HC 217/80 *

5. ZE'EV SEGAL v. MINISTER OF INTERIOR

In the Supreme Court sitting as High Court of Justice

Cohn DP, Barak J, Levine J

A S Shiloh, for the petitioner

M Shaked, Senior Deputy State Attorney, for the respondent

JUDGMENT

Cohn DP:

The Time Determination Ordinance, 1940, enacted by the High Commissioner of Palestine on the advice of his advisory council and in effect to this day, provides in section 2 (which is, in fact, the only section in the Ordinance) as follows:

> "Determination of Time in Palestine:
>
> (1) During such period in each year as the High Commissioner may by order prescribe, the time for legal and general purposes in Palestine shall be three hours (or such other period of time as may by order be prescribed) in advance of Greenwich Mean Time.
>
> (2) Wherever any expression of time occurs in any law, Ordinance, Order in Council, order, regulation, rule, proclamation, by-law or any like instrument, or in any deed, time table, notice, advertisement, or other document, the time mentioned or referred to shall be held to be the time as fixed by this Ordinance:
>
> Provided that nothing in this Ordinance shall affect the use of Greenwich Mean Time or East-European

* 34 P.D.(4) 429.

> time for purposes of astronomy, meteorology or navigation, and shall not affect the interpretation of any document mentioning or referring to time in connection with such purposes."

(The words in parentheses were added to the Ordinance by the Time Determination (Amendment) Ordinance, 1948 of June 3, 1948.)

It will be noticed that during the same period in each year prescribed by the High Commissioner -- now the Minister of Interior -- under this Ordinance, there is "time" that "for legal and general purposes", and specifically for the purpose of interpreting laws and documents, can be regarded as legal time, or in other words as time for the purpose of the law; whereas apart from that period, on all other days of the year, there is no "time" in Israel -- and was no "time" in Palestine -- that the law recognizes. There are grounds to suspect that at the time the High Commissioner and his advisory council enacted this Ordinance, they assumed erroneously that the legal situation in Palestine was similar to that in England, where the matter of time is regulated by statute (since 1602, and lately under the Acts (Definition of Time) Act, 1880) and "summer time" is an exception to the rule, requiring special legislation (The Summer Time Act, 1925). Or perhaps the High Commissioner and his advisory council assumed that Greenwich Mean Time was determinative in Palestine, too, as part of the Common Law. But the fact is that even during the period of the British Mandate we did not live in this country according to Greenwich Mean Time but preceded it by an hour or two. Be that as it may, and be the time that we live according to throughout the year as it may, the one existing and binding statute in this matter is the Time

Determination Ordinance, 1940 -- and according to it we know what is the legal time, at least during the same period each year as the Minister of Interior prescribes.

However, the Minister of Interior does not wish to exercise his authority under this Ordinance. There were years (1948, 1974, 1975) in which the Minister of Interior issued orders under the Ordinance, and we were privileged in each of those years to have a legal time, which is "summer time" or, in popular language, "the summer clock". Whether due to the experience of the Minister of Interior in the same periods that the summer time was introduced, or whether due to the exercise of his discretion on the advice of experts or the argument of interested parties -- in any event, the Minister reached the conclusion that for the good of the community it is preferable not to introduce the summer time, but to leave the time uniform for all the days of the year. This conclusion does not agree with the petitioner in this case, who professes to be expert, learned and experienced in matters such as this and presents himself -- much to the dissatisfaction of the learned counsel who argued brilliantly before us for the Minister of Interior -- as spokesman for a multitude of people who yearn for the summer time and call upon the Minister without avail. The petitioner heaped upon us much interesting material, of his own and other experts, to show us the benefit and pleasure of summer time and its advantage to the state economy and prosperity; however, we are not concerned with either the blessings or curses of the summer time: we may not sit as an appellate instance to debate the question whether the Minister was right or wrong in his discretion. No argument was made

before us that the Minister did not weigh material considerations, or that his decision was blemished by a moral fault: the argument that the Minister attached too much importance to one consideration and not enough to another is not the sort of argument that can serve as grounds for our intervention so long as both considerations were material.

