

From Ben-Gurion to Venezuelan converts: The Law of Return and the State of Israel's Jewish identity*

De Ben-Gurion à convertidos venezuelanos: a lei do retorno e a identidade judaica do Estado de Israel

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Abstract: This study analyzes the development of the unique Law of Return (LOR) of the State of Israel. The LOR is aimed at enabling the immigration of all Jews to Israel and can be viewed as an expression of Israel's ethno-religious self-definition. The analysis includes amendments made to the LOR since its implementation in 1950 to today, and how different groups of Jewish immigrants have been affected by the law. Moreover, this paper introduces a case study that so far has not received the scholarly attention it deserves; the exodus from Venezuela and the particular case of nine Venezuelan converts to Judaism in accordance with the Conservative branch of the religion. The research uncovers that the LOR contains a core contradiction. While it should be assumed that everyone is treated equally before the law, discrepancies in the treatment of different individuals and groups of people with regard to the LOR continue taking place. The differences in treatment are due to the fact that terms such as 'Jew' and 'Jewish convert' are subjective in accordance with Weber's theory on ethnicity and the terms have been given different meanings by Jewish religious law, the Supreme Court, and the legislative power. While recognizing that the definition of these terms form the identity of the State of Israel, which is heavily contested between Orthodox religious and secular forces since its establishment as a Jewish State – this study offers suggestions for approaches to dealing with the randomness of the LOR. These consist of two main points: clarifying who should be responsible for verifying the question of who is a Jew, and listing a set of criteria that a person should meet in order to be eligible for the LOR.

Keywords: Law of Return, Israel, Jewish identity, Diaspora, Venezuela

Resumo: Este estudo analisa o desenvolvimento da Lei do Retorno (LOR) do Estado de Israel. A LOR visa permitir a imigração de todos os judeus para Israel e pode ser visto como uma expressão da autodefinição etno-religiosa do país. A análise inclui emendas feitas à LOR desde sua

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implementação em 1950 até os dias atuais e como a Lei impactou diferentes grupos de imigrantes judeus. Além disso, este artigo apresenta um estudo de caso que até o momento não recebeu a devida atenção acadêmica, qual seja, o êxodo venezuelano e o caso particular de nove nacionais deste país convertidos ao judaísmo de acordo com a religião. A pesquisa apresenta que a LOR contém uma contradição central: embora deva ser assumido que todos são tratados da mesma forma perante a lei, ainda há discrepâncias no tratamento de diferentes indivíduos e grupos de pessoas em relação à LOR. As diferenças de tratamento devem-se ao fato de que termos como 'Judeu' e 'Judeu convertido' são subjetivos de acordo com a teoria de Weber sobre etnicidade, de modo que os mesmos receberam significados diferentes pela lei religiosa judaica, pela Suprema Corte e pelo legislativo. Apesar de se reconhecer que a definição desses termos formam a identidade do Estado de Israel, que é fortemente contestada entre as forças religiosas ortodoxas e seculares desde seu estabelecimento como um Estado judeu, este estudo oferece sugestões de abordagens para lidar com a aleatoriedade da LOR. Elas consistem em dois pontos principais: esclarecer quem deve ser responsável por verificar quem é judeu e listar um conjunto de critérios que certa pessoa deve atender para ser elegível à nos termos da LOR.

Palavras-chave: Lei de Retorno, Israel, Identidade judaica, Diáspora, Venezuela.

1. Introduction

The aim of this study is to clarify how the unique Law of Return of the State of Israel has created complex issues revolving around the question of 'who is a Jew' and who gets to decide who is, from the creation of the state up to today. The most important amendments to the Law and how different groups of Jewish immigrants have been affected by it are touched upon before elaborating on a more recent and so far by academics overlooked case of Venezuelan Jewish converts and their claim to the Law of Return. This study is relevant as it uncovers that the Law of Return contains a core contradiction. While on the one hand, it should be assumed that everyone is treated equally before the law, discrepancies in the treatment of different individuals and groups of people with regard to the Law of Return have taken place in the short modern history of the State of Israel. The differences in treatment are due to the fact that terms such as 'Jew' and 'Jewish convert' are subjective in accordance with Weber's theory on

ethnicity and the terms have been given different meanings by Jewish religious law, the Supreme Court, and the legislative power. Another contribution of this paper lies in the starting points it provides to take into consideration for policy recommendations that should limit differential treatment before the law.

