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CA 7155/96

A.

v.

The Attorney-General

The Supreme Court Sitting as the Court of Civil Appeal

[April 17, 1997]

Justices E. Goldberg, T. Strasberg-Cohen, D. Beinisch

Appeal from the decision of the Tel-Aviv/Jaffa District Court, handed down on August 29, 1996. Appeal was accepted

Facts: Appellant requested to adopt a young man of 26 years, whom he had raised since infancy, after marrying the young man's biological mother. The potential adoptee, as well as the Israel Children Society, supported the appellant's request. The district court, however, denied the adoption order. The district court held that the requirements of section 25(1) of the Children Adoption Law, which allowed for the adoption of adults under special circumstances, were not fulfilled. The district court also held that the requirements of sections 8(a) and 13 of the law, which required the consent of

the biological parents to adoption or, alternatively, that the child be declared by the court as fit for adoption, were not fulfilled.

Held: The Court held that appellant could adopt the young man. The court noted that the Children Adoption law was not intended to serve as an everyday mechanism for the adoption of adults. Even so, the law provided for the possibility of adult adoption under special circumstances. As per the provisions of the law, as they should be interpreted in light of the general approach of Israeli law, the Court held that the adoption of an adult should be allowed as long as it does not injure any protected interests. As such, a court should see the “special circumstances” requirement of section 25(1) of the law as fulfilled when adoption reflects the critical needs of the participants in the process, or gives legal expression to an existing parent-child relationship. Looking to the facts of the case, the Court held that a parent-child relationship obviously existed between appellant and the potential adoptee. As such, the Court held that the lower court should grant the biological father an opportunity to present his objections to the adoption. If the court did not see any substance in these objections, the Court held that the lower court could declare the potential adoptee as fit for adoption, and then proceed to grant the adoption order.

Statutes Cited:

Children Adoption Law-1981

Inheritance Law-1965

Tenant Protection Law-1972

His Majesty's Palestine Order-in-Council-1922

Children Adoption Law-1960

National Insurance Law-1995

Family Law (Support)-1959

Income Tax Ordinance [New Version]

Privacy Protection Law-1981

Defamation Law-1965

Evidence Law [New Version]-1971

Equal Opportunities in Employment Law-1988

Regulations Cited:

Civil Procedure Regulations-1984

Israeli Supreme Court Cases Cited:

- [1] CA 179/53 *Cohen v. Cohen*, IsrSC 9 1166
- [2] CA 152/65 A. v. *The Attorney-General*, IsrSC 19 (2) 309
- [3] CA 362/70 *Avogoz v. The Attorney-General*, IsrSC, 25(1) 260
- [4] CFH 2401/95 *Nachmani v. Nachmani*, IsrSC 50(4) 661
- [5] HCJ 693/91 *Efrat v. Population Registrar*, IsrSC 47(1) 749
- [6] CA 105/92 *Re'em Engineers and Contractors v. The Municipality of Upper Nazareth*, IsrSC 47(5) 189
- [7] CA 294/91 *Jerusalem Burial Society v. Kestenbaum*, IsrSC 46(2) 464
- [8] CA 5492/92 A v. B, IsrSC 48(3) 837
- [9] CA 232/85 A. v. *The Attorney-General*, IsrSC 40(1) 1

Israeli Books Cited:

- [10] N. Maimon, *The Law of Adption* 2-5 (1984)

United States Cases Cited:

- [11] *Matter of Adoption of Robert Paul P.*, 471 N.E.2d 424 (N.Y. Ct. Appeals 1984)
- [12] *in re Jones*, 411 A.2d 910 (R.I. 1980)
- [13] *Stevens v. Halstead*, 168 N.Y. Supp 142 (N.Y. Sup. Ct. 1917)
- [14] *Matter of Adoption of Elizabeth P.S.*, 509 N.Y. Supp. 2d 746 (N.Y. Fam. Ct. 1986)

Foreign Books Cited:

- [15] 5(2) Halsbury's Laws of England (4th ed. 1993)

[16] W.W. Buckland & Arnold D. McNair, *Roman Law & Common Law* 39-42 (1936)

[17] 17.9 The Laws of Australia (1995)

Foreign Articles Cited:

[18] W. Wadlington, *Adoption of Adults: A Family Law Anomaly*, 54 Cornell L. Rev. 566 (1968)

[19] John Brosnan, *The Law of Adoption*, 22 Colum. L. Rev. 332 (1922)

[20] H.E. Still-Caris, *Legislative Reform: Redefining the Parent-Child Relationship in Cases of Adoption*, 71 Iowa L. Rev. 265 (1985)

For the appellant—Dr. Yosef Ben-Or

For the respondent—Miki Cheshin, Office of the State Attorney

JUDGMENT

Justice D. Beinisch

1. Appellant requests, through the legal mechanism of the Children Adoption Law-1981, to adopt Gil, a youth of 26 years old, who the appellant has raised and educated since infancy. The question before us is whether, given the fact that Gil is now an adult, may we issue an adoption order that would grant legal status to the *de facto* parent-child relationship between the appellant and Gil—an adoption order in which they are both interested.

The Facts

2. Gil parents divorced when he was two months old. He remained, together with his three year old brother, in the custody of his mother. When Gil was two years old, his mother married the appellant who, ever

since, has acted as Gil's father. In 1975, when Gil was four years old, appellant approached the courts and requested to adopt Gil and his brother. For the purposes of the adoption proceedings, the court made use of the opinion of a Family Welfare Officer. The Officer recommended allowing the appellant to adopt Gil, noting that Gil's biological father had not been in contact with Gil, that he had left Israel, and that he had started another family. This adoption request was cancelled, however, due to the lack of the biological father's consent to the adoption. The parties agreed to appoint the appellant as Gil's legal guardian. The parties also agreed that the children would use the appellant's surname, in addition to the surname of their biological father. This agreement has the force of a court order. Appellant, together with the children's mother, raised Gil and his late brother, who was killed in 1992 in a gunfire accident. No intervention or supervision of the welfare office was ever required.

