HCJ 2597/99

Tais Rodriguez-Tushbeim

v.

1. Minister of Interior

2. Director of the Population Register, Ministry of Interior

HCJ 2859/99

Tamara Makrina

and 14 others

v.

1. Minister of Interior

2. Director of the Population Register, Ministry of Interior

The Supreme Court sitting as the High Court of Justice

[31 March 2005]

Before President A. Barak, Vice-President Emeritus E. Mazza, Vice-President M. Cheshin, Justice Emeritus J. Türkel and Justices D. Beinisch, E. Rivlin, A. Procaccia, E.E. Levy, A. Grunis, M. Naor E. Hayut

Petition to the Supreme Court sitting as the High Court of Justice.

Facts: The petitioners were lawful non-Jewish residents in Israel. They studied Judaism in various frameworks in Israel, and went abroad for a short time to undergo the ceremony of converting to Judaism in various Jewish communities outside Israel. Upon their return to Israel, they applied to the Ministry of the Interior (the first respondent) to be recognized as Jews for the purposes of the right of immigrate to Israel under the Law of Return, 5710-1950. The first respondent refused to recognize the conversions of the petitioners, on the ground that the petitioners did not join the

communities that converted them, but returned immediately to Israel after the conversion ceremonies.

Held: (Majority opinion — President Barak, Vice-President Emeritus Mazza, Vice-President Cheshin and Justices Beinisch, Rivlin, Naor and Hayut) A conversion that is performed abroad within the framework of a 'recognized Jewish community' by the religious organs of the community that are competent for performing conversions should be recognized by the respondents for the purposes of the Law of Return. The ground for refusal, that the petitioners did not join the communities that converted them, was unreasonable, since the petitioners wished to join another Jewish community — the Jewish community in Israel. Consequently the petitions should be granted and the petitioners recognized as Jews for the purpose of the Law of Return.

(Minority opinion — Justice Procaccia) The combination of the spiritual act of joining the Jewish people with the acquisition of a civil status under the Law of Return and the right of citizenship in Israel, for someone who converts abroad while living in Israel, creates a dilemma. It mixes two worlds that should be kept distinct. The state has a duty to supervise the acquisition of citizenship, and to prevent the abuse of conversion in order to obtain citizenship by means of the Law of Return. The state should formulate a comprehensive policy that will regulate the conditions required for the purpose of recognizing conversions of an Israeli resident that are conducted abroad. The state's criterion that a convert abroad should join the community that performed the conversion is a reasonable criterion for examining whether a conversion is genuine, although not necessarily the sole criterion. Since the first respondent has not yet formulated a comprehensive policy in this sphere, the petitioners' conversions have not yet been properly examined. The petitions should therefore remain pending for an additional period, while the respondents formulate a comprehensive policy for recognizing conversions abroad of Israeli residents.

(Minority opinion — Justice Levy) The process of conversion involves a recognition of the right of every convert to return to Israel, which, except in rare cases, is equivalent to receiving Israeli citizenship. It is only natural that granting citizenship should be controlled by a state authority. The first respondent has no expertise in the field of the validity of conversions. It follows that the state is obliged to avail itself of another party that has expertise in this regard. The court has the tools to decide the question of the validity of the conversion, and it is therefore enjoined to turn to a state authority that has expertise in this field. Such an authority is the new state conversion system, which is capable of publishing, after extensive investigation, a

list of Jewish communities abroad whose conversion processes will be recognized, so that there will be no question of the validity of their conversions.

(Minority opinion — Justice Grunis) The requirement that the state imposed for recognizing conversion of the kind that the petitioners underwent is reasonable. The possibility of receiving 'instant' citizenship by virtue of the right of return, easily and without commitment, is likely to lead to the occurrence of problematic and unseemly phenomena.

(Minority opinion — Justice Emeritus Türkel) The very important questions in this petition lie entirely within the spiritual realm. These questions have no legal solution and they cannot be resolved by a judicial determination. The court is not required to decide them merely because the petitioners chose to seek the court's decision. Therefore the court should refrain from making a decision. The decision ought to be made following a thorough study of all the opinions and beliefs of all the sectors of the public, and with a joint effort to reach a broad consensus. The proposal of Justice Levy, that the new state conversion system should be authorized for these purposes, should be adopted.

Petition HCJ 2859/99 granted by majority opinion (President Barak, Vice-President Emeritus Mazza, Vice-President Cheshin and Justices Beinisch, Rivlin, Naor and Hayut), Justice Emeritus Türkel and Justices Procaccia, Levy and Grunis dissenting.

Petition HCJ 2597/99 became redundant since the petitioner received citizenship while it was pending, and the petition was therefore dismissed.

Legislation cited:

Basic Law: the Government, s. 32.

Citizenship Law, 5712-1952, ss. 1, 2(a), 2(b), 5(a)(2).

Engineers and Architects Law, 5718-1958, s. 9(a)(6).

Entry into Israel Law, 5712-1952.

Law of Return, 5710-1950, ss. 1, 2(a), 2(b), 2(b)(2), 2(b)(3), 4B.

Law of Return (Amendment no. 2), 5730-1970.

Physicians Ordinance [New Version], 5737-1976, s. 4(a)(3).

Population Registry Law, 5725-1965, s. 3A(b).

Psychologists Law, 5737-1977, s. 2(b).

Religious Community (Conversion) Ordinance, s. 2(1).

Veterinarians Law, 5751-1991, s. 5.

Israeli Supreme Court cases cited:

HCJ 5070/95 *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [2002] IsrSC 56(2) 721. [1]

HCJ 72/62 *Rufeisen v. Minister of the Interior* [1962] IsrSC 16 2428. [2]

HCJ 58/68 *Shalit v. Minister of Interior* [1969] IsrSC 23(2) 477. [3]

HCJ 3648/97 *Stamka v. Minister of Interior* [1999] IsrSC 53(2) 728. [4]

HCJ 573/77 *Dorflinger v. Minister of Interior* [1979] IsrSC 33(2) 97. [5]

HCJ 265/87 *Beresford v. Minister of Interior* [1989] IsrSC 43(4) 793. [6]

HCJ 758/88 *Kendall v. Minister of Interior* [1992] IsrSC 46(2) 505. [7]

HCJ 487/71 *Clark v. Minister of Interior* [1973] IsrSC 27(1) 113. [8]

HCJ 1031/93 *Pesero (Goldstein) v. Minister of Interior* [1995] IsrSC 49(4) 661. [9]

HCJ 143/62 *Schlesinger v. Minister of Interior* [1963] IsrSC 17 225. [10]

HCJ 264/87 *Federation of Sefaradim Torah Guardians — SHAS Movement v. Director of Population Administration, Ministry of Interior* [1989] IsrSC 43(2) 723. [11]

HCJ 2888/92 *Goldstein v. Minister of the Interior* [1996] IsrSC 50(5) 89. [12]

HCJ 8600/04 *Shimoni v. Prime Minister* (unreported). [13]

HCJ 754/83 *Rankin v. Minister of Interior* [1984] IsrSC 38(4) 113. [14]

HCJ 2208/02 *Salama v. Minister of Interior* [2002] IsrSC 56(5) 950. [15]

CrimFH 8612/00 *Berger v. Attorney-General* [2001] IsrSC 55(5) 439. [16]

HCJ 1689/94 *Harari v. Minister of Interior* [1997] IsrSC 51(1) 15. [17]

HCJ 7139/02 *Abbas-Batza v. Minister of Interior* [2003] IsrSC 57(3) 481. [18]

AAA 9993/03 *Hamdan v. Government of Israel* [2005] IsrSC 59(4) 134. [19]

HCJ 2527/03 *Assid v. Minister of Interior* [2004] IsrSC 58(1) 139. [20]

HCJ 8030/03 *Samuilov v. Minister of Interior* (not yet reported). [21]

HCJ 11406/03 *Peroskorov v. Minister of Interior* (not yet reported). [22]

HCJ 47/82 *Israel Movement for Progressive Judaism Fund v. Minister of Religious Affairs* [1989] IsrSC 43(2) 661. [23]

HCJ 2757/96 *Alrai v. Minister of Interior* [1996] IsrSC 50(2) 18. [24]

HCJ 6191/94 *Wachter v. Ministry of Interior* (unreported). [25]

HCJ 4889/99 *Abu Adra v. Minister of Interior* (unreported). [26]

HCJ 1692/01 *Abu Adra v. Minister of Interior* (unreported). [27]

HCJ 8093/03 *Artmiev v. Minister of Interior* (unreported). [28]

HCJ 2526/90 *Vegetable Growers Organization v. Vegetable Production and Marketing Board* [1991] IsrSC 45(2) 576. [29]

HCJ 4354/92 *Temple Mount Faithful v. Prime Minister* [1993] IsrSC 47(1) 37. [30]

HCJ 636/86 *Nahalat Jabotinsky Workers' Moshav v. Minister of Agriculture* [1987] IsrSC 41(2) 701. [31]

HCJ 399/85 *Kahana v. Broadcasting Authority Management Board* [1987] IsrSC 41(3) 255. [32]
HCJ 389/80 *Golden Pages Ltd v. Broadcasting Authority* [1981] IsrSC 35(1) 421. [33]
LAA 3186/03 *State of Israel v. Ein Dor* [2004] IsrSC 58(4) 754. [34]
CA 1805/00 *Kineret Quarries (Limited Partnership) v. Ministry of Infrastructure* [2002] IsrSC 56(2) 63. [35]
HCJ 2324/91 *Association for Civil Rights in Israel v. National Planning and Building Council* [1991] IsrSC 45(3) 678. [36]
HCJ 2828/00 *Koblabesky v. Minister of Interior* [2003] IsrSC 57(2) 21. [37]
HCJ 4156/01 *Demetrov v. Minister of Interior* [2002] IsrSC 56(6) 289. [38]
HCJ 758/88 *Kendall v. Minister of Interior* [1992] IsrSC 46(4) 505. [39]
HCJ 3373/96 *Zathra v. Minister of Interior* (unreported). [40]

Jewish law sources cited:

Jeremiah 31, 16. [41]
Mishnah, *Avot* (Ethics of the Fathers) 4, 7. [42]
Babylonian Talmud, *Yevamot* 47b. [43]
Maimonides, *Letter to Obadiah the Convert*. [44]

For the petitioners — U. Regev, N. Maor.
For the respondents — Y. Gnessin.

JUDGMENT

President A. Barak

The petitioners came from different places around the world to Israel. Their presence here is lawful. They began conversion proceedings in Israel. They participated for approximately a year in courses for studying Judaism. When they completed the courses, they underwent a conversion process in a Jewish community outside Israel. Most of the conversions were performed by a religious court of the Reform community. One conversion was performed by a religious court of the Conservative community. Shortly after this they returned to Israel. They applied to be recognized as Jews for the purposes of the Law of Return, 5710-1950. The Minister of the Interior refused their applications, since immediately prior to the conversions they were not members of the Jewish community that converted them. Is this refusal lawful? That is the question before us.

The proceedings

1. The proceedings began with five petitions — including the two petitions before us — that were heard jointly. The respondent in all of the petitions is the Minister of the Interior. Three petitions concerned the effect of the conversions for the purposes of the Population Registry Law, 5725-1965 (HCJ 5070/95, HCJ 2901/97, CA 392/99). Two petitions, which are the petitions before us, concerned the effect of the conversions both for the purposes of the Population Registry Law and for the purposes of the Law of Return. After we finished hearing the arguments, we decided to separate the petitions concerning the Population Registry Law only from the petitions concerning both the Law of Return and the Population Registry Law. We first gave judgment in the three petitions concerning the Population Registry Law: HCJ 5070/95 *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1]. Subsequently we turned to consider the two remaining petitions, which are the petitions before us. These petitions concern the effect of the conversion both for the purposes of the Population Registry Law and for the purposes of the Law of Return. In so far as the effect of the conversion for the purposes of the Population Registry Law is concerned, we ruled in our decision that this would be determined in accordance with our

decision concerning the Law of Return. Let us now turn to consider this question.

2. Originally it was argued before us — when we were still hearing the five petitions together — that a conversion that is conducted outside Israel for someone who is not a part of the community in which the conversion takes place, and for the sole purpose of enabling the convert to join the Jewish community in Israel, can have no effect in Israel either for the purposes of the Population Registry Law or for the purposes of the Law of Return. According to this argument, the Jewish community in Israel should not be required to recognize the conversion of someone who is living lawfully in Israel (under the Entry into Israel Law, 5712-1952) and who travels to a community outside Israel merely in order to undergo the actual conversion ceremony. This approach was based on the respondents' outlook that in Israel there is one Jewish community, which is headed by the Chief Rabbinate of Israel. Conversion in Israel, which by its very nature constitutes an act of joining this community, should be done with the approval of the Chief Rabbinate. In *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1] (which was decided by a majority of Justices A. Barak, S. Levin, T. Or, E. Mazza, M. Cheshin, T. Strasberg-Cohen, D. Dorner, D. Beinisch, E. Rivlin, with the dissenting opinion of Justices J. Türkel and I. Englard), we rejected this argument in so far as it concerned registration in the Population Registry. We held that Jews in Israel do not constitute one religious community that is headed, in the religious sphere, by the Chief Rabbinate. Against the background of this ruling, on 5 March 2003 we asked the respondents to present their position in view of the judgment in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1].

3. In their reply (of 2 October 2003), the respondents no longer repeated their argument concerning the Jewish community in Israel. Instead, the respondents presented us with a new position. According to this, the Law of Return does not apply at all to someone who came to Israel under the Entry into Israel Law, and while he was in Israel underwent a conversion process (in Israel or outside Israel). According to this approach, the Law of Return concerns the right to live in Israel. It is not an immigration law that seeks to regulate the status of non-Jews who are present in Israel. The petitioners

objected to this position, both because it involved a change of the state's line of argument and also on its merits. In a decision of 31 May 2004 (hereafter — 'the decision'), we rejected this line of argument by a majority (Justices A. Barak, T. Or, E. Mazza, M. Cheshin, D. Dorner, D. Beinisch, E. Rivlin, with the dissenting opinion of Justices J. Türkel, A. Procaccia, E.E. Levy and A. Grunis). We held, in principle, that the Law of Return applies to someone who is not a Jew, who comes to Israel and while present in Israel lawfully undergoes a process of conversion (whether in Israel or abroad). On the basis of this determination, which did not conclude the hearing of the petitions, and was merely an interim decision within the framework of the petitions, we requested in the decision that the respondents should present their position with regard to the petitioners' claim that they are entitled to have the provisions of the Law of Return applied to each of them.

4. In a statement presented by the respondents on 17 November 2004, we received their revised position. It contains a restatement of the original position, with new reasoning. This reasoning is no longer based on the existence of a Jewish community in Israel which the convert wishes to join (an argument that was rejected in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1]). The respondents' reasoning now distinguishes between a conversion that was conducted outside Israel and a conversion that was conducted in Israel. With regard to the former, the respondents recognize conversions conducted outside Israel, on an equal basis, by every recognized branch of Judaism (Orthodox, Conservative and Reform), in a recognized Jewish community and by the competent organs of the community. This recognition is restricted to conversion proceedings in which the convert joins the converting community, lives in it and becomes one of its members. It does not apply to converts who come to the converting community merely for the purpose of carrying out the conversion ceremony, without any real intention of joining that community. The reasons for this are as follows: the state's recognition of a conversion performed outside Israel is based on the principle of respecting an act of a recognized Jewish community. The realization of this principle, for the purposes of the Law of Return, justifies a substantive examination of the conversion process, which will clarify whether the accepted procedures in that community with regard

to a non-Jew who wishes to join it as a regular member were carried out for the convert. A certificate that a ceremony was conducted is insufficient in itself. With regard to conversion in Israel, the respondents' position, which is based on several government decisions in recent years, is that the importance of the issue of conversion and the substantial rights that it brings with it justify recognition by the state (for the purposes of the Law of Return) only of a conversion that was conducted within a framework established by the state. Such a framework was established by the Israeli government, within the scope of its residual powers (s. 32 of the Basic Law: the Government), when it approved the conclusions of the Committee for Formulating Ideas and Proposals concerning the issue of Conversion in Israel ('the Neeman Commission'). It includes an institute for studying Judaism, in which the three branches are represented, and a system of special religious courts which deals exclusively with the issue of conversion and which operates in accordance with Jewish religious law. A conversion that takes place in Israel must, therefore, comply with this procedure that was determined by the Neeman Commission. The petitioners did not carry out either of these procedures — in Israel or abroad —and therefore the conversions that they underwent should not be recognized.

