

- 1. Shai Gil**
- 2. Nahum Abir**
- 3. Avichai Ratzani (withdrawn)**

**v.**

- 1. Minister of Education**
- 2. Judging Committee under the Israel Prize Rules**
- 3. Shimon Mizrahi, Adv.**

**Requesting to join: The Yamit Association for Good Governance**

**The Supreme Court sitting as High Court of Justice**

[11 April 2011]

*Before Justices A. Grunis, E. Arbel, and H. Melcer*

Petition for an order nisi

**Facts:**

On 9 March 2011, the Minister of Education announced that Advocate Shimon Mizrahi would be awarded the 2011 Israel Prize in the field of sports, upon the recommendation of the Israel Prize Judging Committee. The members of the Judging Committee were Tal Brody, an renowned basketball player who had played for the Maccabee Tel-Aviv basketball team, and who was awarded the Israel Prize in 1979, Gili Lustig, the head of the competitive sports section of the Israel Olympic Committee and a coach of the Israel All-Star volleyball team, and Esther Roth-Shachamorov, a celebrated athlete who had represented Israel at the 1976 Olympic Games, and who was awarded the Israel Prize in 1999. The Petitioners asked that the Court annul the decision, arguing that Brody had acted under a conflict of interests because Advocate Mizrahi had served for many years

as the chairman of the Maccabee Tel Aviv basketball team, and he and Brody were professionally and socially acquainted.

**Held:**

In rejecting the petition, the Court held that the scope of Court's intervention in decisions concerning the granting of the Israel Prize should be significantly limited, particularly in regard to claims regarding the worthiness of the recipients. Restraint should also be exercised in regard to claims addressing the award procedures.

The choice of recipients of the Israel Prize is almost entirely non-justiciable, and should be treated, *mutatis mutandis*, in accordance with the provisions of section 33 of the Contracts (General Part) Law, 5733-1973. The choice of recipients of the Israel Prize involves a significant subjective element. The greater the subjective component of the decision, the narrower the scope of judicial review.

As for conflicts of interest, the members of each judging committee must be people who are well acquainted with the particular field. It is but natural that the members of the committee will be people from that field or related fields. It is hard to imagine that those qualified to serve on the judging committee would not be acquainted with the candidates. If the Court were to adopt a broad approach to conflicts of interest in this regard, it might not be possible to find any person in Israel qualified to serve on an Israel Prize committee. A broad approach in regard to conflicts of interest might also limit the pool of appropriate candidates for the prize, inasmuch as an acquaintance between a member of the committee and a potential candidate would result in the disqualification of the candidate, regardless of his achievements.

Although, the Court should adopt a restricted approach to judicial review of decisions in regard to the Israel Prize, not all such decisions are immune to review. The Court would certainly address issues of corruption or serious flaws in the conduct of the judging committee or the Minister of Education, even if the petitioner had no direct interest in the petition.

The Court was divided on the question of whether petitions such as this justified revisiting the issue of the standing of petitioners who lack a direct interest.

## JUDGMENT

**Justice A. Grunis:**

1. On 9 March 2011, the Minister of Education announced that Advocate Shimon Mizrahi (Respondent 3) would be awarded the 2011 Israel Prize in the field of sports. The Minister announced the award following a decision of the Israel Prize Committee in the Field of Sports which stated as follows:

Advocate Shimon Mizrahi created new management norms in the field of sports. His many years of continuing, voluntary activity led to heightened public awareness of basketball, while ensuring high level, quality management in Israeli sports that resulted in prestigious national and international achievements.

Advocate Mizrahi's public activity in national and international forums has enhanced the image of Israeli sport in general, and the field of basketball in particular.

The petition before the Court, submitted on 23 March 2011, argues that Advocate Mizrahi's award should be revoked.

