

Conversion in the Age of Immigration

Menachem Finkelstein



In a letter to the Neeman Commission on Conversion, I wrote as follows:

The issue of conversion retains its place on the public and legal agenda of the State of Israel. In my opinion, the principal problem in Israel today pertaining to matters of conversion ensues from the existence of thousands, and perhaps hundreds of thousands, of immigrants from the former Soviet Union, who, from the point of view of the *Halacha*, are not Jewish or whose Jewishness is doubtful, and who in any event have not converted. These people live as Jews among us - in schools, in the Army and in every other area of life; however, as a matter of Jewish law they are not recognized as Jews.

It seems to me that we are facing a **new situation** which requires a fresh look and courageous new handling, to the extent even of: "It is time for thee, Lord, to work: for they have made void thy law." (Psalms, 119:126, this verse forms the *Halachic* basis for lifting prohibitions when it is necessary to do so). In my opinion this will be the test of the religious public, its arbiters of *Halacha* (*Poskim*) and leadership in Israel.

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The reexamination and proposals offered must, of course, fall within the framework of the *Halacha*, and be made by the greatest *Poskim* of the day. The greater the public which accepts these proposals - the better. The goal must be to admit larger numbers of converts than have been admitted to date.

The following are the principal grounds which, cumulatively, give rise to the "new situation":

- A. The huge numbers of immigrants under consideration.
- B. The fact that, in practice, the immigrants have joined Jewish society in the State of Israel.
- C. The current social reality in the State of Israel, including the tension and distrust in the relations between the "religious" public and the "secular" public.
- D. The legal state of affairs in the State of Israel, in the period following the enactment of the Basic Law: Human Dignity and Liberty, and the constitutional revolution.
- E. The current spiritual reality in the State of Israel.

A detailed discussion of these issues is outside the scope of this letter.

In the past, arbiters of the *Halacha* faced a "new situation" in the area of conversions - this was in the middle of the 19th century, during the emancipation in Europe, when a number of central, interconnected, processes brought issues of conversion for the purpose of marriage to the forefront. These processes were a) annulment of the prohibition on conversion in many countries, and the sharp increase in the rate of conversion; b) the social links between Jews and gentiles, and in particular, the

high rate of civil marriages; c) the phenomenon of secularization; and d) the spread of the reform movement.

One of the most common questions considered by the *Poskim*, concerned the position of a Jew married to a gentile in a civil marriage, who wished to marry her in accordance with Jewish law following her conversion. Similarly, they considered the position of a Jewess who wished to marry a gentile after he converted. In this connection, a distinction has to be drawn between two prohibitions: first, the prohibition on converting when the conversion is for the purpose of marriage; and second, the prohibition imposed on a Jew to marry a gentile woman who has converted, when there is a suspicion that the two cohabited prior to the conversion of the woman. Numerous *responsa* addressed these questions, and it may be said that in practice, the majority of *Poskim* in recent generations have tended to leniency in their rulings on this issue, while detailing and developing various considerations of *Halachic* policy - the essence of which is to preclude problems which might arise if the conversion does not take place (for example, saving the Jewish spouse and his offspring, so that he will not be assimilated). There is no doubt that these *responsa* offer a courageous and creative way of coping with the problems which the new times are creating. Professor S. Shilo, who examined this area, emphasized that this effort on the part of the *Poskim* to deal with the new problems which have arisen, is of great significance, and not only in connection with conversions -

“... but [it] demonstrates the dynamism and creativity inherent in the *Halachic* system” (S. Shilo, *Halachic* Leniency in Modern *Responsa* Regarding Conversion, 22 *ILR* (1987) p. 353).

The return to Eretz Israel and the establishment of the State of Israel also posed new problems and questions in relation to conversion, including in regard to the weight which should be given to the fact that the conversion is not carried out abroad, but in Israel, from the point of view of:

“More precious is Eretz Israel which validates the converts” (*Masechet Gerim*, Heiger ed., Chapter 4, Rule E). Indeed, the possibility that the Jews from the other side of the iron curtain would immigrate in their masses to Israel at first seemed to be an unlikely possibility.

In this connection, the comments of the Deputy President of the Supreme Court Justice Moshe Zilberg a generation ago in the Shalit case are instructive. In that case (H.C.J. 58/68 *Shalit* v.

