HCJ 7625/06

HCJ 1594/11

HCJ 1595/11

Before:	President M. Naor
	Deputy President E. Rubinstein
	Justice S. Joubran
	Justice E. Hayut
	Justice H. Melcer
	Justice Y. Danziger
	Justice N. Hendel
	Justice U. Vogelman
	Justice Y. Amit
Petitioner in HCJ 7625/06:	**Martina Rogachova**
Petitioners in HCJ 1594/11:	**1. Shawn Patrick Murphy**
	2. Rachel Zipporah Alter
Petitioner in HCJ 1595/11:	**Viviana del Sisana Cabarera Martinez**

v.

Respondents in HCJ 7625/06:	**1. Ministry of the Interior** **2. Population Authority** **3. Conversion Committee** **– Prime Minister's Office** **4. Immigration Authority**
Respondents in HCJ 1594/11 and HCJ 1595/11	**1. Ministry of the Interior** **2. Conversion Committee** **– Prime Minister's Office**
Requesting to join as Respondents:	**1. World Union for Progressive Judaism** **2. Movement for Progressive Judaism in Israel** **3. Masorti Movement in Israel**
Requesting to join as "Amicus Curiae**"**:	**ITIM Organization**

Objection to an *Order Nisi*

Dates of the hearings: 23 Adar 5773 (March 5, 2013)

13 Tammuz 5755 (June 30, 2015

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1594/11	Borochov
and the Petitioner in HCJ 1595/11	
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Israel Supreme Court cases cited

[1] HCJ 58/68 *Shalit v. Minister of the Interior* [1970] IsrSC 23(2) 477

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

[3] HCJ 5070/95 *Naamat v. Minister of the Interior* [2002] IsrSC 56(2) 721

[4] HCJ 2597/99 *Rodriguez-Tushbeim v. Minister of the Interior* [2005] IsrSC 58(5) 412 (May 31,.2004).

[5] HCJ 2859/99 *Makrina v. Minister of the Interior* [2005] IsrSC 59(6) 721[http://versa.cardozo.yu.edu/opinions/tais-rodriguez-tushbeim-v-minister-interior]

[6] HCJ 142/62 *Funk-Schlesinger v. Minister of the Interior* [1963] IsrSC 17 225

[7] HCJ 264/87 *Hitahdut Hasefaradim Shomrei Torah – Shas Movement v. Director of the Population Administration in the Ministry of the Interior* [1989] IsrSC 43(2) 723

[8] HCJ 265/89 *Beresford v. Minister of the Interior* [1989] IsrSC 43(4) 793

[9] HCJ 3648/97 *Stamka v. Minister of the Interior* [1999] IsrSC 53(2) 728 [http://versa.cardozo.yu.edu/opinions/stamka-v-minister-interior]

[10] HCJ 1188/10 *Pozarsky v. Ministry of the Interior* (31.7.2013)

[11] HCJ 11585/05 *Movement for Progressive Judaism in Israel v. Ministry for Absorption of Immigration* (May 19, 2009).

[12] HCJ 8091/14 *Hamoked Center for the Defence of the Individual v. Minister of Defense* (Dec. 31, 2014).

[13] FH 23/60 *Balan v. Executors of the Estate of Raymond Litwinsky (dec.),* [1961] IsrSC 15(1) 71.

[14] HCJ 3477/95 *Ben Attiah v. Minister of Education and Culture* [1976] IsrSC 49(5) 1.

[15] HCJ 6624/06 *Pashko v. Ministry of the Interior* (Aug. 13, 2015).

[16] HCJ 4504/05 *Skaborchov b. Minister for Internal Security* (Nov. 4, 2009).

[17] AAA 5875/10 *Masorti Movement v. Be'er Sheva Religious Council* (Dec. 11, 2016) [http://versa.cardozo.yu.edu/opinions/conservative-movement-v-beer-sheva-religious-council].

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

[19] HCJ 5079/08 *A. v. Rabbi Sherman* (April 25, 2012)

[20] HCJ 5444/13 *Erez v. Special Conversion Courts* (2014)

[21] HCJ 10226/08 *Zevidovsky v. Minister of the Interior* (Aug. 2, 2010).

[22] HCJ 3994/12 *Asphaho v. Minister of Justice* (June 15, 2015).

United States courts cases cited

[23] *Ran-Dav's County Kosher, Inc. v. State,* 129 N.J. 141 (1992).

[24] *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415 (2d Cir.2002).

Israeli Legislation cited

Basic Law: Human Dignity and Liberty.

Basic Law: The Government, sec. 32.

Citizenship Law, 5712-1952, sec. 2(a).

Defense Services Law [Consolidated Version] 5746-1986, sec. 22A.

Law of Return, 5710-1950, general, and secs. 1, 2(a), 3(a), 4A, 4B.

Marriage and Divorce (Registration) Ordinance, sec. 2A.

Nationality Law, 5712-1942, sec. 2(a).

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

Prohibition on Kashrut Fraud Law, 5743-1983, sec. 2(a)(2).

Religious Community (Conversion) Ordinance

Abstract

The Petitioners arrived in Israel from different places throughout the world, and while in Israel, underwent the conversion in an Orthodox community that did not operate within the framework of the state conversion system. The question that must be decided is whether these petitioners should be recognized as Jews for the purpose of the Law of Return. The Respondents argue that from an interpretative point of view, the Law of Return was not intended to apply to a person who converted while already living in Israel, and that a conversion performed in Israel should not be recognized unless it was conducted within the framework of the state conversion system.

The Supreme Court, sitting as the High Court of Justice, ruled:

President Naor: The question of the application of the Law of Return to converts who were living in Israel prior to their conversion has already been addressed in *Rodriguez-Tushbeim v. Minister of the Interior*. The fundamental decision in that case still holds: the Law of Return applies to a person who came to Israel, and converted while living lawfully in Israel. There is no justification for departing from that rule.

The Respondents' approach lacks any support in the language of the Law. In this regard, we cannot accept the argument that the provision of sec. 3(a) of the Law of Return, establishing that "A Jew who has come to Israel and subsequent to his arrival has expressed his desire to settle in Israel may, while still in Israel, receive an *oleh's* certificate" represents a negative arrangement in regard to a person who comes to Israel when he is not a Jew. The conclusion required by purposive interpretation of the Law of Return is that it is, in fact, a positive arrangement.

The approach of the Respondents is incompatible with the purpose underlying the Law, i.e., immigration and the Ingathering of the Exiles. In addition, this approach has

consequences that are not egalitarian, and for this reason, too, it cannot be accepted. As has been held, it would be unlawful discrimination for one person to be considered an *oleh* because he converted and later settled in Israel, while another person who wished to settle in Israel would not considered an *oleh* only because his conversion occurred after he settled in Israel. Both converts joined the Jewish people and settled in the State of Israel; they are both children returning to their homeland. The difference in the "timetable" of the conversion and the immigration is irrelevant for the purposes of the Law, and the Law should not be interpreted in such a way as to lead to such unlawful discrimination.

True, the purpose of encouraging immigration is not the only purpose that the Law of Return was designed to realize. Underlying the Law is also an objective purpose that concerns abuse of the right to acquire status by virtue of Return. However, it is doubtful whether the approach of the Respondents realizes this purpose, and in any case, it does not constitute the only or the optimal solution to the problem. First, concern about abuse of the Law does not exist only with respect to those converting in Israel. Second, concern about abuse of the Law can be dealt with by increasing the oversight and supervision of a person who wishes to realize his right to status by virtue of Return, such that conversion that is not sincere will not be recognized. This, however, will not affect the rights of sincere converts.

The requirement that the arrangements in the Law of Return be invoked in good faith and without abuse justifies limiting the application of the Law only to a person who was living in Israel lawfully at the time of his conversion. The Law of Return will not apply to a person who underwent conversion while he was knowingly living in Israel unlawfully. For the purpose of the application of the Law of Return, the type of visa

held by the convert is irrelevant. If a person was in Israel lawfully at the time of his conversion – the Law applies to him.

We cannot accept the Respondents' position that the concept of conversion under the Law of Return refers only to conversion in the framework of the state conversion system. First, this approach has no support in the language of sec. 4B. True, the language of the Law inserts almost no content into the concept of conversion. However, sec. 4B must be interpreted in light of the Law in its entirety. Against the backdrop of the context of the provisions of the Law of Return, it may be said that conversion in the context of this Law is a public-civil act. Hence, a certain degree of oversight of the recognition of conversion is necessary. However, the language of the Law does not specify the nature of that oversight and the conditions under which conversion will be recognized. It certainly does not necessitate that oversight be achieved by means of recognizing only conversion by the state conversion system.

Examination of the purpose of the Law also indicates that the Respondents' approach must be rejected. The purpose of sec. 4B of the Law is to encourage every Jew to immigrate to Israel and to settle in the country. This is so whether he is a Jew from birth or whether he has chosen to affiliate to the Jewish people through conversion. In this, the provision comports with the general purpose of the Law of Return, which is, as stated, the Ingathering of the Exiles. Let there be no mistake: in addition to encouraging immigration, the Law of Return also reflects the purpose of establishing the unity of the Jewish people in Israel and abroad. The interpretation proposed by the Respondents does not realize these purposes. It significantly limits the right of immigration and does not attribute weight to the variety of Jewish communities that exist, and it therefore cannot be accepted.

Make no mistake: the approach whereby the expression "has become converted" refers to any person whom three Jews have declared to have been converted by them is likewise unacceptable. It is clear from the purpose of the Law that the expression "has become converted" in the Law of Return embraces an objective test of public recognition of the process of the conversion. The criterion that should be adopted is that which was adopted for the purpose of recognition of a conversion conducted abroad: the criterion of the recognized Jewish community. This criterion successfully combines realization of the purpose of encouraging immigration and the unity of the Jewish people on the one hand, and oversight of the public aspect of conversion on the other. It is also in keeping with the general, objective purpose underlying the Law of Return, which is concerned with ensuring egalitarian outcomes.

Therefore, the term "converted" in the Law of Return must be interpreted as conversion under the auspices of a recognized Jewish community, in accordance with its established criteria. As has been ruled, "recognized Jewish community" means an established, active community with a common, known Jewish identity, which has fixed frameworks of communal administration and which belongs to one of the streams recognized by the international Jewish community. The Orthodox communities in which the Petitioners were converted comply with the definition of recognized communities, as they are established and have a common, known Jewish identity.

The state conversion system was established in the framework of the Government's residual authority. It is a well-known principle that residual authority cannot serve as the basis for violating human rights. Furthermore, residual authority does not include the authority to determine primary arrangements. Recognition of conversion for the purpose of the Law of Return is a primary arrangement. This arrangement should be

made by the legislature and not by the administration. For these reasons, it was not found to be within the residual power of the Government to determine that only conversion within the framework of the state conversion system is conversion according to the Law of Return.

Oversight of the sincerity of conversion is not exhausted by the one and only possibility offered by the Respondents, which proposes the recognition of state conversion alone. The Respondents have multiple tools for addressing the concern of abuse, by way of individual, careful examination of the sincerity of the conversion, and by attributing weight to the objective facts surrounding the process of conversion, including the circumstances of the convert's entry into Israel and the type of visa on which he entered. In any case, the requirement that the conversion be conducted in a recognized Jewish community allays, to a great extent, concern about abuse.

On the said basis, the petition of the Petitioner in HCJ 7625/06 is denied. The other petitions are granted, and the petitioner in HCJ 1594/11 and the petitioner in HCJ 1595/11 were held to be Jews for the purpose of the Law of Return.

Justices Danziger, Vogelman, Joubran and Hayut concurred.

Justice Melcer concurred, adding: In administrative law, abuse of a right on the part of others in the past, or a concern about such abuse in the future, does not justify the withholding of a right from a person seeking it in good faith. Refusal of the authority in such a case is tainted by unreasonableness and non-proportionality. This principle applies even more strongly in constitutional law, when what is involved are fundamental constitutional rights.

The Right of Return is a fundamental constitutional right that derives from the Jewish character of Israel, which is defined as a Jewish and democratic state. As such, this

right is granted to every Jew. Just as the Law of Return does not present a monolithic view of every person born of a Jewish mother, so there cannot be a monolithic view of every person who has converted.

Justice Amit tended towards the minority opinion in *Rodriguez-Tushbeim*, according to which the Law of Return applies to a person who was Jewish before he came to Israel. However, since this extremely important decision was decided by a panel of eleven justices, Justice Amit concedes and does not find cause to deviate from that ruling. He concurs in the conclusion whereby recognition of conversion should not be confined to the state system alone.

Deputy President Rubinstein: The difficulty with the position of the President, at this time, lies in the fact that we are lending a hand to discord on the subject of conversion – an important subject in the Israeli experience as a Jewish and democratic state. Thus, recognition that grants status should come from the state, and it should be done in a manner that is friendly to the convert and as broad-minded as possible so that its outcome will apply to all Jewry. This is not something unattainable. The decision proposed by the President should be accepted with a deferment for 18 months, during which the Knesset will be able to establish by law a state conversion system that is harmonious, appropriate and fair both regarding the halakhah and respecting all sectors of our nation, at some level of centralization or decentralization, for otherwise, the responsibility will be borne by the political system.

Justice Hendel: "Conversion" is at base a religious term. Analysis of a concept with clearly religious roots requires addressing the halakhic position. To be clear, the roots of the institution of conversion are planted in the two-pronged philosophic and halakhic legacy of Jewish law, and at the same time, in a legal process. Interpretation of the term "has become converted" in the Law is required in order to give expression

to these elements, while scrupulously preserving the frameworks, including an understanding of our role as the Supreme Court and not as a religious *beth din* [rabbinical tribunal].

The language and purpose of the Law do not entrench a position that would comprehensively negate the status of conversions conducted by private Orthodox religious tribunals. On the contrary: from the point of view of the purpose of the Law of Return, it would appear to be more correct to expand the possibilities of conversion – while giving expression to different halakhic approaches, and to rabbis with different outlooks who fall within the Orthodox framework. Creating over-centralization and granting an absolute monopoly to the Chief Rabbinate over the institution of conversion contradict the main purpose of the Law of Return, which is to encourage immigration. As such, the term "has become converted" must be interpreted broadly, in a way that includes every Orthodox conversion that was conducted in a *beth din* composed of rabbinic judges of stature.

This outcome is necessitated not only by the specific purpose of the Law of Return, but also by its general objective purpose, as derived from the basic principles of the system. There are substantive disputes even in the world of halakhah, certainly on the issue of conversion. Preferring a particular halakhic approach, while dismissing other approaches that exist in the halakhic-Orthodox arena is not an outcome that can be defended in the present legal situation. The state was not authorized to make such distinctions. Neither is this consistent with the values of the State of Israel as a Jewish and democratic state. Jewish, because the approach of the halakhah throughout the generations has supported pluralism in conversion proceedings, and democratic, due to the wrong in preferring the positions of one Orthodox group over those of another, in violation of equality and of the rights of those entitled to Return.

JUDGMENT

President M. Naor

The Petitioners before us arrived in Israel from different places around the world, and they underwent a process of conversion in an Orthodox community in Israel which did not operate within the framework of the state conversion system. The main question arising before us is whether they should be recognized as Jews for the purposes of the Law of Return, 5710-1950.

The Facts Pertaining to the Case

1. The petitioner in HCJ 7625/06, Martina Rogachova (hereinafter: Martina), is a Czech citizen. There, according to her, she drew close to Judaism. In 2001, Martina arrived in Israel as a tourist. Towards the end of 2001, the tourist visa on which she had entered Israel expired, but she remained in Israel until the end of 2004, and then returned to the Czech Republic. In the course of the period in which she remained in Israel illegally, Martina underwent an Orthodox conversion in the rabbinical tribunal [*beth din*; pl. *batei din*] of Rabbi Karelitz in Bnei Brak, which is not part of the state conversion system. In 2005, and after many upheavals, she was permitted to reenter Israel, and she embarked on a process of acquiring status by virtue of her relationship with an Israeli citizen. Subsequently, after separating from her Israeli partner, Martina submitted a request to the state conversion system to "receive a certificate of conversion of religion" in view of the conversion that she had undergone, hoping to acquire entitlement to status by virtue of the Law of Return. When her application was rejected, she submitted the present petition. To complete the picture, it should be

noted that while her petition was pending, Martina left Israel for the Czech Republic several times. During one of her visits in the Czech Republic, she became pregnant by a Czech national, and their son was born there in April, 2014.

2. Petitioner no. 1 in HCJ 1594/11, Shawn Patrick Murphy (hereinafter: Shawn), is a Canadian citizen who entered Israel for the first time in 2006 on a tourist visa, which he extended from time to time. He studied in Israel for about a year in preparation for an Orthodox conversion, which was conducted at the beginning of 2007 in the *beth din* of Rabbi Frank in Mea Shearim, which is not part of the state conversion system. In 2010, Shawn applied for recognition of status under the Law of Return, but his application was rejected. Hence the petition. Eventually, Shawn received a permit for temporary residence in Israel (an A/5 visa), by virtue of his marriage to Petitioner no. 2, who is an Israeli citizen.

3. The Petitioner in HCJ 1595/11, Viviana del Sisana Cabarera Martinez (hereinafter: Viviana), a native of Ecuador, arrived in Israel in 1999 with an Israeli partner. After the expiration of the tourist visa on which she had entered the country, Viviana remained in Israel illegally for several years. In the course of this period, two deportation orders were issued against her. In 2005, she returned to Israel following an application for status that had been submitted on the basis of her relationship with her Israeli partner, and eventually she received a temporary resident's permit (an A/5 visa), which expired in 2010. In the course of 2009, after a period of study and preparation she converted – she too did so in the *beth din* of Rabbi Karelitz. Later that year, she submitted an application to the state conversion system to begin a process of state conversion. A year later, before the state conversion system had decided on her application, Viviana applied to the Ministry of the Interior to be granted temporary status until her conversion was arranged. At that time, she noted that she had

separated from her Israeli partner. Her observance of an Orthodox lifestyle was, she claimed, the main reason for the separation. On January 3, 2011, her application for status was rejected; hence the petition. After the petition was submitted, on April 4, 2011, her application to begin a state conversion process was also rejected.

4. The Petitioners in this case are different from one another. Many and varied reasons led them to Israel, and the nature of their stay in Israel is different in each case. However, the question underlying these proceedings is the same: should the conversion that each of the petitioners has undergone – Orthodox conversion that was not conducted in the framework of the state conversion system – be recognized for the purposes of the Law of Return?

The Proceedings

5. A great amount of time has elapsed since the first petition was submitted. The reason for the delay lies in the attempts to find an out-of-court solution for the problem that the petitions raised. In this framework, attempts were made to solve the individual problems presented by the Petitioners (see, e.g., the decision of January 19,2009 (concerning Martina); the decision of May 2, 2012 (concerning Shawn)). These attempts, however, were unsuccessful. Subsequently we also postponed the hearing of the petitions several times with a view to allowing the Respondents to find a comprehensive solution to the problem. Thus, on March 5, 2012, we decided as follows:

> In our opinion, the issues that were raised in the three petitions before us, and in other petitions submitted by the those requesting to join as respondents (the World Union of Progressive Judaism, the Movement for Progressive

> Judaism and the Masorti Movement in Israel), ought to be brought before the Government that will be formed.

On July7, 2013 we granted the Respondents' request to revisit the matter and update it, after we were informed that –

> [I]n two meetings that took place in his office, the incoming Minister of the Interior was presented with the issues that arise in the three petitions … and in other petitions that were submitted by those requesting to join. These issues were also raised before the Deputy Minister for Religious Services, in a meeting that was held in his office.
>
> At present, the Minister of the Interior intends to bring up the matter before the relevant bodies in the Israeli Government (Notice on behalf of the Respondents of July 4, 2013).

On January 23, 2014, we once again granted the Respondents' request to consider and update the matter, after "exhaustion" of the presentation of the issues before the Government. Finally, on February 13, 2014, the Respondents informed us that "a meeting had taken place on this subject, with the participation of the Minister of the Interior, the Deputy Minister for Religious Services, the Cabinet Secretary and other representatives of the state conversion system, the Ministry of the Interior and the State Attorney's Office" in which it was concluded that the position of the State remains unchanged, but "one must await developments" in relation to a private member's bill submitted on the matter of conversion (Amendment to the Religious Community (Conversion) Ordinance (Conversion by the Rabbi of a Town and a Local Council), 5773-2013). The legislative process of the said bill was not crowned with success.

There is, therefore, no avoiding a judicial decision. An order nisi was issued in each of the proceedings before us, and on March 5, 2013 and June 30, 2015, we heard the oral arguments of the parties.

Pleadings of the Parties

6. The Petitioners' argument was that it is sufficient to convert through a recognized Jewish community – in Israel or abroad – in order to entitle a person to status by virtue of the Law of Return. A similar position was presented by the organization seeking to join as amicus curiae. In the latter's view, once a halakhic authority has decided on the validity of a conversion, the Ministry of the Interior cannot second-guess it. ITIM also argued that granting status only to a person who has converted through the state conversion system disproportionately violates the right of freedom of religion of those converting in private conversions in Israel, as well as their right to equality (both in relation to a person who converted in Israel through a state conversion, and in relation to a person who converted abroad). ITIM added that since conversion is an act that determines a person's status, it must be regarded as a "primary arrangement" that the Government cannot regulate by means of the state conversion system.

7. The Respondents, on the other hand, argued that status should not be granted by virtue of the Law of Return to a person who converted in Israel outside the framework of the state conversion system, for two reasons: first, they argued that from a interpretative point of view, the Law of Return was not intended to apply to a person who is already resident in the State of Israel; secondly, it was argued that in view of the legal ramifications of conversion, the term "who converted" in sec. 4B of the Law

of Return must be understood as "under the aegis of the state, under state supervision." In other words, for the purpose of granting a person status by virtue of the Law of Return, only conversion undergone in the special conversion tribunals established in the framework of the state conversion system will be recognized. This position, so stated the Respondents repeatedly, is based on a concern about frivolous requests for conversion, the only purpose of which is to acquire status in Israel. In their view, due to the great importance of oversight on the part of the state over applications for status by virtue of the Law of Return, which this Court has discussed more than once, it is not possible to recognize conversion by "any three people" – in the words of counsel for the state (see, e.g., pp. 5-6 of the protocol of the hearing of June 30, 2015) – but only conversion in the framework of the state conversion system.

8. In addition, the position of the World Union of Progressive Judaism, the Movement for Progressive Judaism in Israel and the Masorti Movement, which requested to be joined as respondents, was submitted to us. Their main argument was that the decision in the petitions before us must be confined to the question of the recognition of private Orthodox conversion in Israel, and should not extend to the question of recognition of private conversion of the Masorti (Conservative) Movement and the Reform Movement – an issue that is the subject of petitions submitted by those requesting to be joined, and which are still pending (HCJ 11013/05 and related petitions).

9. I will already remark at this stage that, in my opinion, we do not need to decide on the requests to be joined. We have read the arguments of those requesting to be joined, and we have also heard their oral arguments. It is, of course, clear that our decision will relate only to the petitions before us. The issues that arise in the petitions that are pending (HCJ 11013/05 and related petitions) will be decided there.

The Normative Framework

10. As stated, the question confronting us is whether, following the conversions that they underwent, the Petitioners should be recognized as Jews for the purpose of the Law of Return. Underlying the matter, therefore, is the interpretation of the Law of Return, which is one of the most important laws in the State of Israel. The Law of Return is a major expression of this being a Jewish state, in addition to a democratic state. At its core is immigration to Israel:

> *Right of Aliyah* 1. Every Jew has the right to come to this country as an *oleh* [immigrant].

The Law further provides that *aliya* [immigration to Israel] will be by virtue of an *oleh*'s visa (see section 2(a)). An *oleh*'s visa shall be granted to every Jew who has expressed his desire to settle in Israel, unless the Minister of the Interior is satisfied that the applicant is engaged in activity directed against the Jewish people, or is likely to endanger public health or the security of the state (sec. 2(b)). The arrangement in the Law of Return is complemented by sec. 2(a) of the Nationality Law, 5712-1952, which states:

> *Nationality by virtue of Return* 2(a) Every *oleh* under the Law of Return 5710-1950 shall become an Israeli national by virtue of Return […].

11. The right of *aliyah* – and by virtue thereof, the right of nationality – is granted to every "Jew". A definition of this concept was added to the Law of Return in 1970, in the framework of Amendment no. 2 to the Law. This Amendment was passed following the judgment of this Court in HCJ 58/68 *Shalit v. Minister of the Interior*

[1], according to which a child who was born to a Jewish father and a mother who was not Jewish is to be registered in the Population Registry as a "Jew", even though this child is not Jewish according to Jewish law. Since the passage of Amendment no. 2, the Law of Return has not been amended. The term "Jew" is defined thus in the Law of Return:

> *Definition* 4B. For the purposes of this Law, "Jew" means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.

In our context, none of the petitioners was "born of a Jewish mother." Neither was it argued here that any of them is "a member of another religion." Thus, we must address the interpretation of the term, "has become converted."

12. This is not the first time that this Court has addressed the question of the interpretation of the term "has become converted" in the Law of Return (see: HCJ 1031/93 *Pessaro (Goldstein) v. Minister of the Interior* [2]; HCJ 5070/95 *Naamat v. Minister of the Interior* [3]; HCJ 2597/99 *Rodriguez-Tushbeim v. Minister of the Interior* [4] (decision of May 31, 2004); HCJ 2859/99 *Makrina v. Minister of the Interior* [5]). In the various proceedings before this Court, the consistent position of the state has been that recognition of conversions for the purpose of the Law of Return should be limited. As will be explained below, this was based on a number of different arguments, which were dismissed. I will discuss these proceedings in brief.