### **The Background and Facts**

2. The decision to award the prize to Advocate Mizrahi was adopted unanimously by the committee appointed in accordance with the Rules of the Israel Prize. The committee comprised three members: Tal Brody (hereinafter – Brody), who served as chairman of the committee, Gili Lustig and Esther Roth-Shachamorov. Brody was an outstanding basketball player for many years, and played for the Maccabee Tel Aviv team. He was awarded the 1979 Israel Prize for his special contribution to the state and to physical culture. Lustig is the head of the competitive sport section of the Israel Olympic Committee, and a volleyball coach who coached the Israel All-Star team. Roth-Shachamorov was an outstanding athlete who represented Israel at the Olympic Games in 1976. She was the winner

of the 1999 Israel Prize in sport and physical culture. Advocate Mizrahi serves as the chairman of the Maccabee Tel Aviv basketball team.

3. On 10 March 2011, the day following the announcement that the prize would be awarded to Advocate Mizrahi, the representatives of the Petitioners requested that the Minister of Education rescind the decision to award the prize to Advocate Mizrahi. The request was denied. Therefore, as is has become the accepted practice over the past years, the Petitioners submitted the petition that is before the Court. The Petitioners' main argument is that the decision is tainted by a conflict of interests and must be revoked in light of the alleged professional and social ties between Brody and Advocate Mizrahi arising from their joint activities in the Maccabee Tel Aviv basketball team. It should be noted that the petition does not question whether "Mr. Mizrahi is actually worthy or unworthy of the Israel Prize". In their petition, the Petitioners note that they do not cast any personal aspersions upon Brody, and they have no doubt that he acted in good faith. On 6 April 2011, the Petitioners submitted a request to amend the petition (hereinafter – the amendment request). In the amendment request, the Petitioners seek to make a significant change in the petition, and to argue that the decision to grant the prize to Advocate Mizrahi is flawed on the merits, and not just due to a conflict of interests. This claim relies upon a number of past events that, according to the Petitioners, are related to Advocate Mizrahi. Thus they raise a matter from 1988 in regard to the issuing of free Maccabee Tel Aviv game tickets by Advocate Mizrahi. In the amendment request, they also raise new claims in regard to the Israel Prize Rules. Thus, they argue that the procedure for selecting the recipient of the Israel Prize is not properly transparent, and that no minutes of the meeting are recorded. On the day the amendment request was submitted, two additional requests were also submitted: One was a request to remove Petitioner 3, and the other was a request for the Yamit Association for Good Governance to join the petition. In a decision given that day, Justice A. Hayut ordered the removal of

Petitioner 3, and that the amendment request and the request to cojoin a petitioner be decided by the panel that would hear the petition.

4. Under the circumstances, and in light of the intense interest of the petition and the responses in Advocate Mizrahi and Brody and their relationship, it would be appropriate that we say a few words about the Petitioners and the association that asked to conjoin. The three original Petitioners describe themselves in the petition as “fans of sport in general, and of basketball in particular”. The request to add an additional petitioner was supported by the affidavit of the chairman of the association, Nati Granai. In his response to the petition, Advocate Mizrahi claims that one of the two remaining, original petitioners is a fan of the Hapoel Jerusalem basketball team, and that the second is a business partner of one of the lawyers who signed the petition. As for Nati Granai, the response claims that he is a fan of the Hapoel Tel Aviv basketball team. We do not see any need to address the question of the team preferences of the Petitioners or the association requesting to conjoin. We would further note that we did not see fit to permit the amendment of the petition. The request does not show adequate reason why the new claims were not raised in the original petition. Moreover, the factual claims in the amendment request refer primarily to matters from the distant past. The request to conjoin adds nothing.

