

The Supreme Court sitting as
the High Court of Justice

H.C. 264/87, 78,
95, 136, 200 224,
238, 382, 383,
384, 385, 723/88,
272/89

Before: President M. Shamgar
Deputy President M. Elon
Justice A. Barak
Justice M. Bejsky
Justice G. Bach

The President

1. (a) These petitions concern the registration of the religion and the nationality of the petitioners in H.C. 63/87, 112/87, 95/88, 136/88, 200/88, 224/88, 723/88 and 272/89 in the Population Registry.

(b) In this context two groups of petitions came up before us: a series of petitions wherein the abovementioned registration was requested with respect to the petitioners in H.C. 95/88, 136/88, 200/88, 224/88, 723/88 and 272/89. Next to these, in some other petitions an objection was raised:

(i) to the registration of religion and nationality as requested in the abovementioned petitions (H.C. 382/88, 383/88, 384/88 and 385/88), and

(ii) to the further validity of the religion and nationality registration of the petitioners in H.C. 63/87 and 112/87. In H.C. 264/87, 78/88 and 238/88 the petitioners requested, in relation to the above, the cancellation of the registration that had already been completed pursuant to the court's judgment given on 1.31.88 in H.C. 63/87 and the abovementioned 112/87.

We have considered all the petitions jointly. It was agreed that we consider all the petitions listed in subsection (a) above and in H.C. 78/88 and 238/88 as if an order nisi was granted. In H.C. 264/87 the grant of an order nisi was decided during the hearing.

2. After considering the thorough arguments of the parties, I came to the conclusion that the issues brought before us should be decided in accordance with the guiding principles of the Population Registry Law, 1965, and its provisions.

In this regard, I accept the approach of the learned state attorney which was also clearly reflected in the Chief Registration Officer's affidavit submitted to this court at the time, in H.C. 230/86 (Miller v. The Minister of Interior, 40 P.D. (4), 436), and was partly quoted there (supra, p. 440).

As stated in the affidavit, which expressed the Registration Officer's approach prior to the hearing of the petition in the abovementioned H.C. 230/86:

" . . . and now, here I come to my major argument: after serious hesitations I came to the conclusion, in my capacity as a Chief Registration Officer, that I am obliged in the present legal situation to register the petitioner (in H.C. 230/86-M.S.) as a 'Jew' in the religion and nationality entries in the Population Registry, since she holds a document prima facie showing that she passed a conversion ceremony in 'any Jewish community', and I am not authorized to determine the validity or non-validity of this ceremony . . .

. . . As a Registration Officer I am not authorized, as stated above, to scrutinize the character of the ceremony and the validity of the conversion . . ."

(Emphases added - M.S.)

In the abovementioned H.C. 230/86, I noted in this regard that (supra, p. 443):

" . . . if a person gives a statement that he is a Jew according to the definition in the

law, and there is no other statement given pursuant to the abovementioned law and there is no other registration in the Population Registry or a public document which shows that he is not a Jew, he has to be registered as stated in Section 19B."

I added and stated that:

" . . . the scope of action of the Registration Officer, and even of the Chief Registration Officer, insofar as it relates to the initial registration and to changes in registration, is not unlimited since the legislator defined the items to be registered, the scope of the Registration Officer's discretion, the duty to report changes and similar provisions. Neither the Registration Officer, nor the Chief Registration Officer, nor the Minister of Interior, have authority beyond the classifications and modes of registration laid down by law or by the regulations promulgated by virtue of an explicit authorization in the law, with the approval of the committee of the Knesset, assigned to it."

(supra, p. 444.)

3. The meaning of all this for our purposes is that the conversion of an immigrant (Oleh) will be registered in the Population Registry according to his statement (Sections 5 and 19B(a) of the Population Registry Law, 1965) and, if demanded, he must submit together with the statement, the document which evidences the conversion (Section 19(1) of the abovementioned law) or a public document. There is no duty to attach a public document, and as stated above, a document evidencing the conversion (see Section 19B(a) of the abovementioned law) will suffice. It follows that a statement accompanied by a document evidencing a conversion in any Jewish community abroad are sufficient to render obligatory the registration of a person as a Jew. In this regard there is no difference whether the community is Orthodox, Conservative or Reform.