13. First, the state made the argument that to recognize conversion for the purpose of the Law of Return, the convert had to meet certain conditions stipulated in the Religious Community (Conversion) Ordinance (hereinafter: Conversion Ordinance).

This argument was dismissed by the Court in *Pessaro v. Minister of the Interior* [2] (*per* President (emeritus) M. Shamgar, Deputy President A. Barak and Justices E. Mazza, M. Cheshin, T. Strasburg-Cohen and D. Dorner concurring, as against the dissenting opinion of Justice Z.A. Tal). It was ruled that the Conversion Ordinance "applies only to subjects that are within the jurisdiction of the religious courts" (p. 690), and does not apply for the purposes of the Law of Return:

> All we are saying is that the Conversion Ordinance does not apply for the purpose of recognition of conversion under the Law of Return […]. Our ruling today is of a purely negative nature. We are determining the negative (the Conversion Ordinance does not apply). We are not determining the positive (the precise contents of the essence of conversion in Israel). As we have mentioned, the "positive" is likely to be determined explicitly and specifically by the legislature. At the same time – and as long as the Knesset has not had its say – we do not have a legal lacuna. A "positive" solution to the problem is found in the Law of Return, which defines who is a Jew. If the legislature does not say anything further on this, there will be no option but to come to a judicial determination on this point in accordance with the existing definition (*ibid.*, pp. 747-748).

14. Once the argument concerning the application of the Conversion Ordinance had been dismissed, the argument was raised that a conversion that is conducted in Israel constitutes an act of joining the Jewish religious community – a single religious community at the head of which stands the Chief Rabbinate – and therefore the conversion must have the consent of the Chief Rabbinate. This argument was rejected in the case of *Naamat v. Minister of the Interior* [3] (*per* President A. Barak, Deputy President S. Levin and Justices T. Orr, E. Mazza, M. Cheshin, T. Strasburg-Cohen, D.

Dorner, Y. Turkel, D. Beinisch and E. Rivlin concurring, as against the dissenting opinion of Justice I. Englard). In that matter it was ruled that the conception of the Jews as a single religious community reflects a "Mandatory-colonialist approach" (*ibid.*, p. 752). Israel, it was ruled, is not the state of a "Jewish community", but rather, the state of the Jewish people. Therefore, and as held in *Pessaro v. Minister of the Interior* [2], there is no need for the approval of the Chief Rabbinate for conversion undergone in Israel. It was also ruled that the connection between the convert and the community conducting the conversion is not important, and the convert is not required to join this community in order for the conversion to be recognized.

15. It should be clarified that the relief that was sought, both in *Pessaro v. Minister of the Interior* [2] and in *Naamat v. Minister of the Interior* [3], was registration of the petitioners as Jews in the Population Registry. For the purpose of the Population Registry, the term "Jew" is defined "in accordance with its meaning in section 4B of the Law of Return" (section 3A(b) of the Population Registry Law, 5725-1965). For this reason, the Court turned to the interpretation of the expression "has become converted" in the Law of Return. However, it issued its rulings in relation to the Population Registry, and not for the purpose of acquisition of status by virtue of the Law of Return. In the words of President A. Barak:

> As in the case of *Pessaro*, in our case, too, state oversight of the public aspect of conversion [with respect to status by virtue of Return – M.N.] – beyond the oversight of registration in the Registry – must be determined by the Knesset. As long as the Knesset has not expressed itself, we go back – insofar as registration in the Registry is concerned – to the authority of the

registration officer under the Population Registry Law (*Naamat v. Minister of the Interior* [3] at p. 753).

The extent of the authority of the registration officer was determined by this Court over 25 years ago, in the case of *Funk-Schlesinger* (HCJ 142/62 *Funk-Schlesinger v. Minister of the Interior* [6]), which has a firmly established place in the case law (see, e.g., HCJ 264/87 *Hitahdut Hasefaradim Shomrei Torah – Shas Movement v. Director of the Population Administration in the Ministry of the Interior* [7], 732; and see also: *Shalit v. Minister of the Interior* [1], at p. 507; *Pessaro v. Minister of the Interior* [2], at p. 674; for an in-depth discussion of the application of the ruling in *Funk-Schlesinger v. Minister of the Interior* [6], see: *Naamat v. Minister of the Interior* [3] at pp. 735-745). According to the case law, the role of the registration officer is purely statistical, and it is not within his authority to examine the validity of the conversion.

16. Additional arguments concerning the interpretation of the expression "who was converted" were raised in *Rodriguez-Tushbeim v. Minister of the Interior* [4]. That case dealt with petitioners who, while living lawfully in Israel, began their studies towards conversion, at the end of which they underwent a conversion ceremony in a Jewish community outside of Israel. The relief sought in that case was recognition of the petitioners as Jews for the purpose of status under the Law of Return (in addition to their registration as Jews in the Population Registry). The State's argument was that the Law of Return was never intended to apply to a person who came to Israel and converted during his stay, whether the conversion was conducted in Israel or abroad. This argument was dismissed in *Rodriguez-Tushbeim v. Minister of the Interior* [4] (*per* President A. Barak, Deputy President (emeritus) T. Orr, Deputy President E. Mazza and Justices M. Cheshin, D. Dorner, D Beinisch and E. Rivlin concurring, as against the dissenting opinion of Justices Y. Turkel, A. Procaccia, E. E. Levy and A.

Grunis). The rule that was settled in *Rodriguez-Toshbeim v. Minister of the Interior* [4] was that the Law of Return applies to a person who was not a Jew, and who converted in Israel or abroad during the period of his lawful stay in Israel.

17. Following dismissal of this argument, another argument was raised, based on the distinction between a conversion undergone in Israel and a conversion undergone outside of Israel. With regard to the former, it was argued that only a conversion undergone in the framework of the state conversion system should be recognized. As for conversion abroad, it was argued that recognition should be granted only to those conversions by which the convert joined the converting community – which could belong to any recognized stream of Judaism – and became part of that community. In *Makrina v. Minister of the Interior* [5] this argument was dismissed. Concerning conversion undergone abroad, it was ruled (*per* President A. Barak, Deputy President (emeritus) E. Mazza, Deputy President M. Cheshin, Justices D. Beinisch, E. Rivlin, E. Hayut and myself concurring, as against the dissenting opinion of Justices Y. Turkel, A. Procaccia, E.E. Levy and A. Grunis) that joining the converting community is not a condition for recognition of a conversion undergone outside of Israel. The ruling was as follows:

> We rule that according to the Law of Return, it is not a *sine qua non* for recognition in Israel of a conversion undergone outside of Israel that the conversion was for the purpose of joining the community in which the conversion was conducted (*ibid*., at p. 740).

The condition that was set for recognition of conversion abroad was that it was conducted in a Jewish community recognized by the authorized religious organs of that community (*ibid.*, at pp. 738-739). With respect to conversion in Israel – which, as stated, was not the core issue in that case – it was noted only that the government is

not authorized to determine, by virtue of its residual authority, that only conversion conducted in the framework of the state conversion system will be recognized under the Law of Return (*ibid.*, at p. 744). The legislature did not see fit to amend the Law of Return after these judgments had been handed down.

18. I have only briefly discussed the abundant case law pertaining to the interpretation of the concept of conversion in sec. 4B of the Law of Return. Since we, too, have been charged with the task of interpreting the concept of conversion in the Law of Return, this case law will serve as a basis and a normative framework.

Deliberation and Decision

19. The Respondents, as will be recalled, argued that from the point of view of interpretation, the Law of Return was not intended to apply to a person who converted once he was already in Israel, and that a conversion conducted in Israel should not be recognized unless it was in the framework of the state conversion system. In that case, the first question confronting us is this: does the Law of Return apply to a person who arrived in Israel prior to his conversion, and who converted in the course of his stay? If it is decided – and I recommend to my colleagues to decide thus – that the Law of Return applies, a further question will arise, namely: does the interpretation of the expression "has become converted" in the Law of Return imply that conversion that was undergone in Israel should be recognized only if it was conducted in the framework of the state conversion system? I will address each of these questions in turn.

Application of the Law of Return to Converts Living in Israel

20. The question of the application of the Law of Return to converts who were living in Israel prior to their conversion was discussed in the case of *Rodriguez-Tushbeim v. Minister of the Interior* [4]. The law as decided on this question a decade ago is still valid. The decision there was as follows:

> *In principle*, the Law of Return applies to someone who is not a Jew, came to Israel and converted (in Israel or abroad) while staying in Israel. (*ibid.*, para. 26 *per* President A. Barak) (emphasis added – M.N.)

The fact that that case involved individuals who had undergone conversion outside of Israel neither adds nor detracts. The fundamental law remains in force: *the Law of Return applies to a person who comes to Israel and converts while he is lawfully in the country*. The Respondents are not, in fact, raising a new argument; rather, they are asking us to depart from the decided case law. I do not think there is justification for so doing – neither from the point of view of the language of the Law of Return, nor from the point of view of its purpose. I shall explain.

21. The Respondents' approach lacks any foothold in the language of the Law. The Law does not contain any exception, express or implied, to its application. On the contrary, its formulation is sweeping: every Jew is entitled to immigrate to Israel. The Respondents based themselves on the provisions of sec. 3(a) of the Law of Return, which states that "A Jew who has come to Israel and subsequent to his arrival has expressed his desire to settle in Israel may, while still in Israel, receive an *oleh*'s certificate." According to them, this provision reflects a negative arrangement in relation to a person who is not a Jew. This approach is unacceptable:

> Indeed, the provisions of sec. 3(a) of the Law of Return […] are not to be understood as a negative arrangement with respect to a person who comes to

> Israel when he is not a Jew, and subsequently converts. This provision deals with the special case of a Jew who has not yet crystallized his position and came to Israel other than on an *oleh*'s visa. It should not be deduced from this that only a Jew who arrives in Israel other than on an *oleh*'s visa may, while still in Israel, receive an *oleh*'s certificate. We will not interpret one of the most fundamental of Israeli laws in this technical, formalistic way (*Rodriguez-Tushbeim v. Minister of the Interior* [4], para. 19 *per* President A. Barak).

The language of sec. 3(a) does not necessarily indicate a negative arrangement:

> […] From the explicit meaning, an implicit meaning may be deduced. What appears to be the silence of the constitutional text is not silence at all, nor a lacuna, but rather, it is possible to deduce from it an implicit meaning or "informed silence" or "talking silence". The implicit meaning may be negative (a negative arrangement). The significance of a negative arrangement is that the arrangement that was fixed in the explicit sense will not apply to the unregulated matter. An expression of this is found in the saying, *expressio unius est exclusio alterius*. The implicit meaning may also be positive (a positive arrangement). The meaning of a positive arrangement is that the arrangement that was fixed explicitly may also apply to the matter that was not regulated explicitly (Aharon Barak, *On the Implied in the Written Constitution*, 45 *Mishpatim* (forthcoming)) (Hebrew), p. 11 in the version to which I have access; and see regarding legislation: AHARON BARAK, INTERPRETATION IN LAW – INTERPRETATION OF LEGISLATION, 109-115 (1993) (Hebrew) (hereinafter: BARAK, INTERPRETATION OF LEGISLATION)).

In my opinion, the inescapable conclusion of purposive interpretation of the Law of Return is that this is in fact a positive arrangement. I will explain my reasons.

22. Negating the application of the Law of Return, as the Respondents claim, is incompatible with the purpose underlying that Law – "*aliyah"* [lit. – going up, namely, immigration to Israel], i.e., the Ingathering of the Exiles. Indeed, "this purpose was to restore the sons to their borders and to make the State of Israel into the state of the Jewish People" (HCJ 265/89 *Beresford v. Minister of the Interior* [8], at 845). The words of Justice M. Cheshin are apt:

> The right of return is granted to every Jew – as such – and the primary characteristic of the right is its decisiveness – it is a right that is almost absolute. Every Jew, whomever, can and is entitled to – at his volition alone – realize the right to return, the right that "your children shall return to their country" [Jeremiah 31:17]. (HCJ 3648/97 *Stamka v. Minister of the Interior* [9], at p. 751).

This purpose is also evident in the various provisions of the Law of Return, the whole purpose of which is to encourage and facilitate *aliyah* (on the Law in general as a source for its purpose, see: AHARON BARAK, PURPOSIVE INTERPRETATION IN LAW 413 (2003) (Hebrew) (hereinafter: BARAK, PURPOSIVE INTERPRETATION); BARAK, STATUTORY INTERPRETATION, at pp. 106-108). Among these provisions is sec. 4A of the Law of Return, which deals with granting status to the non-Jewish family of a Jew, whether or not the Jew himself immigrates to Israel. This section "was conceived with the purpose of facilitating the immigration of mixed families, in the hope that the non-Jewish family members would ultimately join the Jewish people" (HCJ 1188/10 *Pozarsky v. Ministry of the Interior* [10], para. 25 of my opinion (July 31, 2013). The same applies to recognition of the status of a "second-time *oleh*", i.e., a Jew who

immigrated to Israel by virtue of Return, severed the connection with Israel by leaving and giving up his Israeli citizenship, and subsequently chose to return and settle in Israel. A "second-time *oleh*", too, is entitled to immigrate to Israel and to acquire citizenship by virtue of Return (see: *ibid.*, at paras. 26-27 of my opinion).

The approach of the Respondents is incompatible with this purpose of the Law.

23. In addition, the Respondents' approach leads to results that are not egalitarian. It discriminates between a person who converted prior to settling in Israel and one who settled in Israel prior to his conversion; it discriminates between a person who is a Jew from birth, who according to the Respondents may live in Israel prior to his decision to immigrate to and settle in Israel, and a person who is a Jew by virtue of conversion. For this reason, too, it is unacceptable (see: BARAK, PURPOSIVE INTERPRETATION, at p. 425). President Barak discussed this matter:

> *Aliyah* [immigration] means the settling of a Jew in Israel. In this context, the question of when the person who settled in Israel became a Jew – either before he settled in Israel or thereafter – is immaterial. Indeed, the process of conversion means "joining the Jewish people. That is its entire nature and entire purpose" […]. With respect to the convert's joining the Jewish people (conversion) and settling in the State of Israel (immigration), the question of whether the conversion preceded the place of residence or the place of residence preceded the conversion is of no importance. It would be unlawful discrimination if one person would be regarded as an *oleh* because he converted and then settled in Israel, whereas another person who wishes to settle in Israel would not be regarded as an *oleh* because his conversion postdated his settling in Israel. Both these converts joined the Jewish people and settled in the State of Israel; both are children returning to their

homeland. The difference between the two converts with respect to the "order of events" of the conversion and the immigration is irrelevant for the purpose of the Law of Return, and the Law of Return should not be interpreted in such a way as to entail such illegitimate discrimination" (*Rodriguez-Tushbeim v. Minister of the Interior* [4], para. 19 *per* President A. Barak).

24. In truth, encouraging immigration is not the only purpose that the Law of Return was intended to realize. I accept that there is also an underlying, objective purpose that concerns preventing abuse of the right to acquire status by virtue of Return. This Court has stated more than once that the state has a right to prevent abuse of the arrangements in the Law of Return (See *Rodriguez-Tushbeim v. Minister of the Interior* [4], para. 24 *per* President A. Barak; HCJ 2859/99 *Makrina v. Minister of the Interior* [5], at p. 739; see also my position, *ibid.*, at p. 747; HCJ 1188/10 *Pozarsky v. Ministry of the Interior* [10], para. 29 of my opinion). But it is doubtful whether the Respondents' approach realizes this purpose. It is hard to see it as a response to the problem of abuse, and in any case it does not constitute the only or the best solution to this problem. First, concern about abuse of the Law of Return does not exist only with respect to a person who has converted in Israel. This concern is apparently also relevant regarding a person who converts abroad. Limiting the application of the Law of Return in such a way that it would not apply in relation to a person who was residing in Israel prior to his conversion does not, therefore, provide a response to the concern about abuse of the arrangements. Moreover, concern about abuse of the Law of Return can be addressed by increasing oversight and monitoring of those who wish to realize their right to acquire status by virtue of Return, in such a way that conversion that is not sincere will not be recognized – and this, without harming the

rights of sincere converts; in other words, in the framework of interpretation of the Law of Return, and not by a wholesale negation of its application, which would limit the significance of the right of Return. Indeed, "Woe to basic human rights, if they are given a restrictive interpretation, only for fear of abuse" (*Rodriguez-Tushbeim v. Minister of the Interior* [4], at para. 24 *per* President A. Barak).

25. The requirement that the provisions of the Law of Return be invoked in good faith and untainted by abuse – a requirement to which I subscribe – does not justify restricting the application of the Law of Return such that it will not apply to a person who converts in Israel. It does, however, justify restricting its application such that it applies only to a person who was living *lawfully* in Israel at the time of his conversion. In this spirit, it was decided in *Rodriguez-Tushbeim v. Minister of the Interior* [4] that the Law of Return applies only to a person "who came to Israel, and underwent a process of conversion while he *was in Israel legally*" (*ibid.*, para. 25 *per* President A. Barak; emphasis added – M.N.). The Law of Return does not apply to a person who underwent conversion while he was knowingly in the country unlawfully. To be precise: for the purpose of the Law of Return, the type of visa held by the convert is not important. The Law of Return applies to anyone who was in Israel lawfully at the time of his conversion.

26. Thus, my view is in accordance with the decision in *Rodriguez-Tushbeim v. Minister of the Interior* [4], that the Law of Return applies to a person who came to Israel, and while he was residing in Israel legally, underwent a process of conversion, whether in Israel or outside of Israel. The question still remains as to the scope of the expression "has become converted" in sec. 4B of the Law of Return, and whether, as the Respondents argue, it extends only to a person who underwent conversion in

Israel in the framework of the state conversion system. This is a question of interpretation, which I shall now address.

Interpretation of the Expression "Has become converted" in sec.4B of the Law of Return

27. The concept of conversion in the Law of Return raises complex questions of interpretation. The Knesset did not adopt a position on the question of the meaning of this concept. With respect to a conversion that was conducted abroad, it was decided that it means conversion that was conducted in the framework of a "recognized Jewish community" (*Makrina v. Minister of the Interior* [5], at pp. 738-739). As for conversion conducted in Israel, according to the Respondents this means conversion in the framework of the state conversion system alone. I cannot accept this approach, and I will explain. First, this approach has no foothold in the language of the section. Section 4B of the Law of Return is formulated concisely. The language does not limit or provide exceptions to the expression "has become converted" in any way whatsoever, over and above what is necessitated by the fact that the legislature invoked a religious concept, i.e., that the act of conversion comports with a Jewish understanding of the concept. In truth, it appears that the language of the Law barely provides content for the concept of conversion. However, the task of interpretation is not exhausted by the meaning of the individual term "has become converted". As is well known, "a legislative expression is a creature that exists in its environment. It receives its character from its context" (see *Shalit v. Minister of the Interior* [1], at p. 513). The provision of section 4B must be interpreted in its context, i.e., in light of the Law of Return in its entirety (see: BARAK, STATUTORY INTERPRETATION, at p. 106; BARAK, PURPOSIVE INTERPRETATION, at p. 413). Against the backdrop of the context

of the provisions of the Law of Return, it may be stated that the concept of conversion therein does not refer exclusively to the private, religious act. The intention is not to a person's personal recognition, which is a matter between himself and his God. Conversion in the context of the Law of Return is a public-civic act: by virtue thereof, a person becomes affiliated to the Jewish people, and by virtue thereof he acquires the right of Return and the right to citizenship. From this it transpires that a certain degree of oversight of the recognition of conversion is required (see: *Pessaro v. Minister of the Interior* [2], at p. 687; *Naamat v. Minister of the Interior* [3], at p. 753; *Makrina v. Minister of the Interior* [4], at p. 746). I accept that recognition of conversion should be contingent upon an objective test and not be dependent upon the personal will of the individual. However, the language of the Law does not indicate the nature of that oversight, or the conditions under which conversion will be recognized. It certainly does not necessitate oversight exclusively by means of recognition of state conversion. In any case, the language is only the starting point of the task of interpretation, and not its end. An examination of the purpose underlying sec. 4B of the Law of Return, and the Law in general, also indicates that the approach of the Respondents must be rejected.

28. The purpose of sec. 4B is to encourage every Jew, as such, to immigrate to Israel and to settle in Israel, whether he is a Jew by birth or whether he has chosen to join the Jewish people by means of conversion. In this, the section merges with the general purpose of the Law of Return, which is, as stated, the Ingathering of the Exiles. Let there be no mistake: the Law of Return is not a law that is designed to regulate immigration to Israel and oversight thereof, but rather, a law that expresses the right of self-determination of the Jewish people, and the link between the Jewish people and its homeland. The Law of Return embodies the justification for the existence of

the State of Israel as a Jewish state, in addition to it being a democratic state. It is based on the recognition that "the Jewish people is one nation. Part of it is in Israel; part of it is in one Diaspora; part is in another Diaspora)" (*Naamat v. Minister of the Interior* [3], at p. 751.

The Jewish people is, indeed, one people, but it is dispersed throughout the world, and it comprises disparate and varied communities, and sub-varieties within those communities. As such, the Law of Return, in addition to encouraging immigration, reflects the purpose of establishing unity of the Jewish people in the Diaspora and in Israel. The interpretation proposed by the Respondents does not reflect these purposes. It significantly restricts the right to immigration, it does not attribute weight to the variety that exists among the Jewish communities, and it cannot, therefore, be accepted.

29. However, also unacceptable is an approach whereby the expression "has become converted" refers to any person whom three Jews have declared to have converted, and certainly not to every person who has decided, by virtue of his own subjective will, to affiliate to the Jewish people. From the purpose of the Law – as well as its language, as explained above – it emerges that the term "has become converted" in the Law of Return embodies an objective criterion of public recognition of the process of conversion. What is that criterion? The criterion that I propose to my colleagues is the very same criterion that this Court adopted in relation to recognizing a conversion that was conducted abroad – *the criterion of the recognized Jewish community*. In my opinion, this criterion suitably combines the realization of the three purposes that I mentioned: encouraging immigration and unity of the Jewish people on the one hand, and oversight of the public aspect of conversion on the other.

30. The significance of this is that the expression "conversion" in the Law of Return should be interpreted as a conversion conducted in a recognized Jewish community in accordance with the accepted criteria of that community. On this, President A. Barak wrote as follows:

> When we say "recognized Jewish community" we mean, as a rule, an established, active community with a common, known Jewish identity, which has fixed frameworks for communal administration, and which belongs to one of the recognized streams of the world Jewish community (*Makrina v. Minister of the Interior* [5], at p. 737).

Hence, we are talking about conversion that is conducted by religious organs in a recognized Jewish communal framework, and in accordance with the criteria followed in that community. This is no trivial requirement. It means that this is not a matter of conversion by "any three people", in the words of counsel for the state, but conversion that is conducted by a religious body that has been authorized for this purpose by the community that it serves, and in accordance with the established, accepted criteria of that community. Let it be clear: not every Jewish community the world over will be considered a recognized community. The community must have a common, established, fixed Jewish identity. Nevertheless, I do not think it appropriate, in the present circumstances, to list the specifications for all those Jewish communities that should be regarded as "recognized Jewish communities". I will also not go into the question of the threshold requirements of such a community, e.g., what is the minimum number of members. For our purposes, it is sufficient to determine that the Orthodox communities in which the Petitioners before us were converted, in Bnei Brak and in Jerusalem, comply with the definitions of recognized Jewish communities that are established and that have a common, known Jewish identity.

31. My conclusion concerning the recognized-community test is in keeping with the objective, general purpose underlying the Law of Return, which is concerned with ensuring egalitarian outcomes (see: BARAK, PURPOSIVE INTERPRETATION, at p. 224). Indeed, the interpretative preliminary assumption is that the purpose of a legislative act is to uphold and maintain basic rights, including the right to equality (see: *ibid.*, at p. 425). The Respondents' approach creates discrimination between a person who underwent converted abroad and a person who converted in Israel (see and compare: *Rodriguez-Tushbeim v. Minister of the Interior* [4], at para. 23 *per* President A. Barak). In my opinion, there is no room for discrimination between a person who chose to convert abroad before deciding to settle in Israel, and a person who settled in Israel prior to deciding to convert, and who converted while he was lawfully resident in Israel. Both are Jews who wish to establish their homes in Israel.

32. As for the immigration of a Jew to Israel, the order of events of settling in Israel and affiliating to the Jewish people through conversion is not important (see: *ibid.*, at para. 19). In the words of Justice E. Rivlin:

> "*Aliyah*" […] is not exhausted by actual arrival in the Land of Israel. Its essence is reflected in the choice made by a Jew by birth, or a person who converted, to settle in Israel […]. "*Aliyah*" is not necessarily the first stay in the Land of Israel. This preliminary stay is not necessary, but it is also not sufficient. It is not necessary because a Jew may stay in Israel for a certain period of time before becoming an *oleh*, and there is nothing to prevent him from making *aliyah* to Israel even if he had been in Israel previously. Let us say as follows: "*aliyah*" does not lie in the physical act of arriving at the gates of the country […]. "*Aliyah*" to Israel is the fact of the decision made by a Jew to live permanently in Israel […]. There is not, nor, in my opinion,

> can there be, any doubt that if the non-Jew converted after he has been in Israel, and he decided sincerely to reside in Israel – this is a Jew who has "made *aliyah*" to Israel. It is not surprising that the Bible attaches no significance to the question of whether Ruth the Moabite converted prior to crossing the Jordan River or whether […] only after she crossed the River. One way or another, she merited becoming the mother of the Royal Dynasty of Israel" (*id.*, at para. 4).

