning properly and complies with the minimum demands set by its national counterpart, it is best for the central government to curb its interference in local matters. This, of course, is subject to the existence of a local interest in the issue involved, which extends beyond the general national interest. I should also emphasize that my comments relate exclusively to the issue of jurisdiction and not to the substantive manner in which it is exercised. Had that latter issue arisen, it would have been incumbent upon us to examine the intensity of the separate local interest required in a particular case. As noted, however, the issue of the manner in which the local authorities' exercise their discretion was not raised.

In my opinion, in the case at bar, the local councils in question have successfully shown the existence of a separate local interest, aside from the corresponding national interest, which justifies bringing the matter within their jurisdiction. It will be recalled that one of the two objectives for which the association in question was established was to preserve Israeli sovereignty over the Golan Heights, in accordance with the Golan Heights Law-1981. The local authorities funded the association's activities in order to promote the struggle against a withdrawal from the Golan Heights, which would entail withdrawing from the particular areas over which the local councils here have jurisdiction. Such a withdrawal would effectively put an end to the councils' existence. Simple logic would dictate that these councils be entitled to do their utmost, within the bounds of the law, to preserve their existence. Clearly, no local interest

could be more urgent than self-preservation. In other words, while the issue of continued Israeli sovereignty over the Golan Heights involves national policy, in the central government's province, it nonetheless has inherent and obvious local implications. Clearly, any decision taken with respect to the Golan, whatever it may be, is liable to fundamentally change the lives of the residents of the councils. Let it be noted that this Court is not required to address whether the councils' decisions are substantively correct. This is for the council's residents to address, through their elected representatives.

This is all the more true given the association's additional purpose of promoting new communities in the Golan Heights, as well as expanding and strengthening existing communities. This purpose obviously falls within the jurisdiction of the local authorities. Thus, had we held the allocation of funds to be *ultra vires*, we would have also been required to address the legality of allocating funds to a corporation with various and diverse goals. In light of the above-said, however, this issue does not arise.

The fact that the subject at bar is controversial does not affect our ruling. The Court is only occupied with the issue of the local authority's jurisdiction—not how many residents support or oppose the allocation of funds. As the councils who took the decision were democratically elected on the basis of a public platform, there is no need to address the question of whether or not there is consensus among the residents of the Golan Heights regarding the desirability of supporting the association. Having held that the matter of allocating funds is within the councils' jurisdiction, by reason of it raising issues of special local interest, above and beyond the national interest, provides sufficient grounds for upholding the allocation of funds to the association. The fact that the issue also happens to be at the center of a political storm is not relevant.

For these reasons I am satisfied that the petition should be dismissed.

Justice D. Dorner

1. A local authority, like any other administrative body, is bound by administrative law and has no power, save those specifically conferred it by statute.

The issue that arises in this petition is whether the local or regional councils are authorized to take actions that do not conform to foreign or defense policies of the central government that jeopardize the interests of the locality's residents. More specifically, our present question is whether the local and regional authorities of the Golan Heights are authorized to fund protest activities and propaganda that seek to guarantee continued Israeli sovereignty over the Golan Heights.

2. My colleague, the Deputy President, is of the view that the council is authorized to act in such a manner, by virtue of section 146 of the Local Councils Order (A)-1950 and section 63 of the Local Councils Order (Regional Councils)-1958. These sections authorized the Councils, "having regard for the Minister's instructions, and to the extent that no statutory provisions are infringed, to act in any matter concerning the public within the council precincts."

3. The Orders were issued under section 2 of the Local Councils Ordinance [New Version], which provides:

> The council's functions, authorities and duties shall be determined in its constituting order.

Section 146 of the Local Councils Order provides as follows:

> The council is empowered, having regard for the Minister's instructions, and to the extent that no statutory provisions are infringed, to act in any matter concerning the public within the council precincts, including the following powers:

1. To maintain order, good government and security;

2. To ensure the development of its precincts, to promote the economic, social and cultural well-being of all or any of its residents;

3. To serve as trustee or guardian for any public matter;

4. To establish and maintain public structures and to complete public works.

5. To establish, maintain and manage institutions that, in the council's opinion, will serve the public interest.

6. To regulate, restrict or prohibit the establishment and the conduct of affairs of any authority, factory or public institution;

7. To regulate, restrict or prohibit the establishment of businesses, trades and industries.

8. To establish procedure… in order to ensure public health, order and security;

9. To regulate, restrict or prohibit the farming, maintenance or sale of pork;

10. To regulate… peddling..;

11. To regulate irrigation, sheep herding and the prevention of erosion...

12. …

13. To adopt all measures necessary for the preparation of the economy for emergencies...."

The wording of section 63 of the Local Councils Order (Regional

Councils) is identical to the wording of this section.