5. As noted, the primary claim raised in the petition is that Brody has a conflict of interest in regard to Advocate Mizrahi, and therefore it was improper that a committee that he chaired awarded the prize to Advocate Mizrahi, especially as it was Brody who suggested that the prize be awarded to Advocate Mizrahi. As noted, Brody played for Maccabee Tel Aviv for several years. Advocate Mizrahi has served as chairman of the team for decades, including during the years in which Brody played for the team. The Petitioners argue that the two enjoyed not

only a professional relationship but also a social relationship that continues to this day. The petition further argues, inter alia, that Brody's name appeared on the list of directors on the Maccabee Tel Aviv Internet site. The petition also relies upon various well-known media publications in regard to Brody's and Advocate Mizrahi's relationship. Advocate Mizrahi's response states that Brody ceased to serve as a director of Maccabee Tel Aviv in 2007. However, according to the response, Brody is invited to board meetings. Advocate Mizrahi's verified response also states that Brody is not "a personal friend" of Advocate Mizrahi, and that "there is no personal relationship between them beyond professional acquaintance and cooperation". The response emphasizes that the two are not "close friends".

6. The response of Respondents 1-2, which was very ably drafted by Advocate Dina Zilber of the State Attorney's Office, argues that the Court's involvement in decisions to grant prizes, including the Israel Prize, should be as limited as possible. It argues that decisions to award prizes concern matters of respect and prestige and therefore differs from other administrative decisions. Decisions to grant prizes enjoy very wide discretion that, by their nature, involve a subjective element. The Respondents therefore believe that the Court must exercise great restraint in this area. As for conflicts of interest, it is argued that if the Petitioners' position is accepted, it will be extremely difficult to find judges to serve on the Israel Prize committees, inasmuch as it is but natural that the candidates for the prize will be well-known personalities with whom the judges are professionally acquainted. The Respondents therefore ask that the petition be denied, and of course, that was also Advocate Mizrahi's request in his response.

### **The Israel Prize**

7. The Israel Prize has been awarded annually by the state since 1953. The prize is awarded in the fields of Jewish studies, social sciences, humanities, exact sciences, culture, art, communications and sports. In addition to the prizes awarded to outstanding representatives of the above categories, a prize is also awarded for “lifetime achievement – special contribution to society and the state”. The prize is very prestigious, and the winner is also granted a sum of money by the state. The prize is awarded in a special ceremony on Independence Day, in the presence of the President, the Prime Minister, the Chief Justice and the Minister of Education. The legal basis for the prize is cited in the Israel Prize Rules. As of this year, a process has begun for the granting of the prize on the basis of new rules (upon the recommendation of a public committee). The prize is not awarded in all of the categories every year but in accordance with a certain cycle. The candidates for the prize must be Israeli citizens who resided in Israel during the three years prior to their candidacy (except in special cases). The prize is awarded to individuals and not to corporations. A person can receive the prize only once. According to the new rules, each member of a committee may nominate a candidate after receiving the list of candidates. The other judges on the committee do not know the identity of the nominating party, even when that person is a member of the committee.
  
8. The Israel Prize is a state prize intended to recognize people who have excelled in various fields and who have significantly contributed to human knowledge and to Israeli society. In addition to the recognition and honor of those members of society for their important achievements, it is hoped that honoring them will encourage others to excel in the various fields and contribute to society. The prize serves a uniting role on our special holiday. The unique character of the prize can be seen, inter alia, from the fact that it is awarded on Independence Day. The prize ceremony has become an ongoing tradition over the decades. Therefore, its uniqueness and status should be assiduously protected. All members of society

and, of course, the Court, must take care to avoid taking any action that might detract from its prestige.

### **The Scope of Review of Decisions concerning the Israel Prize**

9. In my opinion, the petition should be denied. According to my view, as shall be set forth below, the scope of Court's intervention in decisions concerning the granting of the prize should be significantly limited. This is particularly so in regard to claims regarding the worthiness of the recipients, that is, in regard to the substantive aspect of the award. But significant restraint should also be exercised in regard to claims addressing the award procedures, i.e., the procedural aspect, especially in regard to claims of conflict of interest. This narrow approach is grounded on two considerations: First, we are concerned with a subject that is almost entirely non-justiciable. Second, the issue of standing should be reinstated, if only partially, where the Israel Prize is concerned.
  
