
HCJ 651/03

**Association for Civil Rights in
Israel**

v.

- 1. Chairman of the Central Elections Committee for
the Sixteenth Knesset**
- 2. Raam– United Arab List**
- 3. Balad– National Democratic Assembly**

The Supreme Court Sitting as the High Court of Justice

[January 21, 2003]

Before Justices T. Strasberg-Cohen, I. Englard, and A. Procaccia

Facts: During elections for the sixteenth Knesset, Respondent no. 1 disqualified portions of the election propaganda broadcasts of respondents nos. 2 and 3. These portions were disqualified by the Chairman because they included pictures of the Palestinian flag. Petitioner asserted that this disqualification of the portions constituted an infringement of the freedom of speech of respondents nos. 2 and 3, and an infringement of the voters' right to view political messages uncensored. The Attorney-General, as an *amicus curae*, asserted that petitioner did not have standing to bring his petition, as the injured respondents could have brought the petitions themselves.

Held: The Court held that petitioner did have standing as a public petitioner. The Court noted that the standing of public petitioners has been recognized in matters of a public nature that concern the rule of law, the enforcement of constitutional

principles, or where intervention is necessary to repair a substantial error in government operations. In general, however, the standing of a public petitioner has not been recognized where there exists a specific individual who has been injured and also has standing. Even so, in the context of election law, the Court held that the standing of a public petitioner should be recognized even where there exists a specific individual who has standing. This extended right of standing should be recognized due to the importance of regular and proper elections to the democratic process, and due to the fact that all voters have an interest in receiving the political messages of the candidates. As to the merits of the petition, the Court held that, under the circumstances, the appearance of the Palestinian flag in the broadcasts would not cause injury to viewers. As such, the Court struck down the decision of the Chairman of the Central Elections Committee.

Israeli Supreme Court Cases Cited:

- [1] HCJFH 4110/92 *Hess v. Minister of Defence*, IsrSC 48(2) 811
- [2] HCJ 852/86 *Alony v. Minister of Justice*, IsrSC 41(2) 1
- [3] HCJ 1/81 *Shiran v. The Broadcasting Authority*, IsrSC 35(3) 365
- [4] HCJ 910/86 *Ressler v. Minister of Defence*, IsrSC 42(2) 441
- [5] HCJ 1759/94 *Srozberg v. Minister of Defence*, IsrSC 51(1) 625
- [6] HCJ 16355/90 *Jarjevski v. The Prime Minister*, IsrSC 45(1) 749
- [7] HCJ 428/86 *Barzilai v. The Government of Israel*, IsrSC 40(3) 505
- [8] HCJ 4112/99 *Adalah, The Legal Center for Arab Minority Rights in Israel v. Municipality of Tel-Aviv/Jaffa*, IsrSC 56 (5) 393
- [9] HCJ 2148/94 *Gilbert v. Chairman of the Investigating Committee for the Examination of the Massacre in Hebron*, IsrSC 48(3) 573
- [10] HCJ 26/76 *Bar Shalom v. Israel Lands Administration*, IsrSC 31(1) 796
- [11] CA 10596/02 *Ness v. Likud Party*, IsrSC 57(1) 769
- [12] HCJ 40/70 *Becker v. Minister of Defence*, IsrSC 24(1) 238
- [13] HCJ 231/73 *Bergman v. Minister of Treasury*, IsrSC 27(2) 785
- [14] HCJ 148/73 *Kaniel v. Minister of Justice*, IsrSC 27(1) 794
- [15] HCJ 549/75 *Noah Films. v. The Film Review Board*, IsrSC 30(1) 757
- [16] HCJ 14/86 *Laor v. The Film & Play Review Board*, IsrSC 41(1) 421
- [17] HCJ 869/92 *Zweely v. Chairman of the Central Elections Committee for the Thirteenth Knesset*, IsrSC 46(2) 692
- [18] HCJ 212/03 *Herut—The National Jewish Movement v. Chairman of the Central Elections Committee for the Sixteenth Knesset*, IsrSC 57(1) 750

Israeli Books Cited:

[19] 1 I. Zamir, *The Administrative Authority*, 81-83 (1996).

