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of the Government means a determination in favor of one of the approaches, the rule that, in the case of policy, as with a matter that is within the Government's discretion, the Court will not hasten to intervene in the administration's act, should not be applied. A policy which denies a person's right to consider himself a member of the Jewish nation is harshly discriminatory, the type of act which makes it incumbent on the Court to intervene in the policy of the executive authority. The Court cannot remain neutral in a conflict between those persons who wish to impose their views on others and those—religious and free-thinking—who profess the freedom of the individual and oppose any trend towards conformity. Since the establishment of the State, the High Court of Justice has acted in a spirit of tolerance towards all opinions, in line with the Proclamation of Independence, the Universal Declaration of Human Rights and the liberal tradition which is the essence of the unwritten constitution of Israel. It follows, therefore, that, if the law remains unamended and the rubric *le'om* is not deleted, the Registration Officer must be ordered to carry out registration according to the notification furnished to him in good faith.[1]

2. C.A. 630/70, TAMARIN v. STATE OF ISRAEL
26(1) *Piskei Din* 197 (1972)

Registration of Israeli or Jewish nationality; ethnic-national identity and identification; individual and national self-determination; secession.

The subject of the appeal is the District Court's decision to dismiss the appellant's application to be declared as belonging to the Israeli *le'om* ("nationality"). He is a resident and citizen of the State of Israel, to which he immigrated in 1949 from Yugoslavia. According to his notification to the Registration Officer, he was recorded in the Population Registry as "Jewish" under the rubric of nationality, and as "of no religion" under the rubric of religion. Following the 1970 amendment to the Population Registry Law, 1965, under which no one may be registered as a Jew by nationality or religion unless he was born of a Jewish mother or had been converted to Judaism, and did not belong to some other religion, the appellant asked the Registration Officer to change the entry of the rubric *le'om* in his identity card and in his file in the Registry from Jewish to Israeli. The Registration Officer informed him that, under the Law, he could not do so unless

[1] Following the Court's decision, the *Knesset*, on March 10, 1970, enacted the Law of Return (Amendment No. 2), 1970, which included an amendment to the Population Registry Law, 1965. The effect of the amendment was that no one would be registered as a member of the Jewish *le'om* or religion unless he was born to a Jewish mother, or had been converted and was not a member of another religion.

he presented a public document attesting the change in his nationality. The purpose of the appellant's application for a judgment declaring that he belonged to the Israeli nationality is that such judgment serve as the required public document. The grounds for his application are given in paragraph 5 of his sworn declaration:

> At the time of registration, I pondered whether to define my nationality as Jewish or as Israeli, but my conclusion then was that there was still only a nucleus of the process of creation of the Israeli nationality, and I was not yet sufficiently rooted in it, and I therefore decided to write "Jewish *le'om,*" though greater accuracy would have obliged me to write Jew and Croatian .... To the best of my understanding today, a crystallized Israeli nationality already exists, and I belong to it by all the subjective criteria (identification, sense of belongingness, loyalty and declaration to that effect) and the elements of Croatian nationality have almost disappeared from within me.

Common to the several contentions of the appellant was a submission that, in the matter of belonging to the Israeli *le'om,* his subjective feeling of belongingness is the determining factor; and that he has the right "to define himself as Israeli from the viewpoint of national membership and to express his subjective feeling by asking that the present record be altered."

The Supreme Court, sitting as the Court of Civil Appeals, dismissed the appeal. Agranat C.J. observed:

> There is no significance in the criterion of the subjective feeling of a certain person regarding his belonging to a certain nation, unless it is possible to determine, according to any criteria, that that nation exists. It follows that the majority decision in the *Shalit case,*[2] which upheld the criterion of bona fide declaration of the subjective feeling—or "the criterion of self-determination"—for the purpose of recording a citizen's nationality in the Population Registry, is irrelevant here since there ... the existence of the Jewish nation was not in doubt.