5. On 22 December 2004, the petitioners filed a reply to the respondents' statement. They reject the respondents' position in both respects. With regard to conversion outside Israel, the petitioners argue that it is not the duty of the Ministry of the Interior, or any other official body, to evaluate the sincerity of the conversion on the basis of criteria of joining or becoming affiliated with the converting community abroad. That is the concern of the community that performed the conversion, and the state should be satisfied with the fact that a conversion process took place in that community, which is confirmed by a certificate from the relevant movement to the effect that the converting community is a recognized Jewish community that complies with the accepted rules of conversion in that movement. With regard to conversion in Israel, the petitioners deny the picture that is presented in the respondents' statement, as if the state conversion system that was established guarantees openness and consideration for the various branches of Judaism. The petitioners describe the framework that the government established as a

framework that perpetuates Orthodox control of the issue of conversion, without providing a solution for persons who wish to convert in a non-Orthodox conversion, and that keeps open the possibility of cancelling the conversion retrospectively when it transpires that the convert does not observe the commandments on a regular basis. Thereby, the petitioners claim, the state is acting contrary to the decision of this court, which (according to their understanding) regards a conversion performed in Israel and a conversion made outside Israel as equal for the purposes of the Law of Return. In reply to the state's concern that a conversion process that does not take place within the framework of the state will lead to abuses, the petitioners say that the movements that represent the Conservative and Reform branches have told the Minister of the Interior in the past that they do not convert persons who do not have a residency status in Israel.

6. While we were considering the petitions, we were told that the petitioner in HCJ 2597/99 received Israeli citizenship by virtue of naturalization, and that she has been registered (according to the respondents, in error) in the Population Register as a Jew under the Law of Return. Consequently the petition on its merits has become redundant, and the petition remains pending only for the purpose of deciding the question of costs. Since making the decision (on 31 May 2004), two of the justices on the panel (Justice T. Or and Justice D. Dorner) have retired, and they were replaced by Justice M. Naor and Justice E. Hayut. With the consent of the parties, we are giving this judgment on the basis of the material in the files, without holding another hearing on the petitions before the current panel.

The normative framework

7. In the decision of 31 May 2004, we held, by a majority that —

> 'In principle, the Law of Return applies to someone who is not a Jew, came to Israel and while staying in Israel underwent a conversion process (in Israel or outside Israel). It follows that the Law of Return applies in the case of the petitioners, and their right to an immigrant's certificate will be determined in accordance with its provisions.'

The basic principle provided in the Law of Return is the following:

'The right to immigrate

1. Every Jew is entitled to immigrate to Israel.'

The immigration shall be by means of an immigrant's visa (s. 2(a)). The immigrant's visa shall be given to every Jew who has expressed his desire to live in Israel (s. 2(b)). The Citizenship Law, 5712-1952, supplements this arrangement. It provides that 'Every immigrant under the Law of Return, 5710-1950, shall become an Israeli citizen, by virtue of the right of return' (s. 2(a)). The right to immigrate and the right to citizenship in consequence thereof is given to a 'Jew.' The term 'Jew' is defined in the Law of Return (s. 4B) as follows:

'Definition

4B. For the purpose of this law, a 'Jew' is someone who was born to a Jewish mother or who converted, and who is not a member of another religion.'

It follows that the question before us is whether each of the petitioners is a Jew according to the definition of this term in the Law of Return. Since none of the petitioners was born to a Jewish mother, the question is whether it is possible to regard each of them as someone 'who converted.' There is no claim that, notwithstanding the conversion of each of the petitioners, he is 'a member of another religion.' But is it possible to say that each of the petitioners 'converted'? It should be noted that this question does not arise before us within the framework of the Population Registry Law. That issue was decided in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1]. The question arises before us within the framework of the Law of Return. What is the meaning of conversion in the Law of Return?

8. The Law of Return originally provided that every Jew is entitled to immigrate to Israel, without the term 'Jew' being defined in the law. This gave rise to considerable problems, some of which came before the Supreme Court (see HCJ 72/62 *Rufeisen v. Minister of the Interior* [2]; HCJ 58/68 *Shalit v. Minister of Interior* [3]; see also A. Rubinstein and B. Medina, *The Constitutional Law of the State of Israel* (vol. 1, fifth edition, 1996), at p. 111). Against this background, the Law of Return was amended (Law of

Return (Amendment no. 2), 5730-1970; on this development, see HCJ 3648/97 *Stamka v. Minister of Interior* [4], at p. 753; M. Corinaldi, *The Riddle of Jewish Identity: the Law of Return de facto* (2001), at p. 13; Rubinstein and Medina, *The Constitutional Law of the State of Israel*, *supra*, at pp. 124-125; A.H. Shaki, *Who is a Jew in the Law of the State of Israel* (vol. 1, 1977), at pp. 173-198). The Law of Return (Amendment no. 2) defined the term 'Jew.' It was provided that this definition applies both for the purposes of the Law of Return and for the purposes of the Population Registry Law. This definition resolved several problems and created new problems. The latter focused on two main questions. *One* concerns the meaning of the term 'who converted'; the *other* concerns the meaning of the term 'another religion' (on this question, see HCJ 573/77 *Dorflinger v. Minister of Interior* [5]; HCJ 265/87 *Beresford v. Minister of Interior* [6]; HCJ 758/88 *Kendall v. Minister of Interior* [7]). The focus of the petition before us concerns the question of conversion. Let us turn to this.

9. *Prima facie* the answer to the question whether a person has joined Judaism should be left to the subjective decision of the convert. This was the position of Justice H.H. Cohn in *Rufeisen v. Minister of the Interior* [2]. It is a matter between a person and his God. The state should not adopt any position on this issue. I said '*prima facie*' because there is no possibility of adopting this position for the purposes of conversion in the Law of Return. There are two reasons for this: *first*, the Law of Return provides someone who converted is a Jew. Conversion is a religious concept. It involves an act 'of taking upon oneself the burden of Judaism and joining the Jewish people' (*per* Justice Berinson in HCJ 487/71 *Clark v. Minister of Interior* [8], at p. 119). For the purposes of implementing the Law of Return it is therefore necessary to examine also the attitude of the Jewish religion to conversion, not merely the attitude of the convert. I discussed this in one case, where I said:

> 'The concept "conversion" is, first and foremost, a religious concept, of which the secular legislature makes use… therefore the act of conversion — whatever its substantial content may be — should be consistent with a Jewish understanding of this

concept' (HCJ 1031/93 *Pesero (Goldstein) v. Minister of Interior* [9], at p. 747).

There is great dispute on the question of this 'Jewish understanding' (see Rubinstein and Medina, *The Constitutional Law of the State of Israel*, *supra*, at p. 131). There are those who claim that it only embraces Orthodox conversion (see A.H. Shaki, 'The Validity in Israel of Reform Conversion Abroad — concerning the Meaning of "Jews" in the Jurisdiction in Matters of Dissolution of Marriage (Special Cases) Law, 5729-1969,' 4 *Israel Law* 161 (1973); Shaki, *Who is a Jew in the Law of the State of Israel*, *supra*, at p. 178; Tz.E. Tal, 'Reform Conversion,' 17 *Tehumin* 189 (1997)). Others claim that it is also possible to recognize Reform and Conservative conversion within this framework (see Rubinstein and Medina, *The Constitutional Law of the State of Israel*, *supra*, at p. 135; A. Maoz, 'Who is a Jew — Much Ado About Nothing,' 31 *HaPraklit* 271 (1977); cf. also H.H. Cohn, 'The Law of Return,' *Selected Writings* 312 (1992); P. Shifman, 'On Conversion Not According to Jewish Law,' 6 *Hebrew Univ. L. Rev. (Mishpatim)* 391 (1975); Corinaldi, *The Riddle of Jewish Identity: the Law of Return de facto*, *supra*, at p. 82); as we shall see below, we do not need to decide this issue in the petitions before us.

10. *Second*, a person's conversion for the purpose of the Law of Return has an effect that goes beyond the relationship between him and his Creator. It gives him the right 'to immigrate to Israel' (s. 1 of the Law of Return); it gives him 'citizenship by virtue of the right to immigrate' (s. 2(b) of the Citizenship Law). Indeed, Justice Tz.E. Tal rightly pointed out that conversion in the Law of Return has two facets: 'On the one hand it is entirely a private matter, between man and his Maker. On the other hand, conversion has great public significance' (*Pesero (Goldstein) v. Minister of Interior* [9], at p. 703). In a similar vein I said in the same case:

> 'Conversion for the purposes of the Law of Return is not merely a private action of a person vis-à-vis his Creator; it is not merely a private action of several people who wish to convert someone. Conversion for the purpose of the Law of Return is an act that enables a person to join the Jewish people. It has public

ramifications for regard to the right of return and citizenship' (*ibid*. [9], at p. 747).

Justice Tz.E. Tal said that 'the Law of Return is the central immigration law of the State' (*Pesero (Goldstein) v. Minister of Interior* [9], at p. 703). It would appear that thereby Justice Tal understated the value of the Law of Return. The Law of Return has ramifications on the questions of immigration and citizenship. But it is far more than this. It is the expression of the connection between the Jew and his historic homeland. This was discussed by Prime Minister D. Ben-Gurion during the debate on the Law of Return:

> 'The Law of Return has nothing to do with immigration laws. It is the eternal law of Jewish history. This law establishes the national principle that led to the founding of the State of Israel' (*Knesset Proceedings*, vol. 6 (1950), at p. 2036).

The uniqueness of the right of return has been discussed by my colleague Justice M. Cheshin, who said:

> 'This decisiveness of the right derives from its unique nature, in that it is the concrete expression of the connection between the Jew — as such — and the land of Israel. A Jew from the Diaspora who wishes to settle in Israel is no immigrant; he is "going up" to Israel, he is "coming back" to Israel, in the sense of "And the children shall return to their borders" (Jeremiah 31, 16 [41])' (*Stamka v. Minister of Interior* [4], at p. 751).

In the decision (of 31 May 2004) that was made in the petitions before us, I said:

> 'The Law of Return is one of the most important laws in Israel, if not the most important. Although it is not a "Basic Law" in form, it is certainly a Basic Law in essence… it is the most fundamental of all laws, and it constitutes, in the words of David Ben-Gurion, the "foundation law of the State of Israel." This is the key to entering the State of Israel, which constitutes a central reflection of the fact that Israel is not merely a democratic state, but also a Jewish state; it constitutes "the constitutional cornerstone of the character of the State of Israel as the state of

> the Jewish people"… it gives expression to the "justification… for the existence of the Jewish state"… it is an expression of the right of the Jewish people to self-determination' (*ibid*., at para. 18 of the decision).

It follows from this that the application of the Law of Return should not depend merely on the subjective wishes of the individual. A state does not entrust the key to enter it to every individual, according to his subjective wishes. The operation of the Law of Return depends upon the application of an objective test, according to which a person joins the Jewish people, and on the existence of proper measures of control and supervision for realizing this test, and for preventing its abuse.

11. In this we can see the difference between registering an individual as a Jew under the Population Registry Law and recognizing that same individual as a Jew under the Law of Return. The definition of a Jew in the two laws is identical (see s. 3A(b) of the Population Registry Law, which was introduced in 1970 at the same time as the definition of a Jew in the Law of Return). Notwithstanding, within the framework of the identical definition, the degree of state supervision and the standard of evidence required in these two situations is different. For the purpose of the Population Registry Law, the premise is (for the purpose of initial registration) that the registration official should register what he is told, unless it is manifestly incorrect (see HCJ 143/62 *Schlesinger v. Minister of Interior* [10]; HCJ 264/87 *Federation of Sefaradim Torah Guardians — SHAS Movement v. Director of Population Administration, Ministry of Interior* [11], at p. 732; HCJ 2888/92 *Goldstein v. Minister of the Interior* [12]; *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1], at p. 735). Naturally, the definition of a Jew in the Law of Return — which is also the definition for the purposes of the Population Registry Law — has an effect on the question whether the subjective statement of the person seeking registration is manifestly incorrect. Obviously the registration official will not register as a Jew someone who applies to be registered as a Jew while stating that his mother is not Jewish and that he has not converted, but that his subjective feeling is that he is Jewish. It such a case it is manifest that this person is not a Jew, and the registration official will not register him as a Jew (*Naamat, Working and*

Volunteer Women's Movement v. Minister of Interior [1], at p. 742). But apart from these cases where what the registration official is told is manifestly incorrect, the registration official does not make additional checks. This 'low' level of supervision and this minimal degree of evidence is determined by the nature of the register, which for the purpose of registering an individual's religion is merely 'a collection of statistical material for the purpose of managing the register of residents' (*Goldstein v. Minister of the Interior* [12], at p. 93). The position with regard to the Law of Return is different. The recognition of conversion for the purpose of this law gives the convert the key to enter the State of Israel and to acquire citizenship in it. The level of supervision in this context should naturally be stricter and the standard of evidence required should be higher. It follows that it is possible that the same individual may be registered as a Jew in the register, but may not be considered a Jew for the purpose of the Law of Return. This difference derives from the different purposes underlying the Population Registry Law and the Law of Return. Let us now turn to the normative and objective test underlying the term 'who converted' and its operation in the context of the Law of Return, and let us begin with the fundamental position of the state.

12. Underlying the fundamental position of the State is the outlook that for the purposes of conversion in the Law of Return two main situations should be distinguished: *first*, where the conversion takes place outside Israel, and *second*, where the conversion takes place in Israel. This distinction originated in the state's position in *Federation of Sefaradim Torah Guardians — SHAS Movement v. Director of Population Administration, Ministry of Interior* [11]. It continued in the state's position in *Pesero (Goldstein) v. Minister of Interior* [9], at p. 678, and in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1]. Now this position has been presented to us in the petitions before us. The respondents' statement says the following:

> 'The State of Israel recognizes, on an equal basis, a conversion that was conducted abroad by every recognized branch of Judaism (Orthodox, Conservative, Reform), provided that it took place within the framework of a recognized Jewish community abroad, by the competent organs of the community. Underlying

> this recognition is the principle of respecting an act of a recognized Jewish community abroad' (para. 23).

For the purposes of the petition before us, without deciding the issue, the basic distinction made by the state between a conversion that is performed outside Israel and a conversion that is performed in Israel will serve as a premise. We accept the state's approach that if a conversion takes place within the framework of a recognized Jewish community outside Israel, in accordance with its rules, this conversion will be recognized in Israel for the purposes of the Law of Return. Indeed, the Jewish people is one entity. It is dispersed throughout the world, in many communities. Whoever converts in one of the communities outside Israel thereby joins the Jewish people, and should be regarded as a 'Jew' by virtue of conversion for the purposes of the Law of Return. This serves to encourage immigration to Israel. It serves to maintain the unity of the Jewish people in the Diaspora and in Israel. This approach — which emphasizes the approach that should be adopted, for the purpose of the Law of Return, in respect of a conversion that took place outside Israel — found its expression in the deliberations of the Knesset on the Law of Return (Amendment no. 2). The Minister of Justice, Y.S. Shapira, who presented the draft Law of Return (Amendment no. 2) on its first reading, emphasized in his remarks that:

> 'There are many Jewish communities. I have no knowledge of what communities we have in the east. For example, do we know very much about the Jewish community in the Caucasus? But we know that there are Liberal Jews, there are Conservative Jews, there are Reform Jews, for all sorts and for all types, and they perform conversions. Therefore, I do not wish to determine any rules. We say therefore that an individual who comes with a conversion certificate of any Jewish community, provided that he is not a member of another religion, will be accepted as a Jew' (*Knesset Proceedings*, vol. 56, at p. 781).

In the debate during the first reading, MK H. Zadok (the chairman of the Constitution, Law and Justice Committee of the Knesset) said that this amendment would contribute to the absorption of immigration, since it

allowed Jews from the various branches to fall within the scope of the Law of Return. MK Zadok added:

> 'The proposed law adopts a more general language, by saying that a Jew is someone "who converted," which shows that anyone who underwent a conversion process in any Jewish community in the world does not have his credentials checked, and he is considered a Jew' (*Knesset Proceedings*, vol. 56, at p. 766).

When he presented the draft law for a second and third reading on behalf of the Constitution, Law and Justice Committee, the chairman of the committee, MK H. Zadok, said:

> 'There is in Judaism a large range of communities. In the west there are Ultra-Orthodox, Orthodox, Conservative, Liberal and Reform communities, and in each of these there are different nuances. In all these communities, which are all Jewish communities, conversions are performed. In other words, by means of a conversion process, individuals who are not Jews are welcomed into Judaism. I do not have sufficient knowledge about Judaism in the east; but I assume that there too there are different nuances and there too conversions are performed. If a person proves that he was converted in a Jewish community, it is not the concern of the secular official to examine, for the purposes of the Law of Return and for the purposes of the Population Registry Law, whether the conversion was performed in accordance with Jewish religious law. Anyone that converted in a Jewish community will be accepted as a Jew; in other words, he is entitled to immigrate to Israel as a Jew, he is entitled to citizenship by virtue of his right to immigrate to Israel and he is entitled to be registered as a Jew in the register of residents and in his identity card. The state will not examine — through its secular authorities — whether the conversion processes were in accordance with Jewish religious law' (*Knesset Proceedings*, vol. 57, at p. 1137).