4. To my mind, the provision upon which my colleague bases the council's authority cannot be so construed. My colleague's interpretation is inconsistent with the provision's purpose, as reflected by the legislation as a whole, including the empowering statute and the local council's status in our system of government.

5. The local authorities' various activities are listed in the Municipalities Ordinance [New Version] and the Local Councils Ordinance [New Version]. Both of these ordinances establish relatively limited autonomy for the local authorities, subjecting them, for the most part, to the authority of the central government.

Indeed, the Minister of the Interior wields extensive influence over the local authorities. The Minister is empowered to constitute municipalities and councils. *See* sections 3, 5 and 6 of the Municipalities Ordinance, section 1 of the Local Councils Ordinance. He is empowered to disband an elected municipal council and order new elections or to appoint a standing committee in the municipal council's stead. *See* section 143 of the Municipalities Ordinance and section 38 of the Local Councils Ordinance. The Minister is further authorized to alter the municipal or local boundaries, *see* sections 8 and 9 of the Municipalities Ordinance and sections 4-7 of the Local Councils Ordinance, and even annul them altogether. *See* section 11 of the Municipalities Ordinance, section 42 of the Local Councils Ordinance. Moreover, by-laws adopted by the municipality or the council require the Minister's approval. *See* section 258 of the Municipalities Ordinance, section 22 of the Local Councils Ordinance. Similarly, the Ministry of the Interior's regional appointee has the authority to order the council or the municipality to perform any legal duty incumbent upon it, or to appoint someone to fulfill that duty. *See* section 41 of the Municipalities Ordinance, section 36 of the Local Councils Ordinance. The local authority's budget, a significant portion of which is funded by the state, requires the approval of the Minister of the Interior, who is entitled to add or detract from it.

See sections 206, 207 of the Municipalities Ordinance, section 27 and 29 of the Local Councils Ordinance. For its part, the Foundations of the Budget Law, 5755-1995, renders credit requests by the local authority contingent on the Minister of the Interior's approval. *Id.*, at § 45. Furthermore, the council's power to impose taxes or surcharges is restricted, *Id.*, at § 31, and a prohibition is imposed on the signing of any wage agreements with employees of a local authority, inconsistent with the standards applied to state employees, *Id.*, at § 29.

6. The powers set out in the Orders all relate to municipal matters. This local authority is restricted in the exercise of its powers and the Minister of the Interior is authorized to intervene in their exercise. The opening clause of the Orders stipulates that authority is granted the council "having regard for the Minister's instructions." Section 223 of the Municipalities Ordinance concludes, in relation to municipal powers, that "provided there is no other order issued by the Minister in these matters."

The whole legislative scheme illustrates that the Orders' purpose is to empower the local authority to provide municipal services to the public within its jurisdiction. Hence, "a matter concerning the public in the precincts of the council" is a municipal matter that the local authority is empowered to deal with.

7. The municipality, which ranks highest among local authorities, is invested with broader powers than those of the councils. This having been said, the Municipalities Ordinance contains no residual provision similar to the provision in the Orders, upon which my colleague's interpretation is based. Section 233 of the Municipalities Ordinance stipulates as follows:

> The municipality shall, within its precincts, act with respect to the matters specified with regard to the Municipality's duties in Article B, and any other function that the municipality is held to perform as per this Ordinance, or under any other law, and it is empowered, within the municipal precincts or in the area of

> the town which encompasses the municipality, to act on the matters dealing with the authorities of the municipality, as set out in Article C. This applies absent any other provisions issued by the Minister in these matters, and subject to the provisions of the Ordinance and of any other Law."

Sections 235-249 A of the Municipalities Ordinance regulate both the powers and the duties of the municipalities, all of which concern municipal matters relating to the municipality's precincts.

Both the Municipalities Ordinance and the Local Councils Ordinance, including the orders promulgated therefrom, deal with the same material, *in pari material,* and should therefore be given the same interpretation, wherever possible. To this effect, see Justice Elon's opinion in HCJ 609/82 *Pantomp Overseas 1981* v. *Investment Center* [5], at 766:

> The interpretation of two statutes dealing *in pari materia,* with the same subject and same goal, ought to be as uniform as possible.