A resident applying for a declaratory judgment as to his national membership must prove the existence of the nation in question, unless the fact of it is clearly visible and is, therefore, within the Court's judicial knowledge. While it may be assumed that most applications will be of the type last mentioned, that is not so in the present case. The appellant's words in paragraph 5 of his declaration imply that, during the years that have passed since he immigrated to Israel, there has taken place, in Israel, a separation from the Jewish nation, so that, in addition to that nation, a distinct Israeli nation has come into being. This claim needs proof by the appellant.

On the attributes for determining a separate existence of nationality, Agranat

[2] H.C. 58/68, 23(2) *Piskei Din* 477 (1969), discussed on pp. 317–27 *supra.*

C.J. adduced two of the statements cited by him and by Sussman J. in the *Shalit case*,[3] and commented upon them:

i. The attribute of a feeling of unity, prevalent among all the members of a national unit, forms the corollary to the other attributes, namely, mutual participation in various aspects of its culture, a sympathetic attitude towards those aspects, and to the other attributes that characterize the unit, and also the desire to share in a destiny and in aspirations for the future. This attribute embodies a subjective-collective factor—that is, a feeling that is common to most of the individuals who make up the national unit. ii. The ethnic attributes and cultural assets that single out a national group and make it different from other national groups are objective factors, just as the factor of the sympathetic attitude with which the members of the national group regard those attributes and assets is of a subjective character. iii. For the purpose of the present discussion, emphasis must be laid on the factor of the wish of members of the national group to share in a destiny and in aspirations for the future. This is also a subjective-collective factor and it signifies that members of the national group are imbued with a feeling of inter-dependence, which, in turn, implies a sense of common responsibility; it follows that this factor forms an important element in the feeling of national unity. iv. It is useful to bear in mind the distinction between identification and identity in their national ethnic meaning. Ethnic identity means the pattern of attributes of the ethnic group as seen by its members. From the viewpoint of the individual, this concept relates to the reflection in the individual of these attributes, *i.e.*, how the individual sees himself by virtue of his membership in the ethnic group. Ethnic-national identification relates solely to the fact that a man regards and defines himself as belonging to a certain nation, and is prepared to declare so at any moment. There is a tight nexus between the two concepts and there is often a reciprocating influence between phenomena to which they relate. In other words, the degree of ethnic identity felt by a person is likely to strengthen or weaken the degree of national identification; just as the extent to which a person identifies himself with his nation is likely to enhance or diminish his sense of ethnic identity. At the same time, it is clear that the weakening of national identity does not necessarily cancel out the feeling of national identification. v. From the standpoint of ethnic identity, a person may have two ethnic identities. There is no need for him to feel, in different situations, that there is a conflict between them, but it is very possible that their influences will overlap or act on him in harmony or by way of reciprocal action. Therefore, even if we assume that a Jew in Israel has, besides his

[3] *Ibid.* 514, 577.

Jewish identity, an Israeli one, that need not affect his identification with the Jewish nation.

As is known, the Jewish people is composed not only of Jews who reside in Israel, but also of the Jews of the Diaspora. The attribute that embraces all Jews wherever they are, and serves as an important element of their national unity, is inherent in their sense of inter-dependence and common responsibility. It is superfluous to offer examples of this, whether out of the long history of the people of Israel in dispersion, or out of contemporary Jewish annals. It will suffice to mention, first, the tremendous solicitude of Jews abroad, on the eve of the Six-Day War, for the security of the State and the lives of its Jews, and the boundless moral and material help that they gave during the war and the days that followed; and, secondly, the constant concern of the Jews in Israel and abroad for the fate of Jews in the Arab States and the Soviet Union, a concern with which went a resolute desire to secure their immigration to Israel, and action towards the realization of that aim.