This article is divided into two parts. The first part introduces the Law of Return (LOR) and its significance for the identity of the State of Israel. After all, the Declaration of Independence declared the establishment of a Jewish state to be known as the State of Israel. What makes a Jewish state is its Jewish population, and what makes a person Jewish has been codified in the Law of Return and debated by those who encounter it. The LOR's development and its justification is also discussed. The second part elaborates on the history of Jews in Venezuela and the circumstances that caused the Venezuelan Exodus, with the country counting 22,000 Jews in 1999 to in between 6,000 and 9,000 in 2017. Israel has increasingly become a more popular destination for Venezuelan Jews. In addition to this Exodus not having received the scholarly attention it deserves, a particular case of nine Venezuelan converts to Judaism and their desire to move to Israel based on the LOR in 2017 provides evidence of a power struggle between those in Israeli politics who wish to be the one to decide who is a Jew and who is not. An analysis of this particular case helps better understand the role and state of religious and secular forces in Israeli politics. The chosen case study of Venezuelan Jews is therefore appropriate to discuss. Following the analysis of the LOR and the Venezuelan case, suggestions are made for approaches to deal with the seemingly randomness of the definition of a 'Jew' by the Law. A conclusion follows.

2. The Law of Return and a Jewish State

We appeal to the Jewish people throughout the Diaspora to rally round the Jews of Eretz-Israel in the

tasks of immigration and upbuilding and to stand by them in the great struggle for the realization of the age-old dream - the redemption of Israel — The Declaration of the Establishment of the State of Israel, 1948.

Today the term diaspora is used for any ethnic minority group that retains their ties to a homeland through continuing traditions, religious rituals and/or the use of language of that homeland. However, the term diaspora – Greek for dispersion – originates from the dispersion of Jews among the Gentiles, scattered ‘in exile’ outside present-day Israel (Encyclopaedia Britannica, 2020). Since that exile of the first century, Jewish communities kept alive the idea of a return to the Holy Land.

They believed that a re-establishment of an Israel would be the fulfillment of God’s promise to the Jews that they were chosen to complete their destiny in Zion. Organized political Zionism however, only started in the late 19th century. The Zionist objective was to build up the Jewish population in Palestine through immigration, at first during the rule of the Ottoman Empire and later during the British mandate. Eventually in 1948 David Ben-Gurion proclaimed the independence of the State of Israel and became its first Prime Minister (Cleveland & Bunton, 2009, p. 240, 254 & 266-267).

An interesting law that is still valid today was passed by the Israeli parliament called the Knesset in 1950. The importance of the specific date, July 5, was stressed – it was the anniversary of the death of Theodor Herzl, the visionary of the Jewish state (Sapir & Goldfeder, 2018, p. 210). This introduced law was the Law of Return (LOR). The law enabled immigration of all Jews to Israel, no matter what their age, gender, qualifications, or any other characteristics – as long as the person was Jewish. This law still is different and distinct from Israel’s general immigration laws. The LOR grants eligibility for a quick naturalization process, providing full citizenship (Perez, 2011, p. 60). Joppke (2005, p. 158-159) explains that

diaspora migration is treated very differently from other forms of migration, because the first involves unfinished nation-building. He terms Israel an 'ethnic state', e.g. a state that is owned by a non-territorial nation. Such a state perceives itself as the state of the entire (in this case) Jewish people, the nonresident and noncitizen diaspora included. This is evident in the Declaration of Independence of Israel, as quoted above. Diaspora migration should be viewed as an expression of Israel's ethno-religious self-definition and a material state-building device (Joppke, 2005, p. 169).

2.1 The development of the LOR

There is no set range of criteria that define who is eligible for 'return' to the Jewish homeland. Similar to asylum applications, each case has to be closely examined and each individual's claim double checked. This often requires the responsible state agency, in the case of Israel it is the Jewish Agency and the Ministry of Interior, to reconstruct complicated family histories often based on questionable documents to prove Jewish ancestry (Joppke, 2005, p. 174-175).