Two statutes dealing with the same subject are essentially complementary elements of the same legislative structure. The arrangements in both statutes, directed towards achieving the same goal must be interpreted identically. Thus, in PLA 265/89 *Ravi v. Elections Clerk for the Local Committee, Jaljoulia* [6], it was argued that voting slips for the head of a local council should be invalidated where the name of the candidate was added in handwriting. The Court rejected that claim. The Court interpreted a provision of the Local Authorities Law (Election and Tenure of Head and Deputy Heads)-1975, in light of an arrangement found in the Local Authorities Law (Elections)-1965. In this vein, Justice S. Levin wrote:

> This interpretation is justified due to the need to preserve harmony between the statutes and to prevent an undesirable situation whereby two slips are placed in the same envelope—

> one for the election of the council, and the other for the election of its head—with one of the votes considered valid and the other invalid, even though both of them bear handwriting not belonging to the voter.

Id. at 440. See also, 2 A. Barak *Law and Interpretation*: *Statutory Interpretation* 327-335, 341-343 (1993)

8. In the case at bar, the interpretation of the Orders should conform to that of the Municipalities Ordinance, and not the other way around. There are three reasons for this: First, the normative status of the Municipalities Ordinance is superior to that of the Orders. Second, the Municipalities Ordinance precedes the Orders in time. Generally speaking, when dealing with legislation dealing with the same material, the earlier law is interpreted in a manner consistent with the later law. *See* Barak *supra.* [23], at 195. Third—and this is the central point—the Municipalities Ordinance offers no textual basis supporting an interpretation in which the necessary powers would be conferred upon the municipality. The Orders can easily be similarly construed.

9. Orders enacted by way of secondary legislation should be interpreted in accordance with the legislative purpose of the primary legislation upon which they are based. Furthermore, the interpretation limits itself to the confines of the empowering statute. In the words of Deputy President Shamgar, in HCJ 337/81 *Metrani* v. *Minister of Transportation* [7], at 358:

> Not only must a regulation not contradict the provisions of any statute, but it must also not deviate, substantively or procedurally, from the legislatively determined boundaries.

For our purposes, the purpose of the Local Councils Ordinance, as reflected by the entirety of its provisions, as well as by the Municipalities Ordinance, is to impose executive duties on the local authority, with respect to the municipal areas within its jurisdiction.

10. In effect, the legislation regarding the local authorities is grounded in ordinances that date from the Mandatory period, intended to ensure absolute state hegemony over the local authorities. Granted, today, it is appropriate to interpret statutes in light of the political and social changes that have occurred since the establishment of the State of Israel. This having been said, there is nothing in Israel's democratic regime to support the interpretation suggested by my colleague. Quite the contrary is true.

11. Allocating responsibility to the local authority is based on the understanding that it is preferable that local affairs be conducted in accordance with the conditions and needs of the particular locality. Clearly, the appropriate solution in a particular place is not necessarily appropriate in a different locality. Thus, the local authority has a relative advantage over the central government in dealing with local problems. Furthermore, from a democratic standpoint, it is similarly appropriate that local matters be conducted in accordance with local resident's desires and aspirations, by their elected representatives. *See* E. Winograd, *Laws of Local Government* 1-2 (1988) [24].

This, however, does not give the local authorities concurrent jurisdiction with state authorities in matters of national significance, merely because they happen to also specifically affect a particular place. Even in countries whose constitution confers extremely broad autonomy in the conduct of local affairs, there is no model that grants these authorities any powers in areas under the jurisdiction of the central government, such as foreign affairs, defense, and the determination of borders.

In Germany, for instance, the status of the local authorities is constitutionally guaranteed. However, under section 28(2) of the German Constitution, the authority to alter the judicial boundaries of a locality belongs to the central government, which also has the authority to disperse the authority altogether. *See* D.P. Currie *The Constitution of the Federal Republic of Germany* [29].

In England, the Local Government Act (1972) granted the local authorities a large degree of autonomy in the conduct of their municipal affairs. Nonetheless, the court disallowed the decision of the Greater London Council to fund a propaganda campaign against the Government's plan to dissolve the Council, which would have resulted in the firing of 22,000 employees. *See* R. v. The Greater London Council, 19 Dec. 1984 (Q.B.) (unreported case) [19].