I see no justification for interpreting the Law of Return in a manner that entails discrimination between a person who converted in Israel and one who converted abroad. For this reason, too, the interpretation whereby conversion for the purpose of the Law of Return is conversion that was conducted in a recognized Jewish community according to its accepted criteria, whether conducted in Israel our outside of Israel, is preferable.

33. Moreover, the interpretation proposed by the Respondents is incompatible with the accepted principles relating to the exercise of the Government's residual authority. I shall explain. The position of the Respondents is that for the purposes of the Law of Return, only the conversion of a person who converted through the state conversion system should be recognized. The state conversion system was established by virtue of decision no. 3613 of the 27th Government (April 7, 1998), which adopted the Report of the Committee on Conversion in Israel (The Neeman Committee). The Neeman Committee recommended establishing a single process of state conversion, in the framework of which an institute for the study of Judaism would be established, with the participation of the three main streams of Judaism, and in the framework of which conversions would be carried out in special courts that would be recognized by all the streams of Judaism. I am not expressing any position on the question of

whether the state conversion system that was actually set up indeed realizes these recommendations, *inter alia* because there does not seem to be agreement among all the streams of Judaism as to its activity. This is not our concern here. We are concerned with the authority to set up a state conversion system, which is allegedly anchored in the residual powers of the Government (sec. 32 of Basic Law: The Government).

34. It is a well-known principle that residual authority cannot serve as the basis for a violation of human rights:

> Where sec. 32 of Basic Law: The Government authorizes the Government to act, it requires it to act subject to any law. Clearly this constraint prohibits the Government from acting contrary to the provisions of the law. Moreover, it prohibits the Government from violating any of a person's human rights (YITZHAK ZAMIR, ADMINISTRATIVE AUTHORITY, vol. 1, 421 (2nd ed., 2010) (Hebrew) (hereinafter: ZAMIR); see also: DAPHNE BARAK-EREZ, ADMINISTRATIVE LAW, vol. 1, 141 (2010) (Hebrew) (hereinafter: BARAK-EREZ)).

Limiting recognition of conversion to the state conversion system alone, as the Respondents propose, would lead to a violation of the right of Return, which is a fundamental right vested in every Jew, contrary to the provisions of the Law of Return. The question of the proportionality of this violation does not arise at all, since residual authority cannot constitute justification for violating rights. President A. Barak wrote in this vein:

> [W]e accept that the Government is competent to establish, by virtue of its (residual) general power prescribed in s. 32 of 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. (*Makrina v. Minister of the Interior* [5], at p. 744; see also: HCJ 11585/05 *Movement for Progressive Judaism in Israel v. Ministry for Absorption of Immigration* [11], para. 19 *per* President D. Beinisch).

35. Neither does the residual authority of the Government include the authority to establish primary arrangements (see: ZAMIR, at pp. 424-425; BARAK-EREZ, at p. 142). The principle of the rule of law tells us that those will be established by the legislature, and not the executive (see: ZAMIR, at pp. 85-86). Recognition of conversion for the purposes of the Law of Return is a primary arrangement. It reflects the general policy of the State of Israel on an issue that lies at the heart of the justification for the existence of the State, and touches upon fundamental questions that go to the very root of Israeli society. Such regulation ought to be undertaken by the legislature, and not by the administration. For these reasons, I do not think that the residual power of the government enables it to determine that *only* conversion in the framework of the state conversion system is conversion under the Law of Return.

36. Furthermore, the Respondents base their position almost exclusively on concern about abuse of the process of conversion by way of idle requests for recognition of conversion, the whole purpose of which is to allow them to acquire status in Israel. Indeed, it appears indisputable that the state has the right to prevent abuse of conversion and not to grant rights by virtue of Return to a person whose conversion is not sincere. A person whose conversion is not sincere does not, in any case, not

realize the purpose of the Law of Return. However, concern about abuse does not justify, *per se*, restrictive interpretation of the rights under the Law of Return:

> [T]he 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 […].It is possible to prevent abuse of the right to immigrate to Israel in various different ways. Each case has its own circumstances.(*Makrina v. Minister of the Interior* [5], at p. 739; see also: *Pozarsky v. Ministry of the Interior* [10], at para. 29 of my opinion (given that the right of Return that is granted to every Jew is a basic right […] it must not be given a strict interpretation only because of the concern for abuse").

Indeed, abuse of the process of conversion must be prevented. I am even prepared to *assume* – and this is only an assumption – that conversion through the state conversion system usually prevents abuse. However, I do not think that this is the optimal way to ensure the sincerity of the conversion. Take, for example, the case of a non-Jew who enters Israel lawfully. While he is in Israel, he draws closer to Judaism and seeks to become part of the Jewish people. He studies for a lengthy period towards the conversion. He undergoes conversion in a recognized Orthodox community, which is known to be extremely strict, in a *beth din* of well-known rabbis, which is not part of the state conversion system. He does so either because he did not know of the existence of the state conversion system or because he chose to undergo the most stringent conversion. After the conversion, he lives in the community and observes an Orthodox lifestyle. Does the conversion of this person

not fulfill the purpose underlying the Law of Return? Is there a reason to assume in advance that his conversion is not sincere? My answer to these questions is negative.

37. In my opinion, oversight of the sincerity of the conversion is not exhausted by the single possibility raised by the Respondents, which involves recognition only of state conversions. The Respondents have many tools for addressing their concern, by means of individual, careful examination of the sincerity of the conversion and consideration of objective criteria surrounding the conversion process, including the circumstances of the person's entry into Israel and the type of visa on which he entered (see and compare: *Pozarsky v. Ministry of the Interior* [10], para. 29 of my opinion). In any event, the requirement that the conversion be undergone in a recognized Jewish community can significantly allay concerns of abuse, for "it is not sufficient that three people declare that a person was converted by them" (*Naamat v. Minister of the Interior* [3], at p. 751). This, as stated, is the main concern expressed by the Respondents. The test of the recognized community provides a response to this concern. The requirement, as I pointed out, is that a religious body that has been recognized for that purpose by a recognized religious community conducted the conversion in accordance with the accepted criteria of that community. Insistence upon these requirements significantly reduces the possibility of abuse of the process of conversion for the purpose of acquiring status by virtue of the Law of Return (and for acquiring the economic rights that come with this status).

38. My position, therefore, is that purposive interpretation of the expression "has become converted" in sec. 4B of the Law of Return leads to its interpretation as referring to a person who has undergone conversion in a recognized Jewish community in accordance with that community's accepted criteria.

And from general principles to the matter of the Petitioners before us.

From the General to the Specific

The Petitioner in HCJ 7625/06 (Martina)

39. I discussed the fact that the Law of Return applies to a person who came to Israel and underwent a process of conversion while living in Israel *lawfully*. At the time of her conversion, Martina was in Israeli *unlawfully*, since in 2001 the tourist visa on which she had entered Israel expired. Martina remained in Israel, as will be recalled, for about three years after that time without making any attempt to lawfully arrange her stay. Accordingly, her conversion cannot be recognized *for the purpose of acquiring status* by virtue of the Law of Return. Having reached this conclusion, I will not discuss the question of whether the community in which she converted is a recognized Jewish community or not. I also see no need to discuss the sincerity of the conversion, even though the parties raised various arguments on this matter.

40. In Martina's case it was also argued that her conversion was confirmed by the Rabbinical Court, i.e., by an official state body, and she is therefore to be regarded as a person whose conversion is recognized. It is true that on March 12, 2006 a decision was handed down in the matter of Martina in the Tel Aviv Regional Rabbinical Court, as follows:

> The Court hereby confirms that Ms. Rogachova Martina […] was converted before the *beth din* headed by the Sage Rabbi S.Y. Nissim Karelitz., which is a *beth din recognized by the Chief Rabbinate of Israel* (Exhibit 6 of the Respondents' response of Feb. 1, 2007) (emphasis added – M.N.).

However, from that response it emerges that the decision of the Regional Rabbinical Court was based on a mistake, in that the rabbis though that the *beth din* was a special

conversion tribunal that was recognized by the Chief Rabbinate of Israel. In addition, on Nov. 14, 2006, an additional decision was handed down in which it was clarified:

> In its decision [of March 12, 2006 – M.N.], the Court was not expressing any opinion about the validity of the conversion. It merely confirmed, on the basis of the documents before it, that the conversion was conducted by the *beth din* of Rabbi Nissim Karelitz.
>
> Furthermore, the Court was under the impression that the said *beth din* is officially recognized by the Chief Rabbinate of Israel, but it emerges that there is no document confirming this (exhibit R/11 of the response of the Respondents of Feb. 1, 2007).

Without expressing an opinion about the conduct of the Rabbinical Court in this matter, it seems to me that the decisions of the Rabbinical Court should not be seen as conferring validity upon the conversion of Martina by the state conversion system. Since she was in Israel unlawfully, in any case it is very doubtful whether she could have undergone conversion in the framework of the state conversion system (in which lawful permanent residency is a pre-condition for beginning the conversion process). One way or another, the scope of the argument in our case is confined to the question of Martina's entitlement to status by virtue of the Law of Return. I see no reason to depart from my conclusion whereby she is not entitled to status under the Law of Return because she was in Israel unlawfully at the time of the conversion.

My position, therefore, is that the order nisi and the interim orders that were issued in HCJ 7625/06 be rescinded.

The Petitioner in HCJ 1594/11 (Shaun)

41. Shaun has been in Israel lawfully for the last nine months or so. As such, the Law of Return applies to him. There is still a question of whether he is to be regarded as a person who "has become converted" according to the interpretation of this expression in the Law of Return, that is to say, was his conversion conducted in the framework of a recognized Jewish community? From this aspect, Shaun's case is an easy one: he converted in the *beth din* of Rabbi Frank in the framework of the Orthodox community in Mea Shearim. The Respondents did not dispute that this is a community that belongs to one of the main streams of Judaism – a community with an established Jewish identity and with fixed frameworks of communal administration. It is also easy, in view of the whole array of circumstances, to recognize the sincerity of the conversion. The conversion was preceded by a significant period of preparation and study, and after the conversion, Shaun married a Jewish partner, and they live together in an ultra-Orthodox community in Jerusalem. I have not found a single indication that this conversion was not sincere. Therefore, my conclusion is that Shaun meets the condition of "has become converted" in the Law of Return, and is entitled to status by virtue of that Law. The petition also sought additional relief in regard to the granting of a certificate of conversion. This apparently refers to recognition by the state of his conversion. In view of the conclusion that I have reached, I do not think that the discussion ought to be extended to that matter, but I will say that a certificate of conversion (issued by virtue of the Conversion Ordinance) has no legal implications with respect to recognition of conversion under the Law of Return, but only with respect to matters that are within the competence of the religious courts, as was decided in *Pessaro v. Minister of the Interior* [2].

42. My conclusion, therefore, is that the order nisi issued in HCJ 1594/11 should be made absolute with respect to recognition of Petitioner 1 for the purpose of status under the Law of Return.

The Petitioner in HCJ 1595/11 (Viviana)

43. At the time of her conversion, Viviana was in Israel lawfully. In her case, too, it is simple to determine that the conversion was undergone in the framework of a recognized Jewish community, for it was conducted in the Orthodox *beth din* of Rabbi Karelitz in Bnei Brak. The Respondents did not dispute that this is a community that has a known Jewish identity, with a fixed framework, and is renowned. The Respondents argued that the circumstances surrounding the conversion indicate that it was not sincere, but in my opinion, the whole set of circumstances of the case indicates that this is not a case of abuse of the process of conversion, but rather of a person who has tied her fate to the fate of the State of Israel and the fate of the Jewish people, which she seeks to join.

44. Viviana's conversion was conducted at the beginning of 2009, when she was residing in Israel lawfully by virtue of a permit for temporary residency, on the basis of a relationship with an Israeli partner. The visa was valid until April 2010. In the course of 2009, she applied to the state conversion system to begin a process of state conversion. After a year, when no decision had yet been given by the state conversion system on her matter, she applied to the Ministry of the Interior to be granted temporary status until such time as the matter of her conversion would be arranged. On this occasion, she mentioned that she had separated from her Israeli partner, due, as she claimed, primarily to the religiously observant lifestyle that she had adopted

after her conversion. On Jan. 3, 2011, her application for status was rejected on the grounds that the conversion that she had undergone was not a state conversion "as required", and in view of the fact that she had separated from her Israeli partner. On April 4, 2011, her application to begin a process of state conversion was rejected, based on the fact that her status was not arranged.

45. Indeed, more than a decade ago, Viviana lived in Israel unlawfully for a fairly substantial period, but I do not think that this should tip the scales. Her conversion was conducted long after that period of unlawful residence, at a time when she was lawfully in Israel on a visa that would not expire for a significant period of time. The main doubts of the Respondents concerning the sincerity of Viviana's conversion arose regarding the sincerity of her relationship with her Israeli partner, mainly because of the fact that at the time that she applied to the Ministry of the Interior to arrange her status and report her separation, the Israeli partner had already married another woman. I do not accept the conclusion reached by the Respondents that this piece of information indicates that the entire relationship was dubious. The information submitted by the Respondents themselves (see, e.g., exhibit R/2 of the Respondents' response of April 14, 2011, which indicates the existence of a relationship at the beginning of 2011), paints a picture of the two involved in a relationship for about a decade, during about five years of which Viviana's status was regulated in accordance with the graduated process for the partners of Israelis, and the sincerity of the relationship was subject to periodic monitoring of the Ministry of the Interior. During this period, the Ministry of the Interior found nothing untoward in the relationship, and Viviana's residence permits were extended several times. It is clear that in the circumstances that have been described, the split between the partners preceded the date of the notice, even though I cannot determine by exactly how much.

However, this says nothing about the sincerity of the relationship prior to that date, nor about the sincerity of Viviana's conversion. Her conversion preceded the date by more than a year. The conversion itself was preceded by long years in which Viviana lived in Israel, and during most of which she worked in the home of a religious family that encouraged her to draw close to the Jewish religion (see: appendix 5 of the petition of Feb. 27, 2011). She still lives with that family today. Also, her conversion was preceded by a long, significant period of study (see: *ibid*.).

46. This is not a case of a person who tried to arrange her status by any possible means, the conversion being only one of them. Indeed, over the course of a number of years, Viviana's status was regulated by virtue of her relationship with an Israeli partner, and when this relationship ended, she attempted to arrange her status by means of conversion through the state conversion system. However, the conversion in the *beth din* of Rabbi Karelitz was undergone when her status was not at all an issue, and her relationship was still strong – and the circumstances of that conversion, as stated, indicate its sincerity. In any case, this is not a person who was thinking only of regulating her status, using any available means. In this context we would note that her application to arrange her status in the Ministry of the Interior was submitted about a year after she applied to the state conversion system, and after a reply was not forthcoming. This application was rejected – while her application to begin a state conversion process was still pending – because she had not undergone state conversion. Subsequently, her request to begin the state conversion process was rejected on the grounds that her status was not settled. In any case, I do not see how any of this casts doubt upon the sincerity of the conversion.

In this petition, too, the relief of being granted a certificate of conversion was sought, but as we have said, that does not touch upon the question of recognition of the conversion under the Law of Return.

47. My conclusion, therefore, is that the order nisi issued in HCJ 1595/11 should be made absolute with regard to recognition of the conversion of the Petitioner for the purpose of her status by virtue of the Law of Return.

Conclusion

48. Our decision today is confined to the question of acquiring status by virtue of the Law of Return. This is not a religious question, but rather a civil-public one. We are not deciding anything in the framework of these proceedings regarding the question of recognition in other contexts of the conversions undergone by the Petitioners. We waited to hear from the legislature. Since the decision of the legislature has not been forthcoming, we saw no option but to issue a judicial decision on this matter.

If my opinion is accepted, we will rescind the order nisi that was issued in HCJ 7625/06, and make the orders nisi in HCJ 1594/11 and HCJ 1595/11 absolute, in the sense that we determine that Petitioner 1 in HCJ 1594/11 and the Petitioner in HCJ 1595/11 are Jews for the purpose of the Law of Return. This is by virtue of the conversion that they underwent in a recognized Jewish community in Israel. There will be no order for costs.

Justice Y. Danziger

I concur.

Justice U. Vogelman

I concur in the comprehensive opinion of my colleague President M. Naor, and with its reasoning.

In HCJ 2597 *Rodriguez-Tushbeim v. Minister of the Interior* [4], it was decided that the Law of Return applies to a person "who enters Israel and while he is in Israel legally he underwent a process of conversion." I accept the decision of the President whereby there is no justification for departing from this ruling, and therefore the argument of the Respondents that the Law of Return was not designed to apply to a person who converted when he was already in Israel cannot be accepted.

I also agree with her conclusion that the term "has become converted" in the Law of Return must be interpreted as applying to a person whose conversion was undergone in a recognized Jewish community in accordance with its regular criteria, and that recognition of conversion should not be restricted to the state conversion system alone, as the Respondents argued. This is based on the reasons elucidated by the President in her opinion.

I also fully agree with the decisions in the individual cases at bar based on these principles.

Justice S. Joubran

1. I concur in the thorough and comprehensive opinion of my colleague President M. Naor and with her conclusion.

2. My opinion is the same as that of my colleague the President on the two questions confronting us: first, does the Law of Return apply to a person who arrived in Israel prior to his conversion, and while in the country underwent a process of conversion? And the second, if the answer to the first question is positive, whether the interpretation of the term "has become converted" in sec. 4B of the Law of Return implies that conversion that was conducted in Israel is to be recognized only if it was conducted in the framework of the state conversion system?

3. As the President stated, this is not the first time that this Court has addressed the interpretation of the Law of Return, and in particular, the question of the conversion required under sec. 4B of the Law. Quite the contrary! This Court has dealt with this issue extensively – with expanded benches – in a series of petitions on the subject, and has laid down clear principles that are now our beacon. It is a fundamental principle that we are a court of law, and not a court of judges (see: HCJ 8091/14 *Hamoked Center for the Defence of the Individual v. Minister of Defense* [12], para. 1, *per* Justice E. Hayut; FH 23/60 *Balan v. Executors of the Estate of Raymond Litwinsky (dec.)* [13], at p. 75). As such, and since no reasons justifying departure from these principles have been presented, we must continue on the same established, firmly rooted line of interpretation.

4. Like my colleague the President, I too am of the opinion that the answer to the first question is positive. In *Rodriguez-Tushbeim v. Minister of the Interior* [4], it was explicitly ruled, as a matter of principle, that the Law of Return applies to a person who is not Jewish, who arrives in Israel, and who in the course of lawful presence in Israel undergoes conversion – whether in Israel or abroad (*ibid*., at para. 26, *per* President A. Barak; see also: para. 19, *per* President M. Naor in this proceeding). As President Naor stated, this is the interpretation that is necessitated both by the

language of the Law, and by its purpose. My opinion, too, is that there is no cause for deviating from the settled law. I believe that the cumulative requirements that the convert's stay in Israel be lawful and that the conversion be sincere allay, to a great extent, concern about abuse of the arrangements in the Law of Return, and I find no reason to introduce further requirements due to this concern.

5. The response to the second question – interpretation of the term "has become converted" in sec. 4B of the Law of Return in relation to conversion undergone *in Israel* – is apparently more difficult, for it is not based directly on earlier rulings. However, on this matter, too, we rely on previous principles fashioned by this Court. The "criterion of the recognized Jewish community", which the President proposes that we adopt, is a criterion that was established in *Makrina v. Minister of the Interior* [5] regarding the interpretation of the expression "has become converted" in sec. 4B of the Law of Return in relation to conversion undergone *outside of Israel.* According to this criterion, a person who "has become converted" is a person who underwent conversion in a recognized Jewish community, in accordance with its accepted criteria. Like my colleague the President, I too am of the opinion that this criterion should also be applied to conversion undergone in Israel, for it suitably combines realization of the goal of encouraging immigration and unity of the Jewish people on the one hand, and oversight of the public aspect of conversion on the other (and see para. 29 of President Naor's opinion in this proceeding). This criterion – as opposed to the requirement of conversion in the framework of the state conversion system, on which the Respondents insisted – does not discriminate between a person who chose to undergo the conversion process outside of Israel and a person who decides to convert in Israel. This will ensure an egalitarian outcome, and as such, I can only adopt it enthusiastically.

6. Therefore, I concur in the opinion of my colleague President M. Naor and all its reasons.

Justice E. Hayut

I concur in the comprehensive opinion of my colleague President M. Naor and all its reasons.

Justice H. Melcer

1. I concur in the precise and meticulous judgment of my colleague President M. Naor.

2. I will permit myself, nevertheless, to add two comments:

(a) Abuse of a right on the part of others in the past, or concern about such abuse in the future, does not justify, in administrative law, the denial of the right to a person seeking it in good faith, for the refusal of the authority in such a case is tainted by unreasonableness and lack of proportionality. See and compare: HCJ 3477/95 *Ben Attiah v. Minister of Education and Culture* [14].

(b) The principle mentioned in para. (a) above is even more applicable in constitutional law, when at stake are basic constitutional rights, the violation of which is permissible only in accordance with the limitations clause in sec. 8 (with respect to the security forces – sec. 9) of Basic Law: Human Dignity and Liberty.

3. The right of Return, regulated under the Law of Return, is a basic constitutional right that emanates from the Jewish character of Israel, which is defined as a Jewish and democratic state. As such, this right is granted to *every* Jew (see sec. 1 of the Law

of Return), and see: HCJ 6624/06 *Pashko v. Ministry of the Interior* [15], para. 9, *per* Deputy President E. Rubinstein, and my opinion in HCJ 4504/05 *Skaborchov v. Minister for Internal Security* [16], at para. 14).

A Jew for the purpose of the Law of Return is, therefore, *any person who is born* to a Jewish mother, or *who has become converted*, and who is not a member of another religion (see sec. 4B of the Law of Return). Hence, just as the Law of Return does not adopt a monolithic view in regard to a person who was born to a Jewish mother by virtue of the Law of Return – neither can there be a monolithic view regarding every person who has converted, and it is therefore clear that those Petitioners before us, who converted in good faith in the framework of a recognized (ultra-Orthodox) Jewish community, must be accepted by virtue of Return.

Justice Y. Amit

I personally tend to the minority opinion in *Rodriguez-Tushbeim v. Minister of the Interior* [4], according to which the Law of Return applies to a person who was Jewish before he came to Israel. However, since such an important decision was made by a bench of 11 justices, I bow my head, and I do not think it appropriate to depart from that decision.

Once we have overcome this preliminary, principal question, I concur in the conclusion of my colleague Justice M. Naor that recognition of conversion should not be confined to the state conversion system.

Deputy President E. Rubinstein

Introduction

1. “And once more with you, once more with you”, but will “peace be upon you, upon us, and upon everyone” (from the song of Dudu Barak)? The subject of conversion is never off the agenda of this Court, as demonstrated by the many judgments that my colleague has cited and quoted (for some of this history, see the article of Prof. Eliezer Don Yehiyeh, ‘*Who is a Jew” and Who is a Convert? The Attempts to Amend the Legislation on the Subject and their Failure*”, in THE FOURTH DECADE 5738-3738 (Y. Weitz & Z. Zameret, eds., Avi Picard, asst. ed.,) 5776-2016, 69 (Hebrew)). This time we are dealing with an application for citizenship by virtue of Return with respect to persons who converted in an Orthodox community in Israel, outside of the state conversion system. According to the Respondents, such conversions are not acceptable for the purposes of Return. In her comprehensive and interesting opinion, my colleague the President proposes (at para. 29) to interpret the expression “has become converted” in sec. 4B of the Law of Return in light of the criterion of a “recognized Jewish community”, since the High Court in *Rodriguez-Tushbeim v. Minister of the Interior* [4] ruled that “the Law of Return applies to a person who is not a Jew, and who in the course of his lawful stay in Israel underwent conversion (in Israel or abroad).” According to my colleague (para. 30), we are not dealing with conversion by “any three people” whosoever, as the Respondents fear, but with conversion through a community “with a common, established and fixed Jewish identity”, and the communities in which the Petitioners converted meet this requirement. According to my colleague, conversion through the state conversion system cannot be regarded as exclusive, and the Government does not have the residual authority to determine that only conversion through the state conversion system is valid for the purposes of Return (paras. 34-35). Furthermore, according to my colleague, the concern expressed by the Respondents for abuse of the process of

conversion can be dealt with by various administrative tools, and it may be allayed particularly by the criterion of the recognized Jewish community. I will note here that had I been a member of the bench in the case of *Rodriguez-Tushbeim v. Minister of the Interior* [4], I imagine that I – like my colleague Justice Amit in his comment – would have dissented, but that is in the past, and much water has flowed under the bridge since then.

2. As I shall explain briefly, the problem, as I see it, with the President's position at this time is that we are lending a hand – unintentionally, of course – to the creation of discord on the subject of conversion, a subject that is important in Israel's reality as a Jewish and democratic state. Thus, while recognition that grants *status* – as does conversion – must, in my view, come from the state, it should be achieved in a manner that is as friendly as possible to the convert, should adopt as broad a perspective as possible, and should achieve an outcome that would apply to all of Jewry. This is not impossible to achieve. Clearly, in the background lies not only the question of the Orthodox communities in Israel, but on its coattails also the non-Orthodox – the Conservative and Reform – communities, and my colleague mentioned (para. 8) the petition in HCJ 11013/05 and others, in relation to which, in her decision of Aug. 8, 2015, she noted the "substantive proximity" between them and the present petition, and in a decision of Sept. 3, 2015 she said that "their turn will come." That is, indeed, so, and the question is whether, instead of this piecemeal approach, we ought not to take this opportunity – possibly the last one – to achieve a just harmony on the subject of conversion that will be *acceptable to all*, or almost all, in the framework of the state conversion system or with its approval, in the spirit of the recommendations of the Neeman Committee of 1998, which I will discuss below and which I endorse, or in another appropriate way, such as that proposed in recent

years by MK E. Stern and others, thus providing a "service to the nation" – an essential one in my view – that is achievable and fair. This, however, *requires legislation*, and if all would understand that in the absence of legislation, every person will "withdraw into his tent" on the practical as well as the legal level, it may also be possible to achieve the necessary "national compromise" (even though there are those who do not like to use the term "compromise" in this context). This is not at all unattainable. "I have been young and now I am old" [Psalms 37:25] and I am sorry to say that a surfeit of "cautiousness born of humility" (see TB *Gittin* 56a, the words of the Tanna, R. Zechariah Avkulas, relating to the horrific legends of the destruction of the Temple), and for our purposes, the surfeit of piety or extremism of various elements in the religious and political systems – not only the Orthodox, although they in particular, but also from the other end of the spectrum – have until now prevented a solution. This is so even if we do not draw an analogy to the catastrophic consequences of the Destruction which the sages ascribed to that surfeit of "cautiousness".