In 1983, appellant and Gil's mother divorced. This, however, did not cast a shadow over appellant's relationship with Gil. The biological father continued to live outside of Israel, never contributed to raising Gil, and came neither to celebrate Gil's Bar Mitzvah nor to mourn with and comfort him after the loss of his brother. Even so, the adoption request was never renewed until, in 1995, appellant approached the Tel-Aviv/Jaffa District Court with a request to adopt Gil.

Gil's biological father was not a party to the court proceedings. Gil himself expressed the desire that the appellant adopt him. The Attorney-General opposed the adoption request, as the statutory requirements for adoption has not been satisfied. The Family Welfare Officer notified the court that the adoption was recommended by the Israel Children's Society.

The district court rejected the request for adoption. In its decision, the court held that section 25(1) of the Adoption Law, which presents the

requirements for the adoption of one of majority age, had not been satisfied. The court also stated that, without the consent of the biological father, the court could not order an adoption without a prior declaration that the potential adoptee was fit for adoption. The court held that section 8(a) of the Adoption Law also applied to a potential adoptee of majority age, such that either the adoptee had to be declared as fit for adoption under section 13 of the law, or the consent of the biological father had to be obtained. In taking this position, the court accepted the legal stance of Attorney-General. The court added that granting the requested adoption order would allow for the circumvention of the Adoption Law. As such, the court rejected the petition, stating that "[t]here is no legal reason to accept the petition."

Majority Age Adoption—the Rule and its Exception

3. As known, Israel possesses no special law for the adoption of adults. The only applicable law is the Children Adoption Law. Even so, the word "Children" in the title of the law should not be taken as proof of the legislature's intent to restrict adoption to minors. The Hebrew term "*yeled*," as the English word "child," has two meanings, both in the spoken idiom and in legal terminology. The term refers to a minor at the initial stages of his development, as well as referring to the progeny of a person. One remains the "child" of his parents for his entire life. Take the definition of child in the Oxford Dictionary:

- 1.a. A young human being below the age of puberty...
2. One's son or daughter (at any age).

See The Concise Oxford Dictionary of Current English Language (1995). The Even Shushan Hebrew dictionary has a similar definition:

1. The young of a person, from his birth until approximately the age of Bar-Mitzvah.

2. A general term for sons and daughters. *See* Genesis 33:5 "And he lifted up his eyes, and saw the women and the children"; I Samuel 1:2 "and Peninnah had children, but Hannah had no children."

In different statutes the legislature has used both meanings of the term. In this context, it refers to a child of any age. Similarly, the term has an analogous meaning in section 12 of the Inheritance Law-1965, and section 20 of the Tenant Protection Law-1972. For our purposes, we find the words of Wadlington to be fitting:

Although "children" is synonymous with "minors" in the minds of many persons, the former term obviously can include adults when we are speaking in terms of relationship. X, the adult son of Y and Z, is also the "child" of Y and Z

W. Wadlington, *Adoption of Adults: A Family Law Anomaly*, 54 Cornell L. Rev. 566, 569 (1968) [18]. Even so, it is clear that the primary purpose of the law was to set up a legal framework for the adoption of minors.

4. Section 2 of the Adoption Law provides:

There will be no adoption except of one who has not reached 18 years of age.

The words of the statute correspond to the primary purpose of the law, and establish that standard adoption is that of a minor. At the same time, section 25 of the law provides:

25. *Authority to Depart from Statutory Limitations*

If the court believes that adoption is in the best interests of the potential adoptee it may, under special and appropriate circumstances, depart from the following statutory limitations:

- (1) The age of the potential adoptee under section 2

Section 2 of the law establishes the general rule, while section 25(1) provides the exception to this rule. This exception grants the court broad discretion in deciding what constitutes special and appropriate circumstances. The legislature saw fit to point out the relevant factors, while leaving room for judicial discretion. As such, we must determine the proper balance between the exception and the rule.

The Development of the Institution of Adoption

5. The Adoption Law, together with its various amendments over the years, establishes a mechanism to create a legal parent-child relationship. This creation of this legal relationship has far-reaching consequences. The adopting parent assumes the legal rights and obligations of the parent-child relationship, as well as the standard authority that a parent has with regard to his child. *See* the Children Adoption Law, § 16.

Even ancient systems of law had mechanisms of adoption. In Roman law, the head of a household would be able to bestow, upon his dependent, his own status, property, and rights. The "child" that was so adopted was not necessarily a minor. Similarly, in later law, the term "child" expressed the relationship between a parent and his son or daughter, but not necessarily that between a parent and a minor. *See* John Brosnan, *The Law of Adoption*, 22 Colum. L. Rev. 332 (1922) [19]; *see also* CA 179/53 *Cohen v. Cohen* [1] (Cheshin, Acting P.); N. Maimon, *The Law of Adption 2-5* (1984) [10].

The institution of adoption developed in different systems of law. On the continent, its development followed the path of the Roman law. In

common law countries, the institution was recognized at a relatively late stage. In England, adoption was instituted through statute. *See* W.W. Buckland & Arnold D. McNair, *Roman Law & Common Law* 39-42 (1936) [16]; 5(2) Halsbury's Laws of England paras. 1021-22 (4th ed. 1993) [15]

During earlier historical stages of the law of adoption, the law placed a greater emphasis on the needs of the adopting parent, and upon the adopting parent's request to bestow his own status and property upon the "child." Over the years, the center of gravity of the law shifted from the desire of the parent towards the "benefit of the child." In the modern world, this "child" is most often a minor who is in need of a guardian to tend to his physical and psychological needs. *See* H.E. Still-Caris, *Legislative Reform: Redefining the Parent-Child Relationship in Cases of Adoption*, 71 Iowa L. Rev. 265, 266-67 (1985) [20]; Walter Wadlington, *Adoption of Adults: A Family Law Anomaly*, 568 Cornell L. Rev. 566, 567-68 (1969) [18]; Maimon, *supra* at 20-22 [10]

In Israel, the institution of adoption was initially the result of personal and social needs, and developed without a specific statute. The issue of adoption was considered part of a person's personal status, to be regulated by personal religious law under His Majesty's Palestine Order-in-Council-1922. The regulation of the issue through Jewish Law, however, did not prove to be completely satisfactory, *see* CA 179/53 *supra* [1], at 1174-75. As such, the Children Adoption Law-1960 was enacted.