The only question meriting discussion in this petition is whether the Time Determination Ordinance, 1940 imposes a duty on the Minister of Interior to introduce the "summer time" during a period prescribed by him in each year, or whether the Minister is right in his approach that this is a matter for his discretion: if he so wishes -- he shall exercise his authority under the Ordinance in any given year; if he so wishes -- he shall refrain from exercising his authority under the Ordinance in another year. The question is solely one of the Ordinance's interpretation, which is a pure legal question, as to which the controversy over the good and evil of the summer time is immaterial.

But before turning to that discussion, I must remove the obstacle that the learned state attorney placed before us -- which is the argument that the petitioner has no standing in this court. Despite the petitioner's affidavit, according to which he would save a certain monthly sum in electricity expenses if the summer time were introduced and thus suffers monetary damage from failure to introduce it, the learned state attorney justly argues that this is, in fact, a "public claim" and the petitioner's personal interest in saving money is not equivalent to his public interest as a proponent of the community's welfare. Indeed, it has been often said by many judges of this court that we shall

not admit petitions of world reformers who apply to this court in order not to realize their own personal rights but to bring salvation to the entire community; for if we did not say so, this court would be flooded with petitions to reform the world, which would be for us an intolerable state of affairs.

However I have already had several previous opportunities to express my opinion that the matter of standing in this court is also no more than a function, or consequence, of the role imposed upon it to issue relief when and where justice necessitates such. If the rule is, in the language of Agranat P, "that where the petitioner relies, with respect to his standing, on the sole argument that the decision of the public authority affected a collective public interest in which he has an interest, without contending a real violation of his private sphere, the court will not ordinarily recognize his right of standing and will not admit his petition" -- there will always be exceptions to the rule. Agranat P continued there to express his concurrence with Witkon J that it is impossible to determine definitive rules in this matter and that "we must exercise our discretion and decide each case according to its circumstances" (HC 287/69 Meron v. Minister of Labor 24 P.D.(1) 337, at 355).

Where the law imposes a duty on a governmental authority and the authority refuses to fulfil it on discretionary grounds, being of the opinion that under correct construction of the law the duty imposed upon it is outweighed by its discretion -- the court will not allow the authority to hide behind the petitioner's lack of standing so as to prevent the law's proper construction by the court. In such case -- which is the present case -- it is

unbecoming to a respondent in this court to argue lack of standing. To the contrary: it is proper that he pave and clear the way for the court and remove all obstacles so that the law may come to its proper construction and the acts of the authority be corrected. And even if he should argue -- as in the present case -- for lack of standing, the court will not admit that argument or hear it on its merits, not because it is possibly wrong, but rather despite the fact that it is possibly right: this court's duty is to give reign to the law, and when the court happens to have an opportunity to fulfil its duty, it will not shirk it or withhold itself from the law only because of the specific characteristics of the petitioner before it.

It might be said in all truth that I made a supreme effort to arrive at a construction of the Ordinance under discussion in accord with its manner of application by the Minister of Interior: he, indeed, holds the authority under the Ordinance (he is, as it were, its master), and I thought that if the language of the Ordinance only allowed the construction made by the Minister of Interior it would be proper to prefer that construction to any other possible construction. However, after much study and deliberation I reached a clear conclusion that the language of the Ordinance does not allow the construction that the Minister propounds, and that the correct construction of the Ordinance is that determination of a yearly period for introducing summer time is not a matter for the discretion of the Minister of Interior but a duty imposed upon him, even against his will.