If a Registration Officer was requested to register a conversion based on a statement according to Section 5 only, he may use his powers pursuant to Section

19, namely, to ask the resident requesting the registration:

- "(1) To provide him with any information or document he holds which relate to the registration items referred to in the statement, unless the information or document would incriminate him;
- (2) To give written or oral declaration regarding the truthfulness of the information or the document provided by him."

If after receiving details as described above, the Registration Officer has reasonable basis to assume that the statement is not truthful, he will refuse to make the registration based on the statement (Section 19B(b) of the abovementioned law). A statement which is not truthful is a statement which includes falsehood (such as deceit or when there is evidence that the person belongs to another religion. See H.C. 467/75, Hutchins v. The Minister of Interior, 30 P.D. (4), 148 and H.C. 563/77, Dorflinger v. The Minister of Interior 33 P.D. (3), 67).

It should be concluded from the provisions of the abovementioned law that the Registration Officer is not examining the validity or non-validity of a conversion ceremony that took place in a Jewish community abroad and is certified by the document submitted to him. For the purposes of the Registration Officer, the certificate evidencing on the face of it that a conversion ceremony took place in a Jewish community, as described above, indicates that this ceremony was held and requires registration.

This concept regarding the scope of the Registration Officer's powers and duties with respect to the registration of religion and nationality rises also from this court's approach in the past, as expressed, for example, in the judgment in H.C. 143/62 (Funk Schlesinger v. The Minister of Interior, 17 P.D., 225), and from the position taken by the Attorney General and the Chief Registration Officer with regard to registration of conversion applications from abroad after the amendment of the Law of Return (Amendment No. 2), 1970 which added

Section 3A to the Population Registry Law, 1965. As can be concluded from the material and arguments presented to us, the Registration Officer changed his position after our judgment in the abovementioned H.C. 230/86.

4. Therefore I would decide:

- (a) to deny the petitions in H.C. 264/87, 78/88, 238/88, 382/88, 383/88, 384/88 and 385/88 and cancel the order nisi issued following the submission of the petitions.
- (b) to turn the order issued by this court in H.C. 95/88 absolute.
- (c) to turn the order issued by this court in H.C. 136/88 absolute.
- (d) to turn the order issued by this court in H.C. 200/88 absolute.
- (e) to turn the order issued by this court in H.C. 224/88 absolute.
- (f) to turn the order issued by this court in H.C. 723/88 absolute.
- (g) to turn the order issued by this court in H.C. 272/89 absolute.

Based on the aforesaid, it is obvious that the registration following our decision in H.C. 63/87 and 112/87 remains unchanged.

5. The detailed reasons for this judgment will be given separately.

6. Each of the following:

- (a) The Minister of Interior,
- (b) The petitioner in H.C. 238/88, and
- (c) The first petitioner in H.C. 382-385/88,

will bear the expenses of each of the petitioners in H.C. 95/88, 136/88, 200/88, 224/88 and 723/88 (against whom the petitions raising the objections for registration were directed), and the expenses of the respondents 4 and 6 in H.C. 238/88 together with index linkage and interest until the actual payment, in the amount of NIS 1,000 for each petitioner or respondent as the case may be. The Minister of Interior will bear the expenses in the amount of NIS 1,000, in relation to the two petitioners in H.C. 272/89, jointly.

There are no expenses with respect to the other parties.

The President

Justice A. Barak

I agree. I will give my reasons separately.

Justice

Justice M. Bejsky

I agree. Reasons will be given.

Justice

Justice G. Bach

I agree. I will add my reasons separately.

Justice

The Deputy President

1. I attentively read the opinion of my distinguished colleague President Shamgar. With all due respect my opinion is different from his opinion. In my opinion the orders should be made absolute in each of the cases listed in paragraph 4(a) of my colleague's opinion. In the cases listed in paragraph 4(b)-(g) the orders should be denied, and I would also cancel the registration which was ordered in H.C. 63/87 and 112/87. I will present the full reasoning for my opinion when the detailed reasons for this judgment will be given. Now I will mention only the main points upon which my decision was based.