The Adoption Law—Legislative History

6. Before the enactment of the Children Adoption Law-1960, the Knesset discussed the option of allowing the adoption of persons already of majority age. *See* Minutes of the Knesset 25:944 (M.K. Araditi); 28:534 (M.K. Nir-Rafalks); 29:2135 (M.K. Yonitzman). Even so, the

legislature decided to only allow the adoption of those below the age of 18. At the same time, however, the Adoption Law incorporated a transition provision in the form of section 21, which allowed for the adoption of one of majority age, provided that the adoption request was presented within a year after the enactment of the law, and provided that an effective parent-child relationship had already existed for three years. This transition provision brought relatively few cases before the courts. See CA 152/65 A. v. *The Attorney-General* [2]; CA 362/70 *Avogoz v. The Attorney-General* [3].

Section 25(1) of the 1981 Adoption Law changed the earlier provisions. The commentary to the law stated:

Similarly, the bill proposes to allow the courts, under special circumstances, to order the adoption of one over 18 years of age for one legally incompetent, for example, or for one who requires a guardian for other reasons.

In the Knesset, the Minister of Justice stated, when presenting the bill:

The list of special circumstances in section 22 of the law will include two new provisions that will allow, under certain cases, to allow the courts to depart from the statutory limitations. One, for example, will allow the courts to allow for the adoption of one over 18 years of age, for example, in cases of one who is legally incompetent, or one who needs a guardian for other reasons.

Even though the example brought in the legislative history refer to an adoptee who is legally incompetent or otherwise requires a guardian—situations where the need for adoption is especially apparent—the legislature did not limit the exception to these two cases,

and did not specifically define the "special circumstances" that would justify the adoption of one over majority age. The sole limitation placed upon the court was the requirement to consider the "good of the adoptee." The legislature did not provide limitations regarding the age of the adoptee, and did not provide for conditions similar to the earlier law, which required a three year period of "effective adoption." Practically, since the enactment of the Adoption Law-1981, there have been no requests for the adoption of one over 18 years of age. *See* Maimon, *supra* at 104.

The Relationship of a Parent to an Adult Child

7. In general, the law is intended to establish a legal parent-child relationship, and ensure that the adopting parent fulfills all standard parental responsibilities established by law, including physical, psychological and educational needs. This legal parental relationship has the unique characteristics of a biological parental relationship; it applies not only to the supervision of the adopting parent over the adoptee, but to all facets of the parent-child relationship. "The status of a parent is special and unique. It is bound up with the essence of man, and comes with both rights and responsibilities." CFH 2401/95 *Nahmani v. Nahmani* [4], para. 1 (Barak, J.) Aside from providing the substance and consequences of the adoption relationship, the law also lays out the procedural aspects of establishing the relationship.

According to the intention of the legislature, the law is primarily geared towards minors. For many reasons, we may say that the parental relationship is properly a relationship between an adult and a minor. This is especially true because, during the minority years, the parent-child relationship is expressed in all its aspects, as these are understood on both social and psychological levels.

Becoming a parent means the acceptance of both rights and responsibilities. When a person becomes a parent, the law imposes upon him the responsibility to care for his child. And this care is not simply ordinary care—it is the responsibility to put the welfare of the child first. A parent cannot simply refuse to care for his child if he finds it inconvenient or uncomfortable. The responsibility of a parent to his child also has civil and criminal aspects. The responsibility expresses the normative expectations of our social structure and our legal system.

CFH 2401/95 *supra* [4], at 683 (Strasberg-Cohen, J.) .

Simply because the parental-child relationship sees its more complete expression in the period when the child is a minor, does not mean that the relationship is devoid of content when the child reaches adulthood, and becomes self-sufficient and legally competent. Parents supply crucial needs—both physical and psychological—even when their child has become an adult. Israeli law, as the law of many other jurisdictions, gives legal expression to the parent-child relationship even after the child has reached the age of majority. This legal expression may be somewhat limited. However, it comes to the fore in several situations. In pecuniary matters, it will suffice to mention the law of inheritance, *see* the Inheritance Law-1965, §§ 10(2), 16, the provisions of the National Insurance Law which relate to the definition of a parent and a child, *see* the National Insurance Law-1995, §130(a)(3), the support a parent owes his child, *see* the Family Law (Support)-1959, § 4 (providing for broad support responsibilities), and the tax law, *see* the Income Tax Ordinance [New Version], §§ 44-45. *See also* Children Adoption Law, § 11 (requiring consultation with the grandparents of an adoptee whose parents have passed away). Other legal areas that provide for a parental relationship even towards adult children include privacy law and defamation law, which allow the relatives of the injured person to

continue the suit of a deceased, *see* Privacy Protection Law-1981, § 25; Defamation Law-1965, § 25, as well as the law of evidence, *see* the Evidence Law [New Version]-1971, § 4. *See also* the Equal Opportunities in Employment Law-1988 (defining a "relative"). Of course, we cannot forget the provisions of the Children Adoption Law itself.

As such, parental status comes with legal ramifications and consequences even with regard to adult children. As such, different systems of law also allow for an adoptive relationship between two adults, even though this option is naturally limited, as will be explained in greater detail below.

Special Circumstances Justifying the Adoption of an Adult

8. When a court grants an adoption order for a child of majority age, pursuant to section 25(1) of the adoption law, it must contend with two main problems. First, the legislature obviously saw such an order as an exception, and not the rule, which could only be justified by the existence of special circumstances. As such, the court must determine whether such special circumstances exist, and how, in general, they should be defined. Second, the procedures and mechanisms of the Adoption Law are obviously intended for the adoption of a non-adult child. These procedures and mechanisms are not always appropriate for the adoption of a child of majority age, even when a court finds that the existence of "special circumstances" justify that child's adoption. As such, the court must ensure that it wields that law's procedures and mechanisms in a manner that is appropriate for the adoption of a child of majority age. To decide the case before us, we must contend with these two issues—one substantive, the other procedural.