[20] Z. Segel, *The Right of Standing in the High Court of Justice* 253 (1993)

Petition granted.

On behalf of the petitioner—Dan Yakir

On behalf of respondent no. 1—Anar Helman

On behalf of respondent no. 2—Not Present

On behalf of respondent no. 3—Osama Halabi

JUDGMENT

Justice A. Procaccia

1. Respondents nos. 2 and 3 are, respectively, Raam—The United Arab List [hereinafter Raam], and Balad—The National Democratic Assembly [hereinafter Balad]. Both of these respondents are parties running for election in the Sixteenth Knesset. Respondent no. 1 is the Chairman of the Central Elections Committee. The Chairman disqualified segments of two of Raam's and Balad's election propaganda broadcasts which displayed the Palestinian flag. Petitioner, the Association for Civil Rights in Israel, approached this Court with a petition for the invalidation of the Chairman's decision to disqualify the broadcast segments. Petitioner requests that we allow the televising of the propaganda broadcasts in full.

After oral arguments and viewing tapes of the broadcast, we handed down a judgment on January 21, 2003 in which we made the *order nisi* final, and allowed the uncensored televising of Raam's and Balad's propaganda broadcasts. Due to the exigency of the issue, we decided that the reasons for our judgment would be given at a later date. The

following are the facts and the reasons for our decision,

Background

2. The petition before us was submitted by the Association for Civil Rights in Israel against the Chairman of the Central Elections Committee. Raam and Balad were added as respondents. Raam did not attend oral arguments. Balad attended the arguments, supported the petition, and joined in the request for relief.

3. The petition concerns two election propaganda broadcasts, one produced by Raam and the other produced by Balad. We have viewed both election broadcasts. Raam's broadcast is devoted to the troubles of the Bedouin in the Negev. It contrasts, through pictures, the living conditions of the Bedouin with the living conditions of the Jewish population in Israel. The final seconds of the broadcast consist of a scene of a demonstration, whose participants include Knesset Member Sanah. In this scene, a Palestinian flag is seen waving while a number of youths make the letter "V" with their fingers. As per the decision of respondent no. 1, the Palestinian flag was concealed by a white spot. Aside from this, the entire broadcast was approved for broadcast.

The Balad broadcast consists mainly of speeches made by the head of the party, Member of Knesset A. Bishara, to the voting public, and of photographs of his meetings with various officials. At the end of the broadcast, for a split-second, a picture of the Palestinian flag appears. Here too, the Palestinian flag was concealed by a white spot, as per respondent 1's decision.

4. On January 15, 2003, in response to a letter sent by the legal advisor of the Association for Civil Rights in Israel, Dan Yakir, respondent no. 1 gave the following reasons for his decision:

I disqualified a number of segments from election broadcasting, including those segments of which you speak in your letter. I was of the opinion, and am of that opinion still, that it was appropriate not to permit the broadcast of the flag. We should keep in mind that the present elections are elections

for the Israeli parliament and that Israel is currently in a cruel and bitter state of war, even if this does not constitute war as defined under international law.

The Parties' Arguments

5. Following the response of respondent no. 1, the Association for Civil Rights in Israel submitted this petition. Its main argument is that the disqualification of the segments that display the Palestinian flag constitutes a severe infringement of Raam's and Balad's political freedom of speech, and upon the voting public's right to view propaganda broadcasting. According to petitioner, election propaganda, including propaganda broadcasting, is an integral part of any constitutional, democratic electoral process. The right to broadcast election propaganda is founded upon the freedom of speech. This court, in its case law, has formulated an equation for balancing between the freedom of speech in election propaganda and between other public interests. According to petitioner, in the appropriate balancing of the relevant values, there is no room to disqualify these broadcast segments. The significance of the Palestinian flag should be considered within its context. In the case at hand, the Palestinian flag does not reflect a show of support for a terrorist organization in an armed struggle against the State of Israel. As such, there is no public interest that justifies the disqualification of the segments, and they should be seen as a part of legitimate political discourse, a discourse that should not be restricted in this case. The decision to disqualify the broadcast of the segments should be seen as unreasonable, and it should be invalidated.