The reason that there is no straightforward set of criteria is because ethnicity, according to Max Weber, is a subjective, self-defined phenomenon. An ethnic group is not a group with a specific geographical location or people who are actually related, but a group of people who believe they have ancestors from a presumed common past (Jackson, 1982, p. 5). According to Perez however, the definition under the LOR is not subjective because it is not sufficient for a person to feel Jewish to be recognized as such and qualify for the law (2011, p. 61). From the onset, it was thus difficult to define who is and who is not a Jew, and the same goes for who should decide so.

In the early years of the State of Israel, legislature refused to deal with the question of who is a Jew. Leaving it ambiguous was done purposely to avoid the complex religious and political question of who should be included (Herzog, 2018, p. 2011). The issue however did not go away and

ended up at the Supreme Court (for example the Rufeisen case of 1962² and the Shalit case of 1970³). These particular cases led to amendments to the LOR. The Court's decisions that leaned towards a more secular definition and away from *halacha* (Jewish religious law) (Y.S. Kaplan, 2015, p. 1098) caused a crisis in the government coalition that included Orthodox religious groups in 1970. A section B was added to Article 4 of the LOR in accordance with the wishes of the religious groups stating that a "Jew" means a person who was born of a Jewish mother or has converted to Judaism, and who is not a member of another religion (Joppke, 2005, p. 180) (The Law of Return, 4B). This was the very first time that the term "Jew" was defined and codified in Israeli law (Herzog, 2018, p. 2012).

Equally important was the amendment in 1970 to the LOR adding the section "Rights of members of family" stating "*The rights of a Jew under this Law ... are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew*" (The Law of Return, 4A). This effectively extended the LOR to non-Jewish extended family members of Jews. The amendments to the law are regarded as the first time that the Knesset passed a law circumventing the Supreme Court (specifically the Shalit case) and therefore had a significant symbolic implication (Herzog, 2018, p. 87).

The Orthodox religious groups in the Knesset wished but failed to include the sentence "according to *halacha*" following the word conversion to the new LOR's definition of a Jew. This was problematic in their eyes,

² In 1962, Jewish-born Oswald Rufeisen from Poland wished to come to Israel under the LOR as he regarded himself as ethnically Jewish. His case went to the Israeli Supreme Court where three out of four judges denied him the Right of Return for being an apostate and having broken his historic link with Judaism – for at the time, he was a Carmelite monk known as Brother Daniel (Waxman, 2013, p. 38).

Interestingly enough, according to *halacha*, there is no way for a Jew to leave Judaism. Conversion to another religion is not recognized by religious Jewish law (Roos, 2019, p. 55).

³ Benjamin Shalit was an Israeli naval officer who had married a non-Jewish woman. He wanted their children to be registered as Jewish by nationality and blank for religion in Israel. In 1970, the Supreme Court ruled in a five-to-four vote that here secular civil standards should apply (not *halacha*), and that his wishes should be met (Waxman, 2013, p. 38-39).

because without it mixed marriage, bastardy and assimilation are condoned (Joppke, 2005, p. 198-199). Because the definition of a Jewish convert was not specified, the question of who is a Jew had now become who is a Jewish convert (Herzog, 2018, p. 213). Moreover, the conversion issue was and still is of utmost importance to Orthodox groups as it signals their will to supremacy over the Conservative and Reform branches of Judaism. The Orthodox branch predominates in organized Judaism in Israel, while the other branches predominate in the diaspora (Joppke, 2005, p. 198-199).

In the 1990s, following the disintegration of the USSR, an influx of Russian immigration to Israel caused the focus to turn to the non-Jewish family clause of the LOR and the grievances of the Orthodox groups. In 1990, Israel had 4.8 million inhabitants (Central Bureau of Statistics, 2010) and during the decade received around 950,000 Russian immigrants who arrived on the LOR. About 25 percent of these Russians were estimated to be non-Jewish according to *halacha* (Joppke, 2005, p. 199).