9. In interpreting the provisions of section 25(1) of the Adoption Law, we must examine the statute as whole, as well as the interaction of

section 25(1) with the rest of the statute, and the interaction of both of these with our legal system.

As noted, the intention of the legislature, in establishing a framework for adoption, was to allow for the adoption of a non-adult child while leaving room for an exception that would, under special circumstances, allow for the adoption of a child of majority age. In this context, we must interpret the relevant sections of the statute, examine the scope of the exception within it, and outline the path that a court should take in establishing what constitutes special circumstances.

In determining the statutory purposes of section 25(1), we must determine the purposes that it intends to realize within society, within the framework of the fundamental values of our legal system. In the words of Justice Barak, in HCJ 693/91 *Efrat v. Population Registrar*, [5] at 763:

The purpose of a piece of legislation—a normative concept—is made up of both subjective and objective purposes. The subjective purpose of the statute is the purpose that the legislature sought to pursue in enacting the statute. This is the "legislative intention." The objective purpose of the statute is the purpose that the statute is meant to pursue in a democratic statute. This is the "statutory purpose."

See also CA 105/92 *Re'em Engineers and Contractors v. The Municipality of Upper Nazareth* [6] at 198.

10. The issue before us is the desire of two adults to arrange the legal relationship between them—a legal parent-child relationship, under the framework of the Adoption Law. The question is to what extent we should limit their ability to realize this desire.

We recall the statement of President Shamgar, in CA 294/91 *Jerusalem Burial Society v. Kestenbaum* [7], at 481:

A free society minimizes the limits it imposes on the freedom of the individual.

These words are especially true in the context of an individual's aspirations to realize his personality, and in the context of his desire to give expression to his relationship with family and home, and his feelings towards them. In our times, when "human dignity" is a fundamental right, we must respect an individual's desire to actualize himself. For this reason, we should honor his wishes regarding the family unit to which he wishes to belong.

Human dignity, in the constitutional framework, is a legal term. Its practical implementation, however, is in the context of each individual's daily life, and in the citizen's interaction with the state and with the courts. Human dignity is reflected in the individual's ability to freely realize his personality, to give expression to his aspirations, not to be subject to arbitrary acts of compulsion, and to be treated appropriately by the government and by other individuals.

CA 5492/92 *A v. B* [8], at 842. In this spirit this Court has held that the right of an individual to change his name, without the interference of the state, should be respected, as long as the change harms neither another individual nor the public interest:

A person's name is a part of his personality and his social identity. It is the key which he uses to walk the paths of society. It is not simply an identification number. It is an expression of his personality, his feelings, his obligations, traditions and aspirations. In different historical periods people

had different names; radical changes often lead people to change their names. *See* 31 The Hebrew Encyclopedia 1007 (1979). A democratic society respects this freedom. It respects the individual's desire to chose his own name, to choose how he will be called, and to change that name if he feels that another name would better suit him. Indeed, recognition of the person's freedom to change his name is the recognition of his personal autonomy, which is every person's right in a democratic society.

HCJ 693/91 *supra* [5], at 770.

Similarly, a person's parents and children are part of his personality and social identity, perhaps even more so than his name. Of course, a person cannot choose his parents. However, a person's choice to relate to another as his child, or the choice to relate another as one's parent, is an expression of that person's personality. In appropriate circumstances, it is suitable to give this desire legal form. Sometimes, a person can form a relationship with another that is like a parental-child relationship. It is fitting that this relationship be respected, since it forms part of one's human dignity. It would not be an exaggeration to say that this relationship is entitled to no less respect than any other agreement that is freely entered into, provided that it does not harm another person or the public interest.

In other words, the legislature provided for an exception, which allows adoption between two adults, only under special circumstances. We can presume, however, that it did not, at the same time, intend to limit this exception, apart from circumstances where such adoption would not be in the public interest, or where it would harm the interests of another, or where it would not serve the interests of establishing an adoptive parent-child relationship.

The Public Interest

11. When will an adoption order act not be in the public interest?

Many statutes impose rights and responsibilities in the family context. Such legislation can be found in, for example, the law of personal status, in the context of damages in tort law, and in the context of tort law and the law of evidence. In the context of many laws, the parent-child relationship has financial implications, such as in property law, taxes, and government programs. *See supra* para. 7. Once the legislature has established such rights and responsibilities, it is in the public interest that they not be circumvented or abused through a fictitious adoptive relationship.

We can imagine cases where adoption would only provide cover for a relationship that, while close to a parent-child relationship, is not identical to it. Take, for example, a case where adoption is intended to ease a tax burden, where it is intended to arrange a division of property between two adults, or where it is intended to circumvent the provisions of inheritance law. All of these are situations that point to a lack of good faith, and a desire to circumvent the law and abuse the institution of adoption. When the existence of such circumstances are proven, the law should intervene and prevent the establishment of an adoptive relationship. Examples of such circumstances can be found in several states of the United States that recognize adult adoption, as well as in other countries. *See Matter of Adoption of Robert Paul P.*, 471 N.E.2d 424 (N.Y. Ct. Appeals 1984) [11]; *in re Jones*, 411 A.2d 910 (R.I. 1980) [12]; *Stevens v. Halstead*, 168 N.Y. Supp 142 (N.Y. Sup. Ct. 1917) [13].

As such, it is appropriate that adoption should not be allowed, whenever there is suspicion that it is intended to abuse the benefits that society bestows upon the parent-child relationship.