3. I will give you my bottom line right here and now. In my view, President Naor's proposal should be accepted, but deferred for eighteen months, during which time the Knesset, if it sees fit, can *enact legislation* in order to establish, by law, a state conversion system that is harmonious, appropriate and fair, vis-à-vis the halakhah and duly respecting all parts of our nation, however concentrated or dispersed, for otherwise, it will unfortunately be the political system that will be held accountable.

4. The President's opinion, and the decision therein, stem, unfortunately, from the inability of the political system – the executive and the legislature, the Government and the Knesset as one – to generate an appropriate statutory solution for a sensitive subject such as conversion. The negative result is that it is dumped, time and time

again, on the doorstep of this Court, which is intended to solve disputes and to interpret the law, in such a way that its binding decisions must address public, value-based disputes that the Government and the Knesset refuse, or find it politically difficult to resolve. Time and again, the Court calls upon the legislature to do its job – a call that passes as a common thread through the judgments. And since this call is not heeded – and at a time when the judicial lot has no choice but to fall – complaints are often levelled at this Court to the effect that it does not satisfy everyone, and mainly that it is "secular" or should one say "liberal", and not sufficiently "Jewish", or all of these together, and that it is "activist". On the other hand, it is not zealous in guarding rights, and it is too passive. In short, it is "a bit of everything." But in truth, the Court does not "put in an order" for cases, rather, it adjudicates what is submitted to it as a petition or an appeal. If we take a close look at the present issue, the words "has become converted" in sec. 4B of the Law of Return were unclear from the very outset, for the section did not specify how the person became converted. Over the years, bits and pieces of case law have accumulated, as described by my colleague. Incidentally, the same tendency – although there are exceptions – to cast problems at this Court and later to complain when the decision does not satisfy all, is evident not only in relation to conversion: see AAA 5875/10 *Masorti Movement v. Be'er Sheva Religious Council* [17], in which instead of reaching an agreed arrangement of "modest" dimensions on the matter of ritual baths for converts from the Conservative and Reform Movements, which we urged them to do, they dragged their feet, which led to a "monumental" judgment.

5. I asked myself what it is that bothers me about the President's conclusion which, if it becomes the "permanent" bottom line of our judgment, I think will be something of a Jewish-national default position, which in universal-Jewish terms would be a

pity. Two points should, in my view, be considered. The first: when we say "convert", we are dealing with a statutory term that brings with it status and benefits, and it ought to have a meaning that is not voluntary and random, so that not everyone who wishes to call himself by that name may do so and "obligate the realm". Indeed, it is a matter of a "recognized community", but it is reasonable to assume that much ink will be spilt in relation to the term "recognized community", and petitions will be submitted and panels of justices will be sorely tried, and it is possible that everything will return to square one. The same concern applies to the interpretation of "serious Orthodox courts that have standing" (paras. 5-9 of the opinion of Justice Hendel). Secondly, and this is the main point: the division between registration of the conversion in accordance with our judgment treating of the Law of Return, 5710-1950, and the civil, administrative legal system, as well as the Population Registry, as opposed to recognition of conversion for the purpose of marriage in the rabbinical courts, which have jurisdiction in matters of marriage and divorce under the Rabbinical Courts (Marriage and Divorce) Law, 5713-1957, is not desirable, to put it mildly. In my view, we must strive to achieve harmony between the two, in order that there not be among us those who are registered as Jews but who cannot, for example, marry as Jews. The implications of this are harsh, as any reasonable person will understand. However, we, as a court, do not have the tools to achieve that harmony, and the intervention of the legislature is required. The boundaries of interpretation are not limitless. In the absence of guidance from the legislature, the President is right: it is difficult to prefer one interpretation over another. And in fact, the interpretation given by the President is, ultimately, a compromise, placing conversion in Israel, like conversion abroad until now, within the bounds of a recognized community, as opposed to – at least this is the thinking – "Thou puttest the law for each man into his

own hand" (m*Shevi'it* 2:1). But, as stated, I fear that "adventures in litigation" may still await on this matter – would that I were mistaken! Let us recall: "ObviouslyClearly, in matters of Return, which is a basic right of every Jew ('Every Jew has the right to come to this country as an *oleh*', in the words of sec. 1 of the Law of Return), the State has a special obligation to consider carefully any breach of the right" (para. 9(1) of my opinion in *Pashko v. Ministry of the Interior* [15], which was also cited by my colleague Justice Melcer). Is there a solution that would be worthy of *universal Jewish harmony* in the State of Israel? In my view, this is possible, based on a responsible, friendly approach to converts.

The Shalit Case and Amendment of the Law of Return

6. These questions are not new to us. I will recount some – only some – of the history, although I would not presume to exhaust it. Already in the fifties of the previous century, we recall that a crisis erupted against the background of the guidelines of the Ministry of the Interior concerning registration of Jews in the Population Registry, and the appeal of the first Prime Minister, David Ben Gurion, to the sages of Israel on the question of "Who is a Jew", which this is not the time to discuss (see: COLLECTION OF RESPONSA OF THE SAGES OF ISRAEL AND APPENDICES (Hebrew), and A. BEN-RAPHAEL, JEWISH IDENTITIES: RESPONSES OF THE SAGES OF ISRAEL TO BEN GURION (5761) (Hebrew)). However, the crisis arose again in full force in 1970. Due to limitations of space, we will focus on the amendment to the Law of Return (no. 2) of 1970. We will go back four and a half decades, in the footsteps of the *Shalit* case (*Shalit v. Minister of the Interior* [1]) that shook the political system at a time when this Court, with what was then a very rare bench of nine justices, ruled by a five-four majority that Major Benjamin Shalit's children,

whose mother was not Jewish, should be registered as Jews in the Population Registry. Following the judgment, a bill to amend the Law of Return was submitted and debated in the Knesset. This is not the place to go into detail, but I will cite, as background, from the words of (then) Justice M. Landau at p. 520 of his opinion in the *Shalit* case, after the suggestion of the Court to delete the "nationality" section was not accepted (I will admit that I myself, for reasons of principle, agree with the opponents of that suggestion, and I will not elaborate): "The dispute and the division reached this Court. No good will arise from this for anybody, but the grave damage to the public that it involves is clearly evident."

In the debate on the first reading of the amendment to the Law, MK (and eventually Minister) Haim Zadok, in the Knesset session of Feb. 10, 1980, referred to these words, saying (56 DVREI HAKNESSET 764): "I wish to point out that the Supreme Court was not enthusiastic about deciding this subject". The Court ruled "because it was left with no option but to rule." And indeed, at the time, my colleague Justice Sohlberg and I happened to write (MINHA LEYITZHAK, in honor of Judge Y. Shiloh (5759), 339: "The courts – seemingly more reluctantly than willingly – are called upon to deal with disputes on questions of state and religion" (also cited in my book PATHS OF GOVERNMENT AND LAW (5763-2003, pp. 196-197 (Hebrew). The same applies today (see: *Masorti Movement v. Be'er Sheva Religious Council* [17]).

7. Regarding the substance: when Minister of Justice Yaakov Shimshon Shapira, in the Knesset deliberations of the amendment to the Law of Return (p. 781), described the proposal for defining the term "Jew" (which now appears in sec. 4B of the Law of Return, formulated as follows: "…a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion"), he pointed out that the draft law did not contain the words "who has become converted in

accordance with the halakhah", "and we therefore say that a person who arrives with a conversion certificate from any Jewish community, as long as he is not a member of another religion, will be accepted as a Jew." MK Haim Zadok repeated these words in the debate on the first and third readings (March 10, 1970, 57 DIVREI HAKNESSET 1137): "A person who became converted in any Jewish community will be accepted as a Jew." This was the historical basis, which apparently included the understanding – which had no normative anchor – between the two Shapiras (Minister of Justice Yaakov Shimshon Shapira, a member of the Labor Party, and Minister of the Interior H.M. Shapira, a member of the National-Religious Party) that a member of a Jewish community abroad would be registered as Jewish, but in Israel, the conversions would be Orthodox. The position of the State in all of the many petitions surveyed by President Naor was consistently in line with that agreement.

For interpretation from that time (the 1970s) of the legal situation following the amendment of the Law of Return see A.H. SHAKI, WHO IS A JEW IN THE LAWS OF THE STATE OF ISRAEL (5737) A. 178-184 (Hebrew). Professor Shaki wrote (p. 180): "… It is a fact that the present wording ["has become converted" – E.R.] is understood as being ambiguous, and is liable to suffer … also from a non-halakhic interpretation." He also mentions that the words "in accordance with the halakhah" already appeared in the directives issued in 1960 by Minister H.M. Shapira with respect to the Registry (p. 181). According to Shaki – who wrote from an Orthodox ideological perspective (p. 183) – "There is no option but to amend unequivocally the existing ambiguous definition in order to clarify that the conversion under discussion is a conversion recognized by Jewish tradition, in the *Shulhan Arukh*, for generations, and not any substitute for it." In his view (*ibid.*), "a minimal uniformity in determination of the nature of affiliation to Judaism…" should be assured, and he proposes (at p. 184) "the

adoption of halakhic criteria by non-Orthodox streams as well," "a traditional common denominator" which in his view is to be found in the formula, "who has become converted according to Torah law." For another view, see M. Stanislawski, *A Jewish Monk? A Legal and Ideological Analysis of the Origins of the "Who is a Jew" Controversy in Israel*, in E. LEDERHENDLER & J. WERTHEIMER, TEXT AND CONTEXT: ESSAYS IN MODERN JEWISH HISTORY AND JEWISH HISTORIOGRAPHY IN HONOR OF ISMAR SCHORSCH (2005), which discusses the case of "Brother Daniel" (Oswald Rufeisen), HCJ 72/62 *Rufeisen v. Minister of the Interior* [1962] IsrSC 16 2428. See also M. FINKELSTEIN, CONVERSION IN THEORY AND PRACTICE (5754) (Hebrew); RABBI Y. AVIOR, LAWS OF CONVERTS IN MIXED MARRIAGES (Hebrew); RABBI S.A. STERN, HALAKHIC CONVERSION (2nd ed.)(5762) (Hebrew).

Ministerial Committee on Registration of Converts from Abroad – 1987

8. In the above-mentioned article of Justice Sohlberg and myself (and see PATHS OF GOVERNMENT AND LAW, pp. 208*ff*.), there is a partial recounting of the story of conversion in the State of Israel in the eighties and nineties of the last century. Mention is made of the Ministerial Committee that in 1987 attempted, unsuccessfully, to reach a solution on the subject of conversion. The Ministerial Committee on Registration of Converts from Abroad was appointed on Jan. 25, 1987, by the unity government headed by Prime Minister Yitzhak Shamir, "to examine the questions that arise in connection with the registration of converts from abroad. The Committee will examine the various aspects of the subject, and for this purpose will be able to confer with experts in Israel and among Diaspora Jewry. The conclusions of the Committee

and its recommendations will be made with the agreement of all members. The Committee will endeavor to complete its work within 6 months."

9. In its decision of Feb. 8, 1987, the Committee set up a "team comprising Ministers Z. Hammer, Y. Modai and M. Shahal, the Attorney General and the Cabinet Secretary to advise the Ministerial Committee at its next meeting about the arrangements for a meeting of the Committee plenum or a team thereof, as necessary, with experts from Israel and abroad." It was decided that meetings of the plenum would be held once a month, and meetings of the team as necessary.

Inter alia, the full Ministerial Committee met with the Chief Rabbis. Below is a summary dated June 23, 1987:

> The Prime Minister opens and presents to the Chief Rabbi the aim of the work of the Ministerial Committee on Registration of Converts from Abroad.
>
> The Prime Minister requests, on behalf of the Ministerial Committee, to hear the position and the proposals of the Chief Rabbis on this matter.
>
> The Chief Rabbis present their position, and these are the main points:
>
> - The question of conversion affects the whole of the Jewish people. It is impossible for people who are not Jewish to be affiliated to the Jewish people.
> - The problem in Israel focusses on a small number of cases.
> - Pressure must be brought to bear on the Reform community to stop converting.

- The Reform Jews are good, “kosher” Jews but they must not be involved in conversion.
- The ways of the Reform rabbis in the United States cannot be imposed upon those people who live in Israel. This leads to assimilation.
- The problem is a problem of US Jewry, and they must find the solution to the problem that they created.
- Every conversion is checked by the rabbinical court. Conversions are not accepted automatically, even if those conducting the conversion are Orthodox rabbis.

The Vote

The Ministers ask the Chief Rabbis for their opinion on the following proposals:

a. To set up a joint *beth din* of three Orthodox rabbis and two observant rabbis, one Reform and one Conservative.

b. To enhance the authority of the rabbi who is the Registrar of Marriages by granting him authority to accept a sworn affidavit concerning the Jewishness of a candidate for marriage.

c. To add to the items “religion and nationality” in the Population Registry the items “former religion and nationality”.

d. To change nothing from a statutory point of view, and to leave the situation as it is today.

The Chief Rabbis reiterate their position that the problem is a problem of US Jewry, and therefore they cannot intervene by setting up a joint rabbinical

tribunal there. Similarly, they say, eligibility for marriage must be examined. The Chief Rabbis also state that the Knesset is not the appropriate framework for deciding on subjects that are exclusively within the area of halakhah.

The Chief Rabbis make the following proposal:

A representative body on the part of the Chief Rabbinate will be set up, which will be located permanently in the United States (for example, in the Israeli Consulate in New York), to which immigrants to Israel can turn for help on various subjects. *Inter alia*, this representative body will serve as the address for converts who are making *aliyah* to Israel, for clarification and guidance in connection with their *aliyah* and their absorption in Israel.

The Prime Minister notes that the proposal could be a pragmatic solution which could partially reduce the problem of registration of converts from abroad. However, this should be presented to the other streams in order to gain their cooperation in this endeavor.

Other Ministers, too, regarded this proposal as positive in principle. The Prime Minister thanks the Chief Rabbis for their participation in the meeting.

On the position of the Israeli rabbinical world in the decade following the *Shalit* affair, see *Conference of Rabbinical Judges – 5739*, an appendix to the book CONFERENCE OF RABBINICAL JUDGES – 5775 (5776-2016), p. 411, at pp. 440-454, and the words of Rabbis Y. Frankel, S.B Werner, S.T. Rubinstein, S. Goren, M. Uriah, A. Shaar Yashuv, H.D. Halevi and B. Rakover, and I will not elaborate.

For the sake of brevity, I will cite only a small part of the discussions of the said team from the Ministerial Committee, which devoted a great deal of time to the matter. In the meeting of the team of June 16, 1987, Prof. Menachem Shawa observed that “if

the High Court of Justice had to interpret this expression ["has become converted" – E.R.] at the beginning of the nineteen seventies, immediately after the Amendment to the Law of Return, it would have interpreted it in the halakhic sense, but the attempts to amend the Law by adding the words "in accordance with the halakhah" after the words "has become converted", and the rejection on the part of the Knesset of the attempts to amend the Law, created an interpretative rule that is now difficult to ignore."

At the same meeting, Professor Eliezer Berkovits, a Jewish philosopher and halakhist who was himself Orthodox, said that "conversions that are conducted by the Reform and the Conservatives are usually valid retroactively from a halakhic point of view, and agreement should be reached between the streams on the elements that are common and that unite the nation. Every party must compromise a little in order to reach a common path of action, without amending the Law of Return." Concerning the question of whether it is possible in his view to establish a joint *beth din* comprising three Orthodox rabbis and another two rabbis who are halakhically observant – one Reform and the other Conservative – he replied that it is possible to achieve such a solution if the State can find Orthodox rabbis who are prepared to sit down with the other streams … he is doubtful whether this idea can be realized in Israel, but in the United States it is possible, and such a solution is almost inescapable.

The representatives of Chabad were in favor of amending the Law by the addition of the words "in accordance with the halakhah," for the sake of the integrity of the nation and its unity. It should be borne in mind that, at the time, the Lubavitcher Rebbe (Rabbi M. Schneersohn) was at the forefront of those calling for the addition of the words "in accordance with the halakhah" to the term "has become converted", even following the decisions of the Chief Rabbinical Council 5730 (see his letters to Dr.

Zerah Warhaftig of 30 Shevat 5732 [February 15, 1972], *Dvar Malkhut, Ki Tissa* 5776 (13 Adar 5776 [February 22, 2016]), and to Mr. Aharon Cohen of 6 Kislev 5735 [November 20, 1974], *Dvar Malkhut, Vayishlah* 5776 (16 Kislev 5776 [November 28, 2015]).

Attempts at a Solution 1988-1989

The team's work had not yet been completed, and the subject arose once more after a severe crisis concerning conversion following the elections of 1988, on which we will not elaborate here. In 1988-1989, this crisis gave rise to an extremely intensive attempt, focusing primarily on immigrants from the United States, at negotiations with the representatives of the Israeli Government (the Cabinet Secretary at the time – yours truly – who coordinated the negotiations, and the senior official at the Ministry of Religion, Zev Rosenberg), and representatives of the Orthodox (what is called "Modern-Orthodox"), Conservative and Reform streams in the United States (through the rabbinical seminaries of the streams and the rabbinical organizations), with the knowledge of the Israeli Chief Rabbinate and its partial participation (by Rabbi Yohanan Fried, who was then an emissary in New York).

"That you may tell it to the generation following" (Psalms 48:14), I will tell the story of that affair as it was documented in what I wrote in honor of Rabbi Professor Norman Lamm in the jubilee volume, KEMA'AYAN HAMITGABER (Bentzi Cohen, ed.) 5774-2004, pp. 13-15 (Hebrew). Rabbi Lamm participated in the said process. The words are quoted with light editorial modifications:

> After the Israeli elections of 1988l, the conversion crisis erupted. This subject, the "Who is a Jew" question, which some have called "Who is a

Rabbi", occupied the state periodically over the course of many years, and the scope of this paper does not allow for the full history. Towards the end of 1988, important elements in American Jewry, mainly from the Conservative and the Reform movements, feared that the new "narrow" government that was about to be formed in Israel (but which ultimately did not eventuate) would amend the Law of Return such that the Law would define the term "has become converted" in a way that would grant exclusivity to Orthodox conversions. Ultimately the government was established as a national unity government, without the Law of Return being amended. However, in view of the serious crisis that had been created, the idea arose of trying to reach an agreement on the subject of "Who is a Jew". As cabinet secretary I was appointed by the Prime Minister, Yitzhak Shamir, to deal with the matter. The person with whom I communicated in the Religious-Zionist stream in the United States was Rabbi Dr. Norman Lamm, President of Yeshiva University, who was joined by the late Rabbi Dr. Louis Bernstein, also from Yeshiva University. Representing the Conservative Movement were Rabbi Prof. Ismar Schorsch, Chancellor of the Jewish Theological Seminary, together with Professor Shamma Friedman, from the Seminary in Jerusalem and eventually an Israel Prize laureate; and on behalf of the Reform Movement was the late Rabbi Prof. Alfred Gottschalk, Chancellor of Hebrew Union College in Cincinnati, together with Dr. Walter Jacob of Pittsburgh (grandson of Rabbi Benno Jacob, the biblical commentator, often quoted by Prof. Nechama Leibowitz in her biblical commentary). The emphasis was on finding a solution to the questions of conversion in connection with immigration to Israel.

Intensive negotiations took place throughout 1989, virtually without publicity, in a sincere effort to achieve Jewish unity and fairness towards all, and to seek a formulation that would reflect the idea that Jews should not be fragmented; and therefore on the one hand, to create a common platform for the different streams of Judaism, out of mutual respect, and on the other hand, the result of which would be conversion that would be acceptable also to the Chief Rabbinate in Israel. The formulation that was prepared was as follows:

> Memorandum of Agreement
>
> We the undersigned, having conferred on the arrangements necessary for the conversion of candidates for *aliyah* to Israel, in order to ensure that they will be accepted in Israel as full Jews for all intents and purposes, and in order to promote the unity of the Jewish people, have agreed as follows: "A Joint Conversion Committee will be established, which will be comprised of one rabbinical representative who will be appointed by each of the three heads of these institutions: the Hebrew Union College, the Jewish Theological Seminary and the Rabbi Isaac Elchanan Rabbinical Seminary attached to Yeshiva University.
>
> The Chief Rabbinate of the State of Israel will appoint a rabbinical representative (an attaché to the Israeli Consulate in New York), whose tasks will include matters of conversion of *olim*.
>
> After examination of each candidate for conversion who wishes to make *aliyah*, the Committee will make a recommendation, by

consensus, in full coordination with the said attaché, concerning those candidates whom it finds suitable, and the recommendations will be passed on by the attaché to a *beth din* that will be set up by the Israeli Chief Rabbinate for the purpose of conversion prior to *aliyah*.

(-) Israel Cabinet Secretary

(-) Ministry for Religious Matters in the Government of Israel

(-) The Hebrew Union College, The Jewish Theological Seminary

Guidelines as follows were to have been attached to the document:

Guidelines:

1. Conversion will be in accordance with halakhah. The process will include, in its contents and its spirit, "He is informed … about some of the easy precepts and some of the more severe ones." Doctrinal matters are beyond the purview of this process.

2. The length of the process of preparation depends on the intellectual ability of the candidate and the time that he devotes to his studies. The minimum period is six months. The candidate for conversion must develop a basic understanding of and commitment to Judaism, its history and its lifestyles. He must also prove his loyalty to Israel.

3. The candidate for conversion must come equipped with a recommendation from a rabbi who will take responsibility for his preparation and commitment. The rabbi must determine that the candidate has a sincere and healthy interest in Judaism and in Israel.

4. The candidate is expected to demonstrate suitable knowledge of Hebrew.

5. An attitude of warmth and kindness towards the candidates is necessary, bearing in mind that they will be living in Israel.

6. We expect that the candidate for conversion will make a substantial contribution to a Jewish charity of his choice.

7. Every suitable past conversion will be accepted without the necessity of a second conversion.

Simply put, the proposal, like the proposal of the Neeman Committee that was eventually set up in 1997 (see below), was intended to make possible a common platform for all the various streams of Judaism in the form of a joint committee for all (and not a joint *beth din*, as the subject was later presented in a distorted way by certain circles of New York ultra-Orthodox Jewry), and at the same time, to ensure that the conversion would be in accordance with the halakhah and acceptable to the Chief Rabbinate, for the sake of the unity of the Jewish people.

However, due to the proposal being presented in a certain way by those ultra-Orthodox circles (as was the case with the Neeman Committee many years later), and in view of the opposition from the other end of the spectrum, in certain parts of the Reform movement, it never took off.

At that time, we tried to introduce a fair, moderate trend, which called for promoting unity in Israel – unity for all the parts of the Jewish people, while preserving the framework of halakhic Judaism with no violation of the halakhah, and we were not successful. A similar fate awaited the Neeman Committee, even though it progressed

further, reaching the stage of a Government decision, but it did not reach the stage of legislation.

The Neeman Committee

10. The Neeman Committee was appointed by Prime Minister Benjamin Netanyahu on June 27, 1997, and headed by Prof. Yaakov Neeman, who later became Minister of Finance and Minister of Justice. The background to the appointment of the Committee was an initiative – and subsequent crisis – to enact an amendment to the Rabbinical Courts (Marriage and Divorce) Jurisdiction Law, the aim of which was to give official status to Orthodox conversion, apparently following the judgment of the Supreme Court in *Pessaro v. Minister of the Interior* [2]. This time, the emphasis was on Jews from the former Soviet Union, as opposed to the effort described above which primarily concerned US Jewry. This occurred after an agreement was reached on June 17, 1997 between the Coalition Chairman, MK Michael Eitan and representatives of the Masorti movement (the Conservative movement – Rabbi Reuven Hammer) and the Movement for Progressive Judaism (the Reform movement – Rabbi Uri Regev), with the involvement of Minister Natan Sharansky and MK Prof. Alex Lubotzky. It was agreed to freeze impending legal proceedings, and to establish a committee comprising seven members, which would include one representative of the Reform Movement and one of the Conservative Movement, aimed – *inter alia* – at leading "to a situation in which registration of particulars under the Population Registry Law and regulation of the matter of naturalization, including that of converts, would be done in a way that would be satisfactory to all parties," with the Coalition debating and approving the conclusions. On that same day – June 17, 1997 – Prime Minister Benjamin Netanyahu wrote to the leadership of the Conservative and of the Reform Movements that a joint committee would be established, and "I regard this as an

important step in which Israel and the Diaspora will work together to preserve the unity of the Jewish people out of mutual respect. And I hope that out of this crisis we will emerge strengthened."