The determinative phrase in section 2(1) of the Ordinance is in its ending, that is to say: "the time for legal and general purposes shall be three hours (or such other period of time as may be prescribed by order) in advance of Greenwich Mean Time." The first part of the section limits the temporal applicability of that phrase: the provision refers only to the same period in each year as prescribed by order of the Minister of Interior. Were it not for the words "in each year" one might possibly say that determination of that provision's periodic applicability is wholly dependent on the Minister's will; but the words "in each year" define a determinative framework for the Minister from which there is no refuge: in each year the Minister shall determine the period in which the provision applies. If the legislature had intended free discretion -- if he so wishes he introduces summer time in a given year, and if he so wishes he does not introduce it in another year -- it would not have used the language "in each year", but would have omitted these words entirely. Ms. Shaked's contention that the words "in each year" serve only to prevent the Minister from determining the period of summer time for several or many years jointly is not consonant with the language employed by the legislature: the Minister's duty is to determine the period not for each year separately, but rather in each year separately -- and the distinction between the Hebrew letters "bet" and "lamed" * is even more conspicuous in the English language, in which whole words and not mere letters serve for this distinction.

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* Translator's note: the Hebrew letters "bet" and "lamed" serve as prefixes, denoting "in" and "for" respectively.

So long as the Ordinance is in effect it is the law in Israel that the legal time is three hours -- or any other number of hours so determined by the Minister of Interior -- in advance of Greenwich Mean Time, during the same period in each and every year as prescribed by the Minister of Interior. The Minister of Interior is not authorised to change the law by refraining from determining the period of its applicability: his restraint causes the law to be frustrated and cancelled (in the sense that custom cancels law) -- but in a state governed by law, the change and cancellation of a law are matters for the legislature and not for the executive branch. If the considerations of the Minister of Interior might persuade the legislature to revoke the law or to change it by granting free discretion to the Minister of Interior, then by all means he should go to the legislature and persuade it -- but no Minister in Israel may make a law for himself.

Since the petitioner initiated these proceedings so as to do service to the public, there shall be no order for expenses.

Barak J

The petition before us raises three questions: first, whether the authority of the High Commissioner -- now the Minister of Interior -- under the Time Determination Ordinance, 1940 (hereinafter -- the Ordinance) is mandatory or discretionary. Second, if the authority is discretionary, whether the Minister of Interior exercised his discretion lawfully when he decided not to exercise his authority under the Ordinance and not to change the current time. Third, whether or

not the Minister of Interior acted lawfully, does the petitioner have legal standing? As among these questions, the first "in time" is actually the third, for if the petitioner does not have legal standing the court need not concern itself with the first two questions. Notwithstanding, the question of standing is closely connected with the very ground of the petition, and it is sometimes difficult to take a position on the question of standing without examining the ground itself. In any event, having reached the conclusion that the petitioner does have legal standing, I can leave that question for its place and time, and I shall discuss the three questions in their order:

2. The authority granted the Minister of Interior under the Ordinance -- is it mandatory or discretionary? Section 2(1) of the Ordinance provides as follows:

> During such period in each year as the High Commissioner may by order prescribe, the time for legal and general purposes in Palestine shall be three hours in advance of Greenwich Mean Time."

This provision was amended by the Time Determination (Amendment) Ordinance, 1948, which stated as follows:

> Subsection (1) of section 2 of the Time Determination Ordinance, 1940 shall be amended by the addition of the words 'or such other period of time as may by order be prescribed' after the words 'three hours' therein."

The formulation of section 2(1) of the Ordinance is not clear, beyond all question, and it can be construed in several ways. The construction suggested by my esteemed colleague the Deputy President Cohn J, according to which the authority of the Minister of Interior is mandatory, is certainly a possible

construction of the text. But it is not the only possible construction. In my opinion there is a second construction, according to which the authority of the Minister of Interior is discretionary. This construction is not only textually possible but, in my opinion, it is also consistent with the possible legislative purpose underlying the Ordinance, and is the only construction that does not lead to unreasonable results.