Factors in Adult Adoption

12. The legislature intended to allow for the institution of an adoptive relationship only where such legal status is requested in good faith, and where it reflects a true parent-child relationship. The difficulty lies in identifying such circumstances. We may learn from the experiences of other countries, whose laws of adoption have similar foundations to ours—where adoption laws emerged in the culture of a democratic society that respects the will of the individual and his freedom, where such laws recognize adoption as granting the same status as the biological parent-child relationship, and whose central focus is on the good of the adoptee.

An expression of this general approach, which requires granting the possibility of adoption in appropriate circumstances, was laid down in *Matter of Adoption of Robert Paul P.*, 471 N.E.2d 424 (N.Y. Ct. Appeals 1984) [11], by the Court of Appeals of the State of New York:

There are many reasons why one adult might wish to adopt another that would be entirely consistent with the basic nature of adoption, including the following: a childless individual might wish to perpetuate a family name; two individuals might develop strong *filial* affection for one another; a stepparent might wish to adopt the spouse's adult children; or adoption may have been forgone, for whatever reasons, at an earlier date.

Other states and countries that wished to provide for adult adoption, whether through special legislation or in laws that relate to adoption in general, established special arrangements that are appropriate for such circumstances. *See* Code Civil §§ 360-379.2 (France); BGB § 1767 (Germany); Cal. Fam. Code. §§ 9300-9340 (1996); NY CLS Dom. Rel. § 111(4) (1996). It is interesting to note that, in Australia, the legislature

used similar language to our own law, allowing adult adoption under "special circumstances," which are determined according to the judgment of the court:

The grounds on which the court is to exercise its discretion to make adoptive orders re modified in the case of adoption of adults. There is some variation among the jurisdictions, but essentially, criteria appropriate to minors are replaced by a more general formulation, such as that the adoption order should be made if the court is satisfied that special circumstances make it desirable that the [adults] should be adopted.

17.9 The Laws of Australia para. 19, *Adoption of Children* (1995) [17]. Using standards similar to ours, Australian courts tend to allow adult adoption when it is in the best interests of the adoptee and does not harm the public interest.

We in Israel do not possess a special legislative arrangement regarding this matter. Instead, the relevant laws form a part of the adoption law as a whole. Even so, we can utilize the jurisprudence of other countries in determining what should constitute special circumstances under our law.

A. *The Existence of a Parent-Child Relationship*

It would seem that a guiding line of most legislative arrangements for the adoption of adults is the existence of a parent-child relationship. As such, section 5-107(b)(4) of the Uniform Adoption Act, which was adopted by the American Conference of Commissioners of Uniform State Laws in 1994, provided that a condition of adoption would be that the adoption was intended to create a parent-child relationship, and that the parties were aware of this fact:

[T]he adoption is for the purpose of creating the relationship of parent and child between the appellants and the appellant understand the consequences of the relationship.

In the United States, adoption is regulated by the States, each of which has enacted different legislation in the matter. As such, it is difficult to say whether American case law is uniform in this regard. Sometimes, courts have emphasized the centrality of the above test; at other times, courts have emphasized different tests. One case, *The Matter of Adoption of Elizabeth P.S.*, 509 N.Y. Supp. 2d 746 (N.Y. Fam. Ct. 1986) [14], is an example of a court granting significant weight to the establishment of a parent-child relationship. In that case, the adopting parent was a nun who cared for the adoptee. The age gap between the two was only one year. Even so, the court believed that the adopting parent could properly fulfill the role of a parent and allowed the adoption, stating:

Eileen maintains the role of parent, providing leadership, guidance, nurturing, care and affection for Elizabeth, her ward. Elizabeth, in turn, looks to Eileen for the structure and maturity that a parent normally gives, finding in her the comfort and direction so desperately needed.

Id., at 748. Other examples of the centrality of this issue, can be found in cases where courts have refused to grant an adoption order because they were convinced that no parent-child relationship existed. For example, one case discussed a homosexual who desired to adopt his partner as a substitute for the legal marital relationship. *See Matter of Adoption of Robert Paul P.*, 471 N.E.2d 424 (N.Y. Ct. Appeals 1984) [11].

It is proper that Israeli courts, in determining the existence of “special circumstances” under section 25, should place this test—the existence of a parent-child relationship—at the heart of the issue. The

magnitude of the significance of this test is such that it should be an essential condition in deciding whether to allow an adult adoption. All other tests only help clarify the answer to this central question: whether there is a parent-child relationship.

It seems to me that, as per the formulation and purposes of the statute before us, that we should not arrive at the situation existing in many states of the United States, in which the court (not to mention the state itself) is not allowed to examine the nature of the relationship between the two adults requesting the adoption order. It seems patently obvious, from a reading of section 25 in the context of the statute, that the correct interpretation of “special circumstances” should not include situations in which a parent-child relationship does not exist. I believe that this result is also justified by the general approach of our legal system. Adoption does not only affect the adoptee and the adopting parent. Adoption has many legal ramifications. It is not proper that we should use the legal tool of adoption not in the context of a parent-child relationship. Otherwise, we would find ourselves granting the special legal status that the legislature wished to reserve for parent-child relationships to other relationships also.

As such, when deciding whether there exists “special circumstances” that justify an exception to the rule of section 2, the court should first check to see whether a parent-child relationship exists. If the answer is affirmative, the court should then decide whether it is appropriate to allow adoption under the exception of section 25 of the law. If there is an honest intention to have a parent-child relationship, and the facts show that such a relationship already exists, then it would seem that the condition of “special circumstances” has been fulfilled. Then, if the adoption is in the best interests of the adoptee, the court must decide whether there are good reasons not to give legal effect to this relationship through an adoption order.

In examining whether a parent-child relationship exists, the court may use other secondary tests which are intended to shed light on the nature of the relationship between the two requesting adults.

B. *Duration of the Parent-Child Relationship*

14. Take a situation in which the parent-child relationship existed even before the child reached majority age but, for some reason, this relationship was not given *de jure* legal status. It would seem that this would unequivocally fulfill the requirement of “special circumstances.”