13. The distinction that the state makes between a conversion that is performed outside Israel and a conversion that is performed in Israel therefore enshrines a fundamental outlook with regard to the attitude of the Law of Return to conversion in Jewish communities outside Israel, and with regard to the important role of the law in the project of the ingathering of the exiles. Even if this is so, we would like to point out that notwithstanding the obvious difference between the two cases, naturally there is much in common between a conversion that is performed in Israel and a conversion that is performed abroad. The petitions before us do not require a decision on the question of the scope of the difference (or the scope of the similarity) between the cases, and we shall not express an opinion on this at this time. In our opinion, as aforesaid, the distinction between a conversion that is performed abroad and a conversion that is performed in Israel is a premise that is accepted by the state. Let us begin with conversion that is performed outside Israel. As we shall see, the decision in the petitions before us will find its place in this category of cases. We will not need, therefore, to examine the law that applies to conversions that are performed in Israel. Notwithstanding, we shall make several remarks on this matter.

Conversion performed outside Israel

14. As we have seen, the state does not dispute the fact that the Law of Return recognizes a conversion that is performed outside Israel, whatever the branch of Judaism under whose auspices the conversion was performed. Indeed, this achieves the purpose that underlies the Law of Return. Of course, within this framework — in order to realize this purpose — it must be ensured that only a conversion of a religious character is recognized, and no recognition should be given to a conversion that is made solely for the purpose of exploiting the right of a Jew to immigrate to Israel in order to acquire economic benefits. For this purpose, an appropriate degree of control and supervision is required to ensure that the institution of conversion is not abused. What is the significance of these demands? Let us turn to the state's position.

15. The principle underlying the state's position is that, for the purposes of the Law of Return —

> 'The state is entitled to examine, *inter alia*, whether the accepted procedures, which are customary in that recognized community abroad in respect of a non-Jew who wishes to become a member of it for all intents and purposes, were carried out, and whether the conversion was performed by a religious body that received recognition for this purpose from a recognized Jewish community' (para. 24 of the respondents' statement).

Against the background of this principle, the state's conclusion is that —

> 'This principle is naturally limited to a convert who joins a community. The conversion proceeding is therefore a community act of a non-Jew who joins and becomes integrated into the Jewish community in the place where he lives' (para. 23 of the respondents' statement).

In summarizing her position, counsel for the state (Ms. Y. Gnessin) said:

> 'The State of Israel recognizes, on an equal basis, a conversion that was conducted abroad by every recognized branch of Judaism, provided that it was done in a recognized Jewish community, by the competent religious body of the community, and in accordance with the procedures and rules that are adopted and accepted by it, which were intended to ensure the seriousness of the conversion. This principle is naturally limited to a convert who is a member of the community, who joins it and is integrated in it. The conversion process is therefore a community act of a non-Jew who joins a Jewish community and is integrated into it in the place where he lives, and as such it is as if he has been "converted" for the purposes of the Law of Return' (para. 23 of the respondents' statement).

It will be remembered that in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1] we rejected this conclusion with regard to the register. We said (while relying on *Federation of Sefaradim Torah Guardians — SHAS Movement v. Director of Population Administration, Ministry of Interior* [11]) that:

> 'There is no importance to the connection between the convert and the community in which he converted. The relevant matter is that the Jewish community abroad carried out its accepted conversion practices with regard to the applicant. Indeed, what underlies the ruling in *Federation of Sefaradim Torah Guardians — SHAS Movement v. Director of Population Administration, Ministry of Interior* [11] is the approach that the Jewish people is one people. A part of it is in Israel; a part is in one Diaspora community; a part is in another Diaspora community' (*ibid*. [11], at p. 751).

These remarks were made solely with regard to the Population Registry Law. The question before us is whether they are also valid with regard to the Law of Return. Indeed, the question is whether the state is right that for the purposes of the Law of Return a condition is required that the conversion was performed for the purpose of joining the community where the conversion was performed.

16. We accept the principle underlying the state's position. A conversion, in view of its character (joining the Jewish people) and its importance (giving the convert a right to immigrate to the State of Israel), should be conducted in the accepted manner in a recognized Jewish community, which conducts conversions in accordance with its approach to conversion procedures. In saying 'a recognized Jewish community' we mean, as a rule, an established and active community that has a well-known Jewish identity that is common to its members, that has fixed frameworks of communal management and that belongs to one of the recognized branches of world Judaism. Insisting on these requirements will ensure that the conversion is not abused for the purpose of acquiring economic rights without any desire to join the Jewish people. I discussed this approach in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1], where I said:

> 'It is not sufficient that three people announce someone to be converted by them. The requirement is that the conversion is performed by a religious body that has received recognition from a Jewish community' (*ibid*. [1], at p. 751).

And in the decision of 31 May 2004 I said that:

> 'Care must be taken to ensure the sincerity of the conversion, and the right of return should not be given to impostors, whose sole desire is economic benefits and not joining the Jewish people and coming to live in the Jewish state' (*ibid.*, at para. 20).

I said that we should increase 'the supervision and scrutiny concerning anyone who wishes to realize his right under the Law of Return' (*ibid.*).

17. Whereas we accept the fundamental approach of the state that conversion should be performed within the framework of a recognized Jewish community by the religious organs of the community that are authorized for this purpose, the conclusion that the state derives from this approach — recognizing only a conversion of an individual who wishes to join the community and become integrated in it — is totally unacceptable. It is not at all clear why we should limit the recognition of conversions performed abroad merely to those converts that wish to join the community that converts them. Why is it not sufficient to ensure that the conversion proceedings that take place with regard to a non-Jew who wishes to join the Jewish people but does not wish to join the Jewish community that converts him are identical to the conversion proceedings that take place with regard to a non-Jew who does wish to join the Jewish community that converts him? What is so special about joining the Jewish community in which the conversion took place? Why is it insufficient for an individual who underwent a conversion process to wish to join another recognized Jewish community that is outside Israel and from there to immigrate to Israel? And why should a conversion that was made in a recognized Jewish community not be recognized if the convert wishes to join the Jewish people who live in the land of Israel? Moreover, why should recognition be denied to someone who already lives lawfully in Israel and whose sole desire is to ensure recognition of the fact that he has joined the Jewish people living in the land of Israel?

18. We accept that abuse of conversions outside Israel should be prevented; we accept that if the convert does not immigrate immediately to Israel but joins a recognized community where he converted, this usually

ensures that the conversion is not abused. But why should this be determined to be the sole possibility of ensuring the seriousness of the conversion? Take the case of an individual who is not Jewish. He wishes to join the Jewish people. He undergoes an Orthodox conversion in a recognized Jewish community outside Israel. He does not wish to joint that community but to immigrate to Israel. Why should he be prevented from doing so? Is there any doubt that the conversion that he underwent satisfies the requirement of conversion in the Law of Return? And if this is so with regard to an Orthodox conversion, why should conversions by other branches of Judaism be considered less favourably, when even according to the position of the state they should be treated equally?

19. The logical conclusion is that we should ensure that conversions in a recognized Jewish community outside Israel, which lead to immigration to Israel, are performed in accordance with the criteria that are accepted in that community for anyone who wishes to join that community. For this purpose, it is sufficient that those in charge of this matter in that community should give notice that a person converted in a recognized Jewish community in accordance with the ordinary criteria that it accepts and applies to all the conversions in that community, whether for persons who wish to join that community or for persons who do not wish to join it. Indeed, with regard to recognizing a conversion for the purposes of the Law of Return, we should not insist upon a requirement that the convert wishes to join the community that converts him. The recognition of conversion outside Israel should not be restricted solely to someone who joined the community in which he was converted. This is certainly the case for someone who after conversion did not join the community that converted him but joined another community outside Israel. If after several years that person realized his right under the Law of Return, what concern of abuse is there in such a case? The same should apply to someone who after the conversion does not join a Jewish community outside Israel but wishes to join the Jewish people in the land of Israel. Such a case should certainly require consideration and scrutiny. But no strict rule should be determined to the effect that such a convert will not be recognized as a Jew for the purposes of the Law of Return. Indeed, the rules and arrangements should not be allowed to lead to a result whereby the desire

to prevent recognition of the conversions of converts that abuse the right to immigrate to Israel prejudices the right of converts who properly exercise their right to join the Jewish people. Control and supervision should be exercised to ensure that anyone who converted abroad and immigrates to Israel has undergone an accepted conversion procedure. To this end, we should examine whether the convert underwent a conversion that is accepted by a recognized Jewish community outside Israel. The control and supervision are not limited to the sole possibility that the state raised, which requires joining the converting community. It is possible to prevent abuse of the right to immigrate to Israel in various different ways. Each case has its own circumstances. Let us now turn to the petitioners before us.

From general principles to the specific case

20. What is the position concerning the petitioners? The answer to this question requires us to consider two secondary questions. The *first* of these is the following: should the petitioners be regarded, for the purposes of the Law of Return, as persons who converted outside Israel, or should they be regarded as persons who converted in Israel? If each of the petitioners should be regarded as someone who converted outside Israel, then the *second* question arises. This is whether we should recognize, for the purpose of the Law of Return, the conversion that was conducted for each of the petitioners outside Israel, in view of the fact that, shortly after the conversion took place, the converts returned to their lawful place of residence in Israel. Let us begin with the first of these questions.

21. Was each of the petitioners converted in Israel or abroad? As we have seen, each of the petitioners was living lawfully in Israel. They devoted themselves to Jewish studies in Israel for the purposes of a conversion. Most of the petitioners studied within the framework of the Reform movement. One of the converts studied within the framework of the Conservative movement. The studies lasted approximately one year. At the end of the studies, each of the petitioners was referred by the movement in which he studied to a religious court of that movement that operates in one of the communities outside Israel. They travelled to that community. They were converted in it. Shortly afterwards they returned to Israel. Is the conversions

of each of the petitioners a conversion that was made outside Israel or in Israel?

22. Conversion in Judaism is based on a legal act of conversion that constitutes the conversion (see M. Finkelstein, *Conversion: Theory and Practice* (1994), at p. 19). The studies in preparation for the conversion are not a part of the conversion itself. Therefore the conversion of each of the petitioners took place outside Israel. The studies that each of the petitioners underwent in Israel are not a part of the conversion. They are merely preparatory acts for the conversion. They are not a constitutive part of the act of conversion. Indeed, in the petitions before us it was not alleged at all by the respondents that the petitioners did not undergo a process of conversion in a recognized Jewish community. The respondents' arguments, in their various forms, focused consistently on requirements that are external to the actual conversion. At first the respondents argued that since each of the petitioners does not wish to join a Jewish community outside Israel but to join the Jewish community in Israel, the act of conversion that was done outside Israel should require the approval of the Chief Rabbinate, which heads the Jewish community. When we rejected this argument in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1], the respondents raised another argument before us. According to this, the Law of Return does not apply at all to someone who came to Israel, and while he was in Israel underwent a conversion process — whether Reform, Conservative or Orthodox — in Israel or abroad. Even in the context of this argument, no doubt was cast on the existence of a conversion outside Israel. When we rejected the argument that the Law of Return does not apply to the petitioners' case, the respondents raised before us the argument, which we are now considering, that the conversion that took place outside Israel required the external condition that the convert would join the community in which he converted. Ms. Gnessin writes on behalf of the state:

> 'The petitioners before us lived in Israel throughout the period during which their conversion process took place. They underwent the preparatory procedures in Israel, not within the framework of the state's conversion system, and they went abroad for a few days in order to hold the conversion ceremony.

> Consequently, since the petitioners are not members of the community abroad where the conversion took place, and they did not join that community nor were they integrated into it, they should not be regarded as persons who underwent the conversion process abroad nor should they be regarded as persons who "converted" for the purposes of the Law of Return' (para. 27 of the respondents' statement).

We are rejecting this position in our judgment. We are deciding that under the Law of Return there is no absolute condition, for recognition in Israel of a conversion that took place outside Israel, that the conversion was intended for the purpose of joining the community where the conversion took place. Against this background, the second question before us arises. This requires us to consider whether the conversion outside Israel was done merely in order to take advantage of the right of a Jew to immigrate to Israel. Let us now turn to examine this secondary question.

23. Each of the petitioners devoted approximately one year to Jewish studies in Israel. They were referred by the Reform movement (in the vast majority of cases) and the Conservative movement (in the case of one of the petitioners) to perform the conversion in a community of that movement in which they studied Judaism. It has not been argued at all that the conversion that was conducted for each of the petitioners was different from the conversion that is conducted for anyone wishing to joint the converting community. In our opinion, it is sufficient that each of the petitioners was referred for conversion procedures within the framework of the movement in which he studied Judaism and presented a certificate from the competent organ in the recognized converting community with regard to the completion of the conversion procedure in order for us to assume that the act of conversion that he underwent was not designed specifically for him, but was the same conversion that everyone undergoes in any community that belongs to that movement. I will add, though it is not required for our decision in this case, that no argument was made before us to the effect that the sole purpose of each of the petitioners was to obtain the economic benefits that immigration to Israel provides, and that they have no real intention of joining the Jewish people in Israel. In all of the proceedings concerning the

petitioners, the state did not question the sincerity of each of the petitioners. Indeed, the *prima facie* impression received is that each of the petitioners formed a genuine desire to join the Jewish people in the State of Israel; that for most of the petitioners this desire is what brought them to Israel; and that for each of the petitioners this desire is what led them to devote a year of their lives to Jewish studies. We discussed this in the decision of 31 May 2004:

> 'All of the petitioners are lawful residents in Israel. They devoted themselves to Jewish studies in Israel, which lasted for many months. It was not alleged before us that the petitioners are insincere in their desire to join the Jewish people and to live in our country' (*ibid*., at para. 20).

24. We accept that it is necessary to check and examine whether the conversion was performed in a recognized Jewish community. This is required in order to prevent an abuse of the right to immigrate to Israel. Within this framework, the case before us is *prima facie* a simple and easy case to examine: the converting communities are a part of the main branches of world Judaism; these branches operate in many communities, and they even operate in Israel; the preparation for the conversion was done in Israel and took place over a significant period. These facts, when taken together, lead to the conclusion that the fact that each of the petitioners did not join the community where he was converted but returned to Israel in order to join the Jewish community that lives in Israel cannot prevent the recognition of the conversion for the purposes of the Law of Return. All of the facts indicate that the conversion is not a fiction that was designed to achieve economic advantages, but a genuine conversion that was intended to lead to joining the Jewish people. Indeed, precisely the fact that the preparations for the conversion were done in Israel, within the framework of one of the recognized branches of Judaism, is what gives credibility to the conversion that was conducted in a Jewish community outside Israel that belongs to that branch.

25. Our conclusion is therefore that each of the petitioners converted outside Israel in a manner that satisfies the definition of the term 'Jew' in the

Law of Return. He is entitled to immigrate to Israel and he is entitled to receive an immigrant's visa, unless the Minister of the Interior finds that he is likely to endanger public health or security (s. 2(b)(2) of the Law of Return) or that he has a criminal record that is likely to endanger public safety (s. 2(b)(3) of the Law of Return). Thus the case of the petitioners is concluded. We therefore do not need to consider the petitioner's case on the assumption that their conversion took place in Israel. Since the arguments of the state were devoted mainly to this question, we will raise several points on this subject.

A conversion that is conducted in Israel

26. The consistent position of the state is that in view of the character and consequences of conversion, state scrutiny of conversion should be ensured. With regard to the Law of Return (and other civil issues), a conversion performed by a 'private religious court' should not be recognized without distinguishing between the various branches of Judaism. First it was argued before us that in order to recognize a conversion that was conducted in Israel for the purposes of the Law of Return, the conditions in the Religious Community (Conversion) Ordinance should be satisfied, which means that approval should be obtained from the head of the community that a person wishes to join, as proof that he was accepted into that religious community (s. 2(1) of the Ordinance). We rejected this position in *Pesero (Goldstein) v. Minister of Interior* [9]. We held that the Religious Community (Conversion) Ordinance applies to the matters on which the religious courts have jurisdiction. It has no application with regard to the Law of Return. How, then, is the recognition of conversion in Israel determined for the purpose of the Law of Return? On this issue, we wrote in *Pesero (Goldstein) v. Minister of Interior* [9]?