3. The language of section 2(1) of the Ordinance indicates that it contains three elements: the authority, the object of the authority, and the legal consequence following from exercise of the authority as regards the object of the authority. The authority is that of the Minister of Interior to issue an order. This authority is found in the phrase that determines that "the High Commissioner may by order prescribe". There is nothing in these words to indicate that the authority is specifically mandatory. To the contrary: the language of the provision -- including the use of the expression "may" -- indicates precisely a discretionary authority. The object of the authority is to prescribe a period in each year. This object is found in the phrase that states "such period in each year". This is the period that is called "the summer time" or "the summer clock". The legal consequence of exercising the authority and prescribing the period is that during that period a special norm applies, which is to say that the time in Israel shall be three hours in advance of Greenwich Mean Time. The change introduced by the 1948 amendment to the Ordinance enlarged the object of the authority to include not only prescription of the period but also the authority to change the norm itself. According to my

approach, the expression "in each year" -- an expression which, according to the opinion of my esteemed colleague Cohn J, is the source of the authority's obligatory character -- does not refer at all to the actual authority that is to be exercised in each year, but rather to the object of the authority, that such period is to be in each year. The legislature thus excluded the possibility of prescribing a "summer clock" for a full year or more, and limited the duration of the period to a length of time contained within a year.

4. It appears to me that had the legislature sought to determine a mandatory authority, it would have employed a different formulation, such as this:

> During such period as the High Commissioner shall by order prescribe in each year, the time for legal and general purposes in Palestine shall be three hours in advance of Greenwich Mean Time."

This latter formulation emphasises that the expression "in each year" refers to the authority itself, which should be exercised in each year, and not to the prescription of the period. The comparison between this possible formulation and that of the Ordinance illustrates well, in my opinion, that the Ordinance grants a specifically discretionary authority. I am certainly aware of the fact that even the construction that I suggest is not clear of doubt, and that it would have been better had the legislature not used the expression "in each year" and substituted for it the expression "the year" or some other similar expression. But we only have before us the existing formulation, and that formulation allows the construction that I

have suggested. In such a situation, where the text allows different constructions, the decision must fall according to considerations of legislative policy and the logic of the achieved result.

5. It appears to me that the result that I have arrived at realizes the possible intention of the legislature. One finds it hard to assume that the High Commissioner intended to tie his hands and to obligate himself in each and every year to perform an act of changing the local time even where he could find no justification for it on the merits. As for myself, it appears to me that I am not far from the truth if I construe the Ordinance in light of the Second World War as enabling the High Commissioner to exercise the authority thereunder as he deemed fit for the purposes of the war. One finds it hard to assume that the Ordinance sought to impose on the High Commissioner an obligatory duty which might also, heaven forbid, sabotage the wartime effort. Moreover, one finds it hard to assume that the exercise of the said authority was restricted to Palestine without coordination with other parts of the Middle East, such as Cyprus and Jordan. Indeed, at the same time in which the local Ordinance was enacted, a similar ordinance was also enacted in Cyprus. Is it reasonable to assume that the central government in England -- which would certainly have introduced a simultaneous change in all the parts of the Middle East under the control of Great Britain -- sought to tie its own hands and to impose upon itself a duty to change the local time, without taking into account the needs of the time and the place? I wonder.

6. But beyond this, let us assume that the authority is indeed mandatory. On this assumption the authority can be construed in two ways: according to the first construction, the Minister of Interior is obliged to exercise his authority and is, likewise, obliged to change the local time in relation to Greenwich Mean Time, and he may not reproduce the existing situation; according to the second construction, the Minister of Interior is obliged to exercise his authority but he does not necessarily have to change the local time in relation to Greenwich Mean Time. This latter construction was made possible by the 1948 amendment to the Ordinance, which authorised the Minister of Interior to prescribe by order "such other period of time". Under the first construction, what must the Minister of Interior do so as to fulfil his duty? His duty is to exercise the authority vested in him and thereby change the local time in relation to Greenwich Mean Time. The said authority must be exercised in good faith. Does the Minister of Interior fulfil his duty by prescribing a period of one month? one week? one day? Is there any point in assuming that the legislature intended to impose on the authority holder a duty to perform such meaningless acts that serve no purpose? Whereas if one says that the second construction is the correct one, then the authority is exercised in vain, without any import or consequence, since the order prescribes that what has been shall continue to be. Can one assume that this was the intention?