10. As noted, the Israel Prize is awarded in the fields of Jewish studies, social sciences, humanities, exact sciences, culture, art, communications and sports, as well as for "lifetime achievement". Awarding the prize in each of these fields involves a significant subjective element. Awarding the prize is materially different than winning a sports competition like basketball or athletics. In sports, winning is decided by the result. Once the result is known, the winner is decided as a matter of course. That, of course, is not the case in awarding a prize in a field like Jewish studies, social sciences or the humanities, as well as for "lifetime achievement". The greater the subjective component of the decision, the narrower the scope of judicial review. In this regard, we might mention section 33 of the Contracts Law (General Part), 5733 – 1973.

When, under any contract, a mark, a grade, title, prize or the like is to be given according to a decision or evaluation by



one of the parties or by a third party, that decision or evaluation will not be the subject of court proceedings.

Of course, in this matter we are not concerned with a contract but with unilateral rules adopted by the state. However, the rationale of the section is clear, and applicable even to prizes like the Israel Prize. The decision to award the Israel Prize is an administrative decision, in that it is made by the Minister of Education on the basis of a recommendation of the prize committee. Some might argue that as an administrative decision, it is subject to judicial review like every other administrative decision. I disagree. Due to the special nature of the prize, its subjective component, and the social and ceremonial aspects, the Court should exercise maximal restraint when faced with a petition intended to attack a decision by the prize committee and the Minister of Education (see the opinion of my colleague Justice H. Melcer in H CJ 2454/08 *Legal Forum for the Land of Israel v. Minister of Education* [1] (hereinafter – the *Sternhell* case)). It is but natural that in various areas of human endeavor there are different schools of thought or opposing scientific approaches. At times, large ideological gaps arise in the social sciences and the humanities. Similar phenomena are found in various fields of the arts. The Court must not intervene in such debates. Therefore an expansion of judicial review in the area of the Israel Prize must be prevented (see Daniel Friedman, “Justiciability of Decisions in regard to the Israel Prize,” 5 *Hamishpat* 181 (2001)). Moreover, and perhaps needless to say, the Court lacks the institutional skills to decide disputes in regard to the question of whether a candidate is indeed worthy of the prize that the committee has decided to grant. Indeed, judges lack even the personal skills for deciding whether a candidate is worthy of receiving the prize (except, perhaps, in the case of a prize in the field of law; and *cf.* H CJ 10455 *Amir v. Israel Bar Association* [2]).

11. This petition, and similar petitions submitted in the past in regard to the awarding of the Israel Prize, are characterized by a petitioner or petitioners who do not claim

to be worthy of the prize, but rather seek to deny the prize to the person chosen by the judging committee and the Minister of Education. Some might say that it is simply an absence of *firgun*,<sup>1</sup> while others may go so far as to say that petitioners who seek to strip others of the prize are driven by envy (for an exceptional case in which the petitioner complained that he was not awarded the Israel Prize, see HCJ 167/06 *Weinrauch v. Minister of Education* [3]). If the Petitioners are, indeed, rivals of Advocate Mizrahi in the field of sports, it would seem that they see his award as a red – or more precisely, a yellow<sup>2</sup> – flag. In the distant past, this Court held that it would not recognize the standing of a person petitioning to deprive another of a benefit (see, HCJ 100/64 *Mata'ei Emek Ha'arazim v. Jerusalem District Commissioner* [4]; HCJ 19/64 *Israel Insurance Agents Association v. Insurance Supervisor* [5]). Indeed, since that holding, there has been a dramatic change in regard to standing, and the Court has effectively removed that requirement as a threshold for relief in a petition against an administrative decision. In my opinion, the present case demonstrates the need for reconsidering the matter in view of the socio-cultural price that society may pay for recurring petitions against Israel Prize recipients. The Court must refrain from unintentionally assisting legal proceedings that encourage a lack of *firgun* and *schadenfreude*. In my opinion, the Court would do well to adopt rules that would reduce the number of petitions intended to strip a person of a prize, and the Israel Prize in particular.