> 'Our decision today is limited in scope. All that we are deciding is that the Religious Community (Conversion) Ordinance does not apply for the purpose of recognizing conversion under the Law of Return. We are not holding that every Reform conversion is recognized for the purposes of the Law of Return… Therefore, we are not ordering the respondents to

> regard the petitioner as a Jewess for the purposes of the Law of Return… Our decision today is of a negative character only. We are determining the "negative aspect" (the Religious Community (Conversion) Ordinance does not apply). We are not deciding the "positive aspect" (the exact content of the nature of conversion in Israel). As we said, the "positive aspect" may be determined expressly and specifically by the legislature. Notwithstanding, as long as the Knesset has said nothing on the subject, we are dealing with a lacuna in the law. If the legislator does not say anything on this subject, there will be no alternative but to make a judicial decision in this matter in accordance with the existing definition. This judgment does not determine the scope of the "positive aspect" or the details thereof" (*ibid.* [9], at p. 767).

Since the judgment was given in *Pesero (Goldstein) v. Minister of Interior* [9] (on 12 November 1995), no law has been enacted in this regard.

27. After the argument concerning the application of the Religious Community (Conversion) Ordinance was rejected — within the framework of the petitions before us and in the petitions that were considered in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1] — the state raised a new argument. It argued that there is one Jewish community in Israel, which is organized within a national framework under the leadership of the Chief Rabbinate. A conversion that is conducted in Israel, which by its very nature constitutes an act of joining this community, should be done with the approval of the Chief Rabbinate. We rejected that argument in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1]. We held that Jews in Israel do not constitute one religious community that is headed, in the religious sphere, by the Chief Rabbinate.

28. When we rejected the state's arguments with regard to the Religious Community (Conversion) Ordinance (in *Pesero (Goldstein) v. Minister of Interior* [9]) and with regard to joining the Jewish community (in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1]), we asked for the state's position concerning the petitioners before us. We asked

what were the conditions for recognizing their conversion for the purposes of the Law of Return. It was first argued that the Law of Return does not apply to them. We rejected this argument in the decision we made on 31 May 2004. We once again asked for the position of the state concerning the conversion of the petitions under the Law of Return. Against this background, the respondents raised a new argument with regard to conversions conducted in Israel, which relies on the conversion system that was set up following the report of the committee established by the government on the question of conversion in Israel. This committee was chaired by Prof. Y. Neeman ('the Neeman Commission'). This committee recommended establishing one national conversion procedure, which would be recognized by the whole Jewish people. Within this framework, it was recommended that a joint institute would be established for the study of Judaism. This institute would be common to all the three branches of Judaism. The actual conversion proceedings would be carried out in special religious courts for conversion, that would be recognized by all the branches of Judaism. The purpose of the proposal was to prevent a split in the Jewish people, and at the same time to regulate the national approach to conversion. On 7 April 1998, the Government of Israel adopted the report of the Neeman Commission. The Knesset also approved these recommendations in their entirety. The government further determined that the head of the conversion system would be appointed by the Chief Rabbi of Israel. He is the person responsible, on behalf of the Chief Rabbinate, for the conversion system and the comprehensive policy concerning conversion in Israel. He was authorized to sign conversion certificates on behalf of the Minister of Religious Affairs. On 27 Elul 5764 (13 September 2004) the Chief Rabbi of Israel and the President of the Great Rabbinical Court published rules for considering conversion applications. The state's position before us now is that for the purposes of the Law of Return only a conversion conducted in Israel within the framework of this national system should be recognized. With regard to the legal basis for establishing the conversion system it was argued before us that it is enshrined in s. 32 of the Basic Law: the Government.

29. The conversion in our case took place outside Israel. We therefore have no need to examine the state's position in depth. We only wish to make

two comments in this regard: *first*, in so far as the Law of Return is concerned, a conversion, whether in Israel or abroad, is not merely a private matter. It has a public aspect (*Pesero (Goldstein) v. Minister of Interior* [9], at p. 747). There is a basis, therefore, for public supervision of conversion in Israel, for the purposes of the Law of Return. This was discussed by President M. Shamgar in *Pesero (Goldstein) v. Minister of Interior* [9]:

> 'The further we distance ourselves from the sphere of personal status, it is clear that religious affiliation has a different significance, and therefore it is logical that the scope of the control and supervision, as well the body responsible therefore, should be a civil and national one... Whereas in the field of religious jurisdiction there is a reason to entrust the consideration and decision of issues to the religious authority, there is no such reason when we are speaking of a secular law' (*ibid*. [9], at p. 687).

I made similar remarks in my opinion (*ibid*. [9], at p. 747). I returned to this idea in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1]:

> 'I accept that conversion in Israel is not merely a private act; it has public ramifications. By virtue of it a person joins the Jewish people. In consequence he can acquire Israeli citizenship. There is therefore a justification for state regulation of the public aspects of conversion… State supervision of the public aspect of conversion… should be determined by the Knesset' (*ibid*. [1], at p. 753).

30. *Second*, the government regarded the realization of the Neeman Commission report as a solution to the problem of conversion in Israel. We are not adopting any position on this matter, which raises difficult problems. It is sufficient to point out that it can be seen from the petitioners' reply (of 22 December 2004) that there is no consent on the part of all the branches in Judaism with regard to the manner in which the government acted, and that according to the petitioners the conversion system that was established does not follow the Neeman Commission Report, but makes the conversion

subservient to the Chief Rabbinate. We are not going to consider these claims. We wish merely to say this: we accept that the government is competent to establish, by virtue of its (residual) general power prescribed in s. 32 of the Basic Law: the Government, a conversion system similar to the one that was established following the recommendations of the Neeman Commission. Notwithstanding, the government is not competent to determine, by virtue of its general power, that only conversion that is conducted within this framework shall be recognized under the Law of Return. The recognition of conversion for the purposes of the Law of Return shall be determined in accordance with the interpretation of the Law of Return. It is of course possible that the requirements of the Law of Return for the purposes of conversion will be consistent with the arrangements provided in the conversion system under the Neeman Commission report. In so far as this consistency exists, it derives solely from the provisions of the Law of Return. Where there is a conflict between the interpretation of the Law of Return and the conversion arrangements under the Neeman Commission report, the Law of Return prevails. The government's (residual) general power cannot override what is stated in the Law of Return or violate a human right (see HCJ 8600/04 *Shimoni v. Prime Minister* [13]). It follows that as long as the Knesset has not lawfully said anything on the subject, the problem of recognizing conversion for the purpose of the Law of Return should be resolved within the framework of the interpretation of the Law of Return. This is what we decided in *Pesero (Goldstein) v. Minister of Interior* [9]. We affirmed this in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1]. We are affirming this once again today.

Postscript

31. The term 'Jew' in the Law of Return gives rise to difficult problems. This was the case before the Law of Return (Amendment no. 2). It is also the case after the amendment. The recognition of conversion that is performed outside Israel and in Israel gives rise to fundamental questions concerning the character of the State of Israel as a Jewish and democratic state. It concerns the relationship between the Jewish people in the Diaspora and the State of Israel and the relationship between religion and state in Israel. The main task of resolving these problems lies with the Knesset as the legislature. Even

though it is not completely unfettered in carrying out this task — in view of the restrictions that it imposed on itself in the Basic Laws — the discretion that it has is broad. Apart from the Law of Return (Amendment no. 2), the Knesset has adopted no position on this question. The resolution of these problems was therefore brought before the court by the petitioners who were personally harmed by the position of the Minister of the Interior. We had no choice but to decide them, since the petitioner argued that their rights under the Law of Return were violated. Notwithstanding, the primary arrangements with regard to the problem that arises — namely the recognition of Reform or Conservative conversions that are conducted in Israel — should be determined by the legislature. I will not express any position on this matter. I will merely repeat some of the remarks that I wrote in memory of Zevulun Hammer on the subject of national unity:

> 'As justices, our power is limited. Admittedly, every problem has a legal solution. But the legal solution is not the ideal solution for every problem. Not every problem that can be solved in the court should be solved in the court. The solution for the relationship between religion and state and healing the national rift requires a national compromise. Judges cannot bring about this compromise. We make our contribution in our judgments; we do our part in our constitutional approach that is based on a balance between competing values; the balance between the power of the majority and the right of the minority; the approach that human rights are not absolute, but relative; that it is permitted to violate them for a proper purpose, but not excessively; that democracy is tolerant, even of intolerance. All of these are essential, but insufficient, conditions for a national compromise. It requires the emotional strength of the whole people; it requires love of others, and not hatred of others; it requires bringing people closer together and understanding them, and not distancing oneself from them and pushing them away' (A. Barak, 'On National Unity,' 23 *Tel-Aviv University Law Review (Iyyunei Mishpat)* 601, at p. 604).

32. Our judgment does not decide the question whether a Reform or Conservative conversion that is conducted in Israel is recognized for the purposes of the Law of Return. We gave no answer to this question in *Pesero (Goldstein) v. Minister of Interior* [9] or in the decision of 31 May 2004 in the petitions before us. In this judgment we also give no answer to this question. The petition before us concerns conversions that took place outside Israel, and there are no grounds in this case for deciding the question of the recognition of conversions that took place in Israel. With regard to conversions outside Israel, we are deciding that a conversion conducted in a recognized Jewish community in accordance with its own rules should be recognized for the purposes of the Law of Return. In this regard, it makes no difference whether the convert joins that community after the conversion, whether he goes to another Jewish community outside Israel and afterwards immigrates to Israel, or whether he immigrates to Israel shortly after the conversion. With regard to the last possibility, it makes no difference whether before immigrating to Israel he already lived lawfully in Israel or he came to it for the first time after the conversion. In all of these cases, the conversion that was conducted outside Israel will be recognized under the Law of Return.

33. We are aware of the state's need to maintain control of the recognition of conversions within the framework of the Law of Return. This is required by the natural need of a state to supervise a process that makes a person a citizen in it. Conversion is not merely a private act of a religious nature. It has a public civil nature. This aspect requires state supervision. This supervision finds expression in our approach that a conversion that takes place outside Israel within the framework of a recognized Jewish community satisfies the requirements of the Law of Return. Thus the state fulfils the need for supervision, while maintaining the relationship between the Jewish people in Israel and the Jewish people in the Diaspora. This condition is satisfied by the petitioners, and therefore they should be recognized as Jews for the purpose of the Law of Return.

The result is that we are making the order *nisi* absolute, in the sense that we hold that each of the petitioners in HCJ 2859/99 is a Jew for the purposes of the Law of Return, since they have undergone a process of conversion in a

recognized Jewish community outside Israel. The petition in HCJ 2597/99 has become redundant, and therefore it is dismissed. In the circumstances of the case, no order for costs will be made.

Justice D. Beinisch

I agree with the opinion of my colleague the President, and like him I am of the opinion that the requirement that the conversion should be conducted in a 'recognized Jewish community' allows the state to maintain the supervision that is required by the significance of recognizing conversion for the purposes of the Law of Return.

I also agree with the outcome in the specific cases of the petitioners in HCJ 2859/99, for the reasons set out in the President's opinion.

Justice E. Rivlin

I agree with the opinion of my colleague, President A. Barak.

Justice M. Naor

1. Subject to one comment, which has no ramifications on the petitioners' case, I agree with the opinion of my colleague the President.

2. The matter has been concluded but it is not complete. The case of the petitioners and the petitions have been concluded. The consideration of the question of conversion is not complete. First, we have not decided the question of conversion in Israel for the purpose of the Law of Return. Second, in these petitions the state did not dispute that there is no case before us where the conversion proceedings were abused. Therefore in this petition the question of how we can, *de facto*, prevent the key to enter the State of Israel being handed over to external bodies did not arise. I accept that as a rule we should recognize a conversion that was conducted by a recognized Jewish community. The state proposed a criterion according to which conversion abroad should be recognized only for persons who joined one of the communities, and as the President explained, this criterion should not be

adopted. But in my opinion even when we are speaking of conversion that was conducted abroad within the framework of a recognized Jewish community, there may arise a question as to whether the conversion process was abused. Indeed, *as a rule*, and as my colleague the President says, 'a conversion that was conducted outside Israel within the framework of a recognized Jewish community satisfies the requirements of the Law of Return' (para. 33), but this is *not necessarily* the case. In my opinion, even a conversion process that is carried out in a recognized Jewish community may still not be recognized by the state if it involved an abuse of the possibility of conversion. I do not think that Jewish communities are aware that the State of Israel 'relies' upon them to examine the question of abuse. The facts and the arguments in the petition before us do not allow us to determine firm rules on the question of when there is abuse. If in the future concrete problems are brought before us on this question, we will hear the arguments of the parties and make our decision.

Justice A. Procaccia

Introduction

1. I regret that I cannot agree with the conclusion of my colleague, President Barak, and with my other colleagues who agree with his opinion, according to which the order *nisi* in this proceeding should be made absolute and the conversion process that the petitioners underwent in a Jewish community outside Israel should be recognized as valid for the purpose of recognizing their status under the Law of Return.

The reason for this lies, in my opinion, in the fact that the competent authority has not yet been given an opportunity to adopt a comprehensive policy that will regulate the conditions required for the purpose of recognizing conversions of an Israeli resident that are conducted abroad, and the cases of the petitioners have not been examined on an individual basis in accordance with the conditions that should be determined as aforesaid. The dispute does not focus on the principle and essence of the matter, according to which, for the purposes of the Law of Return, a conversion that takes place abroad within the framework of a religious branch that is not Orthodox

should be recognized not only for a foreign resident but also for someone who resides in Israel. The difficulty concerns the method and system that should be adopted in order to realize this principle in a correct and proper manner. The method and the system have not yet been properly formulated by the public authority, and therefore the time for recognizing the interests of the petitioners has not yet arrived. The state should be given an opportunity to regulate the matter in a general and systematic manner in order to guarantee a proper conversion process that will not lead to any problem, in view of the important ramifications of this process not merely for the purpose of acquiring the national-religious connection that is acquired thereby, but also for the purpose of acquiring the status under the Law of Return and the right of citizenship that derive from it. Addressing the manner of realizing foreign conversions and ensuring their propriety will ensure the proper application of the important principle that recognizes the validity of pluralistic conversions abroad for the purpose of granting rights under the Law of Return and the right of citizenship to someone who resides in Israel.

Following the majority view in the first decision that was made by us in this proceeding, the premise in our case is that it is possible to recognize the status of someone who is a resident in Israel as having a right under the Law of Return where, while he was resident in Israel as aforesaid, he underwent a recognized conversion procedure, whether in Israel or abroad. I also agree with the determination in the President's opinion that, although the conversion process that is carried out in Israel within one of the branches of Judaism that is not Orthodox (Reform or Conservative, hereafter — 'a pluralistic branch') has not yet been recognized by the organs of the state, nonetheless where it is conducted in a recognized Jewish community abroad it is likely to grant someone who converted abroad a status under the Law of Return when he comes to Israel. This is the case with regard to a foreign resident who converted in this manner and later immigrated to Israel, and it is also the case with regard to someone who lives in Israel and began conversion proceedings in Israel within the framework of one of the pluralistic branches and for the purpose of completing the conversion process he underwent a conversion ceremony abroad in a recognized community and returned to live in Israel. The point in dispute is therefore narrow. It concerns,

in essence, the following questions: *is there an inherent concern that conversions abroad will be abused as a means of obtaining a civil status in Israel? Is a system of rules and conditions required in order to ensure the propriety of such a conversion with regard to persons living in Israel? What is the scope of the state's authority to determine such rules? What is the scope of the supervision and judicial scrutiny that should be exercised with regard to this policy?*

My ultimate conclusion, in essence, is this: combining the act of conversion with the acquisition of a status under the Law of Return and the right of citizenship that derives therefrom creates an inherent difficulty for people living in Israel. This is because it combines an act of conversion that seeks to create a connection with the Jewish people and Jewish tradition with the acquisition of a civil status in Israel by means of the right under the Law of Return and the right of citizenship. This combination naturally gives rise to a question concerning the motive for the conversion; is it being done for its own sake or in order to facilitate the process of acquiring citizenship? A second difficulty arises in a situation where part of the conversion process — the studies and the preparation in matters of Judaism — is done in Israel, whereas the act of conversion itself is done abroad, in one of the Jewish communities scattered around the world. In this context there are questions as to the propriety of the process, the honesty of the motive for undergoing the process, and the scope of the state's responsibility to supervise properly the process of acquiring the civil status in Israel, including the acquiring of a status under the Law of Return and the Citizenship Law. In order to ensure the propriety of the aforesaid process of conversion abroad, the competent authority needs to formulate a detailed set of rules in order to ensure the propriety and reliability of the conversion process abroad. The state has not yet been given the opportunity of formulating a comprehensive policy in this field. All that it has decided at this time is to impose a condition that the convert should join the converting community abroad for a significant period of time in order to show the sincerity and propriety of the process. This condition, in itself, is not unreasonable in my opinion, and it is capable of indicating the sincerity of the conversion process. Notwithstanding, there is no basis for making this condition a sole criterion in itself, since there is a

concern that it will prevent many people from realizing their sincere desire to convert because they are unable, or do not have the means, to comply with the requirements that it establishes. A complete set of conditions should be formulated, and these should include alternative conditions that are intended to ensure genuine conversions, of which the condition of joining the converting community may be one. Within the framework of this case, the policy of the authority has not been fully formulated. Moreover, the specific cases of the petitioners in this proceeding were not examined by the state, according to the circumstances of each individual. Consequently, the proper way forward in my opinion is to leave the petitions pending in this court in order to give the state an opportunity to formulate a complete set of conditions and criteria for the purpose of recognizing the foreign conversions of individuals who are resident in Israel, and to allow the petitioners to act in order to further their interests in accordance with guidelines that will be established in the future, within a reasonably short period of time.