Under certain circumstances in the State of Virginia, in the United States, an adult adoption order can only be granted if the adoptee lived with the adopting parent, before he reached majority age, for at least three months. In other situations, Virginia law demands that the two have been acquainted for at several years. *See* Va. Code. Ann. § 63.1-222 (1996). A similar position was taken by Australia, *see* 17.9 The Laws of Australia [17], para. 19. In Victoria, Australia, the law provides that the adoptee:

has been brought up, maintained, and educated by the applicant.

See Adoption Act 1984 (Vic.) § 10(1)(b). Similarly, section 1767 of the German Civil Code provides that an adult adoption order will be granted if the adoption is appropriate on moral grounds and “especially if a parent-child relationship existed previously.”

I believe that most cases that come before our courts will be similar—the court will be requested to give legal form to an already existing parent-child relationship. Even so, I do not believe that we should set down a hard and fast rule regarding this matter. Situations may arise in which it is proper to grant an adoption order despite the fact that a parent-child relationship did not exist before the adoptee reached

majority age. This will be the case where the parent-child relationship was created because the adult adoptee required protection or guardianship because of his physical or psychological state, because he was legally incompetent, or because he required medical care. Other situations are also imaginable. As such, it is proper that we not set down bright line rules in this matter.

As such, in determining whether “special circumstances” exist, the court should give significant weight to the duration of the existence of the parent-child relationship, and to the occasion that they were created. The longer the duration of the relationship, and the earlier the relationship was created, the more the court should tend towards recognizing that “special circumstances” justify an adoption order.

C. *Minimum Age Difference*

15. The legislature, in section 4 of the Adoption Law, granted significance to the age difference between the adoptee and the adopting parent:

4. There will be no adoption except by one who is at least 18 years older than the adoptee.

The legislature, however, saw fit to qualify this requirement twice. First, this requirement is qualified at the end of section 4, which discusses an adopting parent who is married to the biological parent of the adoptee. Second, this requirement is qualified at the end of section 25, which subjects the implementation of the age difference requirement to the general discretion of the court.

Several countries in Europe, and many states in the United States, provide for a similar requirement of a minimum age difference between the adoptee and the adopting parent. Some jurisdictions specify the

minimum age difference. *See* Utah Code Ann. §§ 78-30-2, 78-30-3; N.J. Stat. Ann. § 2A:22-2 (1996); the French Civil Code § 344. Other jurisdictions are more flexible, and simply provide that the adopting parent must be older than the adoptee. *See* Cal. Fam. Code § 9320(a) (1996).

As such, I believe that that the age difference between the adoptee and the potential adopting parent can serve as a test that—among other tests—can help the court decide whether there exists “special circumstances” and whether there exists a true parent-child relationship. Where an age gap does not exist, a court may find it difficult to establish that a parent-child relationship exists. We need not decide here whether the law should recognize a parent-child relationship even when there is no such age gap. It is enough that the matter is left to the discretion of the court, who will take the age gap into consideration.

Injury to the Rights of the Biological Parents

16. The law, in recognizing the adoptive relationship, grants that relationship all the rights and responsibilities inherent to the parent-child relationship. As such, granting an adoption order can injure the legal status of the biological parents. This injury is a direct result of section 16 of the Adoption Law, which provides that adoption “ends the rights and responsibilities between the adoptee and between his biological parents and his other biological relatives.”

This Court has already stated:

The taking of a child from his natural family, and his subsequent adoption by a different family, constitutes a profound intervention in the fabric of the family unit. Adoption may forever break the bonds between a parent and child, as it creates a legal bond between that child and the

adopting parent. These long-lasting and irreversible changes are justified, and not only because they serve the good of the child.

CA 232/85 *A. v. The Attorney-General* [9], at 8. (Barak, J.). As such, Justice Barak there stated, at 9:

Consent of the natural parents is usually required for adoption. This consent opens the closed box of the family unit, which is usually closed to the intervention of the state. Some justify this intervention by appealing to the interests of the child. *See* CA 549/75 at 461; CA 680/77 at 412. I myself believe that the explanation is broader than that. This requirement of consent also protects the constitutional rights of the parents. Only once consent to adoption is granted may we begin to consider the good of the child.

Section 8(a) of the law provides that an adoption order may only be issued after the consent of the biological parents is granted, or after the potential adoptee is declared by the court to be fit for adoption. Section 13 of the law details the grounds for declaring a child to be fit for adoption. The combination of these two sections is intended to balance between the rights of the child and the rights of the biological parent, whose child should not be taken from him without his consent unless there are essential reasons for doing so. In accord with the general spirit of the law, the court will declare a minor child to be fit for adoption if he requires protection. In declaring such a child fit for adoption, the court acts in the capacity of his parent. In the same spirit, the Attorney-General is the one who must request from the court to declare the child as fit for adoption. Only the authorities, who are responsible for the good and safety of the child when his natural parents or guardians do not fulfill their responsibilities, can set the wheels of the mechanism of adoption in motion.

17. In adoption proceedings, the central question is the intervention of the state in the family unit. Such intervention is usually for the purpose of ensuring the safety and welfare of a minor child in need of physical and psychological care. However, when the adoptee is an adult who, by his own initiative, approaches the state and requests that he be disconnected from his natural family unit, the balance between the relevant interests must necessarily be different. Practically, and even to some extent from a legal perspective, an adult child can separate himself from his biological family without the intervention of the state. In other words, in the case of an adult who wishes to separate himself from his parents and join a different family unit, the intervention of the state is not necessary to actually separate the adoptee from his natural parents. The state's intervention is only necessary to the extent it changes the parties' legal relationships.

It would seem that, in the context of adult adoption, there is no justification for requiring the consent of the biological parents. The adult can choose his future and destiny by himself, according to his wishes, and he is legally competent. The source of the statutory requirement of parental consent is in the fact that the statute was primarily intended for the adoption of minors. Even so, since an adoption order breaks the legal parent-child relationship, even in the context of an adult child, it is appropriate to grant a certain place to parental consent, even though, in the context of adult adoption, its place and purpose will naturally differ.