Additionally, a higher percentage of Russians who were *halachic* Jewish compared to the percentage of the Israeli Jewish population were non-practicing or secular Jews. For example when it came to measures such as belief in God, lighting Sabbath candles and keeping kosher (Pew, 2016). This led to the general perception that these immigrants' decision to come to Israel was driven more by economic than by ideological motivations. While some proposals in the Knesset aimed to restrict at least non-Jewish immigration, it was not pushed through hard enough by Orthodox and nationalist religious groups. Some argue that the reason they did not was a strategic one: massive immigration strengthened the claim to the entire land of Israel, including the occupied territories (Joppke, 2005, p. 200-201). This shows again that diaspora migration and the LOR are at the heart of state-building.

Another important group of people making use of the LOR in the beginning of the 1990s were Ethiopian Jews. In 1973, the influential Israeli

rabbis Ovadia Yosef and Shlomo Goren declared that Ethiopians who belonged to the Beta Israel group were the descendants of the tribe of Dan and thus Jewish. Close to 45,000 members of Beta Israel were brought to Israel through Operation Moses in 1984, Operation Joshua in 1985, and Operation Solomon in 1991 (Waxman, 2013, p. 40-41). Most came to Israel through government or private initiatives that sought to rescue them from the hardship they faced (S. Kaplan, 2005, p. 382) following deteriorating conditions in Ethiopia after the overthrow of Haile Selassie.

A controversial situation arose when the Falashmura group, who are descendents of Beta Israel, laid claim to the LOR. The Falashmura group consists of Jews who converted to Christianity under pressure of intense missionary activity in the late 19th century in Ethiopia. As they had converted, they were not able to enter Israel according to the LOR, which states that a Jew “*is not a member of another religion*” (The Law of Return, 4A). While the Israeli government seemed not interested in facilitating the immigration of the Christian Falashmura group, under pressure of various groups including prominent rabbis, a restricted number of Falashmura group members were allowed into Israel under the LOR until 2005 (Waxman, 2013, p. 40-41).

It has to be mentioned here that following the entry of larger numbers of in their eyes non-Jewish immigrants in the 1990s, Orthodox religious groups in Israel made an effort to perform rituals that assured the *halachic* Jewishness of the new immigrants. For example, even though rabbi Ovadia had recognized the Beta Israel as Jews, he insisted that they undergo a conversion ceremony to remove all doubt. The Ethiopian circumcision rites were challenged by Israeli religious groups leading to male immigrants having to undergo a slight shedding of blood as a form of symbolic circumcision (Zegeye, 2007, p. 378), sparking heated debates. Chief Rabbi Eliyahu Bakshi-Doron introduced a new system of conversion in 1995 that had a more welcoming approach as part of what he called a more

“realistic” attitude to non-Jewish immigrants. Despite conversion efforts only a small percentage of immigrants converted (Waxman, 2013, p. 42-43). These efforts by Orthodox groups in Israel show that it was important for them that Jews were Jewish according to their Orthodox ways. If a person is not Jewish in accordance with the *halacha*, to them, the person is not a Jew at all. Orthodox groups therefore do not recognize the Conservative and Reform branches of Judaism (D.E. Kaplan, 2003, p. 114). This has been voiced by ministers of the Knesset from Orthodox groups, including David Azoulay of the Shas party when he said “*I cannot allow myself to call such a person a Jew*” about members of the Reform Judaism branch (Kershner, 2015).

In 2005, the Supreme Court was again placed in the position of having to determine a definition as no one from the legislative power was willing to with regard to the LOR. This time it was about the question of who is a Jewish convert. The openness of this question had led to a true push for supremacy by Orthodox groups as their reaction to Russian and Ethiopian immigrants described above have shown. The Supreme Court ruled that converts from the Orthodox, but also both the Conservative and Reform branches of Judaism conducted abroad are eligible for the LOR. Proof of conversion comes from a check performed by the Ministry of Interior with Conservative and Reform rabbinic groups to assure that the conversions were actually performed and done in accordance to their branches’ criteria (Waxman, 2013, p.45). The Court’s ruling took away some power that the Orthodox groups in Israel had sought to maintain on accepting only *halachic* Jews.