In the United States, the Federal Government's exclusive power to deal with foreign affairs and defense is constitutionally enshrined. *See* United States Constitution, art. 1, § 8; art. 2, § 2. Under these provisions, acts of the states that fail to conform with the foreign policies of the federal government were struck down. *See, e.g.*, *United States v. Pink*, 315 U.S. 203 (1942) [18]. *See also* L.H. Tribe, American Constitutional Law 230 (2d ed. 1988) [30].

In Israel too, we must conclude that a local authority is not authorized to take action influencing the determination of the state's borders or other issues of national importance. Indeed, President Shamgar related to this matter in HCJ 3716/94 *Raz* v. *Mayor of Jerusalem* [8], concerning a petition challenging the support of the Jerusalem Municipality to those demonstrating against the visit of the Chairman of the Palestinian Authority to the city:

> It is generally accepted that, with the exception of humanitarian assistance, provided by the municipality to the strikers legally demonstrating in the public domain (water, light, toilets, etc.), a local authority is not empowered to make donations from public resources for the purpose of supporting activities that are the subject of political controversy.

Similarly, a statutory corporation is not authorized to exploit its status to interfere with matters within the jurisdiction of other authorities. *See, e.g.*, HCJ 757/84 *The Association of Daily Newspapers in Israel* v. *The Minister of Education and Culture* [9], at 385-87.

From all of the above, it becomes clear that the councils are not empowered to use their budgetary resources to support an association that acts to prevent Israeli withdrawal from the Golan.

12. On this issue, my colleague, the Deputy President, is of the opinion that a broad approach ought to be adopted, allowing the local authority to exercise its powers in matters that have significant local implications, even if the same issue is basically a national issue. My colleague's approach is a novel one for us. Our case law, for example, has consistently ruled that local authorities are not permitted to exercise their powers for the regulation of religious issues, which are fundamentally national issues. *See e.g.*, HCJ 122/54 *supra.* [1], at 1532; HCJ 72/55 *Mendelson* v. *Municipality of Tel-Aviv/Jaffa* [10], at 752; Crim. App. 217/68 *Izramax* v. *State of Israel* [11]; HCJ 87/60 *Kriboshi* v. *Ramat Gan Municipality* [12]; HCJ 155/60 Elazar v. *Mayor of Bat Yam* [13]; DC (Jerusalem) 3471/87 *supra.* [17]; *see also* HCJ 161/52 *Refinery Company of the Land of Israel*, v. *The Rishon LeTzion Municipality* [14], at 125.

Regardless of the law relating to the legitimate considerations that local authorities may employ in matters within their jurisdiction, the Court cannot grant a local authority, or any other authority, power not bestowed on it by statute. Having established that the local authorities cannot deal with foreign and defense matters, including those concerning state borders, the petition must be granted.

13. This too is an appropriate result.

It is not commensurate with good government that local authorities utilize state funds to fund protest activities against the policies of the central government, even when the issue relates to the municipality and its inhabitants. Such financing also leads to the untenable situation in which the entire population of Israel finds itself inadvertently funding protest activities of a given locality, that run counter to the policies of the elected central government. While the ability to protest government

policy is critical in a democratic state, it is nonetheless not within the jurisdiction of the local authorities.

14. It is for these reasons that I am of the opinion that the petition should be allowed. Even so, I believe that the order should only be made effective from the beginning of 1996. This is in view of the association's previous reliance on the funding that was approved by the Ministry of the Interior.

Justice E. Goldberg

1. The first question to be addressed is whether a local authority, invoking "purely" municipal and public interest considerations, is authorized to finance protest and propaganda activities intended to safeguard its *physical* existence, given the existential threat posed by a central government decision on the matter.

2. To the extent that the issue relates to a local authority that is a municipality, section 249(29) of the Municipalities Ordinance [New Version] requires us to answer the above question in the affirmative. This section, titled "General Authority," empowers a municipality, *inter alia*:

> To perform generally any action required to safeguard the municipal precincts.

The term "safeguard the municipal precincts" is vague. "It is unclear and it is not easy to fathom its precise content." *See* Winograd, *supra.* [24], at 190, n. 34. Even so, there is nothing to prevent an interpretation according to which the municipality is authorized to engage in activities intended for its physical preservation. Such an interpretation is consistent with "the attachment that a person develops to his place of residence." PLA 5817/95 *Rozenberg* v. *The Ministry of Building and Housing* [15], at 229.