18. In weighing the need for the consent of the biological parents, we must recall that, even in the case of a minor, parental consent is not an absolute requirement, *a fortiori* in the case of an adult child.

The consent of the natural parents is not the only cause for intervention by the court. The court may also intervene in the family unity if one of the alternatives of section 8(a) of the law are fulfilled, which will justify a declaration by the court that

the child is fit for adoption. The Adoption Law provides for a closed list of eight causes that will allow the court, even without the consent of the biological parents, to declare the child as fit for adoption.

See CA 232/85 *supra* [9], at 10. A child may be adopted if the court declares him to be fit for adoption, and this procedure has nothing to do with the consent of the biological parents. The court will declare the child to be fit for adoption simply if one of the alternatives provided by the statute are fulfilled. These provisions—as the rest of the statute—were intended for the adoption of a minor child. The section, as such, discusses the responsibilities of a parent towards his children. Non-fulfillment of these responsibilities will cause the parent to be declared unfit to serve as a parent. None of these statutory provisions are relevant for an adult child.

19. Despite all this, the Attorney-General was correct in his claim that, when section 25(1) of the law allowed the court to deviate from the statutory requirements, it did not also provide that the court could dispense with section 8(a) or section 13 of the law. As such, it cannot be said that these provisions do not apply in the case of adult adoption. Even so, when applying the provisions of the statute, it is appropriate that we apply them in a manner that is consistent with the case before us.

It is possible that there is significance to parts of section 13 of the Adoption Law, which deals with abandonment or neglect of the child or the unsuitability of the parents, even in the context of adult adoption. These sections may apply in the case of an adoptee who is legally incompetent, or who requires care and supervision. *See* Uniform Adoption Act § 5-101(a)(2)(4) (applying the provisions of the law intended for the adoption of a minor to the adoption of a legally incompetent adult). It is doubtful, however, whether it is possible to

establish, in the context of an adult child, that the parents are unfit. Of course, one cannot establish abandonment or neglect in the context of an independent adult child.

Moreover, in the case of the adoption of an adult who is not legally incompetent, it is not appropriate that only the Attorney-General, as one who represents the public interest, be able to initiate legal proceedings. In such cases, the potential adoptee is no longer in need of protection and is capable of representing himself.

In order to give meaning to the purposes of the law, and in order that it should not be emptied of all significance, we must apply the remaining provisions of the law in a manner appropriate to those purposes. Otherwise, the dissonance between the statute and reality will frustrate the intentions of the legislature.

In CA 152/65 [2], this Court had the opportunity to point out the need to fit the provisions of the law to the situation of adult adoption. In that case, a man requested to adopt the child of his wife from a previous marriage. That case did not fit into the provisions of the Children Adoption Law-1960, the statute that was then in force. There, in the context of the restrictions of section 21 of that law, the Court held:

It seems to me that the legislature was concerned with ordinary cases. It was not, however, especially concerned with exceptional or improbable cases. As such, it gave the courts the discretion to apply section 21 of the statute to other provisions of the law, in order that that it could find a just solution.

Id., at 314 (Kester, J.) Since, in that situation, the court reached the conclusion that justice required the grant of an adoption order, the court also ordered that the adoption order would apply retroactively, “with the

result being that the daughter will be considered adopted from the day she petitioned the court or from the day she turned eighteen years old.” *Id.*, at 315.

That case reflects an attempt to fit the interpretation of the law to the special circumstances of adult adoption. If the command of the legislature is that the court cannot disregard the requirements of section 8(a) of the law in any case of adoption, then the court should apply that section in a way that it will not lose all significance in the context of the special circumstances before it.

The proper balance between the substance of the adoption order, and between the procedures of the statute, demands a restricted interpretation of the alternative requirements of parental consent and the declaration of the child as fit for adoption.

20. Section 8(a) of the law provides:

The court should not grant an adoption order unless the parents of the child have consented that their child should be adopted, or unless the child has been declared as fit for adoption under section 13 of the law.

I believe that, in general, granting the biological parents the possibility of opposing the adoption order is enough to fulfill the requirements of section 8(a). It can be assumed that, in the case of adult adoption, when the adoptee and the potential adopting parents can point, in all honesty and good faith, to the existence of a parent-like relationship between them, a biological parent who opposes the adoption order must point to a concrete and serious injury to his own rights. Any other reason for opposing the adoption order would not be in good faith, and should not be recognized.

Even more so, to the extent a biological parent can point to a substantial injury to his rights, this injury, and the resulting opposition to the adoption order, should also be examined from the perspective of the two other participants in the adoption process—the adoptee and the potential adopting parents. In such case, the court should also examine the possibility of responding to the opposition by limiting the consequences of the adoption order, as per section 16(1) of the law.

I will add that this conclusion with regard to the station of the biological parent, and to his consent or opposition to the adoption order in the context of an adult adoption, is similar to the position taken by many other jurisdictions that recognize the institution of adult adoption. In many jurisdictions that recognize adult adoption there is no requirement that the biological parents consent to the adoption order. This is the case in Australia, *see* Adoption Act, 1993 (ACT) § 27; Adoption of Children Act, 1965 (NSW) § 26(6); Adoption of Children Act (NT) § 27(4); Adoption Act (SA) § 13(2)(b); Adoption Act (Tas) § 19(1)(b); Adoption Act 1984 (Vic) § 15(2); Adoption Act 1994 (WA) § 69, and in New York State, *see* NY CLS Dom. Rel. § 111(4) (1996). In the State of California the court can issue a notice to any person that may have an interest in the matter, *see* Cal. Fam. Code. § 9323 (1996). In the State of Florida, the court must issue a notice to the biological parents, *see* Fla. Stat. § 63.062(5)(b) (1996).

21. Even the requirement that the child be declared to be fit for adoption, if this is required as an alternative to parental consent, should correspond to the existence of special circumstances. Such would be the case where the adoption is intended to give legal effect to a long-lasting parent-like relationship that has existed since the child was a minor. In accordance with this approach, the declaration that the child is fit for adoption is only a recognition of existing circumstances.