The Neeman Committee worked intensively, and held 50 meetings. It searched for a fair path. I will mention a memorandum that was submitted to it on Sept. 2, 1997 by Dr. Menachem Finkelstein, author of the important work, CONVERSION IN THEORY AND PRACTICE (2004) (Hebrew), who later served as the Military Advocate General with the rank of Major General, and is now Deputy President of the Tel Aviv District Court. The memorandum – in the spirit of "It is time to act for the Lord", and in reliance on well-known halakhic case law – discusses the approach of "in accordance with the need" (in the words of Rabbi Moshe Feinstein, one of the greatest halakhic decisors of the twentieth century in the USA), in order to deal with the subject of observance of commandments, which is the principal halakhic difficulty with accepting converts. Among the decisors that were cited as authorities were Rabbi Ben-Zion Meir Hai Uziel, Rabbi Ovadia Yosef and Rabbi Isser Yehuda Unterman – all Chief Rabbis of Israel; see the memorandum, "On the Problem of Conversion in the State of Israel: Opinion of 1997", also in the special edition of the *Judges Bulletin* in honor of Judge Shmuel Barukh (website of the Judiciary) p. 182 (Hebrew); on the approach of Rabbi Feinstein, see Harel Gordin, *The Conversion Ceremony as a Ritual of Defining Jewish Identity: A Study of the Theory of Rabbi Moshe Feinstein*, in A. MAOZ AND A. HACOHEN (EDS.) JEWISH IDENTITY (5774-2014) 101 (Hebrew).

11. On Jan. 28, 1998 Yaakov Neeman, who by that time was already serving as Minister of Finance, informed the Prime Minister that the Committee had completed its task, and that it was seeking the approval of the Chief Rabbis for its recommendations, which included the establishment of an Institute for the Study of

Judaism and rabbinical conversion tribunals, as will be described. The Report of the Committee, which was attached to the letter, included an agreement (para. 3) "to establish a unified state process of conversion – according to Jewish law – that will be recognized by all of Israel. This will make it possible to ensure the unity of the Jewish people. The proposed conversion track is intended to ensure, insofar as possible, in the framework of the halakhah, maximum consideration of the constraints of the time and human distress." The Report included – as stated – the establishment of an Institute for the Study of Judaism in which all the streams would be represented, and special conversion tribunals that would be appointed by the Chief Rabbis, which would be "*batei din* comprising three judges, in the halakhic sense, as required for purposes of conversion (*Shulhan Arukh, Yoreh Deah* 268:3-4), and not a *beth din* with jurisdiction by virtue of the Rabbinical Court Judges Law, 5715-1955. This conversion, in that it would be acceptable to the entire Jewish people, contributes to national unity." It was also said that "in relation to a candidate for conversion, 'We inform him of the fundamentals of the faith, i.e., the unity of God and the prohibition against the worship of false deities. We elaborate on this matter. We inform him about some of the easy precepts and some of the more severe ones. We do not elaborate on this matter. … . We do not teach him all the particulars lest this cause him concern and turn him away from a good path to a bad path. For at the outset, we draw a person forth with soft and appealing words'..." (Maimonides, *Laws of Forbidden Sexual Unions* 14:2). This, in my view, transmitted cautious optimism.

The protocols of the Council of the Chief Rabbinate of 13 Shevat 5758 (Feb. 9, 1998) dolefully document Professor Neeman's attempt to convince people of the conclusions of the Committee, stressing the need for a solution to the problem of conversion of tens and even hundreds of thousands of people who made *aliyah*

lawfully but are not Jewish according to the halakhah, and the fact that the conclusions of the Committee include conversion according to Jewish law. In his words, "Conversion is not something private … it is unacceptable that each person should choose a rabbinical tribunal for himself," and he refers, therefore, to an exclusive track – if the Chief Rabbinate approves –to prevent fracturing the nation. However, from the many statements of rabbis such as Chief Rabbi I. M. Lau, Rabbi S. Kook and others – apart from the demand to legislate exclusivity for the rabbinical courts – reservations emerge about the joint institute. One of the participants, Rabbi U. Gliksberg, stated, "Were I to hear that the recommendations of the Committee had been enacted as law, we would weigh up whether this is worth 'the trouble of the King', (Book of Esther 7:4), but if it is not a law, who can guarantee that the Reform will stop converting people. If it is not so, we have not helped in any way". Rabbi M. Rochwerger also asked the same question. The reply of Minister Neeman was that "I see a possibility that if the Council should wish with respect to the question addressed to it, and would ask to bring this matter to the Knesset, there is a chance that it would become law. There is no doubt that this would be the decision of the Knesset. The Attorney General has undertaken to defend [the Government] against the petitions that will be submitted to the High Court of Justice. If a subject that was settled by agreement comes before the court, it will not need to adjudicate it."

Ultimately a decision was made, parts of which are quoted below:

> The Chief Rabbinical Council received clarifications, in a clear and absolute manner, that it is required only to consider the matter of conversion itself, and in spite of its clear stance that there should be no cooperation with those who do not accept the yoke of the Torah on themselves, the Council was called upon to discuss the matter of conversion in view of the serious, grave

problem of mixed families who arrived in Israel after being estranged for decades from the Jewish sources. There is no doubt that responding to this involves many difficulties and a huge effort, and the Rabbinate is tackling the heavy task which has been laid on its shoulders.

The Council received the unequivocal announcement of the Minister of Finance that there are no longer, and will no longer be, conversions in Israel that are not in accordance with halakhah, and that he has made a clear undertaking that acts that are called "conversion" and that are only a semblance of conversion will be prevented in Israel. The demand of the Chief Rabbinical Council is that this exclusivity in relation to conversion according to halakhah will be anchored in statute and will receive legal force.

The Council has seen fit to announce publicly that conversion is a personal matter concerning the convert himself and he, and he alone, must convince the *beth din* that he accepts the yoke of the Torah and the commandments, and is committed to joining the Jewish people. The *beth din* is and will be concerned only with the matter of the particular person in front of them, to enable it to consider his matter fearlessly, recognizing the duty imposed on it.

The Chief Rabbinical Council reiterates the longstanding position of the Chief Rabbinate that conversion in Israel must be considered and conducted only in the *batei din* that operate according to the law of the Torah "at the discretion of the *beth din* which will convert, in accordance with the halakhah, a person who it considers to have accepted the yoke of the commandments.

> Accordingly, the Chief Rabbinate decides hereby that additional *batei din* should be set up wherever there is found to be a need for this.
>
> The Chief Rabbinical Council calls upon everyone who is able to do so to prevent the activities of those who do not believe in Torah from Heaven, and who are trying to uproot the foundations of the Jewish religion, thus creating a fissure between parts of the people, and attempting to sow in the hearts of the people a departure from the traditional path that has been trodden for generations. They have already brought about disastrous consequences and assimilation amongst Diaspora Jewry. The great sages of Israel prohibited any cooperation with them and with their approach. It is inconceivable to establish a joint institute with them.
>
> The Torah of Israel is one, and was given from Heaven, and there is no room for any deviation whatsoever from what we were taught by the sages of all the generations, from whom we are sustained. Conversion in Israel is an entry ticket to the Jewish people, and it will be conducted solely according to Jewish law.

I will not presume to offer an interpretation of the decision of the Rabbinical Council; clearly, it did not support the decisions of the Neeman Committee. It appears that on the one hand, it reflects some sort of understanding of the needs of the hour, and on the other hand, it contains a demand for "exclusivity of jurisdiction" for the *batei din* and serious rejection of the non-Orthodox streams – even though it did not call them by names – in a manner that rules out cooperation with them. As I understand, once the Rabbinate did not approve, at least some of the non-Orthodox partners pulled out.

12. As opposed to this, what follows is the decision of the Government dated April 7, 1998, bearing the heading "Conversion in Israel":

We have decided (2 against) to approve the decision of the Ministerial Committee on Conversion in Israel no. NGR/1 of April 6, 1998 as follows:

a. Following decision no. 3610 of the Government of April 5. 1998, to adopt, with the Government's approval, the attached recommendations of the Committee to Develop Ideas and Proposals in the Matter of Conversion in Israel, headed by Minister Yaakov Neeman (hereinafter: the Committee).

The Ministerial Committee takes a very positive view of the recommendations of the Committee, and believes that they present an appropriate solution for the problem of conversion.

The Ministerial Committee is further of the opinion that realization of the recommendations of the Committee will bring sectors of the nation closer together both in Israel and abroad.

The Minister of Finance will find in the State budget the resources necessary for the realization of the recommendations of the Committee, and will allocate this budget for the implementation of the proposed plan in these recommendations.

b. (1 absention) – To take note of the announcement of the Chairman of the Ministerial Committee that with the approval of the Prime Minister, the Chairman of the Ministerial Committee for Diaspora Affairs, Immigration and Absorption, and the Chairman of the Jewish Agency, the composition of the board of directors of the Institute for the Study of Judaism (in accordance

with the second part of the Committee's recommendations – Chap. 1, sec. 3(a)), will be as follows:

Prof. Benjamin Ish-Shalom – Chairman

Ms. Aya Dashevsky – Member

Mr. Avraham Duvdevani – Member

Dr. Amnon Shapira – Member

Prof. Chaim Shine - Member

Rabbi Michael Boyden – Member

Rabbi Reuven Hammer – Member

(the last two – from the Reform Movement and the Conservative Movement)

The Rabbinical Council is one thing, the Government is another, and indeed, the rabbinical tribunals were established.

13. We will cite, somewhat at length, our view (i.e., mine and that of Justice Sohlberg, who served as the Senior Assistant to the Attorney General and the advisor to the Committee in formulating its recommendations) of the Neeman Committee, not long after it had completed its task, in the aforementioned article (see PATHS OF GOVERNMENT AND LAW, pp. 210-214):

> The deep internal struggle within the Jewish people changed, unintentionally, that which was secondary into that which was primary, and that which was primary into that which was secondary. In truth, regarding conversion in Israel at this time – it is not the struggle between the streams that is the main thing; the main thing is the serious problem of those many tens of thousands of immigrants from the Former Soviet Union – some set the number at two hundred thousand or higher – who immigrated to Israel

under the Law of Return, but who are not Jewish according to halakhah, and they are therefore held back from fully integrating into Israeli society. It was not for nothing that the emphasis in the Neeman Committee was on conversion in Israel, as opposed to the emphasis on conversions abroad in the previous attempt.

What was required here, as well, was an attempt to leave aside those disputes of principle that will continue to echo around the world not to push too fast, and to allow each to hold on to his own worldview. Instead, to create a reasonable, consensual arrangement, that would allow for respectful mutual coexistence, with moderation, patience and common sense; to find a common interest that would be the basis for consensual patterns of action. This interest in the matter of conversion is apparently the need to help in the integration of tens of thousands of *olim* into Israeli society. Alongside this common interest, there is also the desire, common to most of those involved, to avoid widening the divisions within the Jewish people. It is no secret that the Reform and the Conservative streams aspire to improve their position in the Israeli reality, and to prevent the exclusivity of Orthodox Judaism. However, in this battle there are red lines, and apparently there is a joint desire not to cross them.

… from these points of view, as seen from the office of the Attorney General, we have tried to balance, to learn and to promote a reasonable, suitable solution.

In these circumstances, the view was widely held – and it still is widely held, despite all the obstacles – that people were prepared for that two-tiered solution proposed by the Neeman Committee, in order to strive for maximum

unity of the Jewish people, out of mutual respect. It was appropriate to have a unified state conversion process, in accordance with Jewish law, which would be recognized by all of Israel, something which apparently could and should have been acceptable to all. The conversion track that was proposed by the Committee was designed to ensure, insofar as possible within the framework of the halakhah, maximum consideration of the constraints of the hour and of human distress.

A preparatory, basic stage is that of the Institute for the Study of Judaism, in which the students would study for conversion. The idea is that the institute for the study of Judaism will operate in different locations around the country, the emphasis being on places in which there are concentrations of immigrants, and it will provide a suitable response from the points of view of accessibility and of the curriculum needs of each person who wishes to convert. Not only is this a promise to the tens of thousands of immigrants, not only a preservation of the halakhic basis which has been the practice over the years in the pre-state Jewish community and in the State of Israel, but also a promise to the Reform and the Conservatives. The Institute is intended to serve the concept of cooperation among the streams and unity in the Jewish people. The directorship of the institute is intended to represent the Jewish population of Israel in all its variety and streams. Just as in the Neeman Committee, in which the members were, *inter alia*, representatives of the Movement for Progressive Judaism and the Masorti Movement, so too the directorship of the Institute.

The curriculum and the teaching staff were also supposed to be varied, to familiarize students with Judaism while stressing the uniqueness of the

Jewish people and its Torah, and what unites the Jewish people in all its variety and its streams. And at the same time, the plan was designed to prepare the students, to teach them and to ready them – should they so wish – for the process of conversion before the special conversion tribunals that would be established by the Chief Rabbis of Israel, and of course, this would be clear to all those involved.

… How unfortunate it is that those "soft and appealing words" (as per Maimonides in *Laws of Forbidden Sexual Unions*) were not adopted by all. For ultimately – what was in the proposals? The dialogue stage – a joint institute for the study of Judaism, in which people of the different streams among the Jewish people would come together, all in order to prepare students for conversion in the knowledge that the conversion would be halakhic; and at the second stage, conversion in *batei din* that would be set up by the Chief Rabbinate, with an understanding of the severe human distress in this generation, and for the purpose of conducting halakhic conversions that would be valid for all intents and purposes, in the most reasonable way possible. One of the present authors, the Attorney General, wrote to the Chief Rabbis on the eve of the discussion of these recommendations in the Committee, that in his eyes, this was a historic agreement: "As a person who has dealt with these matters in the past on behalf of the Government of Israel, in an effort to achieve solutions which at this time have not come to fruition, the achievements of the Committee are indeed great in my view. This is a rare opportunity to achieve a substantive solution in a peaceable manner … for the problem that has accompanied us for forty years … I do not make light of the problems that the Chief

Rabbinate is liable to identify, but it seems that the advantages of the proposal of the Committee far outweigh – to an infinite degree – the problems from the perspective of the Rabbinate – and there are, also, the problems from the perspectives of the Reform and the Conservative movements … It would indeed be unfortunate if it were to be rejected, for then, Heaven forbid, we should all be regarded as having the humility of Rabbi Zechariah ben Avkulas (TB *Gittin* 56a) – the talmudic figure whose surfeit of cautiousness born of humility led to disastrous results….

Far away from the spotlight, the Committee of Rabbi Druckman deliberated the issue of the conversion of minors. The recommendations of this Committee – just the tip of the iceberg – were accepted unanimously. The Committee internalized recognition of the need to deal with the major issues: finding a suitable solution for those minors and their families upon whom fate had not smiled, to distance them from battles of prestige and politics, and to lead to their optimal integration into Israeli society. Common sense prevailed. The Druckman Committee toiled and succeeded, as proven, apparently, in reality.

The Neeman Committee sat for two long months, holding many meetings and displaying great patience, endeavoring to hear and to understand everyone who was involved in the issue. This in itself was an achievement whose importance is not to be underestimated: a meeting around one table of Jews from completely different backgrounds, in order to find a basic common denominator. From time to time, proposals were made for "technical" solutions, such as attaching a special designation to converts in the Population Registry. We opposed most of them, whether due to the need

to avoid reminding the convert (and even more so – those around him) of his past; or whether due to the fact that a technical solution defers the substantive problem somewhat, but it still exists in full force; and primarily due to the fact that as the deliberations of the Neeman Committee progressed, a feeling prevailed that people were becoming open to a substantive solution for which so many had yearned.

In the formulation of the agreements, as is the nature of things, there are things that are revealed and those that are concealed; some things could be said explicitly, and some only in vague terms or hinted at, if at all … it stands to reason that continuing dialogue and mutual respect would make possible suitable solutions for the questions that arose.

Valiant efforts were made in order to ensure that the institute, in the proposed format, would be launched, and that the opportunity would not slip away. We did not ignore the existence of questions of implementation for which no solution had been offered in the recommendations of the Committee. We did not make light of the problematics of the Chief Rabbinate and its misgivings, due to the fact that the institute in question would comprise representatives of the various streams of Judaism, even though we would have been happy had the decision of the Chief Rabbinical Council been formulated differently, and it should be recalled that many conversions that had been performed to date with the approval of the Chief Rabbinate were not based on pure halakhic observance on the part of the converts. We did not ignore the difficulty of the Conservatives and the Reform who were required to agree (even though this coincided with the establishment of a joint forum – the institute – which is a very significant

innovation) to the continuation of the monopoly of the Chief Rabbinate in conducting the conversions. This, when at the same time the attempt to orchestrate a direct meeting between the representatives of the non-Orthodox streams and the Chief Rabbinate did not succeed. We were aware of the fact that this was not the perfect realization of a noble, elevated goal, but the beginning of the lower path which contained many potholes. And with all that we did not see – not then and not now – any other reasonable solution.

Insistence on the continuation of uniform, halakhic conversion with a clear trend towards understanding the needs of the time and its voice, on the responsibility of the Chief Rabbinate, respectful dialogue with the non-Orthodox movements in Israel by way of their integration in the joint institute, and all this based on a common interest to act for the sake of the wellbeing of the *olim*, in a way that is likely to be acceptable to all the different sectors and streams in the nation, including those that wish to challenge the hegemony of the Chief Rabbinate, is a fitting compromise. Each one according to its view and approach would be able to point out its achievements, alongside concessions with which it could live.

It is impossible to elaborate here all the efforts and attempts that were made – whether in order to bring about a comprehensive solution, or to solve concrete problems – in the dozens of cases that came before the courts. We wanted to obviate the need for legal discussions in order to help clear the air and allow for the processes recommended by the Neeman Committee to run their full course. Similarly, our hope was to reach a situation which would make legislation on this issue unnecessary … The goal was to try and reach informed consent to the solution of compromise, of common sense and

goodwill, without us falling between the hammer of the Knesset and the anvil of the Court (the latter is not interested in adjudicating these matters, and would of course prefer for them to be solved within the political system).

At the time of this writing, puffing slowly uphill, breathing heavily, is the engine and with it several carriages, bearing the establishment of the joint institute for the study of Judaism and the establishment of the special rabbinical conversion tribunals. Not all the carriages were attached as anticipated. Some of them are destined to break off, or to stop at one station or another. The passengers, too, are not yet knocking on the doors of the train, even though it is proceeding slowly. There are those attempting to have it both ways, with only one foot on the train, waiting, anticipating, considering whether to jump on or not. And with all that, we hope that the train will roll on, and that in the end, the recognition that the proposed combined solution – which is a golden path at this time for dealing with the polarized views – will eventuate.

There may be more oscillations, protests and objections. Recourse will be made to the parliamentary and judicial arenas. Each party will try to chalk up another victory in one battle or another. But ultimately – so we believe – the possible reasonable path is for a solution of the type that was proposed, on the basis of a basic, common interest. Sometimes solutions arise based on lack of choice, after a crisis or serious friction. The push to seek solutions until now usually occurred in such circumstances. We would prefer that it not necessarily be circumstances such as those that lead to a solution, for it is obviously better that the solution be achieved calmly.

Why did we cite the above at length? Because what was said then is, in my opinion, applicable today as well, and in order to show that, with appropriate changes, it is not impossible, with goodwill, to achieve universal-Israeli harmony, so that all those who convert, belonging to all the sectors of the Jewish people, will be able to marry in Israel in the proper way, and conversion – the preparation for which will include an inter-denominational dialogue – will be acceptable to all, in the regular *batei din* of the Rabbinate.

Regrettably, the recommendations of the Neeman Committee, even though they were adopted by a government decision, did not achieve their overall purpose either. The Joint Institute for the Study of Judaism, which was established following the proposals, did eventually – possibly too late – receive the approval of the Chief Rabbinate, but the conclusions did not become law, and were left dangling between Heaven and Earth.

14. With respect to the position of the Rabbinate regarding the Institute, I will mention that following petitions to the High Court of Justice on the subject of conversion, and after much effort on the part of the Attorney General, a letter was sent to me by the two Chief Rabbis, Ashkenazi Chief Rabbi Israel Meir Lau and Sephardi Chief Rabbi Eliahu Bakshi-Doron, on Sept. 12, 2000, which stated:

> Following the hearing before the Supreme Court on the subject of conversion, out of concern for the unity of the Jewish people, we believe that the following should be clarified:
>
> The *batei din* dealing with matters of conversion that come under the Rabbinical Courts Administration accord decent treatment to every person

who turns to them, child as well as adult, who wishes to shelter under the wings of the Divine Presence.

The *batei din* operate in accordance with the halakhic rule whereby the request of whosoever is not Jewish and who wishes to convert is examined on the substance of the matter, i.e., the person's seriousness, his motives, his knowledge and his desire.

In this framework, the place of the studies of the person wishing to convert does not constitute a factor by virtue of which the *batei din* weigh their decisions on matters of conversion, and there is even no requirement for studies in an institute. The *beth din* does not disqualify any person wishing to enter its gates.

With respect to the Joint Institute for the Study of Judaism: its graduates who converted in the batei din after they were examined, are the very best proof, each one individually, that they were treated like every other convert (emphasis added – E.R.).

The halakhic principle that leads the *batei din* to consider every person seeking to convert irrespective of the place of studies will also lead the *batei din* in the future.

We will add as an aside that we have ruled that every person who undergoes conversion in the special conversion courts will receive a conversion certificate from the Director of the Rabbinical Courts, and the conversion has the same status as conversion conducted in the regional *batei din*.

This letter speaks for itself, and at the time I regarded it as being very important, for in it the Chief Rabbis endorsed not only conversion in the special courts, but also the

Joint Institute for the Study of Judaism. However, no agreed arrangement with any statutory expression has been achieved, and this is the root of the problem.

15. Some eighteen years have passed since the Neeman Committee convened. It appears that there have been no dramatic "strategic" developments, that is, no new agreements and no new legislation, but the subject has not disappeared from the agenda, and it arises and dies down again both in the Government and in this Court, and my colleague the President has reviewed the case law. I will add that, as for myself, as Attorney General I insisted that conversion should be conducted in a governmental framework, and therefore the "Conversion Administration" (headed by Rabbi Israel Rosen, one of the main contributors on the subject) which was a quasi-public-private body even though it bore the name "governmental", became a governmental system; see also the review of Rabbi Rosen, *Fifteen Years of State Conversion From a Personal and Public Perspective*, on the Tzomet Institute website,.

I will mention here that in the judgments of this Court, alongside their decisions on the cases before them, there is a consistent overtone calling upon the legislature to speak out, but unfortunately, it has not been heeded. Thus, for example, in *Pessaro v. Minister of the Interior* [2], President Barak stated (p. 746), in response to the words of Justice Tal (dissenting) on the need for public oversight of the act of conversion: "My colleague further notes that this result [that every private body will conduct conversions – E.R.] is unacceptable, for conversion is not only a private act but a public one. Indeed, my colleague's considerations are worthy. It is, of course, in the hands of the Israeli legislature, to consider what requirements there should be for the purposes of the Law of Return and the Registry …". And further on (p. 747): "Conversion for the purposes of the Law of Return is an act by virtue of which a

person joins the Jewish people. It has public ramifications regarding Return and nationality … The concept 'conversion' is, first and foremost a religious concept, of which the secular legislature makes use." Further on President Barak stated that, indeed, it was ruled that the Religious Community (Conversion) Ordinance does not apply to the Registry, but added (pp. 745-748): "We are not determining that which 'is' [the exact contents of the nature of conversion in Israel – E.R.]. As we mentioned, that which 'is' is liable to be determined explicitly and in detail by the legislature. At the same time, as long as the Knesset has not made its voice heard, there is no juridical lacuna. A solution to the problem of 'what is' is found in the Law of Return, which defines who is a Jew. Should the legislature add nothing to this, there will be no option but to seek a judicial decision on this matter according to the existing definitions." As President Barak said in the majority opinion in *Makrina v. Minister of the Interior* [5], at p. 732, conversion in the Law of Return has two aspects: "From one aspect, it is entirely in the private domain, between man and his Maker. From the other aspect, conversion is of huge public significance." That is why the distinction was made in that case (at p. 734, *per* President Barak), inasmuch as, unlike matters of registration, in which the level of oversight is "low" in that the issue is a statistical compilation, here we are dealing with the Law of Return, which grants "the convert the entry key to Israel and to acquire citizenship of Israel. The oversight in this framework must, naturally, be stricter, and the degree of evidence that is required must be higher. Hence the possibility that the same individual will be registered as a Jew in the Population Registry, but will not be able to register as a Jew for the purpose of the Law of Return" (p. 734); in *Naamat v. Minister of the Interior* [3], at p. 753, President Barak stated:

> Let there be no mistake – I accept that conversion in Israel is not a private act. It has public ramifications. By virtue thereof a person joins the Jewish people. Following conversion it is possible to acquire Israeli citizenship. There is, therefore, a need for governmental regulation of the public aspects of conversion, beyond what is determined in the Population Registry Law, the purposes of which are limited and are statistical in nature … as in the case of *Pessaro*, so too in our case, state oversight of the public aspect of conversion – beyond the oversight of registration in the Registry – must be determined by the Knesset. As long as the Knesset has not stated its position, we return – in all that concerns registration in the Registry – to the authority of the Registrar.

President Barak's judgments constitute a call that could not be more clear that the Knesset state its position. It has not done so.

16. Below is a short, non-comprehensive review of other developments. On Sept. 1, 2003, the Government adopted a decision entitled "Head of the Conversion System in Israel", which stated as follows:

> We decide (unanimously):
>
> Following government decision no. 3613 of April 7, 1998, in which it was decided to adopt the recommendations of the Neeman Committee on the subject of conversion in Israel, and under which *batei din* for conversion were established, a person will be appointed to head the conversion system in Israel, from among the judges of the conversion tribunals.
>
> The head of the conversion system in Israel will be appointed by the Chief Rabbi of Israel, who serves as the president of the Chief Rabbinical Court.