6. The Attorney-General, as an *amicus curae*, claims that the petition should be denied, both on its merits and also because the petitioner lacks standing. It was argued, in regard to the latter claim, that the petitioner is fighting a battle that is not its own, and that this provides sufficient cause to close the gates of the Court. No one, aside from the parties running for election, has the right to broadcast election propaganda. If the decision of the Chairman of the Central Election Committee harms any of the candidates' interests in propaganda broadcasting, that candidate or party is entitled to petition for relief. Under these circumstances, the standing

of a public petitioner should not be recognized, if the injured party itself has not petitioned for relief. In this case, Raam and Balad are the political parties whose broadcast segments were disqualified. If they believed that this decision injured their rights, they could have submitted a petition for relief. They chose not to petition for their own reasons. The petitioner in this case suffered no injury which would entitle it to submit a petition in its own name. It was further argued that, in general, the standing of a public petitioner is not recognized in a case where an administrative act injures the rights of a specific individual and that person refrains from petitioning the court. Such is the case before us, where only the party actually affected by the decision has standing.

The Attorney-General also draws attention to the difficulties intrinsic to a proceeding initiated by a public petitioner and not by the true interested party. First, a petition initiated by a public petitioner may lack all the factual data necessary for a comprehensive understanding of the dispute. Second, recognizing public petitioners may generate an excess of public petitions concerning the elections. This would draw elections issues to the Court, even though they should be dealt with in the public arena.

Regarding the merits of the petition, it was argued that the respondent's decision is reasonable. The Attorney-General argues that, in balancing Raam's and Balad's political freedom of speech against the public interest, the balance leans towards disqualifying the broadcast segments that display the Palestinian flag. This flag is the flag of the Palestinian Authority and of the Palestine Liberation Organization [hereinafter PLO]. The Attorney-General argues that it is a symbol of the cruel terrorist war being waged by terrorist organizations against the citizens of Israel, a war which has claimed many victims. As a result of this war, the lives of thousands of families have been shattered. The disqualification of the segments was intended to prevent certain and substantial injury to the feelings of thousands of families hurt by the terrorist war being waged by the Palestinians. The Attorney-General adds that the respondent has broad discretion in making decisions regarding elections issues which are under his authority. In this case, his decisions should be approved. At minimum, it should be held that they do

not constitute a radical departure from the zone of reasonableness.

Standing

7. In our case law, we have greatly extended the standing of a public petitioner in matters of a public nature that concern the rule of law, the enforcement of constitutional principles, or where intervention is necessary to repair a substantial error in government operations. The status of the public petitioner has been recognized even where the public petitioner cannot claim to have been personally affected or harmed. *See* HCJFH 4110/92 *Hess v. Minister of Defence* [1]; HCJ 852/86 *Alony v. Minister of Justice* [2]; HCJ 1/81 *Shiran v. The Broadcasting Authority* [3]. Our approach to standing was greatly influenced by our understanding of the role of judicial review in the democratic state. Our broad understanding of the right of standing is a part of a broader view of this Court, as not only responsible for resolving conflicts between parties, but also as responsible for the rule of law, even outside the context of resolving individual conflicts:

In a democratic society, the court is responsible for preserving the rule of law. The significance of this is that it must enforce the law with regard to the governmental authorities, and it must ensure that the government is acting lawfully.

