

C.A. 630/70

Georges Raphael Tamarin v. the State of Israel

At the Supreme Court Sitting as the Court for Civil Appeals
(20.1.72)

Before the President (Agranat) and Justices Berenzon and Cohen

[...]

Judgment

President (Agranat): This appeal must be dismissed. The subject of the appeal is the request submitted by the Appellant to the Tel Aviv-Jaffa District Court asking that it issue a declaration stating that his nationality is "Israeli." In a well-reasoned judgment, the learned judge ruled to reject the request. The following arises from the Appellant's affidavit dated 11.6.70 which was attached to the request and regarding which he was not questioned:

A. The Appellant is a resident and citizen of the State of Israel, who immigrated to Israel in 1949 from Yugoslavia. Several months after immigrating, he was registered in the Population Registry as a "Jew" in the "nationality" clause and as "without religious affiliation" in the clause that refers to "religion". These details were recorded on the basis of the statement given by the Appellant to the registrar. The statement was based on his understanding that the term "nationality" is determined by "the sense of identification and belonging to an ethnic group", and that the minimal condition required by the term "religion" is the "belief in a divine entity or other divine entities". The Appellant, however, does not believe in "God as a divine entity, or in other divine entities" (paragraphs 2 and 3 of the affidavit). For all intents and purposes, there is no dispute that the registration of the above details was accurate.

[...]

The strand that runs through all of the Appellant's arguments – which extend over a large number of pages – is the contention that the determining factor in regard to his Israeli nationality is his subjective feeling that he does indeed belong to it, that he is entitled to "define himself as an Israeli in terms of his national affiliation and to express his subjective feeling, and to request to change the existing record concerning his status". Therefore, if the case at hand is to be determined by the right to "define oneself and subjective feelings" then his request will certainly

be granted as there is no dispute that the Appellant's statement regarding his national affiliation was given in good faith...

This argument cannot be accepted. It is simply – and the judge also stressed this point – that there is no meaning to the test of subjective feeling of a particular individual regarding his affiliation to a certain nationality without the possibility of determining, on the basis of some criteria, that this nationality does in fact exist; similarly, the test of “self-definition” has no significance if it is not possible to demonstrate the existence of the national collective to which the person claims he belongs to on the basis of any criteria whatsoever. It follows that the majority ruling in the *Shalit* case [HCJ 68/58] that accepted the test of subjective feeling the resident professed in good faith or, in other words, “the test of self- definition,” for the purpose of recording nationality in the Population Registry has no weight here as in that case there was – needless to say – no doubt of the existence of a Jewish nation. Indeed, when a resident asks the court to issue a declarative verdict that will constitute a public document for the purpose of registering a correction in the Population Registry clause regarding his nationality, it can be assumed, in most cases, that the actual existence of the nationality in question will be obvious and that there will be no need to prove it as the judge will be able to rely solely on his judicial knowledge. However, if the situation is not so, then it is obvious that the contended fact will be subject to proof by the person who submitted the request for a declaration. I do not wish to say that the latest cases necessarily concern the provision of indisputable proof; it is possible that a theoretical proof of the existence of the nationality will also suffice, such as expert opinion on the matter that will be considered trustworthy by the court.

[...]

...I would like to say a few words on the identifying marks that define the essence of a nation and serve to determine its separate existence. This issue was deliberated by some of us in the *Shalit* case, and I do not intend to delve into it again. For the purpose of our matter, I will limit myself to two statements that were made there and which do not contradict each other. The first statement is that of (then) Justice Zusman on page 514:

“...a complex of objective and subjective factors elevate a group of people to the level of a nation.”

The other statement was made by me on page 577:

“...the fundamental fact that must be considered regarding this issue is the feeling of unity that prevails among the members of the national unit as a whole, which

derives from their mutual participation in various aspects of its culture (in the broad sense), from the compassionate feeling with which they relate to all of these aspects, and to other attributes that characterize it, and to the desire to be partners in the nation's fate and aspirations for the future."