The head of the conversion system will be responsible, on behalf of the Chief Rabbis of Israel, *inter alia*, for the conversion system and the overall policy on the question of conversion in Israel.

The head of the conversion system will be authorized by the Minister for Religious Affairs to sign conversion certificates.

On July, 10, 2004, a decision was adopted, entitled "The Conversion System in Israel" as follows:

We decide (11 in favor; 2 against; 3 abstentions):

a. Following government decision no. 761 of Sept. 1, 2003, according to which the Chief Rabbi of Israel, President of the Chief Rabbinical Court, appointed the head of The Conversion System in Israel, and in accordance with sec. 31(d) of Basic Law: The Government:

   To transfer the conversion tribunals unit from the Ministry of Justice to the Israel Conversion System in the Prime Minister's Office.

   In accordance with the request of the Chief Rabbi of Israel, President of the Chief Rabbinical Court, the place of the conversion tribunals unit in the Prime Minister's Office will be examined and determined in coordination with the head of the Conversion System in Israel, the Director General of the Chief Rabbinate of Israel and the Cabinet Secretary.

b. Any power that was held by the Director of the Rabbinical Courts in accordance with government resolution no. 1705(8/GR) of 8.6.2000 will be granted to the head of the Conversion System.

c. To transfer from the Ministry of Justice to the Prime Minister's Office the budgetary items that were allocated in its budget and/or that it used for the subject of the special conversion tribunals, as well as the personnel who dealt with this subject and the means and the resources they had at their disposal.

In the event of disagreement on the said subject – the Cabinet Secretary will decide.

d. Until the complete transfer of the budgets and the means as stated in sec. (c) above, the special conversion tribunals, with their staff and their judges, will continue to receive all the administrative services that they received to date from the Ministry of Justice, including through the Rabbinical Courts Administration, unless it should be decided otherwise in coordination between the Prime Minister's Office and the Ministry of Justice.

e. The staff of the special conversion tribunals and the judges will remain in their present location, unless it should be decided otherwise by the Prime Minister's Office.

f. This resolution amends sec. b(1)(a) of government decision no. 900 of Oct. 8, 2003.

17. In order not to overburden, I will not discuss the case law reviewed by my colleague. I will mention only that whenever a relevant judgment was handed down (such as *Rodriguez-Tushbeim v. Minister of the Interior* [4]), parliamentary debates ensued concerning the preparedness of the Ministry of the Interior for its

implementation (see the survey of the Center for Research and Information of the Knesset, *The Issue of Conversion in Israel*, by N. Ben-Ami, 9 Tammuz 5767 (June, 25, 2007), which contains, *inter alia*, a description of the bodies that are involved in conversion – the Conversion System in the Prime Minister's Office, the Conversion Department in the Ministry for Immigration and Absorption, the Department of Adult Education in the Ministry of Education, the Department of Human Resources and the Chief Army Chaplain, the Joint Institute for the Study of Judaism (described as "the central state body dealing with the preparation of potential converts, acting in the framework of the Jewish Agency), and private non-profit organizations (p. 9). The difficulties in the process of conversion were also described, as well as the fact that the number of those undergoing conversion had not risen significantly despite the partial implementation of the conclusions of the Neeman Committee and the establishment of the Conversion System in the Prime Minister's Office. There was also a description of the work of the "Committee for the Examination of an Overall Organizational Structure and Pooling of Resources on the Subject of Conversion in Israel" (Halfon Committee), which was established in 2007, headed by the Director General of the Ministry for Immigrant Absorption, Erez Halfon, following the stagnation in the number of *olim*, and this Committee recommended the establishment of a supreme steering committee, a pooling of the conversion activities in one governmental support unit (the Conversion System), and expansion of the special conversion tribunals, as well as families to accompany every convert, and a central information system.

18. See also *Procedural Rules and Applications for Conversion* 5766-2006, published by the Chief Rabbi and the President of the Chief Rabbinical Court, the Sephardi Chief Rabbi, Rabbi S. Amar, *Official Gazette* 5766-2062, of Feb. 27, 2006,

in which the location of the special conversion tribunals and their districts was established (five districts throughout the country, with two of them handling Ethiopian immigrants), a description of the pre-conversion procedures and the role of the representative of the *beth din* who, *inter alia*, conducts an interview with the candidates. It was determined that a foreign national (who is not a citizen or a permanent resident) will not be converted except in special circumstances, with the authorization of the Exceptions Committee, and there was discussion of questions of training rabbinical court judges, appointment of judges of the special tribunals (by a search committee according to the decision of the Government of 24 Kislev 5766 (Dec. 25, 2005)0, the proceedings in the tribunal (after examination of the preparation), deciding by unanimous decision, arrangements for ritual immersion and enforcement of the tribunal's decision, as well as the possibility, in exceptional cases, of nullifying a conversion, and also issuing a certificate of conversion (on cases of nullification of conversion, see HCJ 5079/08 *A. v. Rabbi Sherman* (April 25, 2012); HCJ 5444/13 *Erez v. Special Conversion Courts* (2014); on this see Rabbi Shlomo Dichovsky, *Retroactive Nullification of Conversion*, in RABBI YAAKOV DICHOVSKY, (ED.), LEV SHOME'A LESHLOMO, vol. 1, 367 (5774) (Hebrew); A. Edrei, *And Are we Not Responsible For Them? More on the Conversion Debate*, 24 (5771) AKDAMUT 178 (Hebrew); Asher Maoz, *Uncircumcised of Heart – Enough!*, *Haaretz* May 5, 2008).

There has also been no let-up in the preoccupation with attempts to change the alignment of authority in order to allow town rabbis or a local council to conduct conversions in the framework of special tribunals; see government decision no. 2147 of Nov. 2, 2014 concerning "Local Conversions Panels" which was intended to enable the establishment of local conversion panels which would operate in accordance with

Jewish law (a compromise proposal following the proposal of MK Elazar Stern, to which I will refer below). See also, e.g., the Israel Chief Rabbinate Law (Amendment – Authority in Matters of Conversion) Bill, 5775-2015 (Twentieth Knesset; it was preceded by an identical bill in the Eighteenth Knesset).

19. Much has been written on the attitude to the convert since the time of Hillel the Elder (TB *Shabbat* 31a) who, when a Gentile approached him and requested "Convert me on condition that you teach me the entire Torah while I stand on one foot", said to him (unlike the sage, Shammai the Elder), "That which is hateful to you, do not do to your fellow – that is the entire Torah, the rest is commentary. Go and study." See Rabbi Y.Y. Weinberg, *On One Foot – The Attitudes of Hillel and Shammai to the Convert*, LIFRAKIM (5763) 367 (Hebrew), who explains (p. 368) Hillel's belief that after a person embarks on his path into to Judaism, "The love of the convert for his Jewish brethren will grow over time" (and see the comment of Rabbi A. A. Weingort, *ibid*.); see also Joshua Schoffman, *And if a Stranger Sojourn with You in Your Land, You Shall Not Do Him Wrong*, A. HACOHEN AND M. WIGODA (EDS.), PARSHAT HASHAVUA 181, *Leviticus* (5775-2012) (Hebrew); Aviad Hacohen, "*And You Shall Love the Stranger" – On Maimonides' Attitude to the Convert and the "Other"*, A. HACOHEN AND M. WIGODA (EDS.), PARSHAT HASHAVUA 294 (*Ekev* 5767-2007), published also in his book PARSHIOT UMISHPATIM, JEWISH LAW IN THE WEEKLY PORTION (2011) (Hebrew), 265; and Rabbi Dr. Benjamin Lau, *"You Did Not Seek That which was Lost" – On the Conversion Decisions of Rabbi Uziel*, *Akdamut* 21 (5768) 96 (Hebrew); see also A. MINTZ & D. STERN (EDS.), CONVERSION, INTERMARRIAGE AND JEWISH IDENTITY, (R.S. Hirt, series editor) (2005); and *inter alia* the important article of Chaim I. Waxman, *Giyur in the Context of National Identity*, 151. See also the articles of Rabbi Eliahu Birenbaum, *And Many from among the*

People of the Land Became Jews, MAKOR RISHON weekend edition, 21 Heshvan 5775 (Nov. 14, 2014), and *Not a Jew, but Also Not a Gentile*, *ibid*., 3 Adar I 5776 (Feb. 12, 2016).

I will add that Rabbi Haim Amsalem, in his monumental work ZERA ISRAEL (5770) 1 (Hebrew), distinguishes with respect to conversion between a person who has Jewish antecedents and a person who has no Jewish roots, and "if regarding the latter, the Torah said 'And you shall love the stranger', how infinitely much more so does this apply to those with Jewish antecedents who wish to return to the rock of their quarry, that they should be loved and brought close, and this commandment requires us to be lenient in respect of them as far as possible within the framework of the halakhah", whereas in relation to Gentiles who do not have Jewish roots, according to him there is no need to be lenient, and each case should be decided on its merits and they must undergo the entire process (p.2).

20. In these contexts, see also NETANEL FISHER, THE CHALLENGE OF CONVERSION IN ISRAEL – AN ANALYSIS OF POLICY AND RECOMMENDATIONS (Israel Democracy Institute, 2015) (Hebrew), which includes a comprehensive survey of the history of state conversion already from the seventies (although he does not discuss some of the matters described above). According to the author (p. 41):

> The State of Israel is exceptional in the extent of its involvement in the process of conversion of its citizens. In Israel, there is unique regulation of the process of conversion, and the State has invested many resources in order to promote the conversion of its citizens Indeed, in the – relatively few – years in which the leaders of the State and the rabbinical establishment have been active in promoting conversion, the results were commensurate.

At the same time, however, the conversion system did not meet its goals, and only about 24,000 people (about 7% of the non-Jewish *olim*) converted to Judaism between 1996 and 2014, and about half of those who began the process did not complete it. The book claims that state conversion declined over the years for various reasons, and see, e.g., pp. 36-37; and see pp. 80-86 regarding the pragmatic approach adopted by the rabbinical establishment. According to the author (p. 113), "the governmental status of the conversion tribunals should be preserved, and therefore it is proposed to improve the existing system, through cooperation". Various recommendations are also brought, including that "the judges [must] create an atmosphere that will admit additional identities as long as they do not contradict the Jewish halakhah. They must transmit to the person converting that his Israeli and Zionist identities are important, and that Russian or universal identity is not necessarily incompatible with Jewish-religious identity." The author elucidates the various alternatives on the subject of conversion that were raised over the years (chap. 6, pp. 154*ff.*), and mentions the proposal of MK Stern to decentralize the conversion system (147-149).

I will now address what is possibly the author's main point which – I admit – is also close to my heart, and that is "the recommended alternative: Orthodox, state, welcoming conversion" (Chap. 7, pp. 171*ff.*). As the author says:

> Orthodox state conversion will solve the personal problems of identity of the non-Jewish group and will act as a bridge between the Jewish identity of its members and the Orthodox Jewish definitions that are accepted by the majority of sectors of society. From the point of view of regulation of personal status, too, state Orthodox conversion will grant Jewish status in relation to all that concerns matters of marriage, divorce and burial, the absence of which violates the basic civil rights of the non-Jewish group, and

which private or non-Orthodox conversion cannot provide, even from the national point of view …" (p. 171).

The author subsequently demonstrates how this is possible also from rabbinical perspectives throughout the Diaspora (pp. 172-174). Here is his summary:

1. Over the course of the last centuries, the leading halakhic decisors would welcome those converting, and would convert them even if they knew with certainty that the converts did not intend to observe all the commandments of the Torah.

2. The considerations of those decisors – preserving the unity of the Jewish people and restoring the "seed of Israel" which was lost – are infinitely more apt in the Israeli reality of ingathering of the exiles and the return of the forsaken of Israel.

3. It appears that according to this halakhic position, as ruled by Chief Rabbi Unterman, on the basis of the words of the "Ahiezer" (Rabbi Haim Ozer Grodzinski, Vilna, 20th century), there is no need to "push the candidate into a corner" in relation to the level of his future observance of the commandments, and a "good faith" acceptance of the commandments is sufficient.

4. Whereas the sages of recent generations settled for a basic training towards conversion, today the process is much stricter. The demands made of the candidates are high, and they are required to undergo both educational and experiential preparation that continues for a whole year. These demands were not made of candidates for conversion in the past.

5. There is, therefore, a clear halakhic solution to the problem of conversion in our day: it is possible to adopt the lenient approach that was common in many communities, and to achieve higher rates of conversion.

21. This alternative is similar to the proposals from the eighties and the nineties that the author describes. However, the author does not proceed from a jurisprudential perspective, and as good as his proposals may be – and I think they are – without legislation I fear that they will not succeed, for it is the absence of legislation that brought us to this point. The conception that embraces friendly, "welcoming" Orthodox conversion leads to universal-Jewish harmony, and this is such an important thing. Let us be perfectly clear: no matter what this Court decides regarding the conversions of the non-Orthodox streams, with regard to marriage and divorce there will be fundamental difficulties that an appropriate statutory arrangement could prevent. Again – it would appear that there will be no avoiding the legal situation described by the President that will eventuate if there is no awakening in the direction of legislation, and nothing more need be said. Let me explain: why Orthodox conversion? Because the Israeli public includes a large proportion of ultra-Orthodox, Orthodox and traditional Jews, whose religious world is Orthodox, and as was once said by an Israel social scientist – a secular person – "The synagogue that I do not attend is Orthodox", i.e., "the old synagogue". Indeed, the Conservatives and the Reform, who are entitled to equal religious services from the state (see, e.g., *Masorti Movement v. Be'er Sheva Religious Counci* [l7]) are a small minority in Israel, but a significant majority in the Diaspora, particularly in the United States, and they too have a suitable place under the Israeli sky. Let us recall the poem of Nathan Alterman: "There will be No Cultural War" (THE SEVENTH COLUMN, vol. 2, (5732) 239-240 (Hebrew).

Despite all the declarations that
"This is the last straw…how long will we be silent?"
The new Jew can never forsake
his debt to the "old" Jew…

And still: It is not worth the price for the State, not worth the price
to insist upon a decision, whatever the cost,
with forces that have displayed their prowess
in overwhelming mighty kingdoms…

While there is yet time, let not the embers ignite,
for conflagration may follow.
And it seems to me that the Jewish People
have greater enemies than the Jewish People.

The words there were aimed at protecting Orthodoxy, but the pendulum swings in both directions. What is necessary, therefore, is a friendly approach to every candidate for conversion, one that is welcoming and understanding, an approach that is directed at the truth and the essence of conversion, its fundamental elements, and which does not discount reality. I am not saying that the special conversion tribunals do not operate in this manner; but for the sake of universal Jewish harmony, a statutory solution is essential.

22. In order to achieve a statutory solution such as this, various options available to the legislature should be considered: the approach of the Neeman Committee could be

adopted; or that of Yedidia Stern, Seth Farber and Elad Kaplan, *A Proposal for a State Conversion Law* (June, 2014), which was taken up by MK Elazar Stern and MK Aliza Lavie in the Knesset; see also Ariel Finkelstein, *Opinion on the Matter of the Conversion Bill*, the "Golden Mean" project of the Institute for Zionist Strategies (June, 2014); Rabbi Nachum A. Rabinowitz, *In Each and Every City*, MAKOR RISHON weekend edition (April 25, 2014) 4. A more centralized course is possible, under the supervision of the Chief Rabbinate, or a decentralized one – it is not up to us to decide. The main thing is for a harmonious solution to be found, the outcome of which will be conversion that is recognized by all Jewry and which would prevent a situation of "each person with his own Torah", with its implications, for example, for marriage and divorce.

23. I will not presume here to anticipate the outcome of future petitions. But I believe that the non-Orthodox communities, too, apparently have an interest in their conversions being accepted by all, including for the purpose of marriage and divorce. Hence the importance of a comprehensive state solution that will allow the flames to subside, out of a general-Israeli interest; "general-Israeli" means, in my view, recognition of the Israeli reality with its longstanding traditions on the one hand, and on the other hand, treatment of the entire Jewish people, including Diaspora Jewry, fearlessly, as part of the conversation. The dispute over the meaning of a Jewish and democratic state includes interpretation of "Jewish", which involves searching for the golden mean and extending a mutual hand, in decency and tolerance, without dismissing beliefs, opinions and principles. I proposed to allow the said period to enable the government and the legislature to do their work. Although different, this is in the sense of the watchman to whom the prophet Ezekiel referred (33:7): "So thou, son of man, I have set thee a watchman unto the house of Israel …" And what will

become of the love of Israel – all Israel? Has it not also been said, "Love you therefore the stranger; for you were strangers in the land of Egypt" (Deuteronomy 10:19). If any person wishes to convert, and is a genuine convert, Maimonides – and who is greater than he? –has already said (*Laws of Forbidden Sexual Unions* 14:1):

> We ask him: "Why did you choose to convert? Don't you know that in the present era, the Jews are afflicted, crushed, subjugated, strained, and that suffering comes upon them?" If he answers: "I know, and I am unworthy of joining," [and as Rashi says in TB *Yevamot* 47a, *s.v*. "I am unworthy": "and I am not fit to be party to their trouble, and would that I would merit doing so"] we accept him immediately.

Again, let us recall the surfeit of humility and piety of the Tanaitic sage in the accounts of the Destruction that were mentioned above, as well as the statement that is always apt: "When you seize a large amount you may not have seized anything" (TB *Yoma* 80a). I will conclude with what I wrote in the above-mentioned matter of *A. v. Rabbi Sherman* [19]:

> "And if a stranger sojourn with you in your land" – so says the verse, "you shall not do him wrong' (Leviticus 19:33). The Bible repeats the prohibition against oppressing the stranger dozens of times … Woe to the society, morally and normatively, that disparages the strangers who dwell among it (para. 26).

And further: "From a certain point of view, *mutual respect* [emphasis in the original – E.R.] is in my opinion the key term -- mutual respect among the different streams of contemporary Jewry; mutual respect between the tribunals that deal with conversion and those converting" *(ibid*., para. 50). It is precisely the seriousness and the

importance of the subject of conversion that also emerge from the almost desperate cry of this Court over the years to the legislature that indicate the need for a harmonious, sensitive and Jewishly-comprehensive approach of the legislature and those around it, and common sense. I will conclude with a section from what Deputy President Silberg wrote in *Shalit v. Minister of the Interior* [1] (p. 500):

> And I believe with perfect faith that if there should be mass *aliyah* from the Communist countries – *aliyah* which may determine the fate of the Jewish people for good or bad – there will be those sages who will employ their full authority, and will be halakhically lenient regarding the absorption of the far-flung Russian tribe into the people and into the land. The bonds of the halakhah have always *united* the people, but have not *choked* it [emphasis in the original – E.R.].

Justice Silberg did not live to see the day, but we have. We should collect this debt.

24. And a word as to the important opinion of my colleague Justice Hendel. I read with great interest the many apt examples that he brought from Jewish sources concerning "decentralized conversion", which may also be called "privatization of conversion". However, in my view – with all due respect and admiration – the nature of the State of Israel as a Jewish and democratic state, in which the subject of Judaism is relevant on two levels – the religious level (marriage and divorce according to Jewish law) and the civil level (the Law of Return and the Population Registry) must be emphasized. Hence the aspiration for universal state conversion, which will grant every convert full, unquestioned recognition, both for the purpose of Return and registration, and for the purpose of marriage. The moving words of my colleague towards the end of his opinion regarding the treatment of strangers highlight, in my

eyes, the need for the convert to gain his rightful place in all the frameworks of the State of Israel.

25. In conclusion, I propose that the outcome in the opinion of the President be deferred for 18 months, for the purpose of statutory regulation of the subject of conversion, and for the good of all the converts from all aspects, and the sooner the better.

Justice N. Hendel

1. We will begin at the end: my conclusion is the same as that of my colleague President M. Naor, whereby the order nisi issued in HCJ 7625/06 should be rescinded, and the orders nisi issued in HCJ 1594/11 and in HCJ 1595/11 be made absolute, such that the Petitioners will be recognized as Jews for the purpose of the Law of Return, based on the conversions that they underwent in the ultra-Orthodox rabbinical tribunals in Israel that do not belong to the state conversion system. At the same time, my reasons relating to the last two petitions are different, and they will be presented below.

Section 1 of the Law of Return states that "Every Jew has the right to come to this country as an *oleh*," and in sec. 4B it clarifies that "For the purposes of this Law, 'Jew' means a person who was born of a Jewish mother or has become converted to Judaism, and who is not a member of another religion." The legislature therefore defined the term "Jew" as including, *inter alia*, a person who converted. At the same time, however, the expression "has become converted" was not defined. This time, we are dealing with the question of the status of conversions that were conducted upon Israeli soil by "private" Orthodox *batei din* that do not belong to the state conversion

system. Of course, the petitions before us focus on the interpretation of the expression "has become converted" in the Law of Return, and they do not affect the validity of the Petitioners' conversions in other areas. Nevertheless, I would not concur – certainly not fully – in the President's determination that "[t]his is not a religious question, but rather a civil-public one." Indeed, the Law of Return, which was described by President A. Barak as "the most fundamental of laws", and which expresses better than any other law the historical uniqueness of the State of Israel (see HCJ 10226/08 *Zevidovsky v. Minister of the Interior* [21], para. 2 of my opinion) is not a religious law. However, as I remarked in relation to the expression "is not a member of another religion" in that same section, "an attempt to define the term 'religion' without referring to religion is bound to fail" (*ibid.*, at para. 5). "Conversion", too, constitutes a term that is religious at base, and no matter how much we may wish to refrain from deciding on an internal-religious question, the term is present in the background – and even at the center. Even according to the approach that refuses to adopt a "pure" halakhic interpretation in relation to every factual variation that arises, there is no doubt that an analysis of a concept that has clearly religious roots requires basic consideration of the halakhic position – if only due to the central role it has played in fashioning the institution of conversion (see and compare *ibid.*, paras. 5-6).

This position does not stem from the unique characteristics of the State of Israel as a Jewish state, but rather from the very nature of the expression "has become converted" that appears in the Law, which from a linguistic, social and historical point of view bears religious significance. Certain support for this position can be found in the attitude of the courts in the United States to consumer legislation that sought to prevent kashrut fraud, and prohibited misrepresentation of food that was not kosher as

kosher. Thus, for example, the Supreme Court of the State of New Jersey explained that the secular purpose of the legislation, i.e., protection of consumers who wish to buy particular food products, does not obscure its religious nature, for –

> The laws of kashrut are intrinsically religious, whether they are ambiguous or not and whether they are disputed or not […] Here, the disputes that would arise under the kosher laws would call inescapably on the State to assume a religious role. The State itself invariably would be one of the disputants, seeking to impose and enforce its own interpretation of Orthodox Jewish doctrine (*Ran-Dav's County Kosher, Inc. v. State* [23], 162-163).

In other words, enforcement of civil legislation requires an in-depth examination of religious kashrut arrangements. It is not possible to detach it from these arrangements, and to determine that the term "kashrut" will be given an independent, civil meaning (a similar position was presented in the Federal Court in the matter of *Commack Self-Service Kosher Meats, Inc. v. Weiss* [24]). Hence, anchoring a religious concept in a civil law does not create a divider between it and its religious roots. On the contrary, such a separation is likely to miss the original mark of the legislature. The distinction is fine, and one can point out differences between the example that was presented and the interpretation of sec. 4B confronting us. However, this would seem to emphasize the importance of recognition of the religious aspect of the term "has become converted" in the framework of the interpretative process.

Nevertheless, the feeling is that the issue of defining "has become converted" in the Law of Return in the State of Israel constitutes a heavier legal question, with a different load and nature – possibly due to the history of the Jewish people, the religion of Israel and the establishment of the State of Israel. As Justice Y. Turkel wondered in *Rodriguez-Tushbeim v. Minister of the Interior* [4]: "Ought the Court

decide on the question of whether a particular Gentile has become a Jew? Ought it decide on the question of whether the internal process and the external process have taken place in regard to the person converting? Ought it decide on the question of who is authorized to conduct the conversion?" Therefore, he wrote, "If my opinion is heeded, we would wash our hands of this decision" and leave it for the legislature.

However, for all that this approach is good and wise, we cannot avoid making a decision, in my opinion. The petitions here have been pending for many years -- one of them, almost a decade -- and although this Court has repeatedly called upon the legislature to regulate the matter by statute, the Knesset is still delaying. Granting relief to the Petitioners, who are desperately waiting for recognition of the conversion they underwent, and to acquire status in the State of Israel, is within the authority of this Court, and not that of a religious court. At the end of the day, days, year, and decade – and even if we are still waiting for the legislature's word, we are not at liberty to ignore the order of the Angel of the Law who whispers, "Go out and decide."

2. In view of the above, and bearing in mind the weight that must be attributed to Jewish halakhah in interpreting sec. 4B of the Law of Return, we should turn our gaze for a moment from the concrete questions before us – who is a convert or who is the converter – and address, even if only briefly, the question of "what is conversion?" The position of Judaism on this question appears to be somewhat unique. One might have expected that a religion that claims to possess divine truth would aspire to convert all mortals. The Jewish approach, however, even in ancient times, was that every Gentile must indeed observe the seven universal Noahide laws, but he is not required to convert and to adopt the Jewish religion (TB *Sanhedrin* 56a; on the basis of observing these seven laws, a Noahide is entitled to be called "a righteous Gentile"

and he has a share in the World to Come (Maimonides, *Laws of Kings* 8:11)). It is not for nothing that the issue of conversion does not appear in the *Laws of Repentance,* for a person's decision to convert, even though he is not obliged to do so, is not perceived as being "repentance". The Gentile is judged on his own deeds, and in order to fulfil his destiny in the eyes of the Lord he is not required to convert. As it has been said, "I call both Heaven and Earth as my witnesses to testify to the fact that the Holy Spirit rests upon a person in accordance with his virtuous deeds, whether Gentile or Jew, male or female, slave or maidservant" (YALKUT SHIMONI, *Judges* 247, 42).