See HCJ 910/86 *Ressler v. Minister of Defence* [4]; HCJ 1759/94 *Srozberg v. Minister of Defence* [5]; 1 I. Zamir, *The Administrative Authority*, 81-83 (1996) [19]. As such, the standing of a public petitioner was recognized in matters of general public importance concerning the rule of law and concerning matters of a constitutional nature, even where the public petitioner has no direct personal interest in the matter. HCJ 16355/90 *Jarjevski v. The Prime Minister* [6]; HCJ 428/86 *Barzilai v. The Government of Israel* [7].

8. Even in light of this extension of the right of standing, this Court will generally not entertain a public petition where there exists an injured party who has not approached the Court. Where a petition attacks an administrative act which has injured the right or interest of a specific

individual, and that person refrains from petitioning this Court, the Court may not recognize the public petitioner's standing, even if the matter relates to a matter of general public importance. This exception to standing is intended to limit the public petition to government acts where there is no relevant injured party. If such an injured party exists, the public petitioner will be considered to be intervening in a conflict not its own, and its application will be denied. *Srozberg*, [5] at 631; HCJ 4112/99 *Adalah, The Legal Center for Arab Minority Rights in Israel v. Municipality of Tel-Aviv/Jaffa* [8]; HCJ 2148/94 *Gilbert v. Chairman of the Investigating Committee for the Examination of the Massacre in Hebron* [9].

It is appropriate to note that there has been criticism of limiting the standing of a public petitioner in cases where there is an injured individual with a direct and actual interest in the matter:

This limiting approach should not be maintained if the Court finds that the "public petitioner" is drawing attention to a matter of general and exceptional importance, which goes beyond the specific matter at hand.

Z. Segel, *The Right of Standing in the High Court of Justice* 253 (1993) [20]. This approach accords with the view that "the greater the public significance of the matter, the greater the Court's tendency to recognize the petitioner's right to bring the matter before the Court, even if he is an ordinary citizen." HCJ 26/76 *Bar Shalom v. Israel Lands Administration* [10] (Berenson, J.).

9. Here, Raam and Balad have a direct interest in the respondent's decision to invalidate the segments for election broadcasting. They did, however, not petition for relief. The petitioner is the Association for Civil Rights in Israel. The association did not initiate this proceeding in the name of those two political parties. Nevertheless, petitioner's standing should be recognized.

The main reason for recognizing the petitioner's standing lies in the special nature of the matter at hand, which concerns the electoral process. Matters concerning the electoral process are of the utmost constitutional

importance. Additionally, the petitioner has standing as a representative of the interests of the voter, who has a direct interest in the electoral process, and not only as a representative of the parties whose broadcast segments were disqualified.

10. The standing of a public petitioner, in matters regarding the elections, should not be compared to any other matter. The significance of the protected interest in the electoral process, and the petitioner's connection to this interest, are different from that of regular public petitions. The electoral process is, first and foremost, concerned with guaranteeing the rights of voters and parties that wish to be elected through the democratic process. Election laws are intended to ensure that the individual be able to realize his right to vote and be voted for, while allowing him to exercise his freedom of speech. They are also intended to preserve rules of equality, as well as the regularity and fairness of the electoral process:

The goal of election laws is, at the end of the day, none other than the translation of the wishes of the voters into the distribution of political power and seats in the Knesset.

CA 10596/02 *Ness v. Likud Party*, [11] at par. 11 (Barak, J.). The object of the electoral process is to realize the fundamental right to vote and be voted for in a proper and regular process. The regularity of the electoral process is the concern of the entire public, and goes beyond the direct concern of the specific individual injured by government action. Even in the past, when our approach to standing still restricted the right of access to the courts, a voter's right to petition against irregularities in the electoral process was recognized. In H CJ 40/70 *Becker v. Minister of Defence* [12], Justice Vitkon stated:

The right to public standing developed with regard to two issues. One issue relates to the elections. The reason for this recognition is that ensuring election rights is a precondition for any democratic regime. Every voter is personally and directly harmed by disruption and lack of order in the management of the elections, and he has standing in Court, unless his right has

been limited by law.