2.2 Justifying the LOR

Defining who is a Jew, including the question of who is a Jewish convert, is not the only issue that arises with the Law of Return. Quite a few consider the LOR as a form of discrimination or simply an undemocratic law. A

person born a Jew (conversion is considered an exception) is eligible to enter Israel immediately, receive financial support, and apply for Israeli citizenship through the LOR. A person not born a Jew cannot. Because the benefit is granted to a person based on a non-chosen characteristic, just like skin color or gender, it is considered discriminative. Some have argued against the LOR, while others have defended it. Though this article does not attempt to answer the normative question of whether the LOR should be in place or not, it is relevant to understand what views exist.

Perez (2011, p. 63) elaborates that some liberal scholars do allow the allocation of resources on the basis of certain non-chosen characteristics, as long as these characteristics are relevant to the good being allocated. Perez voices a common argument heard from Israeli politicians over time justifying the LOR: the law is a response to the centuries-long antisemitic persecution of Jews and guarantees that persecuted Jews and Jews who fear future persecution around the world will find a safe haven in Israel (Ibid, p. 66) (Y.S. Kaplan, 2015, p. 1089) (Herzog, 2018, p. 84).

This justification of allowing persons who are persecuted based on their religion in their country of origin to find refuge in Israel in a way fits the description of the Convention Relating to the Status of Refugees in which the term refugee applies to a person who fears being persecuted for a few reasons, including religion. However, a refugee as the description in the Convention continues “*is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*” (Article A2). In the case of the LOR, most eligible persons move to Israel from their country of origin and since World War II persecution of Jews has less often been a state effort. Nevertheless, viewing Israel as a place of asylum for members of a specific religion who are persecuted in other countries is interesting as it brings with it a debate on the moral obligation of Israel to keep to its promise.

3. The case of Venezuelan Jews

Now that it is clear how the Law of Return plays a central role in defining the identity of the State of Israel, which is established as Jewish State, and the complications that have come with it, it is time to turn to the case study of this research.

Venezuelan Jews are a more recent larger immigrant group coming from the same country of origin to Israel that has not been given much attention by academia. A reason could be that the Venezuelan group was not large in comparison to groups that arrived in earlier years from Russia or Ethiopia for example. According to the Jewish Agency 683 Venezuelans arrived between 2013 and 2019 on the LOR (Maccioni, 2019). It is not however about the size of a group, but about the response to them.

The response of Israeli institutions involved in the immigration process of diaspora Jews was particularly interesting when it came to nine Venezuelan converts to Judaism and their claim to come to Israel on the LOR. While their case was hotly debated in the Aliyah, Absorption and Diaspora Committee of the Knesset (this time not in the Supreme Court), it has been overlooked by scholars. I argue that the Committee's debate is as meaningful to analyze and draw conclusions from when it comes to Israel's Jewish identity and the power struggle between those who want to be the ones who decide so, as the tired discussed cases of Rufeisen and Shalit.

Before going into the case of the specific nine Venezuelans that made it to the Knesset Committee, the situation in Venezuela in general and for its Jewish communities has to be elaborated on.

3.1 Venezuela and its Jews

Jewish presence in Venezuela goes back to 1819 when the local government accorded Jews the same rights to settle, to religious liberty, and to political privileges as other citizens enjoyed. Jews from Caribbean Islands

started to settle in the country. The small group however never established a synagogue or community institutions, which likely, together with a high rate of intermarriages, facilitated assimilation and the disappearance of this Jewish community (Blank, 1993, p. 211-212).

At the end of the 19th century Moroccan Jews began to arrive. In 1907 there were 230 Jews in Venezuela. Later also Jews from Poland and Romania arrived until the end of World War I. The first synagogue was built in 1939 in Caracas. In that same year, the community successfully negotiated with Venezuelan President General Lopez Contreras to allow the landing of two ships with almost 200 Jewish refugees from Nazism. During the 1950s, many Jews from Morocco, Syria and Egypt came to Venezuela. By 1993, the Jewish population counted 25,000 persons. Most live in Caracas, with about 5000 spread over three other cities. In religious practice, they are similar to Conservative Jews in the US (Ibid, 1993, p. 210-217).