Minister of Interior and others, 23(2) P.D. 477 at p. 500) Justice Zilberg referred to the petitioner’s contention that if the *Halachic* rule relating to the definition of a Jew was accepted, Russian Jewry would be estranged from us if we ever succeeded in lifting the iron curtain: “because these Jews who have been cut off from their people for over 50 years, have among them assimilated men and women who are not of the seed of Israel and a large proportion of whom are not Jewish under the rules of the *Halacha*”. The Judge was unwilling to give too great a weight to this contention, for two reasons. The first was that the immigration from the countries beyond the iron curtain:

“is still a closed vision, hope, dream, ‘*Halacha* for the age of the Messiah’, which we cannot, and are not entitled to use as the basis for determining our actions in this country. If indeed the miracle will happen, and the Jews of the Soviet Union will be permitted and will want to immigrate in their masses to the State of Israel, this matter itself will prove how deep the connection is linking them with the traditions of Israel, and therefore I do not believe that their immigration will actually conflict with the use of the *Halachic* test.”

The second reason is:

“I fully believe that if indeed there will be widespread immigration from the Communist states - immigration which is liable to determine the fate of the people of Israel for good or bad - wise men will be found who will use their full authority, and will ease the absorption of the remote Russian peoples, among our people and in the country. The values of the *Halacha* have always unified the people, but they did not suffocate them”.

Nevertheless, with the large wave of immigration from the Soviet Union in the beginning of the 1970s, a need did arise to find answers to the religious identity problem. A good example of the way this subject may be handled may be seen in the comments of the Chief Rabbi of Israel, Rabbi Issar Yehuda Unterman, in 1971 (Rules of Conversion and Methods of Performing them, Oral Law, 13 (1971) p. 13). The essence of these statements concerned the need to draw closer those immigrants who were not Jews, and convert them in accordance with the laws of the *Torah*:

“In such an hour of need, where it is impossible to prevent foreign immigrants from intermingling among the people of Israel” (page 16).

Throughout his statements, Rabbi Unterman suggested that it would be wrong to exercise “excessive caution”, that the “proponent of moderation will not loose” (page 17), and that “It would be very unfortunate if we should loose the opportunity” (page 19). An additional aspect is that the treatment of “those who require lawful conversion shall be performed with sensitivity and understanding, bearing in mind the spiritual distress which these brothers of ours have undergone” (*ibid.*, and *cf.* the comments of the Rambam in one of his *responsa* (Blau ed., Vol. 2, Para. 121: “And we assist him to marry her with tenderness and softness”).

As an example of the statements made in the last year, which point to the need for urgent solutions in the new and grave situation which has emerged, one may refer to the article written by Rabbi Shlomo Rosenfeld, “‘Time to Act’ to Convert Mixed Families” (*Tchumin*, 14 (1994) page 223). At the beginning of the article, the author considers the new situation which has arisen with the mass immigration from the iron curtain countries (and from Ethiopia), a situation which requires an urgent solution. The essence of his proposal is:

“to encourage those who really come out of a desire to be Jewish in Israel in accordance with their understanding, so that the process of their conversion will be conducted in accordance with the *Halacha*. This should be done in a State-recognized manner by establishing numerous conversion centres and bringing the converts together with foster families which keep the Commandments, and in particular in neighbourhoods and towns where the surroundings will support their integration into Jewish life” (page 224).

In my remarks to the Committee I mentioned Dr. Haim Ozer Grodzansky, “the *Achiezer*” and Rabbi Moshe Feinstein, as the *Torah* sages whose decisions could provide the way to unlock the doors to converts in current times; the “*Achiezer*”, in a famous response written in the beginning of the century (*Responsa, Achiezer*, Part C, Para. 26), and Rabbi Moshe Feinstein in numerous responses written by him. The two Rabbis were of the opinion that conversion was first and foremost “an entry to religion” and not joining a nation or “collective”; from their rulings it is clear that accepting the Commandments is the essence and substance of conversion, and they are referring to a commitment and not solely a declaration. At the same time, these Rabbis did not close their eyes to the reality which had to be dealt with in their times.

