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1. INTRODUCTION

The question "Who is a Jew?" has long concerned the Jews of Israel, where the question has not merely a religio-sociological significance such as it has in the Diaspora, but also a legal-constitutional one, due to the fact that several laws apply specifically to Jews. Included among these laws is the basic Law of Return, 1950 - one of the constitutional laws of the State of Israel. This Law lays down that "every Jew has the right to come to this country as an *oleh* (immigrant);" and by the Nationality Law, 1951, every *oleh* automatically becomes an Israeli citizen, unless he chooses to contract out of this method of receiving Israel nationality. However, only a Jew can be an "oleh" and receive citizenship in this automatic process. Persons - Jews and non-Jews - who do not acquire Israel nationality in this way can become naturalized in the normal manner similar to the procedure in the United States. Another Law which bears on the subject is the Registration of Inhabitants Ordinance, 1949. This, although not specifically referring to Jews, establishes the National Register and provides for the issuance to each inhabitant of the country of an identity card which indicates, among other things, the holder's "nationality, ethnic group and religion." A third Law of relevance is the Rabbinical Courts

Jurisdiction (Marriage and Divorce) Law, 1953. Under this enactment, matters of marriage and divorce of Jews in Israel, Being nationals or residents of Israel, shall be under the exclusive jurisdiction of the Rabbinical Courts, and marriages and divorces of Jews shall be performed in Israel in accordance with Jewish religious Law.

CASE HISTORY

The following case brought the issue to a head in Israel. Oswald Rufeisen was born a Jew in Poland in 1922. During World War II he escaped from the Nazis and took refuge in a Convent. In 1942 he became converted to Catholicism, and in 1945 joined the Carmelite Order. During the Nazi occupation he actively participated in the underground resistance and at the risk of his life rescued Jews from the clutches of the Nazis. In 1958 he left Poland, and came to Israel, where (still a member of the Carmelite Order) he applied for an *oleh* certificate and for an identity card which would show his ethnic group as Jewish.

The priest contended that although he is a Christian by religion, he is one of the Jewish people and feels himself a Jew from the point of view of nationality. Thus, there is no contradiction, he claimed, between his being a Christian in religion and a Jew in nationality.

The Minister of the Interior, who is responsible for the execution of the Registration of Inhabitants Ordinance and the Law of Return, refused this, while offering to facilitate Rufeisen's naturalization, an offer which in turn was rejected. Rufeisen then brought these proceedings, for an order of Mandamus, in the Israel Supreme Court. This would have forced the Minister to register Rufeisen as he had requested.

The order nisi which calls upon the Minister to show why he should not agree to the request, having been granted, the case came on for full hearing before a bench of five judges of the Supreme Court, in view of the importance of the case - Justices Silberg (presiding), Landau, Berenson, Cohen and Many.

By a majority of four to one (Justice Cohen dissenting) the Court, on December 6, 1962, decided to quash the order nisi and dismiss the application.

BACKGROUND

CLARIFICATION OF TERMS

- 1. Halacha - The different approaches of the various commentators and the sages determine (according to majority rule or the expressors of the opinion) how one ought to behave in practice. One must bear in mind that while the commentators may often disagree, the law must be determined according to one of them. It is thus possible that conflicting opinions may have halachic bases.
- 2. Religion - laws and commandments given in the name of God, an outlook based upon belief in God (dictionary definition, M. Meden).
- 3. Nationality - people, nation, tribe, ethnic group. (dictionary definition). Thus, a connection between people because of a common land or common roots.
- 4. Judaism - includes all the qualities that make one a Jew.

THE OPINIONS OF THE JUDGES WITH REGARD TO THE RELATIONSHIPS BETWEEN RELIGION AND NATIONALITY IN ISRAEL. (According to the decision in the Rufeisen case.)

- 1. Dr. Silberg: The concept Jew is determined according to its normal usage in ordinary language and according to the historical tradition of the Jewish people.
- 2. Justice Landau: The State was established by Zionists, and thus the definition according to the thinking of the Zionist fathers.
- 3. Justice Berenson: The feelings of the people determine who is a Jew, and although this will change with time to include even a Christian, we can not yet consider a convert a Jew.

*not a constitutional matter*

According to Mr. Rosenthal and Rabbi Cahana, halacha determines who is a Jew in the laws of the State. They each bring various views according to their understanding:

- 1. Halacha determines that a Jew who has sinned is still a Jew, and thus even a convert is considered a Jew. (Rosenthal)
- 2. A convert is not considered a Jew with regard to privileges. He is considered a member of another people and he is not accepted as a Jew. (Cahana)

PIONEERS:

Here is your big chance to use that mass of gray material found inside the cranium - widely known as the brain!! Please do yourselves a favor (and us too, of course!) and meditate on the following thought-provoking statements...

Definitions of a Jew:

1. A "Jew" is only someone who was born of Jewish parents and who fulfills Jewish religious precepts (mitzvot).
2. A "Jew" is someone born of Jewish parents. This includes those who do not fulfill the precepts.
3. A "JEW" is someone of Jewish origin. It is of no importance if he fights against his people and cooperates with its enemies.
4. Someone of Jewish origin is a "Jew", even if he is married to a non-Jew.
5. Someone of Jewish origin is a "Jew" even if he is married to a non-Jew and is a convert.
6. Someone born of Jewish parents is a "Jew" even if he believes in no faith.
7. Someone born of Jewish parents is a "Jew" even if he believes in Christianity.
8. Anyone who is interested in living in Israel is a "Jew".

Relationship between religion and nationality in Judaism.

1. Jewish religion includes within it Jewish nationality.
2. Jewish nationality includes within it Jewish religion.
3. Religion and nationality in Judaism are the same thing, i.e. they overlap completely.
4. Religion and nationality in Judaism overlap only partially.
5. Religion and nationality in Judaism are very far apart (as in most of the countries of the world, where a man's religion has nothing to do with his nationality or his citizenship).

Anyone may be considered a member of the Jewish nation who is born of Jewish parents or converted to Judaism and:

1. Believes in the Jewish religion
2. does not believe in any religion
3. believes in a non-Jewish religion