With regard to examining the merits of a public petition concerning the elections, *see also* HCJ 231/73 *Bergman v. Minister of Treasury* [13]; HCJ 148/73 *Kaniel v. Minister of Justice* [14]. These two cases discussed the merits of the public petitions at issue there. They did not discuss the question of a public petitioner's standing when a specific party is injured by the government act.

11. A voter has standing to bring a petition regarding the electoral process where his rights as a voter have been directly violated. However, his right to standing goes further than this. In free and democratic elections, the rights of voters are intertwined with the rights of candidates such that the violation of a candidate's rights may affect the rights of a voter. The candidates' freedom of speech, for example, expressed through their election propaganda, is an aspect of a voter's right to receive information from the candidates, consider this information, and formulate their choices. Injury to a party's freedom of speech may not only harm the party, but also the voters who wish to hear the full spectrum of political discourse. Unlawful restrictions on the freedom of speech are not only the concern of the candidate running for election. They are also the concern of the voter, who requires freedom of speech to formulate his electoral preferences. In this way, the voter's rights are connected to the rights of the candidates running for election. A direct injury to the party may constitute an injury to the voter, and grant the latter standing to bring his concern before the courts.

12. We emphasize that, even after recognizing a public petitioner's standing in election matters, we must still examine whether his petition is founded on a solid factual basis or whether, due to the public petitioner's distance from the conflict, it relies on vague assertions, and does not bring verified facts and data before the Court. *See Gilbert* [9]; *Adalah* [8].

13. In the matter at hand, both Raam and Balad have a direct interest in the respondent's decision to disqualify the broadcast segments. Needless to say, they have the right to approach this Court requesting relief, if they believe that the decision has violated their rights. In

petitioning for relief, the petitioner does not act as a substitute for these parties. The petitioner wishes to protect not only the parties' political freedom of speech, but also the public interest in guaranteeing the rights of the voter. The voter has the right—a right related to freedom of speech—to both see and hear the full spectrum of political discourse. Freedom of speech includes not only the candidate's freedom to express his opinions, but also the voter's freedom to know—"to see and to hear." HCJ 549/75 *Noah Films. v. The Film Review Board* [15]; HCJ 14/86 *Laor v. The Film & Play Review Board* [16]. Here, the petitioner's claim concerns the voter's freedom to receive the messages of the election broadcasts without interference in their contents. This aspect of freedom of speech grants the petitioner standing to bring the claim that this freedom has been unlawfully restricted. This is a result of the alleged injury to the voter, and in light of the constitutional status of the right to vote and be voted for in the democratic process, and of the various aspects of the freedom of speech, which is the backbone of the electoral process:

Freedom of speech is a central and fundamental principal, important for realizing the goals of law. This freedom touches all expression. It has special significance regarding political expression in general, and especially regarding political expression during elections....One of the principal justifications of the freedom of speech relates to democracy. The spirit of democracy is lost without freedom of speech... Freedom of speech ensures the exchange of ideas between members of the public, and allows them to form opinions regarding issues on the national agenda.... Only in this way will a person be able to form his own independent opinions with regard to critical issues—both social and national—whose resolution are ultimately in his hands by virtue of his right to choose the state's institutions.

HCJ 869/92 *Zweely v. Chairman of the Central Elections Committee for the Thirteenth Knesset*, [17] at 706-07 (Barak, J.).

In a democratic regime, the freedom of speech during elections requires both the freedom to express ideas and the freedom to receive messages that shape public opinion. This freedom, at the heart of the constitutional right to vote and be voted for, demands the uninterrupted flow of opinions and ideas. The claim that one's freedom of speech was violated—be it the freedom of the voter or the freedom of the candidate, be it the right to express or the right to hear, see and know—entitles the petitioner to standing, and the doors of this Court will open for him. For a discussion of foreign countries who broadly interpret a voter's standing regarding elections, even where the matter does not especially concern him, see *Z. Segel, Standing in the High Court of Justice 44 (1993) [20]*.