Let me clarify my position in detail.

The issue

2. A person who is not Jewish comes to Israel and lives here lawfully with a permit (hereafter — 'the Israeli resident'). In the course of time, he wishes to convert and continue to live in Israel. He wishes to undergo a conversion process within the framework of one of the pluralistic branches, and since such a conversion is not recognized by the state establishment in Israel, he acts in the following manner. He undergoes a process of studying Judaism in Israel for a period of time within the branch that he chose. When his studies are completed, he is referred to a community abroad that belongs to that branch. He travels to that community for a short period of time, which is usually a few days, undergoes a conversion ceremony there and returns to Israel to continue living here as a Jew. When he returns to Israel, he applies for recognition as someone who is entitled to a status under the Law of Return. The status under the Law of Return gives him a right to citizenship. What are the conditions required for the purpose of granting such recognition, and what is the scope of the judicial scrutiny over the policy of

the competent authority in this matter? These are the issues that are central to this case.

Splitting the issue into two

3. The issue raised in these petitions in complex, and it has several strata. Because of its complexity, we split it into two and considered it in two stages: in the first stage we considered the question whether the Law of Return inherently applies only to someone who came to Israel as a Jew (whether by birth or as a convert) or whether it also extends to a non-Jew who came to Israel, took up residence here, and underwent a conversion process in Israel or abroad while he was living in Israel. This fundamental question was decided by us in our first decision, by a majority (hereafter — 'the first decision'). According to this decision, the Law of Return applies in principle also to someone who is not Jewish, comes to Israel and takes up residence here, and during his lawful residence here undergoes a recognized conversion procedure in Israel or abroad. According to this position, the scope of application of the Law of Return is broad, and it extends also to a non-Jew who took up residence in Israel and converted during his period of residence as aforesaid. The opinion of the minority, in which I was included, took the position that this broad interpretation was inconsistent with the language and purpose of the Law of Return, and therefore it was not possible to regard someone who converted in the course of his stay in Israel as a person with a status under the Law of Return from the time of his conversion; he is not a 'person returning to his land' for whom the Law of Return was enacted against the background of the unique history of the Jewish people following the Holocaust of European Jewry.

Once it was determined that the Law of Return applies to someone who converted during his lawful residence in Israel, the time came for the second stage of the decision, namely whether it is possible to recognize, under the Law of Return, the status of someone who converted in a pluralistic conversion abroad while he was living in Israel. If this is possible, what are the conditions for such recognition?

Pluralistic conversion abroad — two aspects

4. Once it was decided in the first decision, by a majority, that it was possible, for the purposes of the Law of Return, to recognize a conversion of an Israeli resident that was conducted abroad, the following were the questions that remained:

First, what is the nature of the conversion process of someone who lives in Israel that will be recognized for the purposes of the Law of Return?

Second, how can the propriety of the conversion proceeding that takes place in this context be guaranteed?

Let us consider these questions.

The nature of a conversion process of an Israeli resident for the purposes of the Law of Return

5. A fundamental question in the matter before us is what are the conversion processes that will grant recognition for the purpose of the Law of Return when we are speaking of someone who lives in Israel. For this purpose, do we recognize only an Orthodox conversion that is carried out in Israel by means of the official institutions of the state, or do we also recognize a conversion that takes place abroad wholly or partly in a Jewish community that belongs to one of the pluralistic branches of Judaism. It need not be said that the character of the conversion procedures in these branches of Judaism is different from the character of conversions in the Orthodox branch, and there are also differences in the conversion processes within each of the pluralistic branches of Judaism.

I entirely agree with the approach expressed in the President's opinion that a pluralistic conversion that takes place in a recognized Jewish community abroad by the competent organs that operate within it should be recognized, and that such a conversion that is carried out in the normal course of events is a recognized and valid conversion for the purposes of the Law of Return. The state, for its part, gave notice that it is prepared to recognize the conversions of Israeli residents that are performed abroad, but only subject to certain conditions that it established for this purpose. This is what the respondents said in their statement (paras. 23 to 25):

'The State of Israel recognizes, on an equal basis, a conversion that was conducted abroad by every recognized branch of Judaism (Orthodox, Conservative, Reform), provided that it took place within the framework of a recognized Jewish community abroad, by the competent organs of the community. Underlying this recognition is the principle of respecting an act of a recognized Jewish community abroad. This principle is naturally limited to a convert who joins a community. The conversion process is therefore a community act of a non-Jew who joins and becomes integrated into the Jewish community in the place where he lives.

Therefore, for the purpose of a decision as to whether to recognize under the Law of Return (as distinct from the Population Registry Law) a conversion that took place abroad, the state is entitled to examine, for all the branches of Judaism equally, the sincerity and seriousness of the conversion, and whether the applicant (the convert) has joined the converting community. Within this framework, and for the purposes of the Law of Return, the state is entitled to examine, *inter alia*, whether the accepted procedures that are customary in that recognized community abroad with regard to a non-Jew who wishes to become a member of it for all intents and purposes were carried out, and whether the conversion was performed by a religious body that received recognition for this purpose by a recognized Jewish community…

It follows that, in the opinion of the state, for the purposes of the Law of Return and for the purpose of examining the term 'who converted,' there should be a substantive examination of the conversion process, and the presentation of a formal document that testifies to the conducting of the ceremony is insufficient for determining that we are speaking of someone who became a Jew abroad. Even if, for the purposes of the Population Registry Law, it is possible, according to case law, to satisfy ourselves merely with a certificate that testifies to the conducting of a

> ceremony abroad, for the purposes of granting substantive rights under the Law of Return and for the purpose of interpreting the term "Jew" in the Law of Return, there is no basis for relying solely on a certificate that testifies to the holding of a ceremony.'

The state summarized its position with regard to the character of those conversions abroad that it is prepared to recognize, by saying (in para. 33 of its statement):

> 'The State of Israel recognizes, on an equal basis, a conversion that was conducted abroad by every recognized branch of Judaism, provided that it was done in a recognized Jewish community, by the competent religious body of the community, and in accordance with the procedures and rules that are adopted and accepted by it, which were intended to ensure the seriousness of the conversion. This principle is naturally limited to a convert who is a member of the community, who joins it and in integrated in it. The conversion process is therefore a community act of a non-Jew who joins a Jewish community and is integrated into it in the place where he lives, and as such it is as if he is "converted" for the purposes of the Law of Return' (para. 23 of the respondents' statement).

The state therefore recognizes, for the purposes of the Law of Return, pluralistic conversions that are carried out abroad not only for a foreign resident that converted abroad and afterwards came to Israel and wishes to become a resident here, but also for an Israeli resident. This approach extends the recognition of the various ways in which a person can act in order to realize his connection with the Jewish people. It recognizes different paths for creating the national identity of the individual, while giving validity, for the purpose of a status under the Law of Return, to his right of self-determination within the framework of one religious branch or another. It thereby adopts an approach that recognizes a pluralism of ideas and values, which is consistent with the fundamental constitutional principles of freedom of religion and freedom of the human spirit (*Pesero (Goldstein) v. Minister of Interior* [9], at p. 687; *Beresford v. Minister of Interior* [6], at p. 843; Y.

Sheleg, *Jews Contrary to Jewish Religious Law — On the Question of the Non-Jewish Immigrants in Israel*, at pp. 38 *et seq*.). Since the Orthodox branch is the only one recognized at this time in the state system in Israel, recognition is given, for the purposes of the Law of Return, to the pluralistic religious system abroad as a means whereby a person may join the Jewish people, whether he converted while he was a foreign resident and was living outside Israel, or he converted when he was an Israeli resident.

The problem: combining the affiliation to the Jewish people and the connection to the State of Israel from the perspective of the sincerity of the conversion proceedings

6. The conversion process for someone living in Israel brings with it a recognition of his status by virtue of the Law of Return and the acquisition of the rights of citizenship. This combination creates an inherent difficulty that lies in the linking of two factors that are not naturally or necessarily connected to one another. One is the spiritual connection to Judaism and the Jewish people that is created by the act of conversion; the other is the connection to the state which mainly involves the acquisition of the status of citizenship, with the rights and duties that this status gives the citizen. Citizenship of Israel and belonging to the Jewish people are not identical.

By means of the conversion a person joins the Jewish people and the Jewish religion, and thereby becomes a part of Jewish culture, tradition and history. He takes upon himself the basic principles of the faith and lifestyle and becomes a member of the Jewish people, as has been the case throughout history. This act of creating a connection with the Jewish people is a spiritual and principled act that is done for its own sake, 'for the sake of Heaven,' as an expression of freedom of religion and conscience (M. Finkelstein, *Conversion: Theory and Practice* (1994), at p. 124); it lies within the sphere of the autonomy of the individual and it is also the concern of the community that the individual joins (*Pesero (Goldstein) v. Minister of Interior* [9], at p. 686). By contrast, citizenship expresses the connection of a person to a state, with the rights and duties acquired by virtue of this connection. Citizenship is a status that leads to the creation of an ongoing legal relationship between an individual and the state (HCJ 754/83 *Rankin v. Minister of Interior* [14], at p.

117). There is therefore no conceptual similarity between the connection to the Jewish people and the civil connection to the state. Although there is a reciprocal relationship between them, we are speaking of two different connections; one expresses a connection to a people, a cultural heritage, a religion and Jewish tradition; the other concerns a connection to the state and acquiring a status therein.

Combining the act of joining the Jewish people with acquiring a status under the Law of Return and the right of citizenship in the state which apply to someone who converts abroad while he is living in Israel creates a dilemma. It mixes two worlds that should be kept distinct. It mixes an act of spiritual identification and belonging with the acquisition of a status under the Law of Return and a right of citizenship that also have practical and material aspects. This combination of factors is likely to raise question marks with regard to the sincerity and credibility of the motives for the act of conversion; it is likely to be abused as a way of bypassing the acquisition of citizenship that otherwise would involve many difficulties and take a long time. It naturally diverts the supervision of the state from the sphere of administrative scrutiny of someone who wants to be naturalized, which is exercised in accordance with the Citizenship Law, to the sphere of supervision of the sincerity and propriety of the conversion process, which, if recognized, immediately grants a status under the Law of Return and a right to citizenship. It requires care to ensure that the competent authority does not relinquish the means of supervision over processes that result in a person acquiring a civil status in the state, where these processes are carried out *de facto* by remote communities abroad.

It is therefore necessary to contend, on the one hand, with the need to ensure the sincerity and propriety of the conversion process from the viewpoint of the convert; linking the conversion to the right under the Law of Return and the right of citizenship is likely to obscure its unique nature and turn it into an action that does not reflect a genuine desire to join a Jewish community but is intended for practical purposes that are based on considerations of material benefit. On the other hand, it requires the state to keep within its control the mechanism of proper supervision to ensure that recognition of a status under the Law of Return will be given only to

someone who converted abroad in a conversion that satisfies proper criteria of propriety, as the state will define these. In principle, it is possible to recognize the status of someone who converted abroad in a pluralistic conversion when he is a resident of Israel. But rigorous state supervision is required for the conversion process, as aforesaid, in order to ensure its genuineness and propriety, at least with regard to its consequence that it grants a civil status to the convert. Let us now turn to the state's responsibility in this sphere.

The state's responsibility in supervising the acquisition of a civil status in Israel

7. Section 1 of the Citizenship Law provides several ways of acquiring citizenship, including the right of return, living in Israel by virtue of birth, adoption, naturalization and a grant of citizenship. Compliance with the conditions for acquiring citizenship in accordance with any of these methods requires scrutiny and supervision on the part of the competent authority. The acquisition of citizenship often requires lengthy processes of scrutiny and examination. Sometimes these processes involve a prolonged consideration of the sincerity of representations made to the competent authority by the person seeking to acquire a civil status. Thus, for example, the arrangements for a foreign spouse who is married to an Israeli resident or citizen and who wishes to acquire permanent residency and citizenship involve several stages and extend over a period of many years and they are accompanied by a thorough scrutiny and checks. They involve an examination of the sincerity of the marriage and the absence of a security or criminal obstacle to granting a civil status to the applicant. The authority examines whether the centre of the couple's life is in Israel. The process of acquiring the civil status, which lasts several years, is ultimately subject to the discretion of the Minister of the Interior as to whether to grant the spouse Israeli citizenship by virtue of marriage (HCJ 2208/02 *Salama v. Minister of Interior* [15], at p. 956; *Stamka v. Minister of Interior* [4]; CrimFH 8612/00 *Berger v. Attorney-General* [16], at p. 454). The position of someone who wishes to become naturalized without being married to a spouse who is an Israeli citizen or resident is even harder. The naturalization process is long and its results are uncertain. Against this background, the authority examines various representations,

including representations of marriage between a foreigner and an Israeli resident or citizen, to discover whether they involve any fiction as a means of evading the difficulties involved in the ordinary naturalization process. The supervision authority of the state in these matters has been recognized also with regard to the granting of visas for the permanent residency of foreigners to whom the Law of Return does not apply (HCJ 1689/94 *Harari v. Minister of Interior* [17], at p. 19); the period of time provided for the purpose of the procedure for obtaining the civil status makes it possible to increase the scope of the checks that can be made and to collect direct or circumstantial evidence from which it is possible to ascertain, *inter alia*, the sincerity of a marriage or to assess a security or criminal risk that can be anticipated from the applicant. This is a complex investigation and it involves cooperation between various government departments, and case law has recognized a need for this 'in view of the fact that, at the end of the process, citizenship, which is a right of special importance that gives an entitlement to significant rights, is granted' (HCJ 7139/02 *Abbas-Batza v. Minister of Interior* [18]; see also AAA 9993/03 *Hamdan v. Government of Israel* [19]). With regard to the scope of considerations for the purpose of the staged process and its importance in examining the stability of the family unit and for the purpose of ensuring that granting the civil status does not harm public interests, such as presenting a criminal or security risk, see HCJ 2527/03 *Assid v. Minister of Interior* [20], at p. 144.

The state also exercises supervision in the sphere of the Law of Return over the methods of acquiring the status under that law. Thus, for example, s. 4A of the Law of Return grants rights of return, *inter alia*, to a spouse of a Jew, and to a spouse of a child and a grandchild of a Jew. This method of acquiring a status by virtue of the Law of Return is also the subject of supervision and scrutiny by the public authority, in order to ensure that it is not abused. Thus, for example, an examination is made to discover whether between spouses, where one is entitled to the right of return by virtue of his Judaism and the other requests recognition by virtue of this right of the spouse, there is a genuine marital relationship, not merely from the viewpoint of the credibility of the marriage ceremony that took place but also from the viewpoint of realizing their married life within the framework of a family

unit. For this purpose, all the circumstances of the couple's life will be examined, in so far as they are relevant to the issue, in the short term and the longer term (HCJ 8030/03 *Samuilov v. Minister of Interior* [21]; HCJ 11406/03 *Peroskorov v. Minister of Interior* [22]). This examination may also continue for a considerable time until the public authority makes its decision with regard to the fate of the civil status of the person applying for recognition.

The state's responsibility to exercise a supervision mechanism for the methods of acquiring a status under the Law of Return and a right of citizenship also applies, by analogy, to a conversion process that is carried out with regard to an Israeli resident. The state has a responsibility to ensure that the act of conversion, which gives someone living in Israel a status under the Law of Return and a right of citizenship, is a proper and genuine one, and not fictitious. Its duty is to ensure that the conversion process does not become a means whose main purpose is to evade the difficult and prolonged naturalization procedures, the consequences of which cannot be foreseen, and that a conversion is not motivated by material concerns that mainly involve the acquisition of a civil status in a relatively short process that brings with it a new status in the State of Israel and economic benefits that are granted to someone who has a right under the Law of Return. The duty of the state to regulate and supervise the conversion process of persons living in Israel for the purpose of acquiring a status under the Law of Return, and the need for state regulation in this matter were discussed by the President in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1], where he said:

> 'I accept that conversion in Israel is not merely a private act. It has public ramifications. By virtue of it a person joins the Jewish people. In consequence he can acquire Israeli citizenship. *There is therefore a justification for state regulation of the public aspects of conversion, beyond what is provided in the Population Registry Law, whose purposes are limited and are of a statistical nature*' (*ibid.* [1], at para. 31; emphasis supplied).

