

In the Supreme Court Sitting as High Court of Justice

Apostate is not a Jew Decision

Per Justice Silberg
Before Justices Silberg,
Landau, Berinson, Cohn
and Many.

Oswald Rufeisen, Petitioner,
v. Minister of Interior, Res-
pondent (H.C. 72/62).

The High Court, by majority
decision, discharged an order
nisi calling on the Minister of
Interior to show cause why he
should not grant the petitioner
an immigrant's visa under the
Law of Return, 1950.

The petitioner, Oswald Rufeisen, known as Father Daniel, a Carmelite monk, was born in Poland to Jewish parents. He was brought up as a Jew, and belonged to a Zionist Youth Movement. During the Nazi occupation of Poland he rescued hundreds of his fellow-Jews from the Gestapo in legendary feats of daring. While hiding from the Nazis in a Catholic convent, he was converted to Catholicism. In 1945, when the war had ended, he joined the Carmelite Order in the hope that he would be transferred to one of their monasteries in Palestine. In 1958, he was finally permitted by the Order to come to Israel. In his application to the authorities to be allowed to leave Poland he gave as his reason for wishing to go to Israel the fact that he was a Jew, albeit of the Catholic religion, and had always wanted to live in his ancestral homeland.

His application to leave was granted only after he had renounced his Polish nationality. He was given a travel document similar to those given to all Jews emigrating from Poland to Israel.

When Father Daniel arrived in Israel, he applied for an immigrant's certificate and declared himself a Jew for purposes of registration in the Register of Inhabitants. He was not registered as a Jew and his application for a certificate was refused by the then Minister of Interior, Mr. Bar Yehuda, who wrote to him saying that in his own personal opinion he was fully entitled to be recognized as a Jew but that he was powerless to grant him the certificate he sought in view of a decision of the Government that only a person who in good faith declares himself to be a Jew and has no other religion should be registered as a Jew. Mr. Bar Yehuda concluded his letter to Father Daniel with the apologetic explanation that a Minister may not act according to his own lights and concepts but must act within the existing lawful limitations, while continuing to press for their amendment.

Father Daniel eventually petitioned the High Court for an order nisi which was granted him.

Section 2 of the Law of Return provides that every Jew has the right to come to Israel as an immigrant, while section 3(a) lays down that "a Jew who has come to Israel and

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subsequent to his arrival has expressed his desire to settle in Israel may, while still in Israel receive an immigrant's certificate"

On the Return Day, Mr. Yaroon and Mr. I Isserlis appeared for the petitioner and Mr. Bar Niv, the State Attorney, assisted by Mr. Terio and Dr. Cheshin, for the respondent.

Decision

Per Justice Silberg:

We were confronted at the outset, in this most unusual of cases with the psychological paradox that we felt that we, as Jews, owed the petitioner, an apostate, all our admiration and thanks. For this man risked his own life times beyond number during the dark days of the Holocaust in Europe, to rescue his brother Jews from the very jaws of the Nazi beasts. It was difficult to envisage how such a man could be deprived of his life's aspiration to identify himself completely with the people whom he loves and to become a citizen of the country of his dreams as of right, as a Jew, and not as an accepted stranger.

But we dared not allow our appreciation and gratitude to betray us into degrading the name and content of the concept "Jew". For the petitioner has asked no less of us than to ignore the historical and sanctified meaning of the designation "Jew" and to forget about those spiritual values for which we were massacred at various times during our long exile. If we were to accede to his request, the aura of glory and splendour surrounding our martyrs of the Middle Ages would pale and vanish without trace and our history would lose its continuity and begin to count its days from the beginning of the emancipation, after the French Revolution. No man is entitled to demand such a sacrifice from us, even though he have as much to his credit as the petitioner.

The concrete question before us is what is the meaning of the term "Jew" in the Law of Return and can it be so interpreted as to include an apostate who regards and feels himself to be a Jew despite his religious conversion? The answer to this question depends on whether the "Jew" of the Law of Return must be given a secular or a religious meaning. The ruling opinion in Jewish

self completely with a people which has suffered so much from religious persecution, and his sincere affection for Israel and its people cannot possibly take the place of such identification. (At this stage Justice Silberg went on to emphasize, in order to obviate any misunderstanding, that he had no quarrel with the modern Catholic Church nor did he intend, for one moment, to compare the petitioner with some of the notorious apostates of the Middle Ages. But he felt that the petitioner's personal decency and humanity did not affect the question of whether he was entitled to arrogate to himself the designation of "Jew").

But here comes the rub — if rub there be. The term "Jew" in the Law of Return does not refer to the "Jew" of Jewish religious law, but to the "Jew" of secular law. For the Law of Return, with all its historical importance, is a secular law which must be interpreted in the light of the legislative purpose behind it. And as this law is an original Israel law, drafted in Hebrew and not translated, its terminology must be given the ordinary everyday meaning which the ordinary Israel man in the street would attach to it. And the ordinary everyday meaning of the designation "Jew", in my opinion, undoubtedly precludes the inclusion of an apostate.

It is not my intention to preach any religious philosophy or to take up the cudgels for any specific view on what path the future development of the Jewish people should follow. I am well aware of the fact that opinions on this score are divided into all the shades of the spiritual rainbow. There is, however, one thing which all Israel has in common: we do not wish to sever ourselves from our historical past or deny our heritage. Only the very naive could possibly believe or think that we are creating a new culture in Israel. It is too late for that. A nation which is practically the same age as the human race cannot start *ab ovo*, and any new culture which we may introduce cannot, even in the most extreme cases, be anything more than a new edition of our past culture.

Whatever the theological outlook of a Jew in Israel may be — whether he be religious, irreligious or anti-religious — he is inextricably bound by an umbilical chord to historical Jewry, from which he draws his language and his festivals and whose spiritual and religious martyrs have nourished his national pride. An apostate cannot possibly identify him-

self completely with a people which has suffered so much from religious persecution, and his sincere affection for Israel and its people cannot possibly take the place of such identification. (At this stage Justice Silberg went on to emphasize, in order to obviate any misunderstanding, that he had no quarrel with the modern Catholic Church nor did he intend, for one moment, to compare the petitioner with some of the notorious apostates of the Middle Ages. But he felt that the petitioner's personal decency and humanity did not affect the question of whether he was entitled to arrogate to himself the designation of "Jew").

As to the petitioner's Counsel's argument that only a theocratic State could refuse to recognize the petitioner as a Jew, it is completely unfounded. Israel is not a theocratic state as it is not religion which regulates the daily life of its citizens but the law as witness the very case under consideration. For if religious doctrine were to be applied to the petitioner, he would be regarded as a Jew. On the other hand, the fundamental conception that "Jew" and "Christian" are a contradiction in terms is something which is unreservedly accepted by all, as can be seen from the quotations submitted by the State Attorney. Furthermore, the healthy instinct and urge for survival of the Jewish people also contribute towards this general conception, as experience has shown that apostates are eventually lost completely to the national family tree for the simple reason that their children inter-marry. As for the petitioner's Counsel's frivolous remark that there is no fear that the petitioner's children would intermarry as he is a monk sworn to celibacy, it was, to put it euphemistically, not in the best of taste.

The order nisi should be discharged.

(To Be Continued)

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