At the same time, Judaism did recognize the process of conversion. This might not be obvious due to another characteristic of Judaism: one could say that Judaism is not a religion in the normal sense of a community of faith, but is more similar to an extended family. This family grew and grew, and over the generations it became a people, with a history and a culture. Its beginning was in family, and its continuation in a nation. The Law of Return, too, recognizes the halakhic principle whereby Jewishness passes down from generation to generation, by way of the mother – as stated at the beginning of sec. 4B of the Law. This unique characteristic raises doubts as to the possibility of conversion: can a convert with non-Jewish origins "change" his family roots? Can he become an integral part of the history of the nation? Despite the complexity this involves, Judaism responded positively to these questions. An interesting treatment of this appears in IGGEROT HARAMBAM [LETTERS OF MAIMONIDES] in his response to Obadiah the Proselyte, who asked whether he was permitted to recite the prayer "Who has chosen us … [because] You have given to our forefathers as a heritage … And You brought us out of the Land of Egypt ... He who performed miracles for our forefathers …" etc. – wording that relates to historical

events to which the ancestors of the proselyte were not party. Maimonides' answer is clear:

> You may say all this in the prescribed order and not change it in the least. In the same way as every Jew by birth says his blessing and prayer, you, too, shall bless and pray alike, whether you are alone or pray in the congregation. …. Since you have come under the wings of the Divine presence and confessed the Lord, no difference exists between you and us… as it is said, "One ordinance shall be both for you of the congregation, and also for the stranger that sojourns with you (MAIMONIDES, RESPONSA, 293).

This also finds expression in the SHULHAN ARUKH (*Even Ha'ezer* 129:20): "The convert writes [his name]: A. son of Abraham our Forefather." The convert therefore belongs not only to the community of believers, but he integrates fully into Jewish history, both as a family member and as a member of the nation. Thus, the Gentile is not obliged to convert, but he may do so, and once he is recognized as a convert he becomes an integral part of the extended family and entitled to full equality.

Alongside the said theoretical aspect, it must be explained that according to the halakhah as well, the process of conversion is a legal process, the validity of which is contingent upon the execution of a particular procedure in the *beth din*. As stated in the Babylonian Talmud (TB *Yevamot* 47a): "R. Judah said, a convert who converted in court is a convert; in private – [he] is not a convert."

Here we have it: the roots of the institution of conversion are planted in a bifurcated ideological and halakhic tradition of Jewish law, and at the same time, in a legal process that is subject to certain laws and does not stem only from the person's subjective conception. Interpretation of the words "has become converted" in the Law

of Return must give expression to all these elements, while scrupulously preserving the frameworks – including an understanding of our role as the Supreme Court and not as a religious tribunal.

3. To be more specific: the present issue is that of recognition, for the purposes of the Law of Return, of conversions that were conducted in Israel by ultra-Orthodox *batei din* that are not part of the state conversion system. According to the state, these conversions should not be recognized, for two reasons: first, because the conversion is conducted in Israel and not overseas, hence the Law of Return does not apply to the Petitioners and others like them; secondly, because the converting body is not part of the state conversion system, which must be granted exclusivity in the context of the Law of Return. I will address each of these arguments in turn.

In *Rodriguez-Tushbeim v. Minister of the Interior* [4] it was ruled that the Law of Return applies only to a non-Jewish person who came to Israel, and in the course of living here lawfully underwent a process of conversion overseas. The petitions before us give rise to a somewhat different issue, since the petitioners were not only living in Israel prior to their conversion, but they also underwent the conversion itself in Israel. At the same time, and as President Naor pointed out (para. 20), in *Rodriguez-Tushbeim v. Minister of the Interior* [4] the Court said:

> …. we decide – as a matter of principle – that the Law of Return applies to a person who is not a Jew, who comes to Israel, and while he is lawfully in the country he undergoes a process of conversion (in Israel or outside of Israel) (para. 26 *per* President Barak).

Indeed, the conclusion regarding the application of the Law of Return to conversion that was conducted in Israel is not free of doubt. From the language of sec. 3(a) of the

Law of Return, which states that "a Jew who has come to Israel and subsequent to his arrival has expressed his desire to settle in Israel may, while still in Israel, receive an *oleh*'s certificate," it may apparently be concluded that a non-Jew who has come to Israel is not entitled to receive an *oleh*'s certificate – even if in the course of his stay he converted and applied to settle in Israel.

However, my view is that the Law of Return applies with full force to a non-Jew who underwent the process of conversion in Israel, for the following four reasons: *first*, the linguistic interpretation that is implied by sec. 3(a) is not definitive. It is entirely possible that the term "Jew" does not relate to the date of arrival in Israel but to the situation of the person seeking status at the time of submission of the application. *Second*, the judgment in *Rodriguez-Tushbeim v. Minister of the Interior* [4], which was handed down by an expanded bench, related to the application of the Law of Return to those converting who had been living in Israel prior to their conversion. In the decade that has elapsed since, the Law has not been changed, and as such I do not find grounds for the position of the state – which is in fact seeking to depart from the prevailing case law. *Third*, there is logic to the position whereby purposive interpretation supports the conclusion reached by this Court in the matter of *Rodriguez-Tushbeim v. Minister of the Interior* [4], for the main purpose of the Law of Return is to enable Jews, whether by birth or by virtue of conversion, to settle in Israel and to realize the vision of the Ingathering of the Exiles. This purpose teaches that decisive significance should not be attributed to the place in which the conversion was conducted, and that the main question is whether the person applying for status is a Jew. *Fourth*, since the *Rodriguez-Tushbeim v. Minister of the Interior* [4] decision says that a person who was living in Israel lawfully – and it is possible that also due to his stay in Israel, the decision to convert was made – is entitled to the status by virtue

of the Law of Return if he converted abroad, then practical considerations support the Petitioners' position. Making the entitlement dependent upon the conversion ceremony being conducted abroad will force the person converting to cut short his lawful stay in Israel. It is difficult to see the justification for creating such a "nuisance". For these reasons, I am of the opinion that the first question should be answered in the affirmative, and that recognition should be granted to the application of the Law of Return to converts who converted in Israel while they were living here lawfully.

With this we conclude our deliberation of HCJ 7625/06. The Petitioner in that process was living in Israel unlawfully at the time that the conversion was conducted, and as such I can only concur in the position of President Naor (paras. 39-40 of her judgment) and rescind the order nisi that was issued in her matter. On the other hand, the Petitioners in HCJ 1594/11 and 1595/11 have overcome the first hurdle, and therefore we must consider the second question on the agenda, which focuses on the status of the process of conversion that the Petitioners underwent in *batei din* that do not belong to the state conversion system. In other words, we must look not at the geographical location of the conversion – Israel as opposed to abroad – but at the identity of the body conducting the conversion: a private body that does not belong to the state conversion system, and is not supervised by the state.

4. It would appear that even according to the state's approach, according to which it has the fundamental authority to operate a state conversion system and to grant it exclusivity in the context of the Law of Return, the petitions should be granted. In other words, even according to the state, the conversions undergone by the Petitioners should be recognized for the purposes of the Law of Return. Why is this?

On April 7, 1998, the Israeli Government (decision no. 3613) decided to adopt the recommendations of the Committee to Develop Ideas and Proposals on the Matter of Conversions in Israel (hereinafter: Neeman Committee, or Committee) – a committee that was appointed in an attempt to appease the various streams of Judaism – Orthodox, Conservative and Reform – and to resolve the disagreements around the issue of conversion. On the one hand, the Neeman Committee considered the pressing need to make conversion possible and accessible for the tens of thousands of Israelis who are not recognized as Jews according to the halakhah, at a time when the conversion process was controlled by the rabbinical courts. On the other hand, the Committee was of the opinion that recognition of non-Orthodox conversions – which are in dispute and which are unacceptable to the Orthodox stream – would be detrimental to national unity. Upon completion of its task, the Neeman Committee recommended the establishment of "a uniform state conversion process – according to Jewish law – which would be recognized by all Israel", through establishing a joint conversion system: an institute for the study of Judaism, in which there would be representation for all the streams, and special conversion tribunals that would be appointed for this purpose by the Chief Rabbis. The Committee stressed that "the intention" is not to be too strict in the conversion procedures, and to settle for acceptance of the main principles of religion and the primary commandments.

The recommendations of the Neeman Committee were adopted, as we have said, by the Government, which attributed great importance to encouraging the conversion of the non-Jewish *olim*, and was so enthusiastic in its support that "it sometimes seemed that the leaders of the state … were more interested in conversion than the religious establishment" (NETANEL FISHER, THE CHALLENGE OF CONVERSION IN ISRAEL: AN ANALYSIS OF POLICY AND RECOMMENDATIONS, 78 (2015) (Hebrew) (hereinafter: THE

CHALLENGE OF CONVERSION); on the elements of this policy see *ibid*., at p. 21-27). Over the course of the years, additional decisions were made concerning the mode of operation and the degree of independence of the state conversion system. In 2003, it was decided that the Chief Rabbi of Israel would appoint the head of the system, who would sign the certificates of conversion and "would be in charge, on behalf of the Chief Rabbis of Israel, *inter alia*, of the conversion system and the overall policy regarding the subject of conversion in Israel" (decision 761 of Sept. 1, 2003). In 2008, it was decided that the conversion system would be defined as an adjacent unit of the Prime Minister's Office, the special conversion tribunals were transferred to the responsibility of this system, and it was decided that it would be headed by a "halakhic authority" who would act "under the guidance of the Sephardic Chief Rabbi" (decision 3155 ofFeb. 14, 2008). The format for the activity of the special conversion tribunals was regulated by the Chief Rabbi through the Rules of Procedure in Applications for Conversion, 5766-2006. *Inter alia*, these Rules provided that the rabbinical court judges who would sit in these conversion tribunals would be appointed by a "search committee for candidates", and that the Chief Rabbi would appoint a president for each panel, who was ordained as a religious court judge (Rules 10(2)-(3)).

In his opinion, my colleague Deputy President Rubinstein presents an excellent survey of the complicated, on-going attempt to reach accord on the subject of conversion. I will permit myself to say that in view of his part and his efforts in the framework of his former public functions, my colleague's review is as enriching as it is moving. In any case, without delving into the depths of how events unfolded, suffice it to say that an analysis of the government decisions on the background of the Report of the Neeman Committee indicates that at the heart of the establishment of

the State Conversion System lay the intention to grant a monopoly to conversion "according to Jewish law" – since such conversion is recognized by "all Israel" and is accepted by all the streams. The purpose of the system is, therefore, to subordinate conversion to the Chief Rabbinate, depositing control of this system in the hands of the Orthodox stream and negating recognition of conversions that are conducted by other Jewish streams, in accordance with their outlooks. This, alongside a certain "compensation" in the form of a joint institute for conversion, in which representation would be given to Conservative and Reform Jewry. From a review of the circumstances that led to the establishment of the State Conversion System, it can easily be seen that the claim of the state – which took center stage in the proceedings before us – concerning what was wrong with depositing the "house keys" in the hands of private elements – does not by any means present the whole picture, or even the main thrust of the considerations that underlay the decision. The catalyst for the government decision was not the choosing of an authorized body for the sake of "making order", come what may, without taking a stand on the identity of that body. The "biography" of the system shows that its establishment did not put great emphasis, for example, on solving the "problem" of private Orthodox rabbinical tribunals that handle conversion. In fact, their activity, as such, did not constitute a real consideration in the recommendations of the Neeman Committee. The main "problem" that arose was the issue of non-Orthodox conversions, and for this reason the Rabbinate was given control over the state system, and the principle of conducting the conversions according to "Jewish law", namely, Orthodox conversion, was adopted. This analysis of the conversion system and its purposes is highly significant – as I will elucidate below.

Before discussing the significance of this, I will mention that in the framework of the petitions before us, we are concerned only with the status of conversions that were conducted by "private" Orthodox rabbinical tribunals. Indeed, at a certain stage, the state sought to establish a connection between these petitions and the issue of recognition of non-Orthodox conversions that were conducted in Israel – an issue that was raised in the framework of a series of petitions that are still pending in this Court (HCJ 11013/05 *Dahan v. Minister of Justice* and others). However, the World Union for Progressive Judaism, the Movement for Progressive Judaism in Israel and the Masorti Movement in Israel (organizations that represent Reform and Conservative Judaism) claimed that these were "two totally different issues." This emerges, according to them, from the separate contacts between the State and themselves in an attempt to regulate the status of non-Orthodox conversion, and this is appropriate bearing in mind their unique characteristics: whereas the Orthodox streams enjoy representation in the state system, which is subordinate to the Chief Rabbinate, the Reform and the Conservatives remain locked in a stalemate if recognition is not given to the conversions that their tribunals conduct. In the present proceedings, this position gained support in the decision of President D. Beinisch of April 12, 2011, which clarified that there is no justification for a stay of proceedings in the present case until the contacts between the state and the non-Orthodox communities have been exhausted, due to the substantive difference between the proceedings. From a procedural point of view, we decided to respect the position of the Reform and the Conservative Movements, to refrain from consolidating the petitions, and to separate the issues of recognition of non-governmental Orthodox conversion and adjudication of the status of non-Orthodox conversion. The turn of the petitions dealing with this

latter issue will also come soon, but I believe that it is possible, and desirable, to decide on the present petitions without addressing the other issue.

An additional preliminary remark concerns the question of the basic authority of the Government to grant a monopoly to the State Conversion System. In this regard, the position of President A. Barak in *Rodriguez-Tushbeim v. Minister of the Interior* [4] is interesting: he says that due to the nature of the issue at hand – a preliminary arrangement with ramifications for human rights – section 32 of Basic Law: The Government cannot be considered a suitable source of authority for granting such a monopoly. Indeed, in the same breath, President Barak explained that it is possible that the provisions of the Law of Return themselves, as opposed to the residual authority in sec. 32, will lead to the conclusion that such authority indeed exists:

> We accept that the Government is authorized, by virtue of its general (residual) authority under sec. 32 of Basic Law: The Government, to establish a conversion system similar to that which was established following the recommendations of the Neeman Committee. At the same time, the Government is not authorized by virtue of its general authority to determine that only conversion conducted within this framework will be recognized under the Law of Return. Recognition of conversion for the purpose of the Law of Return will be determined according to the interpretation of the Law of Return. The requirements of the Law of Return regarding conversion may possibly overlap the arrangements pertaining to the conversion system according to the Neeman Committee Report. Insofar as this overlap exists, it stems from the provisions of the Law of Return and from them alone (para. 30 of his opinion).

For this reason, I decided to elaborate and clarify that even if the Law of Return authorizes the Government to establish a state conversion system, as the state claims, this does not negate the status of the conversion of the Petitioners in HCJ 1594/11 and HCJ 1595/11. Clearly, it is possible to decide on these petitions and to grant them even on the assumptions presented in the state's position, or at least some of them.

From the above it emerges that one of the main grounds for the establishment of a state conversion system is the desire to ensure that only conversions conducted according to Orthodox halakhah will be recognized. A big question, therefore, is why only the conversions of the tribunals belonging to the state system should be recognized as valid for the purpose of the Law of Return and not the conversions of other Orthodox *batei din* which rule according to Jewish law.

This question derives from the shortcomings in the state's position. To clarify: the State Conversion System, as presented to us by the state, consists of three levels. The first is the granting of exclusivity to Orthodox conversion; the second is the establishment of special conversion tribunals; and the third is the non-recognition of the conversions conducted by other tribunals – whatever their commitment to halakhah and whatever their status may be. As we have said, for the purpose of deciding on this petition I am prepared to accept the two first levels. The focus of the examination, therefore, will be upon the third level – non-recognition of any Orthodox *beth din* that was not appointed by the Chief Rabbinate as part of the special conversion tribunals.

In my opinion, this third level, whose many shortcomings lie at the interface of the triad of authority, interpretation and reasonability, is unacceptable. As will be recalled, in *Rodriguez-Tushbeim v. Minister of the Interior* [4], this Court ruled that the Government is authorized to establish a state conversion system by virtue of its

residual powers – in the absence of concrete statutory regulation of the status of the Chief Rabbinate and the religious courts in the area of conversion. However, in the same breath it was clearly stated that sec. 32 of Basic Law: The Government does not authorize the Government to decide that only conversions conducted in the special tribunals may confer status for the purpose of the Law of Return, in the absence of such authorization in the formulation of the Law:

> Where there is a contradiction between the interpretation of the Law of Return and the arrangements for conversion under the Report of the Neeman Committee, the Law of Return prevails. The general (residual) power of the Government cannot contradict the provisions of the Law of Return or violate a human right […] therefore, as long as the Knesset has not had its lawful say on the matter, the problem of recognition of conversion for the purpose of the Law of Return must be resolved in the framework of the interpretation of the Law of Return (para. 30 *per* President A. Barak).

As stated, the need to prevent abuse of the arrangements under the Law of Return by means of fictitious conversions was recognized in the case law, and led to the ruling that conversions conducted before any three people, no matter what their halakhic status, are insufficient. Thus, counsel for the state argued repeatedly that the purpose underlying the withholding of recognition of the validity of private Orthodox conversions for the purpose of the Law of Return was legitimate. According to her, a situation in which any three Jews may serve as a conversion tribunal for the purpose of acquiring status by virtue of the Law of Return is unacceptable.

However, the choice is not between granting a monopoly to *batei din* that belong to the state conversion system and recognizing the conversions of any panel of three Jews. There is another possibility, one which is consistent with the relief sought in the

present petitions: to recognize Orthodox *batei din* that are headed by rabbis and halakhic decisors whose standing in the community is unquestioned.

6. This intermediate possibility is strengthened in view of the existence of groups of rabbis whose status as rabbis complying with the halakhah has received a certain degree of state recognition. For example, why detract from the status of a municipal rabbi, or the heads of the hesder yeshivas [rabbinical seminaries in which the students combine Jewish studies and military service]? As for the first group, the State of Israel has an abundance of rabbis who serve in rabbinical positions on its behalf, and constitute, in fact, an integral part of the public service on the one hand, and of the rabbinical establishment on the other. These are, first and foremost, the rabbis of cities or towns, in whom the legislature has placed its trust and granted them sensitive powers. Local rabbis possess various religious-civil powers, such as issuing kashrut certificates (sec. 2(a)(2) of the Prohibition of Kashrut Fraud Law, 5743-1983), and registration of marriages – with all the sensitivities involved in regulating matters of personal status (sec. 2A of the Marriage and Divorce (Registration) Ordinance)). It is difficult to see why considerations of "making order" and protecting the integrity of Israel's borders could justify the restrictive interpretation of sec. 4B of the Law of Return in a way that would except conversions conducted by recognized town rabbis.

Moreover, concern about abuse of conversion proceedings also diminishes in regard to conversions that are conducted by semi-official figures, such as heads of hesder yeshivas who rule on practical halakhic issues. Section 22A of the Defense Services Law [Consolidated Version] 5746-1986 anchors the status of the students of the hesder yeshivas – academies that comply with the criteria set by the Minister of Defense, which are included in a list drawn up by him, and that are granted the exclusive right to combine active military service with yeshiva studies. The process of

individual recognition of these yeshivas, and its substantive ramifications for a substantive institution such as military service, grants their leaders, at the very least, a quasi-official status. Could it be said that they are trigger-happy when it comes to conversion? To these – town rabbis and heads of hesder yeshivas – must be added known ultra-Orthodox *batei din*. It is hard to take seriously the argument that these *batei din*, such as the *batei din* involved in this case, which are committed to the halakhah and to examining the purity of intention of the person converting, would not be trustworthy, and would cause Israel to be inundated with pretenders seeking to abuse the institution of conversion in order to acquire civil status.

In accordance with the decision in *Rodriguez-Tushbeim v. Minister of the Interior* [4], conversions that were conducted by rabbis who served in recognized Orthodox communities overseas, for example, in the United States, are recognized, and the converts are granted the right of Return. However, according to the state's position, if those rabbis would immigrate to Israel, and would reestablish their *batei din*, in which conversions would be conducted according to the same practical and halakhic criteria according to Jewish law, the conversions they conducted would no longer be valid. Beyond the fact that such an outcome discriminates between those converting who presented themselves before a *beth din* overseas and those who did so in Israel, it reveals the lack of logic in the sweeping dismissal of "private" conversions that were conducted on Israeli soil – and shows that the considerations of sincerity and purity of intention cannot form its basis.

Even if there are real concerns about abuse of the conversion process, the state's position is flawed and unconvincing. As I have said, I do not advocate an absence of oversight, and clearly the conversions of a *beth din* whose members do not have halakhic authority will not acquire status by virtue of the Law of Return. But even

without discussing the setting of clear criteria for recognition of *batei din* – criteria that are not required in the framework of this petition – it is difficult to ignore the fact that the solution that the state has chosen is not proportionate. No basis has been laid before us for the concern that recognition of the conversions of serious Orthodox *batei din* in which the rabbinic judges are people of stature will lead to a breaching of the dams and to mass fictitious conversions of *olim*. In this context it will be noted that even if not every town rabbi or head of a hesder yeshiva, for example, is interested in dealing with conversions, most of the *batei* din that deal with this subject are experienced in it. I am referring mainly to Orthodox *batei din* that are committed to halakhah and that examine the conversion meticulously. In these circumstances, clearly there is no room for exclusive recognition of the special tribunals, while negating wholesale the status of every other conversion.

On the other hand, and as my colleague the President noted in her opinion (para. 36), it was not proven that the State Conversion System is immune to mistakes and abuse, particularly in view of the appointment and oversight mechanism of the special conversion tribunals, which are not part of the regular rabbinical court system. The status of the latter system is directly regulated by statute, with all the implications – including procedures for selecting the judges. As opposed to this, the conversion tribunals are designated tribunals, appointed by the Chief Rabbi for the sole purpose of conversion, and therefore there is significant doubt as to whether the factual investigations that they are able to conduct regarding the sincerity of the motives of the person converting are qualitatively superior to the investigations conducted by the Orthodox *batei din* that are not part of the conversion system.

We thus find that there is no purposive or linguistic anchor for a position that comprehensively dismisses the status of conversions that were conducted in private

Orthodox *batei din*. On the contrary, from the point of view of the purpose of the Law of Return, it would appear that it is more correct to expand the possibilities of conversion, giving expression to the different halakhic approaches, and granting recognition to rabbis with different outlooks that fall within the Orthodox framework – at least with respect to the three groups I mentioned: rabbis with an official or semi-official status, such as town rabbis or heads of hesder yeshivas; ultra-Orthodox *batei din* that have stature in the Haredi community; and rabbis from established Jewish communities abroad who immigrated to Israel. Over-centralization, and granting an absolute monopoly to the Chief Rabbinate over the institution of conversion – a monopoly the practical significance of which is the adoption of a strict approach and the placing of obstacles in the path of Jews who wish to immigrate to Israel – are contrary to the central purpose of the Law of Return, which is to encourage *aliyah*. This being the case, the expression "has become converted" must be interpreted broadly, to include every Orthodox conversion process that was conducted in a *beth din* in which the rabbinical judges are people of standing. Indeed, this would not prevent the state from checking the sincerity of the motives of the person converting, and from deciding every case on its merits (see and compare HCJ 3994/12 *Asphaho v. Minister of Justice* [22], para. 6 of my opinion, in which my colleagues Justices E. Hayut and Z. Zylbertal concurred), but wholesale disqualification of conversions is contrary to the language and the purpose of the Law of Return.

I would incidentally note that the position of the state raises a difficulty in the area of reasonableness. No criteria were presented to us to explain why certain courts are recognized but not others. Make no mistake: the emphasis is not on recognition of the special conversion tribunals, but on the lack of justification for negating the status of the conversions of the *batei din* that do not belong to the conversion system.

Consequently, even if I accept that recognition should be confined to *batei din* that belong to the Orthodox stream, and even if I agree that authority exists to set up special conversion tribunals, there is no basis for withholding similar recognition from the *batei din* that adhere to Jewish law and which have gained stature and recognition.

This result is inevitable not only in view of the specific purpose of the Law of Return, but also of its general, objective purpose, as derived from the basic principles of the system. It should come as no surprise if I say that in the halakhic world as well, there are substantive differences of opinion – certainly on the subject of conversion. Preferring a particular halakhic approach, while dismissing other approaches that exist in the halakhic-Orthodox arena, is not a defensible outcome in the present legal position. The state was not authorized to draw such distinctions. Moreover, doing so is incompatible with the values of the State of Israel as a Jewish and democratic state. Jewish, because the approach of halakhah over the centuries has supported pluralism in conversion proceedings, as will be explained, and democratic, due to the defect in preferring the positions of one Orthodox group over another, thus violating equality and harming those entitled to Return. This is not an expression of a position on whether this is correct in relation to non-Orthodox *batei din* to the same degree as in relation to non-governmental ultra-Orthodox *batei din*.

7. Before I explain why the establishment of a centralized conversion system is incompatible with the values of the State of Israel as a Jewish state, I will say that, of course, I am not here to decide upon an internal halakhic disagreement on matters of conversion. My purpose is to present, if only briefly, by means of various approaches, the complexity of the halakhic decisions on the subject. This, as well as supporting the reasons cited above, is in order to provide a basis for the conclusion that, in the present legal system, one cannot grant exclusivity to certain *batei din* – in the absence

of the necessary legislative mechanism that would provide a basis for such a conclusion.