Associating the act of conversion with the acquisition of a civil status under the Law of Return and the right of citizenship, which is the case with regard to an Israeli resident, creates a difficulty from the viewpoint of the supervisory measures that should be adopted in order to ensure the propriety and genuine nature of the conversion. The question of the sincerity of the conversion abroad does not arise, in general, with regard to a person who converted while he was still a foreign resident and who comes to Israel at a later date and wishes to become a resident here. In this case, the separation between the conversion process and acquiring the civil status is clear, and usually a question of the sincerity of the process does not arise. Therefore it does not involve any special difficulty from the viewpoint of the recognition of such a convert as a person who has a status under the Law of Return when he comes to Israel at a later date. The position is different with regard to a convert who is an Israeli resident, since the reciprocal relationship between the act of joining the Jewish people and the acquisition of the civil status in Israel cannot be separated *de facto*.

The concern that conversion will serve as a means of obtaining a civil status as opposed to an end in itself may apply to anyone living in Israel who wishes to convert through one of the recognized branches of Judaism. Notwithstanding, the easier and more convenient the conversion process in one of the pluralistic branches, and the smaller the investment of time and money required on the part of the prospective convert, the greater the concern that the process may be abused. This concern increases with pluralistic conversion because of the relative ease that is associated with it. Indeed, the pluralistic Jewish branches in the Diaspora are characterized by a lack of uniformity between one community and another, and between one branch and another (HCJ 47/82 *Israel Movement for Progressive Judaism Fund v. Minister of Religious Affairs* [23], at p. 705). The petitioners in our case studied for a long period before their conversion; all of them immersed themselves in a ritual bath (*mikveh*) for the purposes of conversion, and the men among them were circumstances. These conditions were satisfied in the case of the petitioners, and this can serve as an indication of the sincerity of their conversion, but they will not necessarily be satisfied by every future convert who is converted by a community abroad. Thus, for example, the

court noted what happened in the case of *Federation of Sefaradim Torah Guardians — SHAS Movement v. Director of Population Administration, Ministry of Interior* [11], at p. 737):

> 'Counsel for the petitioners even declared expressly and openly that the petitioners' conversion ceremony did not include ritual immersion; the conversion certificate in HCJ 272/88 is signed by three persons, *of whom one is the husband of the convert* (the petitioner); and the conversion certificate in HCJ 216/89 was signed by three persons, *of whom two are the father and mother of the convert* (the petitioner)' (emphases supplied).

The Reform movement's Central Conference of American Rabbis ruled as long ago as 1893 that circumcision or the removal of a drop of blood (for persons already circumcised) is not required for the purpose of conversion in the Reform movement ('Circumcision for Adult Proselytes,' *American Reform Responsa* (W. Jacob ed., vol. III, at pp. 69ff.),[1] and even modern responsa emphasize that although the movement encourages converts to be circumcised, it does not require this for the purpose of recognizing their conversion ('Circumcision for an Eight-year-old Convert,' NYP no. 5756.13).[2] It is also possible to find in the movements' responsa database a discussion of the doubts expressed by a rabbi of a local community in a city in the United States, with regard to a conversion that was conducted by a colleague of his in Australia, which in his opinion was too hasty ('A Convert from Another Land,' New American Reform Responsa (Solomon Freehof, 1980), at pp. 199-200),[3] and in another responsum there is a discussion of the conversion of someone who came from another country to the United States, and it transpired that she was converted 'after only an afternoon of instruction,' in the words of the questioner ('The Course of Study for Gerut,'

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1 This can be found at the following web address: http://data.ccarnet.org/cgi-bin/respdisp.pl?file=68&year=arr.

2 This can be found at the following web address: http://data.ccarnet.org/cgi-bin/respdisp.pl?file=13&year=5756.

3 This can be found at the following web address: http://data.ccarnet.org/cgi-bin/respdisp.pl?file=127&year=narr.

New American Reform Responsa (Solomon Freehof, 1980), at pp. 194-196).[1] Cf. also 'Conversion Without Formal Instruction,' *American Reform Responsa* (W. Jacob ed., 1983), vol. XCII, 1982 at pp. 209-211).[2] Additional discussion of reform conversion can be found in Tz.E. Tal, 'Reform Conversion,' 17 *Tehumin* 189.

It is therefore clear that unsupervised recognition of a conversion process abroad for someone who lives in Israel means recognition of very varied processes among the different branches of Judaism and the different communities scattered around the world. This means that the state is accepting procedures that are being carried out abroad far away from its scrutiny, and this means recognition of the status of the convert as someone having a right under the Law of Return and a right to citizenship. This recognition gives great power to Jewish communities abroad to determine not only the Judaism of someone by virtue of conversion but also his status as a citizen, which derives therefrom. This complex reality naturally requires the introduction of a detailed policy that will establish how it is possible to undergo a conversion process abroad that will be recognized for the purpose of the Law of Return, in order to ensure the genuineness of its purpose and aims. This policy is likely to be complex. State supervision of the conversion process is therefore required as a part of the supervision policy of the public authority over the ways of acquiring a civil status in Israel.

Scope of the public authority's discretion in determining its policy

8. The right to citizenship is a significant human right. It is a right to a continuing relationship between a person and his state. It gives a person a status that gives rise to civil rights and duties. It is not limited to what happens inside Israel only. It grants a status vis-à-vis the whole world. A consequence of this is the recognition of the broad scope of the discretion given to the Minister of the Interior, in exercising his powers with regard to

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1 This can be found at the following web address: http://data.ccarnet.org/cgi-bin/respdisp.pl?file=124&year=narr.

2 This can be found at the following web address: http://data.ccarnet.org/cgi-bin/respdisp.pl?file=66&year=arr.

the acquisition of a civil status in Israel. This was discussed by the court (*per* Justice Cheshin) in *Stamka v. Minister of Interior* [4], at pp. 790-791):

> 'The scope of the discretion of the Minister of the Interior is derived, *inter alia*, from the nature of the right of citizenship, and in general we can say that the nature of this right shows that the discretion is very broad. The right of citizenship is a basic right: HCJ 2757/96 *Alrai v. Minister of Interior* [24], at pp. 22-23. The right establishes a continuing relationship between the citizen and the state, and it is also capable of granting him rights and imposing various duties… the citizen carries his citizenship with him on his back, and whersoever he goes, it goes with him. The right is not confine itself to the borders of the State of Israel… From all of this we see that granting citizenship naturally involves broad discretion, and that the minister has the power to consider many different factors before he decides whether to grant the naturalization application or refuse it.'

(See also HCJ 6191/94 Wachter v. Ministry of Interior [25]; HCJ 4889/99 *Abu Adra v. Minister of Interior* [26]; HCJ 1692/01 *Abu Adra v. Minister of Interior* [27]).

The scope of jurisdiction of the competent authority also extends to examining the proceedings that lead to the acquisition of a civil status, including proceedings that give rise to a status under the Law of Return that brings civil rights with it. The Minister of the Interior has been defined in one judgment as the 'doorkeeper' of the state, who has been given the power to grant residency permits and the status of citizenship in Israel. This is a power with broad discretion. He must exercise it reasonably; the court will rarely intervene in his discretion in view of the recognition of its broad scope (HCJ 8093/03 *Artmiev v. Minister of Interior* [28]).

Scope of judicial review of the policy of the Minister of the Interior

9. It is well-established case law in Israel that this court will usually refrain from intervening in the discretion of the public authority, and its intervention will be limited to cases of extreme unreasonableness. This is also the case in matters of policy, including matters of social and economic policy

(I. Zamir, *Administrative Authority*, part 1, at p. 90; HCJ 2526/90 *Vegetable Growers Organization v. Vegetable Production and Marketing Board* [29]; HCJ 4354/92 *Temple Mount Faithful v. Prime Minister* [30]). When examining the reasonableness of the policy, we examine the considerations taken into account and the way of balancing them, as well as the proportionality of the decision (HCJ 636/86 *Nahalat Jabotinsky Workers' Moshav v. Minister of Agriculture* [31], at p. 708; HCJ 399/85 *Kahana v. Broadcasting Authority Management Board* [32], at p. 307; HCJ 389/80 *Golden Pages Ltd v. Broadcasting Authority* [33], at pp. 436-448). The court does not act as a tribunal that decides in the place of the administrative authority, even if it is inclined to support a different approach (LAA 3186/03 *State of Israel v. Ein Dor* [34], at p. 766; CA 1805/00 *Kineret Quarries (Limited Partnership) v. Ministry of Infrastructure* [35]; HCJ 2324/91 *Association for Civil Rights in Israel v. National Planning and Building Council* [36], at p. 688).

In the sphere of the policy of the Minister of the Interior concerning the acquisition of a civil status, judicial intervention is especially limited in view of the broad discretion given to him in these matters (cf. *Hamdan v. Government of Israel* [19]; HCJ 2828/00 *Koblabesky v. Minister of Interior* [37], at pp. 27-28; HCJ 4156/01 *Demetrov v. Minister of Interior* [38], at p. 293; HCJ 758/88 *Kendall v. Minister of Interior* [39], at p. 520; HCJ 3373/96 *Zathra v. Minister of Interior* [40]).

Supervision of foreign conversions by the Ministry of the Interior — the condition of joining the converting community

10. State recognition of the foreign conversions of Israeli residents implies the acquisition of a status under the Law of Return and the right of citizenship. This reality that associates the act that creates the affiliation to the Jewish people with the connection to the state that is acquired by virtue of the Law of Return and the right to citizenship, justifies state scrutiny and supervision of the sincerity and genuineness of the procedure. It justifies the existence of a general and fundamental policy infrastructure in this sphere and a set of conditions that define the methods of conversion abroad that will be recognized for the purpose of an Israeli resident acquiring a status under

the Law of Return. For example, conditions concerning the identity of the persons living in Israel from the viewpoint of the length of their residency in Israel, the status of their residency in Israel (temporary residents, permanent residents, etc.), their family status, and other personal circumstances; conditions concerning the type, character and location of the Jewish communities abroad that will be recognized for the purpose of foreign conversions of Israeli residents; in addition to the need for examining such a fundamental infrastructure, a specific examination of each case on its merits is required, to ascertain whether the necessary conditions are satisfied in the individual case or not. Formulating a general set of criteria together with individual supervision will ensure state supervision and control of the issues of civil status that derive from the conversion procedures abroad. The absence of such supervision is likely to undermine the powers and responsibility of the state with regard to the acquisition of a civil status in Israel. This is particularly necessary in view of the significant differences in the character of the conversion procedures in the various communities of the different kinds. State supervision of the conversion procedures abroad in the case of Israeli residents is intended to prevent the keys to acquiring Israeli citizenship being entrusted to persons who are not the official organs of the state, are not Israeli citizens and have no national responsibility to the state or its citizens.

Against the background of the need to determine such a policy and conditions, the state gave notice that it requires, as a condition for recognizing a foreign conversion of an Israeli resident, that he joins the converting community abroad for a significant period of time. This condition is intended, *prima facie*, to ensure the credibility of the motive underlying the conversion process. It is capable of creating a significant separation between indicating a desire to be Jewish and realizing this desire by means of conversion and the aspiration to realize — by means of the conversion — the acquisition of the civil status in the State of Israel. This demand is capable of effectively examining the sincerity of the convert's intentions, and giving an indication thereof.

By establishing the aforesaid criterion, the state is saying that, from its point of view, the symbolic act that takes place at a specific point in time is

insufficient, when it takes place in a community that is distant from the State of Israel and is unfamiliar with the person coming before it, and when that person went to it for only a short period, so that it is not really possible to examine his character, motives and intentions in the conversion process. A sincere and genuine process is required. The separation between the stage of Jewish studies in Israel and the act of conversion that takes place in the community abroad, during merely a short stay in the converting community, raises, according to the state, questions with regard to the sincerity of the process. It is likely to be used as a means to an end, as a 'spade for digging with' (Mishnah, *Avot* 4, 7 [41]), for facilitating and accelerating the acquisition of the civil status as the predominant purpose underlying it. It is likely to make the act of conversion a fiction that is designed to facilitate and accelerate the process of receiving citizenship. Supervision of this process is therefore dictated by the proper state supervision that is required in this sphere.

President Barak accepts the basic approach of the state that requires, for the purpose of recognizing a status under the Law of Return a conversion within the framework of a recognized Jewish community by the competent religious organizations of that community, but he rejects the condition that the state imposes, according to which the recognition of a foreign conversion should be limited to someone who joins the converting community and is integrated in it for a significant period of time. According to his position, the joining of the Jewish community in which the conversion was made is a condition that is unacceptable, since there is no significant difference between the convert joining the community where the conversions took place and his joining another recognized Jewish community, whether in Israel or abroad. He asks 'why should this be determined to be the sole possibility of ensuring the seriousness of the conversion.' He summarizes his position by saying that it is sufficient in this context that the conversion was carried out in accordance with the criteria accepted by the community for someone who wishes to join that community. Control and supervision are not limited to the single possibility raised by the state, namely joining the converting community. It is possible to prevent an abuse of the right to immigrate to

Israel in many different ways, and each case should be considered on its merits.

Two comments may be made vis-à-vis these remarks: *first*, the criterion of joining the community is intended to serve as a test that indicates the sincerity of the act of conversion. It is not required to the same degree for a foreign resident who converts in a community abroad, when there is no connection between the act of conversion and immigration to Israel and obtaining a civil status here. Therefore, there is not necessarily a justification for imposing a condition of joining a community for a convert who does not immigrate to Israel. The position is different for a convert who is an Israeli resident, because of the difficulty arising from combining the act of conversion with the acquisition of the civil status in Israel. *Second*, examining the sincerity of the process for an Israeli resident who converts is consistent with the power and responsibility of the Ministry of the Interior to examine the sincerity of the actions and the representations of the individual with regard to the acquisition of a civil status in Israel. Judicial review that places major obstacles and qualifications upon the power and responsibility of the state to examine the genuineness of the conversion process is inconsistent with the broad discretion given to the Minister of the Interior in this sphere, and with his responsibility to ensure the propriety of the procedures that are intended to lead to an entitlement to acquire a civil status in Israel. It is also inconsistent with the accepted legal outlook that judicial review of an administrative act with regard to these matters is very narrow.

The condition of joining the converting community abroad for a significant period of time is, in itself, a condition that in my opinion satisfies the reasonableness test when we are speaking of a conversion of an Israeli resident abroad. This is because of the special reciprocal relationship that exists in these circumstances between the act of conversion and the acquisition of a status under the Law of Return and of the right of citizenship. The rules concerning judicial review of the administrative act do not justify intervention in this criterion by means of its cancellation. Notwithstanding, the requirement of joining the converting community abroad is not necessarily the only possible test for examining the sincerity of the process. There may be additional ways that will lead to the same outcome but demand

of the individual a lower price on his path to Judaism. It is therefore desirable that in addition to this criterion of joining the converting community there should also be other alternative conditions that can open additional channels that allow a foreign conversion to be realized in other ways whose credibility and seriousness is guaranteed by appropriate rules.

Our first decision in this proceeding recognized, for the first time, the reciprocal relationship between the conversion of an Israeli resident and his status under the Law of Return. This recognition is what gave rise, for the first time, to the question of what are the recognized ways of converting for the purpose of achieving this purpose. Naturally, the policy of the public authority has not yet been properly formulated in this regard. The authority has not yet been given an opportunity to construct a set of rules that can be implemented with regard to this important issue — rules that will both ensure the propriety of the conversion process abroad and be adapted to the practical ability of the individual to comply with them and satisfy them.

From general principles to the specific case

11. The petitioners before us differ from one another. Some of them drew closer to Judaism before they came to Israel and some them drew closer to Judaism only after they came to Israel. Some of them came to Israel as tourists, and some stayed here as work immigrants with foreign workers' visas, and over the course of time they wanted to build their home here. They studied in Israel within various frameworks and for different periods. All of them underwent an act of conversion outside Israel, in different religious courts, in different communities and in different countries. Some of them had a connection to the converting community and some went to it merely for the purpose of the act of conversion. Many of them stayed in the converting community abroad only for the act of conversion and for a very short period of time, and then returned to Israel. All of them, with the exception of the petitioner in HCJ 2597/99, who has meanwhile achieved her goal for other reasons, did not have a status of permanent residents in Israel when they converted. The petitioners were impelled to undergo a conversion ceremony abroad because the state conversion arrangements in Israel were unsuited to their needs. The reliefs sought by them in the petitions focus on the purpose

of recognizing their status as being entitled to the rights of return and citizenship.