2. Section 3A(b) of the Population Registry Law, 1965 states as follows:

"For the purpose of this law and any registration or certificate pursuant to it, a 'Jew' has the meaning ascribed to it in Section 4B of the Law of Return, 1950."

The abovementioned Section 4B defines a "Jew" as follows:

"For the purpose of this law, a 'Jew': someone who was born to a Jewish mother or who converted and who does not belong to another religion."

From here you learn that the registration of the nationality "Jew", under the Population Registry Law (Section 2(a)(5)), should be made according to the definition adopted by the legislator in Section 4B of the Law of Return, namely, a Jew is someone who was born to a Jewish mother or who converted and who does not belong to another religion.

3. This definition was added to the above-mentioned laws following the judgment in the Shalit case (H.C. 58/68, 23 P.D.(2), 477) and was intended to change the majority opinion in that judgment (in which the Supreme Court sat in full panel, and the judgment delivered was based on a majority opinion of five out of nine Justices). The majority in the Shalit case was of the opinion that registration as a Jew in the nationality entry of the Population Registry should be made according to a subjective test, namely, according to the self-definition of the applicant who declares in good faith that he is a Jew from the view point of his relation to the Jewish people. The legislator provided that the definition of a "Jew" is based upon an objective-normative test and the registration of the entry of nationality as a Jew should be made according to this legal test.

4. The term "converted" was not created by the legislator. This is a legal-normative term whose origin is in Jewish law, and it does not exist in any other normative system. Thus, when the court determines to expound the meaning of this term it has to turn to the legal system in which the term was born, namely to the world of the Halachah, in the Talmud, including its com-

mentators, Rabbinic authorities and respondents (see Yebamot 46-47, Masechet Gerim, chapters 1-2, Rambam, Hilchot Eisoorei Biha, chapters 13-14, Toor and Soa, Yore Dea, paragraphs 268-269).

5. My colleague the President is of the opinion that "a statement accompanied by a document evidencing a conversion in any Jewish community abroad are sufficient to render obligatory the registration of a person as a Jew. In this regard, there is no difference whether the community is Orthodox, Conservative or Reform." The statement submitted to the Registration Officer should be "a statement that he is a Jew according to the definition in the law" (from President Shamgar's opinion in H.C. 230/86, 40 P.D. (4), 443), namely the definition in Section 4B of the Law of Return. My colleague determined hereby the substantive meaning of the term "converted" with respect to the Law of Return and the Population Registry Law (and with regard to the Law of Citizenship, 1952, Section 2 of which is also based on the abovementioned definition of the Law of Return).

I do not agree with this determination. It ignores the interpretation of the term "conversion" in the normative system which is the origin of the term, and it contradicts the objective nature of this term. For example, the conversion proceedings in a community which belongs to Reform Judaism are not conducted in accordance with a uniform and obligatory system of norms. These proceedings differ from one community to another according to the views and opinions of the person conducting the proceedings. For example, in several of the conversion proceedings in the cases before us (see infra) the petitioners' attorney stated explicitly before the court that the conversion was conducted without the ritual bath immersion which is, as well known, an essential and necessary element in the conversion rules according to the Halachah.

6. The abovementioned determination regarding "conversion in any Jewish community abroad" is ambiguous and it cannot serve as a minimum objective-normative definition. What is the meaning of the term any Jewish community? What shall be the ruling with regard to a community which does not belong to any of the three abovementioned movements? In order for a community which does not belong to any of the three abovementioned movements to be regarded as "any Jewish community", should

there be a minimum number of members in this community? And what should the Registration Officer do when a document evidencing a conversion in such a community is submitted to him? Thus, this determination implies that the legislator adopted a definition lacking any objective-normative test, and we have a basic principle not to imply to the legislator such an obscure definition, especially when we address an issue placed in the eastern wall of the constitutional law of our legal system.

7. According to the abovementioned determination, the term "Jew" has two distinct meanings in the laws of the Jewish state: one meaning is according to the Rabbinical Courts Jurisdiction Law (Marriage and Divorce), 1953, where all agree that the meaning of this term is based on the rules of the Halachah, and the second meaning is for the purpose of the Law of Return, Population Registry and the Law of Citizenship (unless a third meaning will be given in relation to the last law).