7. A possible argument is that the authority of the Minister of Interior is mandatory because otherwise there would be no "legal time" or "time for the purpose of law" in Israel. This argument

lacks substance. The Ordinance was not designed to prescribe "legal time" or "time for the purpose of law". Even under the construction that regards the Minister of Interior's authority as mandatory, there will be periods in each year -- those periods to which the order does not apply -- in which there is no "legal time" or "time for the purpose of law". The Ordinance clearly emphasises this result in section 2(2), which provides:

> Whenever any expression of time occurs in any law, Ordinance, Order in Council, order, regulation, rule, proclamation, by-law, or any like instrument, or in any deed, time table, notice, advertisement, or other document, the time mentioned or referred to shall be held, during the prescribed period,* to be the time as fixed by this Ordinance." (emphasis added -- A.B.)

Indeed, the purpose of the Ordinance is not to prescribe a "legal time" or "time for the purpose of law". We do not have "legal time" in Israel. The purpose of the Ordinance is to allow a change in time, and the Ordinance merely determines that expressions of time occurring in the law or in a private instrument shall refer to the new time during the period prescribed thereunder. And if one wishes to pose the question: what is the time during the period in which the order does not apply, the answer is simple: it is the current time in actual practice, that was in effect after expiration of the latest order and before it, and that was in effect before the issue of the preceding order; that is to say, the time in effect before 1940.

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* Translator's note: It might be noticed that these underlined words are missing in the version of section 2(2) cited by Cohn DP at the beginning of his opinion. It should be noted that Cohn DP cited the offical Hebrew text of the section, whereas Barak J cited its English text.

That time is two hours in advance of Greenwich Mean Time. That is to say: the time, is the time, is the time.

8. In summary, it appears to me that the construction according to which the authority of the Minister of Interior is discretionary is textually possible, and is desirable as a matter of legal policy. The construction according to which the authority of the Minister of Interior is mandatory is also textually possible, but its consequence is problematic. In these circumstances I prefer to choose the first construction.

9. Having determined under my approach that the authority of the Minister of Interior is a discretionary authority, which he may exercise if he so wishes in one year and need not exercise if he so wishes in another year -- as have the Ministers of Interior, indeed, acted since the establishment of the State -- a second question poses itself as to whether the decision of the Minister of Interior not to exercise his authority in the present year is a lawful decision. The material before us indicates that the Minister of Interior considered the effect of a time change on fuel consumption, productivity, public health and convenience. The Minister of Interior considered the question of fuel economy and reached the conclusion that savings would be minimal, no more than 0.07 - 0.1% of the annual fuel consumption. There are also grounds to suppose that an "increase" in the hours of day light due to the introduction of a "summer clock" would lead to increased public mobility, which would increase fuel expenditures and balance any possible savings. According to the data before the Minister, there is no evidence that an earlier start to the day would increase productivity. As for the public health, the

effect of the "summer clock" is a matter of controversy: according to some, the summer clock has a health benefit in that some activity would take place in the cool early hours; according to others, the summer clock has a damaging effect, especially on children's health. The Minister of Interior also considered the convenience of the public, including the burden of a summer clock on the religious community and its hours of prayer. The Minister took into account all these considerations and reached the conclusion that a time change would disrupt the order of things without resulting in any substantial advantage.

10. It appears to me that the considerations weighed by the Minister of Interior are relevant and cannot be considered "extraneous". I note specially that I do not regard the Minister's consideration for the religious community as extraneous. The time change affects intimately a person's way of life in Israel, and matters of prayer and religious observance are also relevant. Just as the Minister of Interior may consider the interest of farmers and industrialists, town and village residents, young and old, so, too, he may consider the interest of religious and secular persons. I failed to find any factual error in the grounds of the Minister's considerations. Some of the factual findings are disputed, and in these circumstances the Minister may choose the findings that appear acceptable to him. There remains the question of the reasonableness of the Minister's decision, that is, whether he gave proper weight to the various factors. In this respect, too, I failed to find any defect in the decision of the Minister of Interior. The Minister took into account all the factors and did not unduly depreciate

or favor any factor. The result is that there is no ground for our intervention in the decision of the Minister of Interior to refrain this year from exercising his authority under section 2(1) of the Ordinance.