Petitioner raises a significant constitutional claim concerning the freedom of expression of the parties in the election, a claim that bears on the public interest. Petitioner also represents interests beyond the interests of the two parties here. It also represents the interests of the voting public, of which its members form a part. As such, the standing of the petitioner should be recognized, and the merits of the petition should be addressed.

14. Though unnecessary to the specific issue at hand, it should be mentioned that Balad was present at oral arguments and expressed its full support of the petition. It explained that it did not actually submit its own petition for pragmatic and administrative reasons. Such a position demonstrates a mutuality of interest between the positions of the petitioner and one of the parties who has a direct interest in the matter. This greatly diminishes the force of the state's motion for summary dismissal.

Needless to say, the petitioner cannot force Balad and Raam to televise the broadcasts in full, even if the petition is granted. It may only bring about the judicial invalidation of the limitations imposed upon those parties.

For the above reasons, it is appropriate that the petitioner's standing should be recognized.

Respondent's Decisions—Weighing the Conflicting Interests

15. In HCJ 212/03 *Herut—The National Jewish Movement v. Chairman of the Central Elections Committee for the Sixteenth Knesset* [18], this Court set out the limits of the discretion of the Chairman of the Central Elections Committee regarding permitting or disqualifying election propaganda broadcasts. First, according to *Herut*, the authority of the Chairman of the Central Elections Committee extends farther than the literal language of section 2B of the Elections Law (Propaganda Methods)-1959. Second, two conflicting goals should also be taken into account by the Chairman—the realization of freedom of speech in political discourse as well as the realization of public peace, in its broad sense. Freedom of speech is the fundamental principle of the democratic electoral process. On the other hand, there is the public interest in security, peace and public order, including protecting the feelings of members of the public. A proper balance must be struck between these interests. In balancing these interests, freedom of speech has the status of a constitutional value. Restrictions on the freedom of speech will only be justified if the expression at issue has the potential to injure another protected value.

The Scope of Intervention in the Chairman of the Central Elections Committee's Discretion

16. It is well known that, in deciding whether to ratify or disqualify an election broadcast under section 15A(d) of the Propaganda Methods Law, the Chairman of the Central Elections Committee has broad discretion in balancing conflicting values. A spectrum of possible decisions may fall within the zone of reasonableness. This is acceptable provided that a decision of the Chairman does not fall outside the zone of reasonableness, and that the Chairman attributes the proper weight to each of the relevant considerations. *Zweely* [17] at 703; *Herut* [18] at para. 21.

From the General to the Specific

17. We viewed the broadcasts of Raam and Balad, and meticulously examined their contents and the details of the segments that were disqualified. This examination led us to the conclusion that the petition should be granted. We have no choice but to intervene in the respondent's decision to disqualify the broadcast segments and allow the broadcasting of the election broadcasts in full.

In examining the respondent's decision, we focus on the reasons he gave for his decisions in his response to the petition. His principal reason was that the disqualification of the segments was intended to prevent injury to the feelings of thousands of families harmed by terrorism, victims of the activities of Palestinian terrorist organizations.

The Palestinian flag is indeed a symbol of the national identity of the Palestinians. As it is the flag of the Palestinian Authority and the PLO, it may possibly be identified with hostile groups involved in terrorist activities against Israeli civilians. Nevertheless, in order to disqualify the display of the Palestinian flag from election propaganda broadcasts, the contents of the display must have the potential to cause substantial, deep and severe injury to the feelings of members of the Israeli public who may view the broadcasts, especially to those who have been harmed by terrorist activities. Under the proper balance, only such an injury can justify the restriction of freedom of speech in election propaganda.

After viewing the broadcasts, we hold that no such injury arises from their contents. Balad's broadcast lasts a few minutes, during which Knesset Member Bishara speaks before an audience and is seen appearing at various events and meeting with various people. At the end of the broadcast, the Palestinian flag appears in the background for a split-second, and vanishes immediately. The display of the flag at the end of the broadcast, the short interval during which it is displayed, and the lack of accompanying words which are aggressive or hostile, greatly reduces the potential injury to the public.