Indeed, such a result was the outcome of the judgment in the Shalit case; however, after the determination of the definition in Section 4B of the Law of Return which annulled the majority decision in the Shalit judgment, uniformity of the meaning of the term "Jew" in all the laws of the State of Israel was re-established. This uniformity is vital and this is the desirable and correct situation, especially with respect to such an essential and fundamental term which serves as part of the basic title of the State of Israel as a Jewish state.

8. We reach the same conclusion regarding the interpretation of the term "converted" according to its meaning in the Halachah by analyzing another element, namely the first element in the abovementioned definition of Section 4B of the Law of Return which is: he who was born to a Jewish mother. All agree that since the first generations the origin of this fundamental element is found in the Halachah. By process of analogy and proper law interpretation, it should be assumed and concluded that the following element, namely "converted", is interpreted according to its meaning in the Halachah since the first generations. The late Deputy President Silberg has adopted a similar interpretation in giving a reason:

". . . which obliges us to interpret the term 'converted' in accordance with the Jewish Halachah . . . Section 4B of the law provides

two indications regarding the Jewishness of a person: 'born to a Jewish mother' and 'converted'. The first indication is undoubtedly a Halachic indication -- my conclusion is that since the expression 'converted' is a technical, legal, Halachic expression there is no way to interpret it but according to the definition of the Talmud and its commentators in all generations, and according to this definition a person is not a Jew unless he was circumcized and immersed in a bath ritual" (M. Silberg, Two indications of Judaism, in his book "None in one", p. 281, 284-285.)

These words which were written in 1972 received special meaning in light of the decision adopted ten years later during a conference of the Rabbis of the Reform movement which held that a person born to a Jewish father is also Jewish, even if the mother is not Jewish, as is a person born to a Jewish mother and a non-Jewish father. This drastic change from the accepted Halachah position, which many of the members of the Reform movement itself warned against, entirely contradicts Section 4B of the Law of Return that adopts the Halachic principle that the Judaism of a person is determined according to the mother and not according to the father.

9. I agree that during and after its discussion and adoption of the abovementioned Section 4B, the Knesset rejected the proposal to add to the word "converted" the words "according to the Halachah". Similarly it rejected another proposal seeking to add the words "according to what is accepted in one of the movements of the Jewish religion" (this last proposal resembles the interpretation of my colleague the President). This question is controversial in the public, the Knesset avoided deciding it by using broad language and left the decision for the court which is responsible for the interpretation and application of the law. Even if it was clear that the intention of the majority of the members of the Knesset was that the term "converted" should not be interpreted in accordance with the Halachah, since the term "converted" means conversion according to its meaning in the Halachah, which is the origin of the term, we were required to interpret it in accordance with the actual words of the legislator and not in accordance with his intention. As stated by the late Justice Silberg (supra): "as the first indication is according to the

Halachah, we are obliged to interpret the second indication in the same manner. This is the real interpretation of the act of the Knesset, and we are bound by what the Knesset does and not by what it intends to do or believes it has done" (M. Silberg, supra). Especially when this question is controversial in all public circles and the Knesset did not want to make an explicit decision regarding it. If the Knesset had wanted to make the decision, would it not have been simpler to adopt the proposal made by one of its members and write in the law "converted according to what is accepted in one of the movements of the Judaism". Thus, this decision is the responsibility of the court when it comes to interpret the meaning of the law and this interpretation should be made from the inner context and content of the law.

10. Indeed, the registration of the nationality "Jew" in the Population Registry does not serve as prima facie evidence for any of the personal status issues (Section 3 of the Population Registry Law and Section 40, supra), and so it was argued before us, "What significance does it have?" But now, after the legislator determined the requirement for the registration of the nationality (some thought and some still think that there is no need for it and perhaps the issue should be re-examined), we should not disrespect the national - public importance of the issue and we should treat it with the proper respect. The petitions brought before us and the lengthy and excited discussion and argument in these petitions prove how important and fundamental the decision in these petitions is for all parties before us.