If a parent-child relationship exists, and the biological parents have abandoned or neglected the child, or proven to be unsuitable parents, the court should find that there is cause for adoption, since the child was fit for adoption at the pertinent time—when he was a minor. This is all the more so if this situation has continued into the child's adulthood. In any case, section 8(a) of the law—which requires the consent of the biological parents—and section 13 of the law—which requires that the child be declared as fit for adoption—should be applied in a restricted sense, as appropriate under the circumstances of the case.

It should also be pointed out that other statutory requirements may present problems in situations of an adult adoption. This is the case with regard to section 3 of the law, which requires that the two adopting parents be husband and wife. This requirement is also a result of the fact that the law was primarily intended to apply to minors, and the desire to ensure that the minor is cared for by a warm and loving family. The existence of this requirement, however, should not lead to the immediate conclusion that adult adoption is impossible. This section will also only be applied in accordance with the circumstances, each case unto itself.

Summary: Can an Adult be Legally Adopted?

22. Can an adult be legally adopted under the provisions of the Adoption Law? Our conclusion is that the law was not originally intended to serve as an everyday mechanism for the adoption of adults. Even so, the law provided for the possibility of adult adoption under special circumstances. As per the provisions of the law, as they should be interpreted in light of our general legal approach, the adoption of an adult should be allowed as long as it does not injure any protected interests. These protected interests may be the public interests or the interests of an individual. The court should see the “special circumstances” requirement of section 25(1) of the law as fulfilled when adoption reflects the critical

needs of the participants in the process, or gives legal expression to an existing parent-child relationship. In any case, the court should not grant an adoption order unless it believes that such would be for the benefit of the adoptee.

The preliminary requirements for the granting of an adoption order may not be appropriate for the adoption of an adult, and they should be implemented in accordance with the situation. In general, I should point out that once the legislature has seen fit to provide that an adult may be adopted under "special circumstances," it should also provide for mechanisms and conditions that would allow the application of this exception.

From the General to the Specific

23. As in any case before this Court, we have not scoured the perimeters of adoption law except for the purpose of applying them in the concrete circumstances before us. Appellant wishes to adopt Gil, after he has cared for Gil throughout the latter's formative years, and through his childhood, youth, and adult years.

I will not take the approach of the lower court, which held that there were "no facts to justify the existence of special circumstances, and nothing that would justify issuing an adoption order."

The appellant, who was the spouse of the biological mother of Gil, wishes to give legal effect to the parent-child relationship that he has had with Gil since the latter was an infant. No one claims that a proper parent-child relationship did not exist. Since the moment that Gil's father closed his eyes to the existence of his son, the appellant has been there for Gil, through good and bad. The reports of the Israel Children's Society, since 1975, have consistently painted the same picture: that Gil and the appellant have such a parent-child relationship, and that Gil has

ceased to have any connection with his biological father. During Gil's childhood, the appellant was Gil's legal guardian. Gil himself submitted a brief to this court, in which he detailed his long relationship with the appellant, and poignantly described how the appellant has supported him in his childhood, in school, in youth groups, on his Bar Mitzvah day, when he enlisted in the Israeli Defense Forces, during the course of his military service, and even after his wedding. Gil's wife and mother have submitted similar briefs.

If there be any circumstances at all that could possibly justify adult adoption (aside from one who is helpless or legally incompetent), they are the circumstances we see before us in this case. I hold that the fact presented above present appropriate circumstances for implementing the exception that would allow adult adoption.

24. I do not agree with the lower court, which held that the facts did not show that adoption would be in the best interests of the adoptee. The "benefit of the adoptee," in the context of an independent and mature person, can only refer to the wishes of the adoptee, his aspirations and desires, as long as they spring from proper motivations. The term "in the benefit of the adoptee," in the context of a mature and healthy adult, does not have the same meaning as it does in the context of a minor in need of care and supervision. The presumption is that a mature and able adult knows what it is in his own benefit.

"Human Dignity" demands that we give weight and standing to the wishes of a man who aspires to give expression to the deep relationship he has had with one who was his father through both happiness and sorrow. These wishes are identical with his "benefit," which the court must honor.

As such, there are special circumstances here that justify issuing an adoption order, and that this adoption order is in the best interests of the adoptee.

25. Under section 8(a) of the Adoption Law, we must still contend with the alternative requirements of parental consent or of declaring Gil to be fit for adoption. I believe that the facts before us suffice to show cause to declare Gil as fit for adoption. Such cause has existed since Gil was a minor, when the original adoption request was presented. The facts regarding this matter have been presented in the briefs that were presented to the district court as well as in the reports of the Israel Children's Society. These facts suffice to show cause, as per sections 13(4) and 13(5) of the Adoption Law, that Gil could already be declared a fit for adoption during his childhood. As the facts that gave rise to that cause have not changed, Gil may still be declared as fit for adoption, even now. If we hesitate to do so, it is only because Gil's biological father has not been given notice of these proceedings. The way is now open for the appellant to approach the Attorney-General and request that Gil be declared as fit for adoption. And it is appropriate that the Attorney-General accept his request.

Once this request is submitted, Gil's biological father should be given notice of these proceedings, by being joined to them as a respondent under the Civil Procedure Regulations-1984. This shall give the biological father the opportunity to present his position.

If the biological father does not appear—or if he does appear but does not raise any substantive objections—the requested declaration should be granted. After this declaration is granted, there should be no obstacle to granting the adoption order.

If my opinion is accepted, the appeal will be granted, in the sense that the circumstances here should be considered "special circumstances"

as per section 25 of the Adoption Law, that the grant of the adoption order should be considered to be in the best interests of the adoptee, and that, after a proceeding in which the biological father is given an opportunity to present his position, the court may declare Gil to be fit for adoption, and grant the adoption order as requested.

Justice E. Goldberg

I agree.

Justice T. Strassberg-Cohen

I agree.

Decided as per the opinion of Justice Beinish.
17 April 1997