3. With respect to local councils, section 2 of the Local Councils Ordinance [New Version] specifies that "[t]he constituting order shall regulate the composition of the local council, its tenure, authorities, duties and area of jurisdiction," and section 146 of the Local Councils Ordinance (A)-1950 stipulates:

> The council is empowered, having regard for the Minister's instructions, and to the extent that no statutory provisions are infringed, to act in any matter concerning the public within the council precincts, including the following powers:
>
> 3. To serve as a trustee or guardian for any public matter

Here too, I have no difficulty in construing these sections so that the existence or dissolution of a local council is a "matter concerning the public in the council precincts."—on such matters, the local council serves as "a trustee or guardian" for its residents.

4. This interpretation of section 249(29) of the Municipalities Ordinance; of section 146 of the Local Councils Ordinance (A) and section 63 of the Local Councils Ordinance (Regional Councils), is conducive to consistency with respect to the scope of authority regarding the issues at bar. For "it is difficult to see a logical reason for distinguishing .... As if the residents within the regional council precincts are in greater need of guardianship of the local government than the residents of the municipalities." HCJ 287/71 *Daabul* v. *Ramat Gan* [16], at 824.

5. The second issue is whether the local authority's power should be circumscribed with respect to actions intended to dissuade the central government from adopting a policy that jeopardizes its continued existence, when its struggle for survival is *also* a matter of national significance.

Decision-making power in state matters is not granted to the local authority, which is authorized to function exclusively at the local level,

see 1 I. Zamir, *The Administrative Authority* 373 (1996) [25]. This was also the guiding consideration in HCJ 122/54 *Axel* v. *Mayor of Netanya* [1]). Similarly, it was said in a different context that: "the various ideological controversies among sectors of the population, in matters such as religion, nationalism, and economic concerns, are to be conducted in the forum of the Knesset or in other central government institutions, and neither the municipality nor the local council are responsible for their regulation." HCJ 155/60, *supra.* [13].

This argument, however, is not applicable to the case at bar. In its quest to encourage public awareness of its position by way of advertising, the local authority is not impinging upon the authority of the Knesset or that of the central government. It is undisputed that the exclusive authority for ultimately deciding the matter rests with the central government.

6. It could also have been argued that local authority funds cannot be used for adopting a position on a political issue. It is improper to devote the limited resources of the local authority to taking a stand on a political issue, at the expense of providing municipal services to residents.

This claim, however, should not be acceptable. Clearly, when the local authority allocates part of its resources to taking a stand on a "purely" political issue, without any local connection, there are no grounds for assuming that it represents the interests of the local population. By contrast, when the local authority devotes part of its resources to taking a stand on an issue related to local survival, then it is proper to presume that it is in fact representing its residents' interest in continuing to live in the place that they call home.

7. It could also be argued that the general population should not fund the local authority's acts of protest. In the framework of public decision-making, each and every citizen, including the local authority's residents, should have an equal opportunity to attempt to sway public

opinion. It can therefore by argued that it is not justifiable to put public resources at the disposal of a particular group.

This claim too, however, fails to consider the existential nature of the local authority's struggle. The enlistment of public support is not an objective in and of itself but rather, part of the struggle for the locality's very survival.

8. I am therefore of the opinion that the appropriate legal policy is that which makes the connection between the dangers to the local authority's continued existence and its authority to confront these dangers.

9. It seems to me that if the issue had related to the struggle of an agricultural community against a peace agreement, under which most of its agricultural territories would not remain in its possession, all would agree that the financial expense required for the community to engage in the struggle would be a legitimate expense, even though the issue of the determination of state borders is a national one. The only difference between that case and the case at bar is an additional element: the public controversy regarding the future of the Golan Heights in a future peace agreement. But this distinction should not change the legal result. The struggle in which the Katzrin Local Authority and the Golan Heights Regional Council are involved is for the continued existence of the communities in the Golan Heights. The fact that a public debate surrounds the future of the Golan Heights does not, for that matter, affect the councils' struggle for survival. The struggle for the continued existence of these communities must be considered separately from the said public debate, which is irrelevant for the purposes of our judicial decision.

I was therefore of the opinion that the petition should be dismissed.

Petition Denied.

Justice E. Goldberg

Rendered today, May 11, 1997.