It is clear that the petitioners do not satisfy the condition of joining the converting community abroad in accordance with the condition imposed by the state. No other tests were applied in their cases in order to examine the nature of the conversion process that each of them underwent. No examination was made of the personal background and special circumstances of each petitioner, their residency status and the period of time that they were Israeli residents, the character of the communities in which they underwent the conversion ceremony, the nature of the conversion ceremony and its seriousness. Similarly, the content and level of the Jewish studies that they underwent in Israel were not considered. Even were we to say that the condition of joining the converting community abroad that the state imposed is not acceptable for the purpose of recognizing a status under the Law of Return, it is not possible, in my opinion, to recognize every kind of foreign conversion, without it satisfying fundamental criteria that should be determined and without a specific examination as to whether they have been followed in the case of each person seeking recognition. This is because such a sweeping recognition means, *de facto*, leaving the foreign conversion process without any supervision or scrutiny, notwithstanding its consequences that automatically grant a status under the Law of Return and a right of citizenship. The rejection of the condition of joining the converting community as unreasonable, and the sweeping recognition of the petitioners as persons who have duly converted and as persons who have acquired a status under the Law of Return, without a consideration of each case by the competent authority, leave the Ministry of the Interior without any real means of supervising the propriety of these processes. I find it difficult to agree with this outcome.

In his opinion, the President does indeed assume that there is a need for a proper degree of supervision and control by the public authority, to ensure that conversions are not abused (at para. 14); but by making the order absolute, without giving the state an opportunity to formulate a general supervision policy in this area, and without an examination of the individual cases of the petitioners against the background of principles that will be

determined, the administrative authority is left *de facto* without any means of supervising the sincerity and propriety of the conversion process that gives rise to a status under the Law of Return and to the right of citizenship, which are automatically acquired in consequence of an act of conversion by someone who is an Israeli resident. In such circumstances, it is also unable to supervise the acquisition of the civil status in Israel by that resident.

Were my opinion accepted, the test of joining the converting community abroad for a significant period time, as the state demands, should remain in force as a reasonable and valid test, even if not as a sole test. The public authority should be directed to formulate a comprehensive policy that will establish a set of conditions and possibilities for realizing a process of a pluralistic conversion abroad; in this, the condition of joining the foreign community may be one of the possible conditions. I would give the public authority a period of time to formulate its policy, and allow the petitioners, while leaving the petitions pending, to examine whether the conversion processes that they underwent satisfy the tests that will be determined, and, if not, to take the steps required in order to satisfy them.

Summary

12. The uniqueness of this proceeding lies in the recognition that it gives to the right of a person who is an Israeli resident to undergo a conversion process that is not necessarily an Orthodox conversion and to obtain a status under the Law of Return and, by virtue thereof, the right of citizenship. This recognition is of great importance and significance in two spheres: *first*, for recognizing someone who converted in Israel while living here as someone who is entitled to a status under the Law of Return; *second*, for recognizing, with the state's consent, a pluralistic conversion process abroad, for someone who is an Israeli resident, as capable of giving him a status under the Law of Return and a right to citizenship.

The recognition of the pluralistic conversion abroad of an Israeli resident for the purposes of a status under the Law of Return opens a new chapter in the adoption of a broad approach with regard to the right of an individual to choose the religious branch that he desires and through which he wishes to join the Jewish people. It is difficult to exaggerate the importance of this

recognition. Notwithstanding, it is no less important that the recognition of the individual's right of choice, as aforesaid, is accompanied by criteria and supervision that will ensure the propriety of the processes by means of which a person joins the Jewish people, and through which he acquires a status under the Law of Return and the right of citizenship. We should protect the right of the state to supervise these processes, since it has the main responsibility with regard thereto. The civil and national control and supervision should be retained by the Ministry of the Interior to ensure the propriety of the processes that lead to the creation of a connection between an individual and the state. The state has not yet had a real opportunity of formulating a comprehensive policy in this area. It should be given the opportunity and means to do this. We should not rush into the recognition of conversion processes abroad that have not been adequately examined because a framework of comprehensive rules has not yet been formulated, and without an individual examination of each case. Realizing the recognition of the various branches of Judaism as reflecting the different aspects of humanity and Judaism requires the path to this goal to be well paved and kept in good order, since otherwise the idea and the substance will be harmed.

Were my opinion accepted, we would leave the petitions, as aforesaid, pending for an additional period; at the same time we would direct the competent authority to formulate detailed policy rules on this issue. Against the background of these policy rules, the petitioners will be able to plan their future actions.

Vice-President M. Cheshin

I agree with the opinion of my colleague, President Barak.

2. The Law of Return is a law that was enacted in 5710-1950. The world in which the Law of Return was enacted was in certain senses — in relation to today — the world of yesterday. The time was after the Second World War. Jews from places outside the young State of Israel — Holocaust survivors and refugees from Arab countries — sought a place of refuge and a haven for their exhausted bodies and souls. The time was after the War of Independence. Those were simple times, times of great changes, early days.

Only Jews, Jews born of Jewish parents, mostly persecuted Jews, wished to come to Israel. Anyone who was not a Jew did not even contemplate coming to live in Israel. Everyone knew who was a Jew and who was not a Jew. The question of conversion was not even on the agenda, since anyone who was not a Jew did not even dream of converting merely for the sake of immigration. Only approximately fifteen or twenty years later did questions begin to arise. This is what happened in the case of 'Father Daniel' (*Rufeisen v. Minister of the Interior* [2]). It was also the case in *Shalit v. Minister of Interior* [3]. Following the decision in *Shalit v. Minister of Interior* [3], the Law of Return was amended, together with the Population Registry Law, in the Law of Return (Amendment no. 2), 5730-1970, but even after that the question of conversion did not arise. Only in the middle of the 1970s, approximately thirty years after the founding of the state, did the questions of 'Who is a Jew?' gradually begin to arise. Even then, not only were these esoteric and isolated questions, but the question of conversion — as conversion — did not arise at all.

3. If the truth be told, the issue of conversion is not a simple or easy issue at all. And I am not referring to the religious ceremony of conversion. The issue is not simple and easy because the convert is not merely joining the Jewish religion, as a Protestant does when he becomes a Catholic. The convert joins a people, a nation, a history, a culture of several thousand years antiquity of a people that in the past lived on its land; a people of whom the great majority did not live for thousands of years on its own land, but in the 'Diaspora'; and now a part of it has been gathered together and has returned to its historic land. It is no small matter to join the 'eternal people.' Even if the person joining the Jewish people becomes religiously observant, he will not easily become assimilated in the conscious and sub-conscious culture of the Jewish people, its language, religious holidays and way of thinking.

4. The Orthodox method of conversion made the act of conversion difficult and still makes it difficult, so that the entrance was kept very narrow. 'Converts are difficult for the Jewish people' (Babylonian Talmud, *Yevamot* 47b [43]) — this was and is the path of the religiously observant, and so over the years the passage for non-Jews joining the Jewish people remained a narrow one. And since conversion was only done in small numbers, no problems or difficulties arose with regard to the issue of people joining the Jewish people.

5. We do not know whether the question of converts arises today in its full strength or whether we are witnessing another passing trend. Whichever is the case, the time has come to address the special problems that the issue of conversion raises, problems that we have not experienced until now in implementing the other parts of the Law of Return. We are referring, first and foremost, to the immense power wielded by Jewish communities around the world to open and close, as they see fit, the door to conversion and immigration to Israel.

6. As we said in our opening remarks, when the state was established the question of conversion was not even on the national agenda. Only Jews, born of Jewish parents, came to Israel, and if these included persons who regarded themselves as Jews even though they were not Jews, they were merely a handful of individuals. As times changed, so too have customs changed, and it appears that Israel has suddenly become a desirable home even for non-Jews, for members of other nations. Thus the question of conversion found its way onto our agenda as a national question of paramount importance, and differences of opinion increased.

7. According to statute and case law, Jewish communities around the world — whether they are Orthodox, Conservative or Reform communities — have the power and authority to give converts a key to enter Israel, to obtain a status under the Law of Return and to receive immediate citizenship as if they were Jews born of Jewish parents. This means that institutions that are not a part of the State of Israel, Jewish communities that are not bound by the laws and jurisdiction of the State or the authority and jurisdiction of its elected organs, Jewish religious courts and rabbis throughout the world — all of these have the power to decide and determine who will come to Israel as holders of rights, as citizens who have the right to vote and be elected to the organs of the state once they set foot on Israeli soil. It is as if the state is deprived of its power and its authority to determine and decide who will be its citizens and who will have rights in Israel. The state, of its own free will, is giving its fundamental and innate power to bodies outside the state — to bodies whose composition is determined by Jews who live abroad, while the state has no say in their composition or in the way in which they are managed — to decide and determine that one individual or another will be citizens of the State of Israel; that one individual or another may vote and may be elected to the competent organs of the state, the organs

that decide the fate of the state; that one individual or another may live among use as an integral part of the Jewish people in Israel. We have become used to strange situations and to surprising outcomes in the interpretation and application of the Law of Return, but we will find it difficult to accustom ourselves to defer and yield to these and other bodies outside Israel, and to acquiesce in their decisions as to who will be the citizens and residents of the state. But this is what the Law of Return ordains: conversion is controlled solely by the dictates of religion; whoever converts is a Jew; and no one can tell Jewish communities outside Israel what they may or may not do.

8. My colleague Justice Procaccia is concerned that restraints are being lifted, that the keys to enter the State of Israel are being given to Jewish communities around the world, that power is being given to Jewish communities abroad to decide who will enter and who will not enter the State of Israel. My colleague may rest assured that she is not alone in the concerns that she raises. I too share them. Indeed, in agreeing with the opinion of the President I am making an assumption, which seems to me self-evident, that the state retains the power to determine guidelines and criteria for recognizing foreign conversions, both in general and in the specific case. The president speaks in his opinion of a 'recognized Jewish community,' and in my opinion this complex concept contains the power to determine all those criteria of which my colleague Justice Procaccia speaks. With regard to the petitioners before us, I have found no good reason not to recognize the conversions that they underwent, even had detailed criteria been formulated before their conversions.

Vice-President Emeritus E. Mazza

I agree with the opinion of my colleague President A. Barak and I agree with the remarks of my colleague Vice-President M. Cheshin and my colleague Justice M. Naor.

Justice E. Hayut

I agree with the opinion of my colleague, President A. Barak, and I too am of the opinion, as he says and as my colleague Vice-President M. Cheshin reiterates and emphasizes in his opinion, that the supervisory powers and

procedural arrangements that are required in this area will find their place within the framework of the words 'recognized Jewish community.'

Justice E.E. Levy

1. In my dissenting opinion within the framework of the decision that was made in the petitions before us on 31 May 2004, I quoted the remarks of David Ben-Gurion, the first prime minister of the State of Israel, that he uttered when the draft Law of Return was tabled in the Knesset:

> 'The Law of Return is not a kind of immigration law, which determines under what conditions the state accepts immigrants and what types of immigrant it accepts. These laws exist in many countries, and they change from time to time in view of internal and external changes and transformations. The Law of Return has nothing to do with immigration laws. This is the eternal law of Jewish history. This law determines the national principle by means of which the State of Israel was established.'

I was and remain of the opinion that the decision of the majority justices goes too far, in that it allows use to be made of the Law of Return for purposes for which it was not intended (immigration), and therefore I went on to say the following in my opinion:

> 'The deliberations on the issue that is the subject of these petitions cannot be conducted without reference to the social developments of recent years. The State of Israel has become an immigration target, and therefore the broad interpretation of the term "Jew" in its sense in the Law of Return that my colleague the president proposes will, almost certainly, create a way of evading the immigration laws, which will be used not only by those who really and genuinely want to join the Jewish people, but also by others whose motives are questionable. This scenario is likely to lead to a problematic outcome, since the practical significance is that the State of Israel will be compelled to acquiesce in the fact that various parties that reside abroad and

> that are not subject to the supervision and scrutiny of any of the authorities in the State of Israel are those who will determine who will enter Israel and who will be its citizens. It would appear that this outcome is so far-reaching that even this reason alone would justify denying the petitions.'

2. My opinion, like that of the other minority justices, was not accepted, and it was held, in principle, that *the Law of Return applies to anyone who is not Jewish, who comes to Israel and while staying here lawfully undergoes a conversion process, in Israel or abroad*. In such a situation, where I am commanded to accept in humility the decision of my colleagues, I am of the opinion that we are required to look for methods that will ensure control over the conversion processes that take place outside Israel, as a result of the far-reaching consequences of these processes in so far as they concern the rights that the convert acquires under the Law of Return, of which the most important is the right of Israeli citizenship. In this sphere, there is much in common between me and the opinion of my colleagues, the majority justices, as can be seen in the principles that my colleague the president outlined in his opinions in the past, and which he has reiterated also in his opinion in this case. I am referring to the following:

(a) 'The concept of conversion is, first and foremost, a religious concept, of which the secular legislature makes use… therefore the act of conversion should — whatever its substantial content may be — be consistent with a Jewish understanding of this concept' (HCJ 1031/93 *Pesero (Goldstein) v. Minister of Interior* [9], at p. 747).

(b) A person's conversion for the purposes of the Law of Return has an effect beyond the relationship between him and his Creator, in that it also grants him the right to immigrate to Israel and the right to receive citizenship. This was the opinion of my colleague the president in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1], at p. 753:

> 'I accept that conversion in Israel is not merely a private act; it has public ramifications. By virtue of it a person joins the Jewish people. In consequence he can acquire Israeli citizenship. *There is therefore a justification for state regulation of the public*

> *aspects of conversion, beyond what is determined in the Population Registry Law*, whose goals are limited and are of a statistical character.'

My colleague reiterated this in para. 10 of his opinion in the present petitions:

> 'It follows from this that the application of the Law of Return should not depend merely on the subjective wishes of the individual. A state does not entrust the key to enter it to every individual, according to his subjective wishes. The operation of the Law of Return depends upon the application of an objective test, according to which a person joins the Jewish people, *and on the existence of proper measures of control and supervision for realizing this test, and for preventing its abuse*.'

In para. 11 of his opinion my colleague the President says:

> 'The recognition of conversion for the purpose of this law gives the convert the key to enter the State of Israel and to acquire citizenship in it. *The level of supervision in this context should naturally be stricter and the standard of evidence required should be higher.* It follows that it is possible that the same individual may be registered as a Jew in the register, but may not be considered a Jew for the purpose of the Law of Return.'

Finally, I will cite my colleague's remarks in para. 14 of his opinion, where he says:

> '… it must be ensured that only a conversion of a religious character is recognized, and no recognition should be given to a conversion that is made solely for the purpose of exploiting the right of a Jew to immigrate to Israel in order to acquire economic benefits. *For this purpose, an appropriate degree of control and supervision is required to ensure that the institution of conversion is not abused*' (emphases supplied).

3. When we are speaking of a member of another religion who wishes to take upon himself the burden of the Torah and the commandments,

because he desires to join a Jewish community outside Israel, naturally that community is entitled to determine, in accordance with the understanding and choice of its members, the processes that a candidate for conversion must undergo in order to receive the community's recognition, and the character of these processes. However, as aforesaid, the process of conversion has an additional significance that is not limited to the individual sphere, but involves a recognition of the right of every convert to return to Israel, which, except in rare cases, is equivalent to receiving Israeli citizenship. But it is only natural that granting citizenship should be controlled by a state authority, since this status in Israel that is acquired by virtue of conversion has ramifications beyond the definition of the individual's beliefs.

This is the place to emphasize that this approach is not restricted merely to the sphere of acquiring a status in Israel, but it is recognized also in other spheres of our lives, in which state supervision is required because of various public interests, such as the licensing of persons whose professional training was acquired abroad, and who wish to continue their profession in Israel as well. Such are the provisions of the Physicians Ordinance [New Version], 5737-1976, which concerns the licensing of someone who studied medicine abroad to engage in medicine in Israel as well. Section 4(a)(3) requires the person applying for a licence to pass, *inter alia*, a test that is set by the director-general of the Ministry of Health, except in those cases where the director-general grants him an exemption, after reaching the conclusion that the applicant studied in a university or a school of medicine that the director-general recognizes. This is also the case in s. 9(a)(6) of the Engineers and Architects Law, 5718-1958, which provides that anyone who worked as an engineer or architect abroad may be registered in the Register of Engineers and Architects, only after he has satisfied the panel of examiners that he did indeed work in that profession, and he is found to have suitable qualifications to work in that profession in Israel (see also, in this regard, s. 5 of the Veterinarians Law, 5751-1991; s. 2(b) of the Psychologists Law, 5737-1977).