12. If one were to examine the development of justiciability and standing over the last decades, I believe that one would find a clear correlation between that development and the increase in the number of petitions challenging decisions to

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<sup>1</sup> Translator's note: The term *firgun*, used here and elsewhere in the decision, derives from the Yiddish *farginen* and is related to the German *vergönnen*. The term lacks a precise Hebrew or English equivalent. It expresses a sense or acknowledgement of joy or satisfaction at the success of another, and is thus the opposite of *schadenfreude*.

<sup>2</sup> Translator's note: Yellow is Maccabee Tel Aviv's team color.

award the Israel Prize. Indeed, one might say that just as Independence Day arrives every year on 5 Iyyar, so a petition will be submitted to this Court every year after the Ministry of Education announces the awarding of the prize. It is interesting to note that this “tradition” of petitions concerning the prize began in 1997, following this Court’s only intervention in a decision to award the prize (in H CJ 2205/97 *Massala v. Minister of Education and Culture* [6]). Since then, the following petitions have challenged the awarding of the prize to someone: H CJ 1933/98 *Hendel v. Minister of Education and Sport* [7]; H CJ 2348/00 *National Religious Party Faction v. Minister of Education* [8]; H CJ 2769/04 *Yahalom v. Minister of Education and Sport* [9]; the *Sternhell* case [1]; H CJ 3346/09 *Legal Forum for the Land of Israel v. Minister of Education* [10]. In a petition of a different nature, the petitioner, who had been chosen to receive the prize for painting, challenged the rule requiring that he personally attend the ceremony in order to receive the prize (H CJ 3750/03 *Gershuni v. Minister of Education* [11]). It would appear that what we are now witnessing was unforeseeable when the more flexible tests for non-justiciability and standing were instituted. One can also not ignore the additional costs of petitions such as these, even though they are denied. The person chosen to receive the prize by the prize committee finds himself having to defend himself as if he were a criminal defendant. He must, of course, be included as a respondent to the petition, and he must respond to the various allegations often made against him. The respondent may hire a lawyer to represent him in the proceedings. If he is required to pay legal fees, it is unlikely that he will be compensated for his expenses even if the petition is denied.

Those considerations are the basis for my position in regard to the need to significantly limit judicial review of decisions to award the Israel Prize.

13. We shall now address the traditional justification for rescinding the requirement of standing, according to which, even when a petitioner has no personal interest in the subject of the petition, the Court must intervene in flawed administrative

decisions because of its duty to contribute to the rule of law and to ensuring that government agencies act lawfully. Therefore, it is argued, we must ignore the possible motives of the Petitioners in this case, and their lack of personal interest, and focus upon the alleged conflict of interest. As we may recall, this allegation concerns the claimed professional and social relationship between Brody and Advocate Mizrahi. There is no dispute as to the professional relationship. That relationship spanned many years, inasmuch as the former played for Maccabee Tel Aviv while the latter served as chairman of the team. It is also undisputed that the relationship continued after the conclusion of Brody's career as a player. As for the social relationship, it would appear that the parties disagree. In any case, under the circumstances, and as I shall explain below, there was no flaw that would justify this Court's intervention, and there is certainly no flaw sufficiently serious as to warrant rescinding the decision. It may have been preferable for Brody to refrain from nominating Advocate Mizrahi. Nevertheless, we should bear in mind that, at the end of the day, the committee's vote was unanimous – including the two judges against whom no allegations are made – that the prize be awarded to Advocate Mizrahi.

