

Supreme Court of Israel

HCJ 129/13

Before: The Honorable President A. Grunis
 The Honorable Vice President M. Naor
 The Honorable Justice E. Rubinstein

Petitioners: 1. Eli Axelrod
 2. Moshe Axelrod

v.

Respondents: 1. Government of Israel
 2. Israeli Knesset
 3. Ministry of the Interior

Petition to grant an order nisi

Date of Hearing: 21 Shvat 5774 (January 22, 2014)

On behalf of Petitioners: Adv. Eli Axelrod

On behalf of Respondents 1,3: Adv. Ran Rosenberg

On behalf of Respondent 2: Adv. Dr. Gur Bleigh

Judgment

President A. Grunis and Vice President M. Naor:

1. This petition seeks to bring before this Court again a difficult and painful problem. This problem pertains to citizens of Israel, many thousands of them, who cannot marry in this Country because they are not members of one of the recognized religious groups, or one of them is not a member of one of those groups. In addition the petition relates to those who can marry in Israel, but do not wish to do so in a religious ceremony.

2. The stated problem has been presented to this Court in several petitions argued in the last few years: HCJ 7127/11 *Center for Jewish Pluralism v. Government of Israel* (Dec. 5, 2011); HCJ 1143/11 *Jerusalem Institute for Justice v. The Knesset* (Oct. 18, 2012). The first petition was deleted and the second was denied, in both cases after the petitioners accepted the recommendations of the different panels hearing the cases to retract the petitions. There is nothing novel in the current petition in comparison to the previous ones. Clearly, the solution to the difficult problem has to be by way of Knesset legislation. However, the Court cannot order the legislature to legislate. There is a dramatic distinction between striking down a law due to a constitutional defect, and ordering the legislature to regulate a certain issue in legislation. The additional claims raised by the petitioners, including the one pertaining to the Marriage and Divorce (Registration) Ordinance and its treatment of civil marriage, do not substantiate a cause of action.

3. Regrettably, we do not see a basis for the Court's involvement.

President, Vice President

Justice E. Rubinstein:

A. I join my colleagues' judgment. I would like to note that, sadly, the problem invoked by the petitioners is very old, and has worsened with the wave of immigration from the Commonwealth of Independent States (former Soviet Union) from the late 1980's, as it is undisputable that large numbers of those entitled to *Shvut* in a family's two generations are not Jewish according to *Halacha*; even though they are of Israel seed, through father, grandfather, or grandmother.

I would be the last to support intermarriage; however a solution to citizens seeking to marry must be given to them within their country. In my opinion in *LFA 9607/03 Ploni v. Plonit (2006)*, paragraphs J-K, I said about them:

“Intermarriage, a painful issue since ancient days (*see*, during the first return to Zion – Ezra 9 1-2, 12 and chapter 10, and Nehemia 9 31), makes my heart cringe, due to its meaning in the historical respect and its impact on the state of the Jewish people and its size, to an existential degree ... (But) I doubt that closing our eyes to the fact of these difficulties is the way to deal with intermarriage, given the factual and legal reality that has evolved over the years ... It seems that the wave of intermarriage, which appears with great force within a big part of the Jewish diaspora and exists among our people as well since the waves of immigration of the previous decades – is not going to be stopped in this way, and attending to the larger matter is beyond the

Unofficial translation

judicial scope ... The place for decision is the legislature ... the Legislature ought to consider an arrangement that would be suitable to those Israelis *who cannot marry in Israel* (emphasis in original – E.R.); I dare say, that if it were possible to persuade each and every Jewish man and woman, for many good reasons, to marry members of the Jewish people, there would be no-one happier than me, certainly so after a third of the People was decimated in the Holocaust. But since this is not the reality, the state should provide the suitable solutions, of course while accounting for its Jewish and democratic character – as well as for the slippery slope that can ensue.”

The son of a Jewish father and a non-Jewish mother – Petitioner 1 did nothing wrong. He is an Israeli citizen, as good as any of us, subject to duties and entitled to rights, including the right to marry. Since the 1970 amendment to the Law of Return, 1950, and the addition of Section 4A, the right to marry applies also to citizens entitled to *Shvut* and to their offspring. The Law on Matrimonial Partnership for People without Religion, 2010, does not apply to the Petitioner, since he seeks to marry a Jewish woman. He apparently chose not to convert into Judaism although he considers himself Jewish; to me this would have been a practical and commendable solution, but it is up to him and his personal decision. Therefore the state should devise a fair solution to those like him, one that would not make any of its citizens feel as if they are “second rate.” Indeed, the difficulty in this is clear and for that reason the Law on Matrimonial Partnership was dedicated to those without a religion, as its name suggests; however a solution to the complex question is required, while reserving marriage to the religious groups within themselves; the issue is clearly in the purview of the legislature.

Justice

The petition is denied. Given the circumstance no fees will be assessed.

Entered today, 25 Shvat 5774 (Jan. 26, 2014)

President

Vice President

Justice