It is vital to clarify the following regarding this statement:

1. An identifying mark mentioned at the beginning – a sense of unity that prevails among all of the members of the national unit – is merely the result of the other identifying marks that follow it. This mark contains a subjective-collective factor or, in other words, a feeling shared by the all of the individuals who comprise the national unit.
2. The ethnic attributes and cultural property that distinguish the national collective and differentiate it from other national collectives are objective factors, just as the factor inherent in the compassionate feeling with which the members of national group relate to those attributes and properties has a subjective character.
3. In relation to the case in hand, I wish to stress the factor mentioned in the latter part of the above statement: the desire of the members of the national collective to be partners in the nation's fate and aspirations for the future. This is also a subjective-collective factor and its significance is that the members of the national collective are imbued with a sense of interdependence, which also includes a feeling of common responsibility; this factor, therefore, constitutes a vital element of the feeling of national unity. This conclusion is dictated by the sociological explanation according to which the affiliation of a person to a certain group of people is based on a sense of interdependence; As noted by Professor S. Herman in his book *Israelis and Jews*, page 17, (1970):

"...interdependence is recognized as the basis of (group) belongingness..."

It should be clear that by stressing the importance of the above factor, I did not intend to detract from the value of other signs that define the phenomenon of ethnic-cultural similarities and differences. These special attributes distinguish the members of the national collective on the one hand, and differentiate them from other national groups on the other.

4. One must consider the difference between the terms "identification" and "identity" in their ethno-nationalistic meaning. Although there is a close connection between these terms and they are, therefore, interchanged at times, it is important to distinguish between the two. See the words of Professor Herman (*ibid*, page 14):

“...it is useful to bear in mind the distinction between ‘identification and ‘identity’...”

The second term, ethnic identity, is explained by the author in the above. He refers to the array of ethno-cultural attributes that relate to the members of the ethnic group and that, in their view, grant meaning and content to their ethnic uniqueness (“the pattern of attributes of the ethnic group as seen by its members”). For example, the term “Jewish ethnic identity” refers to a reply that must be given to the question: what is the meaning in ethno-cultural terms that all of the Jews give to their being a distinct and separate nationality? what do they see as “Jewish content” which distinguishes them as a people? (“what ‘being Jewish’ is seen by them to mean”). From the point of view of the individual, the term “ethnic identity” refers to those ethno-cultural attributes which in his eyes reflect the meaning of his being a member of an ethnic group.

(“The reflection in the individual of these attributes i.e. how the individual sees himself by virtue of his membership in the ethnic group”),

...The first term “identification” (in the ethno-nationalist sense) only refers to the fact that a person sees and identifies himself as belonging to a certain nationality, a fact he is ready to declare at any time. See the words of Herman (page 10) in which he notes that Jewish identification means:

“The extent to which Jews in a particular community are prepared to stand up and be counted as such”.

It is apt that for the purpose of distinguishing between the two above terms, I will quote the comment made by the scholar Leonard J. Fein, a member of the Massachusetts Institute of Technology, in his memorandum of 1966 on the subject of “Jewish identity” which he wrote for the American Jewish Congress (ibid, page 12):

“There is, after all, a very real difference between identification and identity. The one is a matter of sociology, the other of psychic perspective, the one of joining, the other of belonging”.

As aforementioned, there is a strong tie between the two terms, as a person’s ethnic identity involves his being a member of a national collective and, hence, his identification with it. It can also be understood that at times there is a reciprocal influence between the phenomena the above terms describe. In other words, the degree of ethnic identification that a person feels

within may increase or decrease the degree of his national identification; similarly the degree in which a person identifies himself with his nationality may increase or decrease his ethnic identification. However, it is clear that a diminished ethnic identity does not necessarily eliminate the sense of national identification. Herman notes (ibid, page 7) that the problem of many third generation American Jews “is not, therefore, that of identification with the Jewish collective, but of giving a special distinctiveness to their identity as Jews.” It is well known that Jews who view themselves as different from other Jews in relation to one of the national attributes identify with the Jewish people. For example, both religious and non-religious Jews identify with the Jewish people. Hence, it is important that we examine the above differentiation, as will be clarified below.