14. The members of each judging committee must be people who are well acquainted with the particular field. If, for example, we are concerned with a prize in the field of Jewish studies, it is but natural that the members of the committee will be people from that field or related fields. In our small country, and not only in it, it is hard to imagine that those qualified to serve on the judging committee would not be acquainted with the candidates. If a member or members of the judging committee are not acquainted with the work of the candidate, one might argue that such a member is not qualified to serve on the committee. A similar issue arose before this Court in regard to the awarding of the 2009 Israel Prize for "Lifetime Achievement – Special Contribution to Society and the State" to the Israel Democracy Institute (HCJ 3346/09 [10]). The Court denied the petition even

though there were some relationships among all of the members of the judging committee, as well as between the Minister of Education's advisor on the Israel Prize and the Democracy Institute. Another case adjudicated before this Court concerned the awarding of the Israel Prize for Political Science to Professor Zeev Sternhell of the Hebrew University of Jerusalem. The chairman of the judging committee was Professor Shlomo Avineri of the Political Science Department of the Hebrew University. Conflict of interest was not argued in that case. Perhaps if we were we to accept the argument of the Petitioners in the instant case, we should also retroactively rescind that award (see the *Sternhell* case). If the Court were to adopt a broad approach to conflicts of interest, it might not be possible to find any person in Israel qualified to serve on an Israel Prize committee. Will we have to import judges from abroad for that purpose, as is occasionally done in regard to judges of sports matches?!

15. A broad approach in regard to conflicts of interest has an additional, clear disadvantage in that it might necessarily limit the pool of appropriate candidates for consideration by the judging committee. This would be the case as an acquaintance between a member of the committee and a potential candidate would result in the disqualification of the candidate, regardless of his achievements. Let us examine this in regard to the concrete case before us: If Brody is indeed disqualified from serving on a committee examining the candidacy of Advocate Mizrahi, the significance is that Advocate Mizrahi is disqualified as a candidate. The matter can be examined from another angle: Is it imaginable that this Court would entertain a petition by Advocate Mizrahi against the constitution of the committee because Brody is one of its members? Advocate Mizrahi could raise such a claim as a petitioner, saying that Brody's appointment to the committee would bar his candidacy from consideration by the committee. It would see that it was the good fortune of several Nobel Prize winners that their awards did not have

to pass the tests advanced by the Petitioners in this case and others dealing with the Israel Prize.

16. Although, in my view, the Court should adopt a restricted approach to judicial review of decisions in regard to the Israel Prize, clearly not all decisions in that regard can be said to be completely immune. For example – and hopefully one that will remain hypothetical – if financial corruption, such as bribery, were discovered in regard to the prize, the Court would certainly intervene even if the petitioner had no direct interest in the petition. We can also say that if a very serious flaw were found in the conduct of the judging committee or the Minister of Education, the Court would certainly address the petition. This approach is comparable to this Court's approach in regard to ignoring a claim of laches raised by a respondent. As is well known, if a petitioner delays in submitting a petition to the High Court of Justice, the petition may be dismissed for that reason alone (in regard to Administrative Courts, see Regulation 33 of the Administrative Courts Regulations (Procedures), 5761 – 2000). Only a serious flaw in a decision or administrative proceeding will lead to a rejection of a claim of laches, particularly when the petitioner has no personal interest (see, HCJ 2285/93 *Nahum v. Mayor of Petach Tikvah* [12], at 642-643, *per* Y. Zamir, J.).

17. Another matter, though marginal, should nevertheless be mentioned. I am referring to the influence of petitions like the one before the Court upon other litigants who turn to the Court, but who must, at times, wait long periods for a hearing. The decision to award the Israel Prize to Advocate Mizrahi was published on 9 March 2011. The petition was submitted on 23 March 2011. The Israel Prizes will, by tradition, be awarded on Independence Day, which this year will be celebrated on 10 May 2011 (6 Iyyar). Of course, this petition must be decided before the date of the award. On 6 April 2011, the duty judge (my colleague Justice E. Hayut) decided that the petition would be heard by the Court no later

than 27 April 201. The hearing was held on 11 April 2011. Petitions in regard to the Israel Prize in the past have also been heard shortly after their submission. As a result of the fact that petitions in regard to the prize, and petitions of similar character and urgency are meant to be heard soon after their submission, cases that have already been set for hearing must be delayed or the Court must set aside space in its calendar for urgent petitions. The clear result is that other litigants suffer, although their already pending cases may be more worthy of precedence on the merits.