11. There remains the question of standing. This question does not arise at all if the refusal of the Minister of Interior affects a right of the petitioner. Violation of a right always grants standing. In this respect it is irrelevant whether the right is special to the petitioner or whether it is common to him and others, including a right common to the petitioner and all members of the community. Moreover, "right" in this context has the broadest meaning and includes, in addition to a right that bears a correlative duty, also liberty, power and immunity (see HC 119/80 HaCohen v Government of Israel 34 P.D.(4) 281) as specified in Hohfeld's "table of rights" (see Hohfeld, Some Fundamental Legal Conceptions as Applied in Judicial Reasoning, 23 Yale LJ 16 (1913)). To be concise, a "Hohfeldian petitioner" -- to use the expression of Professor Jaffee in his article, The Citizen as Litigant in Public Actions: The Non-Hohfeldian, or Ideological Plaintiff (116 U Pa L Rev 1033 (1968)), and adopted by Justice Stewart in US v. Richardson (418 US 166 (1974), at 203) -- always has standing. Is the instant petitioner a "Hohfeldian petitioner"? In my opinion, the answer is negative. The Ordinance granted the Minister of Interior discretionary authority. As against the Minister of Interior's authority there is the correlative disability of the petitioner and other members of the public, not their right. It is true that, together with the power vested in the Minister of Interior under the Ordinance,

the law imposes upon him a "duty" to exercise that power lawfully, and the unlawful exercise of a power might result in invalidation of the decision. But such "duty" does not entail a correlative right of members of the public, one that gives rise to standing. In this vein Landau DP distinguished between "procedural standing" and "substantive standing" in HC 112/77 (Fogel v. Broadcasting Authority 31 P.D.(3) 657). The duty to exercise authority lawfully does not pertain to the question of procedural standing -- and, in my opinion, does not pertain to the question of standing at all -- but rather touches upon the substantive law, for if that were not the case every person would have standing in law because there is always a duty to exercise authority lawfully.

12. What is the law regarding a "non-Hohfeldian petitioner"? It was for such a petitioner that the rules of standing were developed. These rules do not have a statutory source but are a judicial creation motivated by the Court's will to regulate the stream of applications submitted to it. This category of regulatory judicial creations also includes the doctrine of the academic issue, the immature issue, or the non-justiciable question. These doctrines seek to grant the court, each from a different perspective, legal instruments by means of which it can close its doors where it deems it improper to discuss the matter.

The doctrine of standing is characterised by its focus on the identity of the petitioner. The court is prepared to assume that it is faced with an actual and mature question that is justiciable in itself. The question before the court is whether the petitioner presenting himself to it is the proper person for

bringing the matter to judicial resolution. In this respect there are two principled approaches in this court's rulings. According to the one approach a petitioner with standing is a petitioner with an interest. Such interest -- be it material, ideological or other -- must be direct, real and special to the petitioner, distinguishing him from other members of the public. The interest in observing the law is not, in itself, sufficient. An actio popularis -- that is, an individual's action motivated solely by the wish to guarantee observance of the law -- is not recognised (see HC 28/71 Association of Life Insurance Companies v. Minister of Finance 26 P.D.(1) 230; HC 40/70 Becker v. Minister of Defense 24 P.D.(1) 238; HC 287/69, op.cit.; HC 26/76 Bar Shalom v. Zorea, Administrator of Israel Lands 31 P.D.(1) 796; HC 651/79 David v. Minister of Finance 34 P.D.(1) 43; and many others). Several reasons have been expounded in support of this approach: first, fear of the court's flooding and the disruption of orderly judicial work if there were no restrictions and a petitioner without an interest were allowed to present his grievance; second, violation of the principle of separation of powers, which might occur if the court dealt with complaints of a public nature concerning problems that involve the political arena and are a subject of debate in the government and Knesset; third, the role of the court is to resolve a dispute (lis), and only in the case of a petitioner who has been deprived can one say that there is a dispute with the authority. Where there is no "dispute" between the parties the court does not act, especially since there is the fear that in such case there will not be a full presentation of the matter to allow determination of

a proper factual situation for judicial resolution.