5. The issue of ethnic identity also includes the phenomenon of a person who may have two ethnic identities, for example, an American Jew, an English Jew, a French Jew etc. – and in a certain sense, also the Israeli Jew (see Herman, page 25 and onwards). It must be noted that the Appellant testified that although in 1949, immediately after immigrating to Israel, he was registered on the basis of his own statement as a Jew by nationality; a more accurate description would have required indicating “a Jew and a Croatian.” I do not intend to enter into the depths of this complex issue; I only wish to state that a person who has two ethnic identities need not necessarily feel, in certain circumstances, that there is a contradiction between them. It is highly possible that their influence will overlap, or be compatible, or interact so that the individual will be able to regulate his conduct without a sense of conflict. (ibid). For example, in his book, Herman notes that according to the replies he received from the vast majority of the young people he studied (see below), it appears that their feeling about being Jews on the one hand, and Israelis on the other are compatible and do not contradict each other (ibid, pages 43-44). The well-known statement made in 1914 by the distinguished judge and renowned Zionist, Louis Brandeis, must be noted in this context: “practical experience and the observation of life have convinced me that in order to be better Americans, we must be better Jews, and that in order to be better Jews we must become Zionists” (see the book *A Free Man's Life* by A.T. Mason, (1946), page 446). Therefore, even if we presume that a Jew in Israel has, in addition to his Jewish identity, an Israeli identity (in the ethnic sense), this fact need not influence his identification with the Jewish people.

C. In my last clarification, I did not intend to challenge all of the issues he [the Appellant] raised, particularly as I do not consider myself an expert in the field of social psychology. It is also clear that it is necessary to be highly cautious when implementing rules that regard a certain group of people, a collective that comprises a nation and, all the more so, the Jewish nation. Nonetheless, and subject to these reservations, I believe that my clarification was useful to the present matter as in light of it – and particularly in view of the distinction it specifies between the terms national

identity and ethnic identity – it is possible to simplify and reduce the problem at hand, which leads us to the conclusion that there is no basis for the Appellant’s argument – not even ostensibly – that a schism took place in Israel creating a separate Israeli nation that is distinct from the Jewish people. How?

As known, the Jewish nation does not only consist of the Jews who live in Israel, but also of the Jews of the Diaspora as noted by President Silberg following in the *Shalit* case (ibid, page 495).

[...]

Hence, there is no doubt that the above identifying mark – one that encompasses and embraces all of the Jews, wherever they are, and serves as a fundamental element of their national unity – is rooted in the feeling of interdependence that prevails between them and in the sense of collective responsibility that accompanies it. It is redundant to bring many examples relating to this point, whether from the long history of the Jewish people in the Diaspora, or from contemporary Jewish history. It suffices that I indicate, firstly, the vast concern of Jews abroad on the eve of the Six Day War for the security of the State of Israel and the lives of its Jews, and the immeasurable moral and material assistance they offered us at that time, during the war and in the years that followed it, and secondly, the persistent concern the Jews in Israel and abroad have for the fate of the Jews in Arab countries and the Soviet Union, a concern that is accompanied by their strong desire to expedite their immigration to Israel, and the actions they undertake to achieve this goal.

If the above suffices as a characteristic that encompasses and embraces both the Jews in Israel and in other countries, it is clear that the problem at hand is as follows: Given that the Appellant’s argument is that a schism from the Jewish people occurred in Israel creating a separate Israeli nation, it was his duty to demonstrate that there are many people in Israel of Jewish decent – and I will not delve here into the question of their origin – who do not identify, or no longer identify with the Jewish nation and that the indication of this – and this is the important factor – is that they lack any sense of interdependence and shared responsibility with the Jewish people in the Diaspora. In other words, it was the Appellant’s duty to demonstrate that those people lack a sense of connection to the fate of Jews everywhere in the present and in the future. Thus, for instance, the persecutions Jews in one country or another suffer from time to time do not perturb their “Jewish” feelings as opposed to their humanitarian feelings and they, consequently, do not see themselves obliged to bear a shared responsibility, based on Jewish motivations, for saving and extricating Jews who are victims of persecution from their torment and their persecutors. Hence, the question that must be answered, taking into account the criterion that serves us as an identifying mark of the national unity of the Jews in Israel and abroad, is whether

the Appellant succeeded in lifting the above burden – if only by bringing prima facie evidence - and whether he proved, that there is indeed a considerable group of people in Israel who lack, or no longer have, the aforementioned feeling of Jewish interdependence and who also lack, or no longer have, the sense of shared Jewish responsibility. As I will demonstrate, the reply to this question is categorically no.

[...]

In light of all of the above, the appeal is hereby rejected and the Appellant is ordered to pay the Respondent's expenses totaling the sum of 300 Liras.