## **Conclusion**

18. We are concerned with a petition to rescind the decision to award the 2011 Israel Prize for sports to Advocate Mizrahi. As I have explained, in my view the Court should adopt a narrow approach in regard to prize decisions. A decision concerning who is to receive the prize need not be addressed by the Court on the merits, except in exceptional cases, such as corruption. A similar, though less strict approach should be adopted in regard to the election process and the decision procedure. We should bear on mind that even petitions that are ultimately denied may, by their sheer number, harm the prize and detract from its prestige. The Court should take care that it not unintentionally encourage a lack of *firgun*, or envy and *schadenfreude*. Independence Day is a holiday that unifies the nation, despite the differences and divisions of the rest of the year. The Israel Prize has become an important, traditional feature of the national holiday. It is to be hoped that awarding the prize will cease to be a focus of discord. In the field of sports, the contests should remain sporting, and the appropriate forum should be on the boards or the grass and not the Court.

19. The petition is denied. Petitioners 1-2 will pay the legal fees of Respondents 1-2 in the amount NIS 20,000, and the same amount to Advocate Mizrahi.

**Justice E. Arbel:**

I concur with the judgment of my colleague, Justice A. Grunis, in denying the petition.

In his judgment, my colleague addressed the question of the scope of judicial review of decisions related to the Israel Prize. I agree that, as a rule, the Court should refrain from intervening in the decisions of the committee that decides upon awarding the prize, and that the committee enjoys broad discretion in this regard. In any case, these are not decisions that are meant to be the subject of legal proceedings (sec. 33 of the Contracts (General Part) Law, 5773 – 1973). I also agree that the Court should exercise great restraint in regard to intervening on the basis of claims against the selection process. However, as I have noted in the past, "...that is not to say that the decisions of the prize committee are immune to judicial review. The prize committee, like any administrative body, is subject to judicial review, but where the decision of the prize committee to award the Israel Prize to a certain person has been arrived at in good faith and on the basis of relevant professional considerations, there is no cause for the intervention of this Court in the decision (HCJ 2454/08 *Legal Forum for the Land of Israel v. Minister of Education* [1]).

However, and although I entirely agree with my colleague on the importance of preserving the Israel Prize as a uniting element on the State of Israel's national holiday, as an expression of appreciation of a person's contributions to the state and society, and as reinforcing the appreciation of excellence in Israeli society, I believe that we should show great restraint in limiting standing. Indeed, there are petitions against decisions to grant the prize to someone that are vexatious and seem to be brought out of envy rather than true desire that the prize be awarded only to those deserving it. Indeed, there are petitions in this regard that express a certain lack of understanding of the public nature of



the prize, as it is not required that a prizewinner, his opinions and views necessarily represent the public consensus, as if anyone knows what that consensus might be and whether it is good and proper. But the Court's open gates can also ensure that certain decisions that are appropriate for judicial review due to material flaws will be brought before the Court. My colleague indeed notes that there may be cases – and let us hope that we not witness such occurrences as financial corruption in regard to the prize – in which the Court will open its gates before a petitioner who has no direct interest in the petition. I believe that should surely be the case where there is no potential petitioner with a direct interest in the petition, and that even where there is a specific victim who did not petition the Court, there should remain an exception – not overly restricted – to the approach limiting access to public petitioners that would apply to matters of importance or significance that goes beyond the individual case (see, in this regard, the decision of Justice A. Procaccia in HCJ 651/03 *Association for Civil Rights in Israel v. Chairman of the Elections Committee for the 16<sup>th</sup> Knesset* [13]). For these reasons, I would not set rules in stone in regard to the standing issue in the context under discussion. My assumption is that the Court will know how to identify – as it has until now – the exceptional cases that justify extending relief to a petitioner whose standing is unclear, which cases should be addressed even if it would appear that the petitioner lacks any direct interest, and which cases should be dismissed *in limine* for that reason.