13. Each of the said reasons has been criticized in one way or another. It is said that there is no fear of the court's flooding, and that, in any event, there exist suitable means for preventing such occurrence (see HC 26/76, op.cit.). As against the fear of violating the principle of the separation of powers the theory of non-justiciability may be employed, but not the theory of standing. And as to the existence of a dispute, a petitioner lacking a specific interest, but holding a general interest in lawful administrative action, also has a dispute with the administration and might present a proper factual situation that is sufficient for the court's judicial resolution. Indeed, the main difficulty with the interest doctrine is that where there is no interest the court does not intervene, and where the court fails to intervene the principle of the rule of law is prejudiced. A government that knows in advance that it is not subject to judicial review might not give reign to the law and might cause its breach, and all such under the shadow of the standing doctrine. This is the basis of the second approach that is accepted by several justices of this court -- albeit a minority approach -- according to which standing is not measured by interest. The doors of the court should properly be open wide to every sincere and serious petitioner who points to a public issue that needs to be resolved for the sake of justice (HC 28/71, op.cit.; HC 26/76, op.cit.). This approach regards the court as a state organ that must contribute its part to administer the rule of law. To be sure, the judicial organ does not act on its own initiative, and must be activated by a petitioner. But where

a petitioner presents himself to the court, his characteristics are not scrutinized so long as justice requires the court's intervention.

14. It comes as no surprise that this approach, too, has been heavily criticized. The test of justice is a subjective test that does not provide any prior guidance and negates any support for a fixed rule (see HC 26/76, op.cit.). Furthermore: is it really the function of the court to express its opinion in every case in which a breach of law is presented to it, or is it not proper that its judicial time be dedicated to real disputes and that complaints against the government be addressed to other state organs, such as the Knesset and the State Comptroller? Indeed, as our survey shows, the issue is difficult and complex and the considerations guiding the court are general ones of judicial policy, and it is doubtful whether one can find in them predetermined and predefined rational tests. Ultimately the determinative factor is the expert feel of lawyers (see Frankfurter J in Joint Anti-Fascist Refugee Committee v. McGareth 341 US 132 (1951), at 150, relating directly to the doctrine of standing and justiciability). This test is not scientific, but it gives expression to life experience and to the wisdom that is accumulated over the years. As for myself, I find no fault in that the matter is not predetermined and predefined. The rules of standing are not intended to protect the government or to enable it to predetermine "dead areas" of judicial review. The rules of standing are intended to protect the court itself, and it is therefore proper and good that the court determine for itself tests for its intervention according to the changing needs

of time, even if such tests are imprecise and unscientific. Indeed our approach should always be "empirical and flexible" (HC 348/70 Kfir v. Ashkelon Religious Council 25 P.D.(1) 685), and the list of persons with standing is never closed (HC 26/76, op.cit., at 808).

15. In my opinion, there is no place now for a revolution in the areas of standing. The tests accepted by us are accepted throughout the world (see Bleckmann, The Aim of the Rule of locus standi: Judicial Protection of the Individual or Objective Control by the Executive Power?, in Judicial Protection Against the Executive Vol.3 (1971, p.19). Nevertheless, I propose that we continue on the path of liberalization that this court embarked on in the past. We will preserve in principle the rules of interest, on the one hand, but will not abandon the principle of the rule of law on the altar of that principle, on the other hand. Indeed the approach of this court, with its attention to the principle of interest, never regarded it as a frozen closed principle that locks the gates to exceptions and extension of the framework (see HC 26/76, op.cit.). Thus, for example, the standing of every voter as regards matters of elections or party financing has been recognized (HC 40/70, op.cit.); the standing of a town resident as regards municipal expenditure has been recognized (HC 292/63 Goldberg v. Mayor of Rishon LeZion 18 P.D.(1) 453); and a petitioner pointing to corruption has not been foreclosed from the doors of the court (HC 348/70, op.cit.). Indeed, neither of the two approaches accepted by this court posits that every petitioner, in every case, will be awarded relief, and they differ less on point of principle than in their