I see no reason why we should not also adopt the same practice in the field of conversion, since the ramifications of this are no less important than the licensing of physicians and engineers, and in my opinion are considerably more important, since they concern the essence of the secret of our existence

as a people. The State of Israel cannot leave foreign conversion, which involves the acquisition of citizenship in Israel under the Law of Return, to a body that is not one of its organs, no matter how respectable it is. That body, which is called 'a Jewish community abroad' not only is defined vaguely but also leaves a great deal more vague that clear with regard to the qualifications and authority of those who conduct the conversion processes on its behalf. This issue has also troubled this court in the past, and this also found expression in the remarks of Vice-President M. Elon in HCJ 264/87 *Federation of Sefaradim Torah Guardians — SHAS Movement v. Director of Population Administration, Ministry of Interior* [11], at p. 735:

> 'What is the meaning of the term *any Jewish community*? What is the law with regard to a *community* that is not identified with any of the three aforesaid branches? Is a minimal number of members required in a community that is not identified with one of the aforesaid branches, in order to regard it as "any Jewish community"? And how should the registration official behave when a document attesting to a conversion in such a community comes before him? This determination therefore attributes to the legislature a definition that lacks any objective-normative test, and it is a major principle of our law that so vague a definition should not be attributed to the legislature, especially when we are concerned with an issue like the issue before us, which is at the forefront of the constitutional law in our legal system.'

4. The state authority that supervises this sphere of granting a status in Israel is the Minister of the Interior. But the assumption is that the expertise of the personnel of this ministry is not in the field of the validity of conversion, and that they are also not allowed to address this matter. It follows that in order to provide a solution to the supervision and scrutiny that are required even according to my colleague's approach, it would appear that the state has no alternative but to avail itself of another party that has expertise in this regard.

For various reasons that need not be discussed here, there is a reluctance to turn in matters of conversion to the Rabbinical Court system. The State of

Israel was aware of this reluctance, as it was also aware of the outlooks of the various branches of Judaism on the question of conversion. Therefore, following the recommendations of the 'Neeman Commission,' which were adopted by the Government of Israel and the Knesset with an overwhelming majority, out of a desire to find a solution that would be common to and unite all the branches of Judaism, and thereby prevent a split among the Jewish people, it was decided to establish an institute in which those who wished to do so could engage in intensive Jewish studies as one of the stages leading to conversion. Moreover, it was also decided to establish an independent system of religious courts for conversion, which would be headed by Rabbi Drukman, and whose purpose would be to facilitate conversion in so far as this is possible.

From the respondents' statement of 17 November 2004 it can be seen (see para. 9) that 'since Rabbi Drukman began to exercise his powers as the head of the conversion system, from September 2004 until today, approximately 700 conversion certificates were signed by him.' In my opinion, this is a statistic of some significance, that can indicate a material change in so far as the approach of state authorities to conversions is concerned. This is also a worthy solution, that should be preferred especially in the case of persons who decided some time ago to make their homes not in a Jewish community abroad, but in the State of Israel, where they also completed their Jewish studies. But since there are also persons who decided to circumvent the conversion process in Israel, and to complete their conversion process during a visit abroad of a few days duration, I am of the opinion that the state has the right, if not the duty, to examine the validity of the conversion in view of its ramifications, not only from the viewpoint of the sincerity of the candidate for conversion, but also from the viewpoint of the qualifications and authority of the person carrying out the conversion. Here I see a need to emphasize that this approach was not intended to cause hardship to someone who really and truly wishes to join the Jewish people, and to make his home in the State of Israel. It was intended to protect essential interests of the state, and one of these interests is that the state should not lose the power to determine who will become its citizens.

5. With all due respect, I am of the opinion that this court has the tools to decide the question of the validity of the conversion, and therefore we are enjoined to find a state authority that has expertise in this field. Such an authority is the new state conversion system, which is capable of publishing, after extensive investigation, a list of Jewish communities abroad, so that after performing the conversion processes that they practise, there will be no question of the validity of the conversion. With regard to those persons who have undergone conversion proceedings in other 'unapproved' communities, they will be required to appear before some kind of 'examination committee' in Israel to examine their conversion. As long as the legislature has not said otherwise, it appears to me that this role can be discharged by the head of the conversion system or someone whom he appoints for this purpose, and one of the possibilities is to authorize for this purpose one of the Rabbinical Courts for conversion that already operate in Israel.

6. With regard to the petitioners before us, it is possible that their subjective sincerity to undergo a conversion is agreed by everyone. But the question of the standing of the foreign bodies that performed the conversion is still unanswered, and this is a question that in my opinion has not been addressed at all, or at least has not been addressed sufficiently. Therefore, were my opinion to be accepted, we would order that the cases of the petitioners should be addressed in the manner that I have set out at the end of para. 5 of my opinion.

Justice A. Grunis

1. A person, who is a citizen of another country, resides lawfully in Israel, either as a foreign worker or as a tourist. He undergoes in Israel a conversion course that is provided by a certain institution. At the end of the course, he goes to another country for several days and undergoes a conversion ceremony there. When he returns to Israel, he applies to receive citizenship by virtue of the Law of Return. According to the position of the majority justices, as stated in the opinion of my colleague, President A. Barak, the Minister of the Interior is obliged to grant their application. I am unable to agree with this position. My opinion, in brief, is as follows.

2. It has often been said that conversion, when associated with a right under the Law of Return, is not a private act (see, for example, *Pesero (Goldstein) v. Minister of Interior* [9], at p. 746). One cannot compare someone who undergoes a conversion for the purpose of the Law of Return to someone who lives in a foreign country and undergoes there a conversion process for the purpose of joining the Jewish people, which is unrelated to immigration to Israel. Section 2(a) of the Citizenship Law, 5712-1952 (hereafter — the Citizenship Law) tells us that 'Every immigrant under the Law of Return, 5710-1950, shall become an Israeli citizen, by virtue of the right of return…'. This provision is what creates the public significance of conversion for the purpose of the right of return. The convert is entitled to Israeli citizenship on an immediate basis. His position is completely different from that of an individual who is interested in becoming a naturalized Israeli citizen. The latter must comply with various conditions, including, *inter alia*, staying in Israel for three years out of a period of five years that preceded the date of filing the application to receive Israeli citizenship (s. 5(a)(2) of the Citizenship Law). The special and unique character of the State of Israel as the state of the Jewish people and its founding a few years after the Holocaust in Europe are what led to the enactment of the Law of Return, of which it has been said, rightly, by President Barak that in essence it is the most basic of the laws of the state, even though it is not a Basic Law (para. 18 of the decision given in this case on 31 May 2004). The easy and unsupervisable method whereby it is possible to obtain citizenship by virtue of the right of return in view of the position of the majority justices is inconsistent with the special significance of joining the Jewish people and obtaining citizenship by virtue of the right of return. The requirement that the state imposed for recognizing conversion of the kind that the petitioners underwent is reasonable and very much consistent, in my opinion, with the public ramifications of the right of return and the subsequent right to citizenship.

3. The present case is dramatically different from the cases that were considered in the past with regard to registration in the Population Register of individuals who underwent conversions abroad. Since the judgment in the case of *Schlesinger v. Minister of Interior* [10], the court has on countless occasions reiterated that registration in the register is for statistical purposes

only and has no other significance. It was therefore held that a document testifying to a conversion in a Jewish community outside Israel was sufficient for the registration official to register the applicant as a Jew in the Population Register (*Federation of Sefaradim Torah Guardians — SHAS Movement v. Director of Population Administration, Ministry of Interior* [11]). Later it was also held that it did not matter at all whether the person applying for registration belonged to the community in which he underwent a conversion or —

> '… whether he was a passer-by that stopped briefly for the purposes of conversion only, or not. The sole criterion… is that a conversion ceremony was held in accordance with the accepted practice of that Jewish community' (*Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1], at pp. 750-751).

But now the majority opinion is leading to a position in which a passer-by who stops briefly for the purposes of conversion only is entitled to receive Israeli citizenship by virtue of the right of return. In *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1] my colleague President A. Barak wrote that 'registration under the Population Registry Law is one thing, and a status under the Law of Return quite another' (*ibid.* [1], at p. 745). Following the opinion of the majority justices, the distinction between conversion for the purposes of registration, with its statistical significance, and conversion for the purposes of the Law of Return, with its far-reaching public significance, has been cancelled. Someone who is in Israel can now go abroad for a few days, undergo a conversion ceremony, return to Israel and become a new immigrant who is entitled to citizenship and to various benefits that derive from his new status (naturally in addition to his registration at the Population Registry as a Jew).

4. I am prepared to accept that the petitioners are sincere in their intention to join the Jewish people and in their desire to become citizens of the state by virtue of the right of return. But the decision cannot and should not be made on the basis of the sincerity of specific petitioners. The court should determine a general test that can be implemented in order to prevent

conversion merely for the sake of appearances. The majority opinion is likely to lead to serious consequences and the development of undesirable phenomena. An opening has been made to allow Israeli citizenship to be obtained easily — perhaps too easily — without it being possible to examine thoroughly the conversion of an individual who applies for citizenship by virtue of the right of return. The many difficulties that are placed in the path of those persons such as the petitioners, who wish to become a part of the Jewish people and citizens of the state, but do not wish or are unable to undergo conversion in Israel, do not justify the making of a large opening for the abuse of citizenship by virtue of the right of return. The remedy proposed in the majority opinion for these cases is likely to lead, in my opinion, to more serious results that the malady that it was intended to cure. As I have said, the condition imposed, namely joining the Jewish community abroad as a condition for recognizing a conversion that is conducted in that community, is in my opinion a reasonable and proper condition. I have not found any defect in imposing this condition that should lead us to say that we should intervene in the discretion of the Minister of the Interior.

5. The approach of the majority justices recognizes *de facto* that the state and its various organs can relinquish their powers and authority and that it is no longer able to supervise the process of obtaining citizenship by virtue of the Law of Return. Around the world there are hundreds and thousands of Jewish communities. The majority opinion gives those communities a 'key to enter Israel' (in the words of my colleague, Vice-President M. Cheshin, in para. 7 of his opinion). Because of the large number of the Jewish communities and because of the great variety thereof, there will be no practical possibility of seriously supervising the conversion ceremonies. The belief that it will be possible to determine guidelines and criteria on the question of what is a recognized Jewish community is mistaken. The possibility of receiving 'instant' citizenship by virtue of the right of return easily and without commitment is likely to lead to the occurrence of problematic and unseemly phenomena in this regard; those who understand will know to what I refer. I also cannot see clearly how it is possible to recognize the conversions of the petitioners before us, even according to the approach of the majority justices. No criteria have yet been determined on the

question of what is a recognized Jewish community and therefore how we can know that the petitioners underwent a conversion in such a community? I find this very questionable. Were the petitioners' applications to be examined in accordance with the proper criterion that the state proposes — joining a Jewish community as a condition for recognizing a conversion that was carried out in that community — the necessary outcome would be that the petitions would be denied. According to my approach, a visitor who stays briefly in a Jewish community abroad cannot become an Israeli citizen by means of a 'quick' conversion.

6. Were my opinion accepted, we would cancel the order *nisi* and deny the petitions.

Justice Emeritus J. Türkel

1. The time of decision has arrived. Now we are no longer considering the 'periphery' of the term Jew, but we are about to shape 'its real content' (see my remarks in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1], at pp. 762-768); and here I cannot join with my esteemed colleague President A. Barak and with my esteemed colleagues Vice-President Emeritus E. Mazza, Vice-President M. Cheshin and Justices D. Beinisch, E. Rivlin, M. Naor and E. Hayut, who have agreed with his opinion.

2. Conversion is a process that converts a non-Jew into a Jew. It is an 'internal' spiritual process in which, so to speak, the non-Jewish identity of the convert is deleted and he acquires a new Jewish identity. It is also an 'external' process — involving study, actions and a ceremony — which accompanies the internal spiritual process, supports it, strengthens it and testifies to the fact that the convert intends, with all his heart and with all his soul, to be a Jew. Ultimately, when the two processes are completed, the convert stands beneath the wings of the Divine presence, and he becomes a member of the House of Israel, the Jewish people, without any difference whatsoever between him and a Jew who was conceived and born as a Jew. The two processes, the internal and the external, are interrelated and interdependent, and one is inconceivable without the other. This leads to the

duty to ensure the fulfilment of all the stages of the external process, without concessions or compromises, since without these there are grounds for concern that the internal process is not a sincere one.

It is beneficial here to cite the remarks of our master Maimonides in his outstanding letter to Obadiah the convert, on the subject of converts, where he says the following:

> 'Therefore anyone who converts, until the end of time, and anyone who makes the name of the Holy One, blessed be He, unique, as is written in the Torah, is one of the disciples of Abraham our father, and a member of his household, and it is he that has returned him to the correct path. Just as he returned the members of his generation to the correct path, with his words and his teaching, so he returned all those who will in the future convert, by means of the testament that he bequeathed to his descendants and to the members of his household. *Thus Abraham our father is the father of all his righteous descendants that follow in his footsteps, and the father of his disciples, who are every person that converts*.
>
> …
>
> And know that our ancestors who left Egypt were mostly worshippers of false gods in Egypt, and they intermingled with the nations and learned from their actions, until the Holy One, blessed be He, sent Moses our teacher and the teacher of all the prophets, and separated us from the nations, and brought us under the wings of His presence, equally for us and for all converts, and gave us one law. And you should not disparage your lineage, for if we are related to Abraham, Isaac and Jacob, you are related to He who spoke and the world came into being' (emphasis supplied) (Maimonides, *Letter to Obadiah the Convert* [44]).

3. Should the court decide the question of whether a specific non-Jew has become a Jew? Should the court rule on the question of whether a convert

has undergone the internal process and the external process? Should the court rule on the question of who is competent to perform conversions?

In *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1], which considered — in my opinion, only *prima facie* — the request of the petitioners in that case to be registered in the Population Registry as Jews, I expressed my opinion, *inter alia*, as follows:

> 'The question of who is a "convert" — which involves the question of who is a Jew — is of very great significance, the subject of great public controversy; it touches the raw nerves and basic values of large parts of the public in the State of Israel and the Jewish people in the Diaspora, and from the earliest days of the state it has been on the public agenda (see, *inter alia*, the survey of Justice M. Landau in *Shalit v. Minister of Interior* [3], at pp. 522-525). I am of the opinion that we can no longer avoid a definition, which should not be made in a decision of the court, but as a result of a thorough study of all the opinions and beliefs of all the sectors of the public, and with a joint effort to reach a broad consensus' (*ibid*. [1], at p. 765).

I went on to say in that case:

> 'It should be emphasized that in so doing I am not expressing an opinion on the substantive content of the expression "who converted" in the Law of Return, or on the question of who is a Jew, or on the question of who is competent to perform conversions. All that I am saying is that the decision should no longer be brought to the door of the court and that the solution should be found outside the courtroom' (*ibid*. [1], at p. 768).

The very important questions that have been brought before the court lie entirely within the spiritual realm, the sphere of religion and belief, and they are national and historical concerns. These questions have no legal solution and they cannot be resolved by a judicial determination. We are not required to decide them merely because the petitioners chose to seek our decision in the way they did, rather than choosing a different path. Therefore, were my opinion accepted, we would refrain from making a decision, and we would

declare, as I proposed in *Naamat, Working and Volunteer Women's Movement v. Minister of Interior* [1], that the decision ought to be made as 'a result of a thorough study of all the opinions and beliefs of all the sectors of the public, and with a joint effort to reach a broad consensus.' We would also declare that the Knesset should determine in statute the forum that will define the rules for conversion outside Israel that will be recognized in Israel, and will determine whether the conversion of an individual abroad is valid. In this respect, I agree with the proposal of my esteemed colleague Justice E.E. Levy, that the new state conversion system should be authorized for these purposes, as stated in para. 5 of his opinion.

3. For these reasons, I would cancel the orders *nisi* and deny the petitions.

Petition HCJ 2859/99 granted by majority opinion (President Barak, Vice-President Emeritus Mazza, Vice-President Cheshin and Justices Beinisch, Rivlin, Naor and Hayut), Justice Emeritus Türkel and Justices Procaccia, Levy and Grunis dissenting.

Petition HCJ 2597/99 became redundant since the petitioner received citizenship while it was pending, and the petition was therefore dismissed.

20 Adar II 5765.
31 March 2005.