**Justice H. Melcer:**

1. At the end of my opinion in HCJ 2454/08 *Legal Forum for the Land of Israel v. Minister of Education Yuli Tamir* [1] I wrote:

In conclusion, we can only hope that, in the future, legal proceedings in these matters will become unnecessary, and that the Israel Prize will continue to be what it always has

been – the highest accolade of the State of Israel for its finest researchers, scientists and contributors to our society.

It would seem that the hint was not taken, as the petition before the Court proves. I therefore agree with the forthright judgment of my colleague, Justice A. Grunis. Nevertheless, I will permit myself two comments:

- (A) In my opinion – as far as recommendations of the judging committee acting in accordance with the Israel Prize Rules are concerned, or the decisions of the Minister of Education to accept or reject those recommendations (to award or not award the prize) – the *substantive* decision in these matters *should not be a subject for legal proceedings*. This is what is required by the provisions of section 33 of the Contracts (General Part) Law, 5737 – 1973, which should, in my opinion, be applied to the matter in accordance with section 61 of that law.
  
- (B) Like my colleague Justice E. Arbel, I do not think that this case justifies setting rules in stone (once again) in regard to the issue of standing. Moreover, in related situations in the past, two separate areas were distinguished (in regard to which various justifications were given for expanding standing):
  - (1) The area concerning the status of a petitioner before the High Court of Justice who petitions to deny the right of another by reason of infringement of freedom of occupation, promoting competition, or preventing discrimination. This status was recognized in overruling the rule in H CJ 100/64 *Mata'ei Emek Ha'arazim Ltd. v. Jerusalem District Commissioner* [4]. For a critical examination of the issue, see Amnon Rubinstein, “The Standing of a Petitioner before the High Court of Justice seeking to Deny a Third Party’s Right,” 27

*HaPraklit* 499 (1971). On the change in the rule, see: HCJ 287/91 *Kargal v. Investments Center Administration* [14] at 856-862; HCJ 849/92 *Shemen Industries Ltd. v. Investments Center Administration* [15] at 706-709; AAA 8193/02 *Reuven v. Paz Oil Company Ltd.* [16]; HCJ 4736/03 *Alon Oil Company of Israel Ltd. v. Minister of Industry and Trade* [17].

(2) The area concerning the status of a public petitioner in constitutional petitions or petitions concerning infringement of the rule of law See: HCJ 910/86 *Ressler v. Minister of Defense* [18]; HCJ 651/03 *Association for Civil Rights in Israel v. Chairman of the Elections Committee* [19]; HCJ 962/07 *Liran v. Attorney General* [20]. For criticism of the rule, see Dr. Shlomo Levin, “Is there Standing for Standing?” 39 *Hapraklit* 453 (1990-1991).

2. In my view, the fact that the Petitioners before us sought to deny the Israel Prize to Respondent 3 on the basis of arguments that they believed had some basis in public law does not justify limiting standing in the above two categories, or confusing them. In my opinion, assessing costs in this area of frivolous petitions should be sufficient for the time being to achieve the necessary balance among the relevant competing interests.
3. In conclusion I would emphasize that the message should be clear and potential petitioners should be aware of two principles:
  - (a) Sometimes it is appropriate “*lefargen*”<sup>3</sup> (an expression borrowed from Yiddish, but that has no Hebrew equivalent, and perhaps for a reason).
  - (b) It is about time that we leave the Israel Prize and its recipients alone.

Held as per the opinion of Justice A. Grunis.

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<sup>3</sup> Translator’s note: Infinitive of “*firgun*”.

22 Nissan 5771

26 April 2011