11. The Minister of Interior is in charge of the execution of the abovementioned laws and as such "the authorization to do something . . . also implies the granting of the reasonably necessary accessory powers" (Section 17[b] of the Interpretation Law, 1981). The powers of the Registration Officer derive, mainly, from Sections 3A[a], 19 and 19B[b] of the Population Registry Law. The Registration Officer must register the details given to him in the statement, unless he has reasonable basis to assume that the statement is false. (The abovementioned Shalit judgment, p.507, based on the Funk Schlesinger judgment). In the Shalit case the majority decided that the Registration Officer had no reasonable basis to assume that the statement was not correct. The majority was of the opinion that "the religion test upon which the Registration Officer based his assumption that

the statement is not correct, is not the relevant test for the purpose of registration of nationality" (supra, p.516 and p.511). Once the legislator determined in Section 4B of the Law of Return that the test for the registration of nationality is in accordance with the normative system of the Halachah (differently from the majority opinion in the Shalit judgment), then if the Registration Officer has reasonable ground to assume that the statement does not comply with the requirements of the abovementioned definition, he may refuse to make the registration of nationality, and according to Section 3A(a) of the law he must refuse to make this registration, as long as the validity of the conversion was not examined (I would like to add parenthetically that the conversion certificates in the files before us are not public documents and, in this regard as well, the situation here is different than the one in Funk Schlesinger). For example, in the cases before us in H.C. 95/88, 383/88, 272/88 and D.H.C. 216/89 the Registration Officer had reasonable basis to assume, based on reading of the conversion certificate, that the conversion was not properly performed according to the definition of the law, and even the petitioners' attorneys explicitly and frankly declared that the petitioners' conversion ceremony did not include ritual bath immersion; in H.C. 272/88 the conversion certificate is signed by three people, one of whom is the husband of the convert (the petitioner); the conversion certificate in D.H.C. 216/89 is signed by three people, two of whom are the father and mother of the convert (the petitioner). When a conversion is clearly characterized with such "qualities", how can the Registration Officer be required to register a person as a "Jew" in the nationality entry based upon it? In H.C. 63/87, after the Registration Officer investigated the matter, he had serious doubts whether the conversion was performed by a religious tribunal, and whether the conversion proceedings were followed according to the Halachah, etc. In all these cases and in other similar cases the Registration Officer asked that a declaratory judgment, stating that the conversion proceedings were conducted in accordance with the requirements and definition of the law, be submitted to him. It was the Registration Officer's duty to ask and demand it.

12. Before I conclude, I will allow myself to add several words, and in this regard these are words from the heart.

The State of Israel is the state of all the Jewish people, all of its individuals, all of its communities, all of its movements and all of its nuances, both those who reside in it and those who reside in the diaspora. The State was established for the sake of all of these people and because of all of these people it exists. This is the undebatable fundamental concept of its thinkers and founders who came from all parts of the people as expressed in their thoughts and discussions, and recently in Section 7(a)[1] of the Basic Law - The Knesset. The State of Israel was established in order to open its gates to brethren, close and far, wishing to return to it, to build and be built in it. Everyone of those who return to it may live in it according to his belief and his way of life. This is one of the superior principles of our legal system. However, the sovereign Knesset of Israel has determined in its laws after deep doubts and differences of opinions - and differently from the majority ruling of the Supreme Court of the State of Israel - that the definition "Jew" for the purpose of the laws of the State of Israel is based on objective-normative components which were accepted and hallowed during the thousands of years of the existence of this nation, and we have to accept the determination of the Knesset of the State of Israel which is the determination of the historical Knesset of Israel, based upon the rules of Israel in the Halachah system, from generation to generation and from the first generations. It seems I will not be mistaken if I will say that it is vital and touches upon the fundamentals of our existence, that the act of joining the Jewish nation be conducted in the same manner for all movements of the Jewish people and that we act in this fateful matter according to a criterion that can be accepted by all parts of the nation. The historic Halachic conversion proceedings are the one and only common criterion for all parts of the nation and acceptance of these proceedings does not preclude the right and permission of everybody to live according to his belief and way of life. Let us look for ways and strive to take upon ourselves the obligation of these proceedings, willingly, as this is the will of the Knesset and which I am confident is the will of the nation.

The Deputy President

Decided by majority vote, against the dissenting opinion of the Deputy President, as stated in the President's opinion.

Given today, July 24, 1989.