In considering the attributes of the national unity of Jews in Israel and abroad, we ask if the appellant has proved that there is a sizeable group of people in Israel who lack, or have lost, that same deep feeling of Jewish inter-dependence and common responsibility. The answer is—no! Most of the evidence that he produced of the existence of a separate Israeli nationality is no more than quotations from sources [4] whose common denominator is that they touch on the subject of Jewish ethnic identity without demonstrating absence of identification with the Jewish nation. An example of the nature of this evidence is the following statement of a certain woman: "When I was asked if I first think of myself as an Israeli and afterwards as a Jew, or the opposite, I answered I am first of all an Israeli! I am sorry, the religious can be unhappy—but that is how I feel." The remarks attest an intensity of the feeling of ethnic Jewish identity, but not that the speaker did not regard herself as belonging to the Jewish people. Evidence of a different kind annexed by the appellant to his application was a sworn declaration stating, *inter alia:*

> I am far from denying the existence of the Jewish nationality or that I feel an attachment to the Jewish mentality and culture and have an interest in the fate of the Jewish people. At the same time, I consider myself as a member of the Israeli nation. I personally know people, and amongst them many youngsters, who consider themselves as members of the Israeli nation.

The testimony of one person, that he considers himself to be a member of an

[4] The three main books on which the appellant based his submission and which were discussed by Agranat C.J. were: Herman, *Israelis and Jews* (1970); Friedman, *Fin Du Peuple Juif?* (1965); Isaacs, *American Jews in Israel* (1967).

Israeli nation, and that there are a number of other people who think like him cannot serve as evidence of the existence of such a nation. Apart from that, it is very possible that the declarant exchanged identification with the Jewish people, with a weakening of her feeling of Jewish identity, for a feeling of Israeli identity; this is inferable from her remarks that she "feels an *attachment* to Jewish mentality and culture," on the one hand, and has "a great interest in the fate of the Jewish people." In any event, one cannot rely on her declaration as sufficient proof of the appellant's contention.

The conclusion that the contention must be rejected is supported by a further argument of wider relevance. An ethnic group becomes a national group if its members are in a position where they exercise in fact—or endeavor effectually to exercise—major influence on the political structure of the society, in order to guarantee maximal realization of the national values which they espouse. Nowadays, there is an ongoing political process whereby an ethnic group becomes a nation under the impact of the principle of "nationalism" which, in the 20th century, has been transformed into the right of national self-determination. Just as the individual has the right of self-determination, so a similar right is vested in the entire ethnic group. This means that the sum-total of the individuals who comprise the group are entitled to demand of the democratic régime which is formed that it will enable them to realize and develop collectively the ethnic-cultural values in which they have a common interest, their national values. But the principle of national self-determination is intended for nations and not for fragments of nations. Otherwise, total national and social disintegration could ensue. Therefore, when a certain nation dwells in its own land, and a group of people, who had till now belonged to it, wish to secede and demand for themselves the status of a new nation, the experience of recent history shows that in such a case the principle of national self-determination should not, as a rule, be applied. An example is the unsuccessful attempt of the southern States of the United States to secede from their union with the northern States, which marked the creation and consolidation of the American nation of which they were a part.

The Proclamation of Independence affirms that the State of Israel was established as "a *Jewish* State in Eretz Israel to be known as the State of Israel," by virtue of "the natural right of the *Jewish people* to be masters of their own fate, like all other nations in their own sovereign State" and "for the realization of the age-old dream—the redemption of *Israel;*" it was established in Palestine, since "Eretz Israel was the *birthplace of the Jewish people.* Here their spiritual, religious and political identity was shaped . . . ." It was further affirmed that the Holocaust demonstrated "the urgency of solving the problem of its [the Jewish people's] homelessness by re-establishing in Eretz

Israel the *Jewish State,* which would open the gates of the Homeland to every Jew and confer upon the *Jewish people* the status of a fully privileged member of the comity of nations." The renewal of the political life of the Jewish people in its Homeland was not brought about in order that the people living in Israel should split into two nations—Jewish on the one hand and Israeli on the other. Such a cleavage contradicts the national objectives for which the State was founded.