In 2011 it was estimated that there were between 9,500 and 14,000 Jews left in Venezuela – which would be a 50 percent decline of the community since the 1990s. Candia has called this a mass exodus, spurred by members of the Jewish community feeling unsafe due to a rise in anti-semitism since Chávez took power in 1999. Chávez used an anti-Israeli rhetoric, advocated for the creation of a Palestinian state, an end to “Zionistic barbarism that enforces an apartheid regime”, and was a friend of Ahmadinejad when he was the President of Iran and is a known Holocaust-denier. Members of the community expressed that it created an atmosphere in which Venezuelan Jews did not feel comfortable (Candia, 2011, p. 23-24).

Incidents of anti-semitism include the host of a political talk show on state television having repeatedly accused members of the Jewish community of participating in the failed coup against Chávez in 2002. A journalist working for state owned media organizations has defended the “Protocols of the Elders of Zion”, an anti-Semitic text used by Nazis to

justify the extermination of Jews. In 2004, 25 armed police officers stormed the Jewish school and community center *Cultural y Deportivo Hebraica* that had 1,500 enrolled students. They searched the building for guns and explosives. Government officials said the raid was ordered in relation to the assassination of state attorney Danilo Anderson, who was killed in a car explosion. Nothing was found in the school, but there was another raid in 2007.

The situation seemed to escalate after Israel's invasion of Gaza in January 2009, when Chávez expelled the Israeli Ambassador. Later that month, 15 unidentified men attacked a Synagogue in Caracas on a Sabbath. They wrote anti-Semitic messages on the walls and desecrated Torahs. 11 of the attackers were arrested, eight of them turned out to be police officers. A month later, a group of unidentified people threw an explosive into a Jewish community center (Ibid, 2011, p. 22-24).

3.2 Crisis in Venezuela

In addition to the struggles of anti-semitism that the Jewish community faced, Jews experienced hardship like any other Venezuelan due to the economic crisis that erupted in 2014 following a collapse in oil prices. In 2015, the GDP declined with 6.2 percent and in 2016, with 18 percent. At the same time, in 2016 prices rose by 274 percent. That year, the government had to halve import spending, which resulted in a food and medicine shortage. National Guard troops patrol supermarkets to prevent rioting while customers wait to get in for hours (Gedan, 2017, p. 57-58).

According to the non-profit organization Caritas nearly 23 percent of children under the age of five are suffering from acute malnutrition (Páez, 2017). Venezuela's Pharmaceutical Federation reported that 85 percent of medicines were unavailable, including antibiotics and painkillers. Hospitals operate without gloves or soap causing infant and maternal mortality to rise. Moreover, violent crime is rampant. Looting has become common place.

In 2016, the country experienced more than 28,000 killings – the homicide rate was 91.8 per 100,000 individuals. Caracas is one of the three most violent cities in the world (Gedan, 2017, p. 58). Only one in ten cases that is reported is prosecuted, causing insecurity and impunity to rise (Páez, 2017).

It is important to realize that Venezuela went from being one of the only democracies in Latin America in the 1970s to being an authoritarian state. Maduro (Chávez's successor since 2013) has responded to rising dissent by quashing the opposition. After elections in 2015 two-thirds of the seats went to the opposition. The government responded by stripping the congress of its authority, imprisoning opposition leaders and violently suppressing protests (Ibid, 2017, p. 58-59).

3.3 Exodus

The economic and political unrest have caused a general exodus from Venezuela. In 2016, about 200,000 Venezuelans left, which was double the average rate per year between 1999 and early 2015. (Páez, 2017). According to UN data, 27,000 Venezuelans globally sought asylum in 2016 (Gedan, 2017, p. 59). Venezuelans formed the top group of asylum applicants in the US (Páez, 2017). Others searched for a new home in neighboring countries. Just in September 2016, 62,000 Venezuelans resettled in Colombia. Many of them were Colombian nationals who reconsidered their decision to live in Venezuela. 30,000 Venezuelans crossed the southern border to Brazil's Roraima State, where the surge in residents has strained public services. Peru introduced a special visa program for Venezuelan migrants which attracted 20,000 applicants. Ecuador absorbed over 62,000 Venezuelans in 2016 and 2017 (Gedan, 2017, p. 59-60).