As I understand matters, the necessity of recognizing a wide array of *batei din*, which represent different halakhic approaches, is derived from the nature of the halakhic decisions on the laws of conversion. Even though there is consensus, albeit not absolute, with respect to the ideal conditions for accepting converts – circumcision (for a male), ritual immersion, acceptance of the yoke of the commandments and affiliation to the Jewish people – reality, as is its way, thwarts neat definitions. The question of conversion does not usually arise under laboratory conditions. Indeed, over the centuries and to the present day, different approaches have been presented, sometimes very distant from each other, with respect to accepting a convert under conditions that were not ideal. As Rabbi Ovadia Yosef pointed out when he was serving as the Sephardic Chief Rabbi of the State of Israel: "We always had disputes between the House of Shammai and the House of Hillel, the former strict and the latter lenient. This is the basis for the fact that in certain *batei din* there are strict rulings whereas in others they are lenient." (Protocol of the Internal Affairs and Environment Committee, 8th Knesset (Nov. 16, 1976) (hereinafter: the Internal Affairs Committee Protocol)).

Maimonides, in his halakhic work HAYAD HAHAZAKAH, discussed the conversion of the wives of King Solomon, which were carried out due to monarchical-political considerations, and not necessarily out of a desire to embrace Judaism. He explains: "One should not think that … Solomon King of Israel…. married gentile women who did not convert", as implied by the literal reading of the Bible (I Kings 11:1-4). Indeed: "the court did not accept converts throughout the reign of … [and] Solomon … [they feared] that they were motivated by the sovereignty, prosperity and eminence

which Israel enjoyed… Nevertheless there were many people who converted in the presence of ordinary people during the era of … Solomon" – and the courts did not reject the conversion after the immersion ceremony had already taken place (*Laws of Forbidden Sexual Unions* 13:14-16).

More generally, the Great Eagle [a sobriquet for Maimonides] stressed that the *beth din* asks the convert, "'Why did you choose to convert? Don't you know that in the present era, the Jews are afflicted, crushed, subjugated, strained, and suffering comes upon them?' If he answers: 'I know. Would it be that I be able to be part of them,' we accept him immediately." (*ibid*., 14:1). The willingness of a Gentile to cast his lot with that of the Jewish people, when he has no ulterior motivation for converting, is sufficient. Maimonides also explains that the convert is informed of the "fundamentals of the faith, which are the unity of God and the prohibition against the worship of false deities. We elaborate on this matter." It is interesting to note that the only precepts that Maimonides saw fit to specify in this context are precepts between man and his fellow – "gleanings of the field and the second tithe" – and in this, too, we learn of the nature of acceptance of the yoke of commandments required in the conversion process (*ibid*., 14:2). Rabbi Shimon Gershon Rosenberg, the head of the Siach Yitzhak Yeshiva, who passed away a decade ago, showed how Maimonides trod the middle ground between the ideal and the reality of his day:

> From Maimonides one can learn about the ability to combine different dimensions of thought: recognition of the ideal but also understanding the practical, recognizing the goal and also understanding the reality and identifying that which is achievable – without giving up on the perpetual and active aspiration to move the reality on towards the vision. The halakhic outlook of Maimonides is conceptual, but not necessarily coherent and

> certainly not monolithic. Moreover, even though he molds the laws of conversion in light of his views, he leaves the last question – whether the convert will be integrated into the Jewish people by the *beth din* – unsolved; and in order to answer it the *beth din* must weigh considerations of time and place and not considerations of the ideal. We have seen that Maimonides preferred to be lenient in the laws of conversion in order to prevent mixed marriages and to preserve the integrity of the family – a weighty consideration in our day as well. However, even if this leniency is a necessity at the time, one must not forget the objective and the vision, which are the creation of the community at the center of which stands the will of God and the way of God – that very community that was established by our forefather Abraham, who as Maimonides emphasizes, was the father of all converts (SHIMON GERSHON ROSENBERG-SHAGAR, ZOT BRITI: CONVERSION, SECULARIZATION, CIVIL MARRIAGE 93 (5772-2912) (Hebrew) (hereinafter: SHAGAR.

In the spirit of the present time of the year,[1] let us discuss the conversion of the Persians in the account in the Book of Esther. In chap. 8 verse 17, it is written that after the victory, "[and] many from among the people of the land became Jews; for the fear of the Jews was fallen upon them." Rashi explains the words "became Jews" – as "became converted". And despite the problematic motive, Rabbi Shlomo Dichovsky, a judge in the Supreme Rabbinical Court and past Director of the Rabbinical Courts (LEV SHOME'A LESHLOMO 1:23, *Retroactive Nullification of Conversion*, (Shafat: 2014) (Hebrew)) writes that it is hard to believe that "a *beth din*

[1] Translator's note: The decision was handed down around the time of the Festival of Purim, when the Book of Esther is read.

in our day would perform wholesale conversions of enemies of the Jews who became frightened of them". Nevertheless, the conversions were not nullified.

More recently, in the 20th century, we have also seen decisions regarding conversion according to halakhic policy and the times, in at least the following two senses. One is the willingness to recognize conversion under conditions that are not ideal, in order to prevent more serious consequences as a result of not accepting the convert. The second is recognition of wider general phenomena as a basis for deciding on the validity of the conversion of an individual.

An example of the first sense is provided by the ruling of Rabbi David Zvi Hoffman, one of the great German decisors at the beginning of the 20th century. In his responsa (RESPONSA MELAMED LEHO'IL, 2, 83) he discusses the situation of a Gentile who "married a Jewish woman under their laws … and she is already pregnant from him and it is very clear that she will marry him even if he does not convert." Despite the difficulty, Rabbi Hoffman allowed the non-Jew to convert, *inter alia*, for the reason that the couple could have remained married according to the civil law only, so that the very willingness of the non-Jewish partner to convert and to gain religious recognition indicates that "there is a basis for saying that he is doing it for the sake of Heaven." Another reason: "If we do not accept him, she will marry him in violation of a scriptural prohibition, for marriage of a Jewish woman to a non-Jew is a scriptural prohibition … And therefore it is better that we accept him rather than that she marry him in violation of the prohibition." He also addresses the fact that the conversion of the non-Jewish partner is for the benefit of the couple's children, and regards this as a relevant consideration. At the end of the discussion, Rabbi Hoffman proposes that in all that concerns observing the commandments, such as keeping the Sabbath and refraining from eating forbidden foods, "it is better for him to promise rather than take

an oath." In another responsum, Rabbi Hoffman addressed the issue of a *kohen* who married a non-Jewish woman in a civil ceremony, and who bore him a child, who was circumcised and then died. Now, "she has misgivings, and she wishes to convert and to marry the *kohen* in accordance with Jewish law." The question noted that if her request is not granted, there is a concern that "she will become ill and go insane." In his responsum, Rabbi Hoffman sketches the guidelines for deciding as follows: "One must investigate which is the greater prohibition – for a *kohen* to marry a convert or for him to marry a non-Jewess? It seems to me to be simple that the prohibition against marrying a non-Jewess is stricter." Despite the prohibition against the marriage of a *kohen* and a convert, he converted the woman in order to avoid an even graver halakhic situation; "to repair the status of the *kohen* and that of his lineage, she is accepted" (*ibid*., Part 3, *Even Ha'ezer* and *Hoshen Mishpat* 8). In the two responsa, Rabbi Hoffman is careful to say that every effort must be made to ensure that the convert will be scrupulous in his observance of the commandments, but it emerges from the responsa that this is far from being a certainty. These responsa demonstrate the new complexity that faced the decisors of that generation in their efforts to be true to both the halakhah and the reality (see Arye Edrei, *And are we not responsible for Them? More on the Conversion Debate*, 24 AKDAMUT (5771) (Hebrew)).

As for the second sense, the effect of the general considerations and challenges that face the Jewish people on the institution of conversion, we will cite the following examples: Rabbi Ben-Zion Meir Hai Uziel, the first Sephardic Chief Rabbi of the State of Israel, while serving as the rabbi of Thessaloniki, was asked a question concerning "an Israelite who married a Gentile woman and lived with her for several years and she bore him children, and now the woman wishes to convert and to marry with *huppah* and *kiddushin* according to Jewish law." *Inter alia*, Rabbi Uziel based

his decision that it was possible to convert the woman on the fact that "this Gentile woman is already married to an Israelite, and in bringing her into the covenant of Judaism she will become much closer to the family of her husband and his religion, and moreover, the children who have been born to her and those who will be born from now on will be full Jews […] *It is a mitzvah for them to bring them close and to include them in the Covenant of the Torah of Israel and to banish the blight of assimilation which is a malignant blight in the orchard of the House of Israel"* (RESPONSA MISHPETEI OUZIEL 1, *Yoreh Deah* 14; emphasis added – N.H.). In other words, the need to fight assimilation led to an institutional change in the concept of conversion, and to an attempt to consolidate ranks even at the price of relaxing the formal requirements.

In a similar fashion, Rabbi Isser Yehuda Unterman – the Ashkenazic Chief Rabbi of the State of Israel 1964-1972 – in referring to the immigrants from the Soviet Union, said that "one must be lenient in this hour of need when it is absolutely impossible to prevent non-Jewish immigrants from assimilating into the People of Israel … those who require conversion must be dealt with according to the law of the Torah, with sensitivity and understanding, bearing in mind what these brothers of ours have undergone in their spiritual plight" (Isser Yehuda Unterman, *Laws of Conversion and their Mode of Execution*, TORAH SHEBE'AL PEH 13, 15 (5735-1975) (Hebrew)). Here, too, the integration of the *olim* who were not recognized as being halakhically Jewish into Israeli society led to a change in the halakhic rulings and to recognition of the need to display "sensitivity and understanding," making the dry criteria with which the converts must comply more flexible.

Thus the major decisors consciously adopted the changing reality in society and among the Jewish people as a basis for fashioning rulings contrary to what had been accepted previously. In the words of Rabbi Ovadia Yosef:

> Despite all these reservations, there has been a change in our generations with respect to a person who comes to convert for marital reasons, and our sages are aware of the new development. In the past, every nation adhered to its own people; a non-Jew could not marry a Jewish woman and the converse; everyone preserved the tradition. Only in recent generations, in view of the development of democracy and individual freedom, can people act in this regard, and if they will not be able to marry according to Jewish law, they will anyway continue to live together as man and wife. When a person lives thus with a Gentile woman and she later presents herself for conversion, they are viewed thus: if only for marital purposes –in any case he is already living with her; hence the request to convert is for the sake of Heaven. This is therefore a good development.
>
> The great sages of the Torah in recent generations have disagreed on this question. Some of the Ashkenazic rabbis are more strict on this matter […] As opposed to them, there are many rabbis who are lenient […] in fact, the majority of judges of the rabbinical courts today accept this change, and therefore, even when they know that the woman who has presented herself for conversion does so due to marital interests – she is accepted (Protocol Neeman Committee, p. 3).

There is no denying, therefore, that different approaches exist. In fact, there is a dispute over whether there is in fact any halakhic disagreement on the question of conversions, or rather, that the differences in approach are limited to investigating the

practical aspects. Rabbi Bezalel Zolty, a judge in the Supreme Rabbinical Court of Appeals, and the Ashkenazic Chief Rabbi of Jerusalem until his death in 1982, argues that:

> The problem of conversion in our times is not a halakhic problem. The laws of conversion are fixed and clear, there are no complicated halakhic problems in the acceptance of converts, and in any case, there is no cause for saying that there are rabbis who act like the House of Shammai and are strict in the laws of conversion, and there are rabbis who act like the House of Hillel and are lenient in the laws of conversion
>
> The main problem in accepting converts, particularly in our time, is purely factual: to determine with certainty the true intention of the person who seeks to convert […] In this matter there are no clear rules […] and it is clear that in determining facts there is no room for strictures or leniencies, but rather the facts must be determined as they truly are (Bezalel Zolty, *On the Laws of Accepting Converts*, 13 TORAH SHEBE'AL PEH 33 (5731-1971) (Hebrew)).

On the other hand, there are stricter approaches, such as that of Rabbi Abraham Sherman, a judge of the Supreme Rabbinical Court, who holds that:

> All the conversions of the modern period in Israel and the world over, since the beginning of the period of the Enlightenment in which mixed marriages began and the need for conversion was created, are accompanied by interests, and it transpires that the vast majority of the converts did not accept the yoke of the commandments at the time of the act of conversion, and also did not observe the commandments after the conversion. The vast majority of conversions in the modern period and in Israel require investigation by an

> authorized *beth din* prior to the converts entering the community of Jews. They are not definitely Jewish. (For a discussion of his approach, see ETGAR HAGIUR, 90 (Hebrew); see also Avraham Haim Sherman, *The Authority of the Sages of the Generation on Subjects of Conjugal Relations and Conversion*, 30 TEHUMIN 163 (5770-2000) (Hebrew)).

The responsa cited are only a small sampling of the rulings over the generations. There were those who were lenient and those who were strict in accepting the convert. This was so from the time of the Talmud: see the different attitudes of Hillel and Shammai – one was tolerant and one was pedantic (TB *Shabbat* 30b-31a). The truth be told that the many approaches traverse many of the different issues. Thus, for example, SHAGAR writes (at p. 87):

> In the sources we found a difference between the Land of Israel and countries abroad with respect to conversion. There is a solid argument for saying that only in the Land of Israel is it possible to convert, but there is also the opposite argument, that only abroad is it possible to convert, due to the concern that in Israel, people want to convert due to the "goodness of the Land of Israel" and not for the sake of Heaven. However, the considerations of Rabbi Unterman are different: outside of Israel the Jews constitute a minority in the midst of a non-Jewish society, whereas in the State of Israel they are the majority, and therefore only in Israel does the convert join Jewish society.

Regarding the changes over time, and sometimes in relation to that same phenomenon, it emerges from the survey that there were those who wished to make the conditions more lenient, those who wished to make them stricter, and even those decisors who held that one must not depart from the rules (see at length the article of

Prof. Edrei (Arye Edrei, *And are We not Responsible for Them? More on the Conversion Debate*, 24 AKDAMUT (5771)); SHAGAR, pp. 15-93, and a collection of sources over the generations, as appears in RABBI HAIM AMSALEM, ZERA YISRAEL, part. 2 (5770-2010)).

Therefore, in this context I do not wish to propose one model of halakhic ruling as being preferable to another. That is not my job. My objective is to disclose the variety and the disagreements on the issue of conversion – a variety that is not similar to that which exists in relation to other halakhic issues, such as kashrut. What I have written was intended to afford a glimpse of the array of rulings.

I believe that this information is significant when we set about interpreting sec. 4B of the Law of Return and deciding whether it is possible to grant the special conversion tribunals exclusive control of the process of conversion and the right of Return – while dismissing various Orthodox approaches that differ from the one adopted by the Chief Rabbinate. Against the backdrop of the approaches that were cited, it would certainly be incorrect to dismiss the approach of a particular halakhic decisor simply because it is lenient. Such dismissal ignores the complexity not only of the rabbi's response, but also of the question that was put to him.

8. It appears that adoption of a broad approach, by recognizing the conversions of ultra-Orthodox *batei din* of stature, is also supported by halakhic rulings from the past and the present. In other words, the problem with preferring one particular halakhic approach is even greater in the area of conversion, in which many decisors stress the importance of the existence of a pluralistic system that is capable of embracing different approaches at the same time. In this matter let us look at the words of Rabbi Professor Nachum Rabinowitz, head of the Birkhat Moshe hesder yeshiva, who takes

a grave view of the establishment of a centralized conversion system, and believes that this is "liable to uproot conversion":

> Clearly there is no room to enact a law or to fix a procedure whereby all the conversions must be subject to a single central halakhic authority. This was never the case in Israel, and such a determination is liable to put an end to conversion. If all the conversions are subject to the approach of a single halakhic authority, a situation is liable to arise whereby the door is barred to converts. On the contrary, over the generations every *beth din* was authorized to conduct conversions, and even in the days of the Sanhedrin, at the time of Hillel and Shammai, we find that Shammai rejected several potential converts whereas Hillel converted them, proving that there is room for differences between *batei din* in their approach to converts. It is precisely the variations among the *batei din* that allow for the acceptance of converts (NACHUM ELIEZER RABINOWITZ, MESILLOT BEL'VAVAM, 283 (2015) (Hebrew)).

In view of the need to accommodate the variety of halakhic approaches, on the one hand, while ensuring the sincerity and the proper conduct of conversion processes, on the other, Rabbi Rabinowitz proposed that the role of the local rabbis be expanded significantly. He writes:

> Accordingly, the town rabbis should be permitted to handle conversions, as was the practice throughout the generations, and even to appoint the members of their *beth din* themselves. Moreover, town rabbis are close to the people of their towns, and know them better than the judges of the centralized *batei din*. In addition, they are able to create connections with the municipal frameworks in their localities, and it will be easier for them to

> establish cooperation with the schools, the youth movements and the residents in the various communities, and they will be able to encourage, monitor and advance the process of conversion of the young people (*ibid*., at p. 284).

Rabbi Ovadia Yosef, who objected to the establishment of special conversion tribunals – *inter alia*, due to the concern about the lack of an alternative in the event that these tribunals would adopt a strict conversion policy – wrote in a similar vein (ETGAR HAGI'UR, 96) that "there were difficult cases … and I accepted them. But everything was done quietly. Even the Tablets of the Covenant that were given publicly, with thunder and lightning – were broken. Everything must be done in a private manner … For this reason, a national conversion tribunal will not only not help, but it is also liable to cause harm" (Protocol of the Internal Affairs Committee, at p. 8).

As I understand it, at the root of the various approaches lies the philosophical dispute that moves on the scale between "Converts are as harmful to Israel as a sore" (TB *Yevamot* 47b) and "Love you therefore the stranger" (Deuteronomy 10:19) – or, as Rabbi Ovadia Yosef pointed out, "The Bible definitely deems conversion as a positive act. Our rabbis took an affirmative view of it" (Protocol of the Internal Affairs Committee, p. 2). The decisor knows the intricacies of the halakhic requirements, but reality, as is its way, does not fit into neat categories. The reality of conditions that are not ideal is not something new. But the particular variations change. One cannot compare the questions that came before the decisor at the beginning of the twentieth century in Germany to the issues that arose in the United States in the middle of that century. In Israel, too, the issue of the new immigrants in the seventies was not similar, factually, to this issue in the nineties. So we see that the non-ideal reality is

not new but it often assumes a different garb in accordance with the conditions of time and place. It seems that the exclusive situation that was created in the State of Israel in our times, following the immigration from the states of the Former Soviet Union, in which tens and possibly even hundreds of thousands of people who are not recognized as Jewish in accordance with the halakhah live among us, highlights the need to provide a platform for different halakhic approaches that advance a solution to the problem.

9. Hence, the substantive halakhic disputes in relation to the institution of conversion – as well as the importance of a variety of halakhic opinions in this area – lend support to the interpretative conclusion whereby, in the absence of explicit statutory entrenchment, the conduct of conversions for the purpose of the Law of Return should not be entrusted to a halakhic monopoly that represents one approach. In addition, the purposes of the Law of Return, alongside the basic principles of the State of Israel as a Jewish and democratic state, indicate that the different approaches that exist within the halakhic framework should be allowed to operate in parallel as a basis for granting the right of Return. In the absence of an explicit directive from the legislature, the state must refrain from taking a side in the dispute by recognizing a single, centralized body that dictates its halakhic conception to the whole conversion system. Just as the strict approach should not be dismissed, the state is not authorized to dismiss the lenient approach.

Indeed, there is a Chief Rabbinate in our state that is in charge of a variety of religious issues. It is not my intention to challenge its status. However, in the case before us, the Law of Return contains no specific authorization granting the Chief Rabbinate exclusive control over conversion proceedings – as exists in the present formulation of sec. 2 of the Prohibition Against Kashrut Fraud Law, 5743-1983, for example. As

such, there is no avoiding an examination of the exclusive status of the State Conversion System by means of purposive interpretation of the expression "has become converted" in sec. 4B of the Law. On this plane, in view of the combination of its civil purposes – the Zionism of the Law of Return, Ingathering of the Exiles and bringing Jews and their family members to the Land of Israel – and its halakhic purposes, which show the importance of preserving halakhic breadth of opinion, I believe that interpretation that dismisses the status of conversions that were conducted in other serious Orthodox *batei din* is unacceptable, as explained above. We are not dealing with a clearly religious determination. The term "conversion" is, in my eyes, a religious term. But the interpretation is implemented in the framework of the Law of Return, which is not a religious law. In the absence of an explicit definition of the expression "has become converted," I believe that limiting the list should be avoided, and that recognition should be granted, for the purpose of the Law of Return, to the Jewishness of Jews who underwent the process of conversion in recognized, appropriate *batei din* – each, in accordance with his halakhic outlook – without imposing one, single, halakhic conception.

To summarize, the conclusion I have reached stems from a combination of several factors. First, there is no explicit law granting the Government the authority to grant *exclusivity* to the State Conversion System – even if there is authority to establish such a system. Second, for the purpose of deciding upon the status of established, private, ultra-Orthodox *batei din*, in this petition it is possible to decide based on the assumption, which stems from the government decision, that only Orthodox conversion should be recognized. Third, given the complexity of the halakhic rulings on matters of conversion, with all its varied approaches, and the purpose of the Law of Return that was intended to encourage the *aliyah* of Jews – both those born as

Jews, and those who converted – restrictive interpretation of the Law is not justified. The cumulative force of these reasons leads to the outcome that recognition should be granted to the status of conversions that were conducted in serious, respected Orthodox *batei din*, as explained.

10. And from the general to the specific. Above, I explained that in HCJ 7625/06, the petition should not be granted, since the Petitioner was living in Israel unlawfully at the time of the conversion. This is a relevant, appropriate consideration, consistent with the case law cited above, and for this reason the order nisi issued in her case should be rescinded (see paras. 39-40 *per* President Naor). As for the other Petitioners, for the reasons elucidated above, and in view of the established status of the *batei din* that conduct conversions in the ultra-Orthodox communities, I believe that their conversions should be recognized for the purpose of the Law of Return. Clearly, the two *batei din* whose conversions were at issue in the framework of these petitions do not constitute a closed list, and the status of conversions conducted by additional *batei din* that enjoy a similar status should be recognized.

Before concluding, I wish to clarify again that this judgment is handed down on the assumption that arises from the position of the state in accordance with the government decision that places Orthodox conversion at center stage. I am not expressing an opinion on the issue of Reform or Conservative conversions, which is not under discussion in this framework.

I will also add that bearing in mind that in the absence of action to amend the Law in the course of the decade that has elapsed since the question of "private" Orthodox conversions was brought before us, and with all due understanding for the position of my colleague Deputy President E. Rubinstein, I believe that there is no longer any justification for delaying the execution of this judgment. Of course, should the

Knesset wish to amend the Law, it can do so. However, in the absence of an amendment, there is no choice but to decide the petitions on their merits.

11. A final point: the opinions in this case, as in the other cases dealing with the Law of Return and the status of conversion, are characterized by an abstract juridical analysis, dealing with public-constitutional issues that are of great importance, and involve the tension between religious law and civil law. But to complete the picture it should be made clear that, as is obvious to all my colleagues, we are dealing with personal status, and more precisely, with a personal matter. At issue are people's deepest and most sensitive aspirations. The legal decision that we must make will affect the person's self-perception, the most basic components of his identity, not to mention the practical question of where he will spend his life. Irrespective of the outcome, I will say that the matter of the Petitioners, and others in their situation, must be treated with utmost sensitivity. It is appropriate to mention in this context that the commandment to love the stranger, and the prohibition against harming him, appear in the Bible no less than 36 times – more than any other commandment, including the commandment to love God. In fact, Maimonides equated the commandments to love the stranger and to love God, and noted in his response to Obadiah the Proselyte that "with respect to the stranger we were commanded to show great love ... just as we were commanded to love His Name (Maimonides, *Responsa*, 369). We will once again mention the talmudic account (TB *Shabbat* 31a) of the non-Jew who asked Shammai, one of the great sages of Israel in the period of the "Pairs", to teach him the entire Torah while he stood on one foot. The Talmud relates that Shammai shouted at him, and "pushed him away with the ruler in his hand". His reaction is understandable. True, it was Shammai who instructed: "Receive every man with a pleasant countenance" (m*Avot* 1:15). Nevertheless, the demand to learn the

whole Torah while standing on one foot relays a lack of seriousness and insincerity, and hence Shammai's cold response. However, and despite this, when the Gentile presented himself before Hillel and threw down the same challenge, Hillel treated him seriously and with compassion, and responded that the Torah can be condensed into the negative aspect of the command to love one's neighbor as oneself, i.e., what is hateful to you, do not do unto others. Beyond the message of the talmudic story in relation to flexibility and the broad view that are necessary in conversion proceedings, as I mentioned above (para. 6), it would seem that we can all learn from Hillel's response – and more than that, from the approach that this response expresses – about the desirable treatment of a person who is not a convert but wishes to become one. It is not for nothing that the Talmud chose to end the story with the following words: "The humble manner of Hillel brought us under the wings of the Divine Presence" (*ibid.*).

12. And finally, for these reasons that I have explicated, I too concur in the outcome reached by my colleague President M. Naor (see para. 1 above).

Decided by majority opinion to rescind the order nisi issued in HCJ 7625/06 and to make the orders nisi in HCJ 1594/11 and HCJ 1595/11 absolute, in the sense that it is decided that the Petitioners are Jewish for the purpose of the Law of Return, as against the dissenting opinion of Deputy President A. Rubinstein, who was of the opinion that the date on which the orders enter into force should be deferred for 18 months, in order to allow for statutory regulation. There is no order for costs.

21 Adar 5776

March 31, 2016