> Accordingly, if there is today . . . —barely twenty-three years after the establishment of the State—a nucleus of men, or even more than that, who seek to secede from the Jewish people and acquire for themselves the status of a separate Israeli nation, then this separatist trend should not be regarded as a legitimate one and recognized, for the principle of national self-determination cannot serve as justification for it.

The Court had already held in another case that, to the extent that the Proclamation of Independence expresses the nation's credo, the laws of the State must be interpreted in the light of the principles enunciated in it. The intention of the draftsman of the Registration of Inhabitants Ordinance, 1949, and the Population Registry Law, 1965, should, therefore, be taken as rejecting the possibility of the creation of an Israeli nation and, consequently, the idea of recording a Jewish person as an Israeli national.

And finally, the appellant's own words make it plain that he and those of his mind regard their anti-religious outlook as the main attribute of their aloofness from the Jewish people and their attachment to a separate Israeli people. But there is nothing in that attribute, not only because there are many Jews who share that outlook but do not, on that account, dream of denying their membership of the Jewish people, but also because the State of Israel is founded on liberal-secular principles, such as "freedom of religion, conscience, education . . . and culture" (Proclamation of Independence). The mere fact that the appellant and his partisans regard certain phenomena in the State unfavorably as being opposed to their philosophy does not establish their right to create a separate Israeli nation; the way is open to them to fight for the removal of those phenomena through the democratic institutions of the State.

The appellant contended, alternatively, that, if no Israeli nationality exists, he is entitled to a declaration that he does not belong to the Jewish nation, so as to entail the deletion of his registration as a Jew in the Population Registry. His reasoning was that, in consequence of the amendment of the Law regarding the definition of a Jew, his self-determination as a Jew had changed. Self-determination is conditional on the definition of a nation. In the nature of things, the nation changes daily from the standpoint of its composition: members of it die, new members are born, others join it. But the nation in

itself does not change with the changes in its composition. Even if the amendment of the Law had effected a change in the composition of the nation, this would not suffice to change the nation itself. Just as the amendment did not affect the definition of the Jewish nation, of which the appellant declared his membership at the time, so it could not effect a change in his self-determination, since the second definition is dependent on the first.

3. H.C. 287/69, MERON v. MINISTER OF LABOR *ET AL.*
24(1) *Piskei Din* 337 (1970)

Sabbath work permit for television broadcasts; deprivation of freedom of employment; affront to religious feelings; standing.

The petitioner applied to the High Court of Justice to restrain the Broadcasting Authority and the Minister of Posts from employing workers to operate the television network on the Sabbath, and so prevent Israeli television broadcasts on the Sabbath. He relied on the Hours of Work and Rest Law, 1951, which prohibits employment of a worker during his weekly rest period which for Jews included the Sabbath, except by leave of the Minister of Labor, so as to prevent, *inter alia,* serious prejudice to the public or part thereof. The petitioner alleged that the permit which the Minister of Labor granted to the Broadcasting Authority and the Minister of Posts was issued for reasons irrelevant to the stated purpose and was therefore granted without authority. The Broadcasting Authority, against which an *order nisi* was issued, argued that the petitioner had no standing in law. The gist of his answer was that, as a consequence of the desecration of the Sabbath by television broadcasts, he and the Israeli religious public suffered prejudice to their freedom of employment and their religious feelings. The petition was dismissed by the Court, which sat with a Bench of five Justices.

After reviewing the principles which the Court had established as to the standing of a litigant seeking remedy against an act of a public authority, Agranat C.J. applied them to the petitioner's arguments. The first issue considered by the President was whether the petitioner suffered prejudice to his fundamental right to free employment without limitations due to his Sabbath observance. The petitioner submitted in this regard that his intention to offer his candidature as a television employee, after completing his professional training, had been frustrated by the Broadcasting Authority's intention not to employ persons unwilling to work on Sabbaths, or to employ only a few, and because the radio workers regarded their Sabbath-observing friends as "special cases" who caused an addition to their tours of Sabbath duty. These submissions were denied by the Broadcasting Authority, which stated that, in Radio Services (also operated by it), tours of duty were arranged