As mentioned, 683 Venezuelans moved to Israel between 2013 and 2019 through the Law of Return based on the grounds that they are Jews. In 2015, the number was double of that of new arrivals in 2012. At first, Venezuelan Jews opted to go to the US or Panama. However, those destinations

have become too expensive due to the economic crisis that has devalued property and other assets (Eglash, 2017). Israel is a good alternative as anyone moving to Israel on the LOR is entitled to what is called an ‘Absorption Basket’ (*sal klita*). This basket consists of financial assistance to aid new immigrants with their initial expenditures, rent, and living expenses in the form of a monthly payment for the duration of six months. In addition to the basket, other types of assistance from the Ministry of Aliyah and Integration include Hebrew language courses, rental subsidies, tuition subsidies for students, and assistance in licensing for employment in Israel (Ministry of Aliyah and Integration, 2019, p. 26, 30-31).

The Jewish Agency (JA) acts on behalf of the Israeli government to process applications and facilitate immigration for people eligible according to the LOR (Jewish Agency website, Eligibility for Aliyah). Another word used for the immigration of diaspora Jews to Israel is the Hebrew word *aliyah*, which literally means going up, to designate the ‘going up’ to Israel of immigrants from other lands. A person who makes aliyah is referred to as an *oleh* (Britannica, 2019). The JA recognizes the anti-Israel bias by Venezuela’s government, the economic crisis, food shortages and increase in crime. Therefore, according to its 2017 annual report, the Agency runs a covert operation in Venezuela, ready to quickly move them to Israel if needed – called an Aliyah of Rescue (Jewish Agency, 2017, p. 11). The JA and other organizations helping Venezuelan Jews to move to Israel prefer not to talk about the process because they fear it could endanger those who remain (Eglash, 2017).

3.4 Venezuelans and the LOR

The Jewish Agency has recognized the dire situation of Jews in Venezuela and together with other institutions aims to bring as many as possible to Israel through the LOR. However, this effort has not been a smooth one. Already in 2008, a JA emissary to South America was arrested upon arrival to Ben-Gurion Airport on the suspicion of facilitating the

immigration to Israel of dozens of non-Jewish Venezuelans. He confessed that he approved their immigration while being aware that their conversion to Judaism was fictitious. The Ministry of Interior said that if the investigation would indeed reveal that some of the immigrants used falsified permits, the Ministry may consider revoking their citizenship (Wiess & Branovsky, 2008).

The emissaries (*shlichim*) of the Jewish Agency play an important role in the migration to Israel process. In accordance with an arrangement between the government of Israel and the JA, the latter handles aliyah to Israel. One of the first steps of the aliyah process involves an 'eligibility interview' with a local emissary of the Agency. The emissary recommends a person's immigration, and transfers the application together with the written recommendation to an official representative of the State of Israel. The recommendation by the JA emissary is only given after verifying that the candidate is eligible in accordance with the LOR. Without the JA's recommendation, the State does not provide a LOR visa to the applicant (Ministry of Foreign Affairs website) (Jewish Agency website, Making Aliyah).

Another case that raised doubt among the Jewish Agency and the Ministry of Interior was that of nine Venezuelan converts to Judaism in 2017. This case made it to the Aliyah, Absorption and Diaspora Committee of the Knesset - instead of to the Supreme Court such as the Rufeisen and Shalit cases. This fact does not make this case less important as governmental powers are delegated to ministerial committees. A decision of a ministerial committee is as binding as a government decision (Galnoor and Blander, 2018, p. 165). The case and its outcome formed a statement by the parties involved on the question of who is a Jewish convert. Analyzing this case is relevant, for firstly, the discussion provides insights into the perceived identity of the State of Israel, which was established as a Jewish

State. And secondly, it provides evidence of a very current power struggle in Israeli politics.