The central *Halachic* problem in the modern age in terms of the validity of conversions (which was also considered in the responses of the two Rabbis) touches upon the issue of accepting the Commandments. Fears as to the validity of conversions followed from the assessment, based on a high level of probability, that the candidate for conversion had made no real commitment to accepting the Commandments. For this reason, Rabbi Moshe Feinstein had doubts as to the validity of conversions carried out in the United States; nevertheless he recognized the possibility of leniency on the part of Rabbis who were willing to accept converts, and he took this approach in view of the fact that there were cases - albeit infrequent cases - where the intention to accept the Commandments was real:

“... I feel a sense of disquiet with regard to the essence of conversion and I myself refrain from becoming involved with it [*i.e.* accepting converts], not only because of the legal principle - that one may not accept in advance conversions effected solely for the purpose of marriage, but also on the grounds that it is almost completely obvious that the Commandments have not truly been accepted and that the acceptance is verbal only... [and] when the [prospective convert] does not accept [the Commandments] he is not accepted - this is the essence of conversion, and with regard to most of the conversions performed in this country for the purpose of marriage, the Commandments are not accepted even though orally they [the converts] claim to accept the Commandments - and it is well-known that they are being deceitful - after all she [the converted woman] will not be better than her husband who transgresses all the laws of the Torah. On the other hand, perhaps the converted wife will accept the Commandments, and therefore I will say nothing to Your Honour, because there are many Rabbis in New York who accept such converts and therefore I will not say that it is prohibited, however, I am not comfortable with this and neither was my very learned late father comfortable with this, although I do not say it is prohibited. Your Honour will do as he understands and thinks right and as is exigent.” (*Responsa, Igrot Moshe, Yoreh Deah*, Part A, Para. 159; *cf.*, similar remarks at para. 160).

In other words, the “possibility” that a certain convert would accept the Commandments prevented the Posek from negating the decision of the Rabbis admitting the converts to Judaism.

In my opinion, the latter point may provide an opening for considering a certain “leap forward” in relation to the conversion in Israel of immigrants from the former Soviet Union. The sages referred to above considered the situation which existed in the previous generation in Europe and the United States, and it may

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expresses support for or identification with a terrorist organization.

Both the factual and mental elements of the offence existed in the instant case and accordingly the Court would uphold the conviction under Section 4(g) of the Ordinance.

Sentence

Finally, Justice Or held that there was no room to intervene in the sentence imposed by the District Court in view of the gravity of the circumstances of the offences and their potentially destructive effect. The acts of the Appellant, fully completed, had a real potential to cause a serious conflagration. It was true that some of the offences concerned expressions of opinion. Israel's system of law recognizes that the protection of expressions is an essential and fundamental pillar of the democratic structure. However, this does not alter the fact that in certain circumstances words, symbols and expressions may be just as dangerous as acts.

Justice Or held that excessive weight should not be given to the fact that the Appellant's plan was frustrated. The legislature

had imposed the maximum penalty on an attempt to commit an offence, a penalty which was identical to that applicable to the completed offence. This was because there was no distinction in relation to moral guilt and issues of deterrence between a person attempting to commit the offence and a person actually completing the offence.

Justice Or emphasized that offences involving the sewing of disaffection and encouragement of confrontation necessitates punishment which is compatible with the gravity of the offence. The sanctions imposed in respect of these offences has the important function of preventing deterioration.

In view of these considerations and after examining the particular circumstances of the Appellant, Justice Or upheld the sentence imposed by the District Court.

Justices **Strasberg-Cohen** and **Goldberg** agreed with the judgment delivered by Justice Or.

Abstract prepared by Dr. Rahel Rimon, Adv.

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perhaps be said that the evaluation regarding non-compliance with the Commandments by converts is **weaker** today than it was in the past. There are increasing numbers of people keeping the Commandments among the population absorbing converts in the State of Israel. The cases in which it becomes clear that acceptance of the Commandments is real are not few but are rather on the increase. This "statistical" fact may therefore - upon examination - be a factor which may be relied upon. The fact that reference is to the acceptance of converts in Israel and not abroad is also of great importance, and it is necessary to try and adapt to the new situation which has recently been created - as described above - which justifies rulings "required by the exigencies of the time". Of course, it would be best if the process would be carried out through State channels.

The ruling of the former Sephardi Chief Rabbi, Rabbi Uziel, in this connection is well-known. *Prima facie*, he did not see any

obstacle or difficulty to admitting converts, even when it was known that they would not abide by the Commandments (*The Decisions of Uziel in the Questions of the Time*, Para. 65). This decision has not been applied, and in my opinion there is a real, conceptual difficulty in accepting the approach to the effect that conversion is not a commitment to abide by the Commandments on the part of the convert, but his agreement to subject himself to the system of reward and punishment which applies to Jews. At the same time, the following recent remarks may be appropriate: "Those same approaches and opinions in accordance with which decisions have **not** been made, are now also likely to be used, in this hour of need, as supporting grounds, and turn a retrospective rule into a solution from the beginning" (Rabbi Yigal Ariel, "The Conversion of Soviet Immigrants" (*Tchumin* 12 (1991) 81, 82).