focus, burden and premise. Therefore we had no difficulty in ruling against the petitioner's standing in HC 119/80 (op.cit.) under either of the two approaches. It appears to me that in cases in which a problem of standing is presented to us, we must consider, on the one hand, the various factors that might justify a refusal to hear the petition and that are contained in the principle of "interest", but we must also examine, on the other hand, the effect of our refusal to hear the petition on the principle of the rule of law. In light of these considerations I wish to indicate several areas in which there is room to expand the standing of the petitioner so as to maintain the rule of law.

16. As aforesaid, I am prepared to proceed from the assumption that we do not recognize the actio popularis, in the same way that it is not recognized in most of the world's countries (with the exception of Colombia -- see Bleckmann, supra). Notwithstanding, I propose that we expand the framework in certain cases and allow the court, on its discretion, to grant relief to a petitioner whose interest consists wholly in insisting on the principle of the rule of law. We shall do this where the petition concerns a matter in which, by its very essence and nature, it is never possible to find a petitioner with an interest according to the accepted tests. If we did not relax the rule in such instance, the court would never grant relief and the principle of the rule of law would be prejudiced. (See Reg. v. Inland Revenue Commissioners Ex.p. National Federation of Self-Employed and Small Businesses Ltd. (1980) 2 W.L.R. 579.) We shall do so mainly where the issue raises a question of constitutional character, such as the relation between an

ordinary law and a basic law. In such cases it is proper to open the doors of the court without an overly rigorous examination of the interest, to the extent that the rule of law requires this. The Canada Supreme Court recently adopted such a liberal approach, and I propose that we, too, act similarly (see Thorson v. Attorney General of Canada (No.2) 43 D.L.R. (3d) (1974) 1; Nova Scotia Board of Censors v. McNeal 55 D.L.R. (3d) (1975) 632).

17. Within the frame of the actual rules of interest, it appears to me that there is room for further liberalization in the sense that we shall no longer insist that the direct and real interest required of the petitioner be specific to him. I find no justification for that requirement. The factors that justify the theory of interest are consistent with an interest that is common to the petitioner and all members of the public. In this way we shall open the doors of the court to the consumer-petitioner complaining about prejudice to a consumer interest common to him and to all the consumers in the country (see HC 415/76, not published), and to the petitioner whose direct and real interest in the quality of the environment has been prejudiced, even if that interest is common to him and many others like him. This is the trend now accepted in the rulings of the US Supreme Court (see Sierra Club v. Morton 405 US 727 (1972); US v. Scrap 412 US 669 (1973); Schwartz, Administrative Law (1976) 469-476). Of course, in this matter, too, as in the preceding one (see paragraph 16, supra) the court will always retain discretion. With the passage of time we may re-examine our approach and narrow or expand it according to the changing conditions of the

time.

18. In light of this approach, we can now examine the standing of the instant petitioner. A possible change in the current time in relation to Greenwich Mean Time has direct and real effect on the life of each member of the public. We must change the times of our awakening and sleep, prayers and work. There are those who maintain that such effect is positive and those who maintain that it is negative, but the effect is always there. It appears to me that, given this state of affairs, the petitioner before us showed a real and direct interest that merits protection. It is true that this interest is not special to the petitioner, but is common to him and many members of the public. But that is not sufficient to deny the petitioner standing in this court. He is not fighting someone else's dispute. He is protecting his own prejudiced interest.

If my opinion were heard, we would dismiss this petition on its merits.

. . . .

Decided by a majority opinion to make absolute the order nisi. No order for expenses.

Judgment given on July 13, 1980.