We analyze Raam's broadcast similarly. The broadcast is dedicated to the issues of the Bedouin in the Negev. It presents their troubles while comparing their situation to that of the Jewish population in the area. At

the end of the broadcast, the Palestinian flag is displayed for a few short seconds during a demonstration in which the demonstrators make a "V" sign with their fingers. Here too, this display of the flag for a short time constitutes a marginal part of the broadcast—marginal with respect to the main contents of the broadcast—and is not accompanied by hostile words. As such, the impact of the flag is diluted over the duration of the broadcast.

In both of the broadcasts, the display of the Palestinian flag is not central. It is only peripheral. It is displayed at the end of the broadcasts and is seen for a split-second. The flag does seize the viewer's attention. Under these circumstances, the display of the flag does not have the potential to cause injury that would justify disqualification of the pictures of the flag, the limitation of candidates' freedom of election propaganda and the limitation of voters' freedom to absorb the full spectrum of political messages.

18. It should be emphasized that the decision to disqualify should not only be measured by the extent of the injury to the party that wishes to televise the propaganda broadcast. The decision should also be measured by the public interest in televising the decision without any part of it being disqualified. Freedom of speech is the standard here. Any injury to it must stand up to the proper balancing tests.

19. Though unnecessary to resolution of the issue here, it should be mentioned that there is no factual similarity between this case and the case of *Herut* [18], where, against the dissenting opinion of the President, we approved the disqualification of Herut's broadcast. In that case, the party wished to broadcast a jingle with Arabic words to the tune of "Hatikva." The jingle bordered on contempt towards the national anthem, included praise of Arafat and terrorist organizations, called for the banishment of Jews from Jaffa, Acre, Ramleh and Lod, and associated the greatness of Allah with Jerusalem and "Holy Palestine." In the first five seconds of the broadcast, the Israeli flag was seen waving above the Knesset as it gradually changed into the Palestinian flag. A majority of this Court found that such use of the anthem and the flag exceeded appropriate levels of tolerance and held that the decision of the

Chairman of the Elections Committee to disqualify the jingle fell within the zone of reasonableness. The extent of the expected injury to the feelings of the public from the broadcast in *Herut* [18] cannot be compared to the case here. In *Herut* [18], the desecration of the flag and national anthem and all they represent led the majority to conclude that the broadcast could cause severe injury and could even lead to the provocation and incitement. The presentation of the PLO flag in the broadcasts of Raam and Balad—considering the spatial and temporal placement of the flag, the length of time it is displayed and its relationship to the broadcasts in general—is not at all similar to Herut’s broadcast. No analogy should be drawn between the two.

As such, we are of the opinion that Raam’s and Balad’s broadcasts should be allowed to be televised in full, without the disqualification of any segments.

Conclusion

20. In light of the above, we are of the opinion that the *order nisi* should be made absolute. The election propaganda broadcasts of respondents nos. 2 and 3 should be allowed to be broadcast in full, without the disqualification of any of their segments.

Justice I. England

I agree.

Justice T. Strasberg-Cohen

I concur with the opinion of my colleague, Justice A. Procaccia, both with regard to the question of the petitioner’s standing in this petition and with regard to the question of the principles and norms which we adopt to guide us in the issue at hand. The question in any given case is the application of those norms to the facts of each case.

The major difference between the facts in HCJ 212/03 *Herut—The National Jewish Movement v. Chairman of the Central Elections Committee for the Sixteenth Knesset* [18] and the facts in the matter at

hand has been clarified and explained by my colleague, and I see no reason to add to her opinion. The same principles that guided me in both of the cases have brought me to a different conclusion in each of them.

Petition granted.
January 23, 2003

TRANSLATED BY: Leora Dahan
EDITED BY: Eli Greenbaum

Comments, questions and suggestions are all welcomed, and may be directed towards elig@supreme.court.gov.il