3.5 Nine converts in the midst of a power struggle

Within Israel, Orthodox religious groups do not recognize other branches of Judaism, such as the Conservative and Reformed, and have made attempts to delegitimize them. Since the creation of the Jewish State there is an ongoing power struggle over who should decide *what* and *who* is Jewish. For the sake of national consensus, the Orthodox were promised by Ben-Gurion in 1947 that matters of personal status would be regulated by religious law (including marriage and divorce), the Sabbath would be the official day of rest, that Jewish dietary laws would be observed in government facilities, and that religious education would be provided if parents desired it. Moreover, Orthodox political parties have been participants in every coalition government since 1948.

A highlight in their bid for power over other branches of Judaism was the proposal of the Conversion Bill in the Knesset in 1997. This bill would grant exclusive power over conversion to Judaism in Israel to the Orthodox rabbinate (Fein, 1997, p. 21-22). Even though the bill sparked a heated debate, in practice this was already the status quo. Those who wish their conversion to be recognized by official Israeli institutions such as the Chief Rabbinate and the Ministry of Interior have to convert through the State's conversion program. The program is operated by the Conversion Authority under the auspices of the Prime Minister's Office. It is an Orthodox conversion program in accordance with the *halachic* guidelines of the President of the High Rabbinical Court (Conversion Authority, Israeli government website).

This example of the power struggle between Orthodox and secular groups in Israel partially ended in 2005. The Supreme Court ruled that a conversion conducted abroad (not within Israel) through the branches of

Orthodox, Conservative and Reformed Judaism was to be recognized for the LOR. For the Jewish community in countries including Venezuela this was important as the majority of Jews there belong to the Conservative branch. The ruling meant that a convert to Judaism in those countries was also considered eligible for the LOR.

Despite the 2005 Court ruling, the power struggle was ongoing in the mind of Member of Knesset (MK) Yael Cohen Paran of the Zionist Union⁴ when she initiated a meeting of the Aliyah, Absorption and Diaspora Committee in January 2017. Together with MK Ksenia Svetlova, also of the Zionist Union and a member of the Committee, Paran questioned the decision of the Jewish Agency and the Ministry of Interior to deny nine Venezuelans who converted in 2014 through the Conservative branch to come to Israel on the LOR. Svetlova went as far as to accuse the institutions involved of having made a political decision over the backs of these members of three families who converted in another manner than the Orthodox way (Protocol no. 181 of the Aliyah, Absorption and Diaspora Committee, 2017).

The decision of the MK's of the Zionist Union, a secular political party, to confront the Ministry of Interior through the Committee has to be viewed in the light of the political context. At the time, the Minister of Interior was Aryeh Machluf Deri of Shas (Knesset website). Shas is short for "Sephardi Torah Guardians" in Hebrew. It is a Sephardic ultra-Orthodox political party that has consistently been part of the Knesset since 1984. The party represents the interests of religiously observant Sephardic Jews, and has opposed efforts to secularize Israel (The Knesset) (Encyclopedia Britannica, 2013). Therefore, the Committee meeting in a way was the embodiment of the clash between secular and Orthodox powers in Israeli politics.

⁴ The Zionist Union was an alliance of the Labor Party and Hatnuah established ahead of the 2015 national elections. However, tension within the Union resulted in its dissolution in December 2018 (Encyclopedia Britannica, 2019).

3.6 The Committee meeting

During the 100-minute meeting, it became clear that the Jewish Agency had passed on information about the nine Venezuelan converts to the Ministry of Interior that stated something could be problematic about their conversion because it was not performed in a recognized Jewish community. Based on this information, the Ministry deemed the application for immigration on the LOR invalid. The controversy in the debate lay in the fact that:

a) The criteria for a conversion process that would make a person eligible for the LOR according to the Ministry of Interior were unclear and not public according to those defending the Venezuelans' claim. This would allow the person reviewing eligibility to make decisions unchecked. The representatives of the Ministry at the meeting however, explained that the rules of conversion are determined by each recognized Jewish branch themselves and that every conversion is examined according to those criteria. They continued that in this case, one of the criteria was having converted in a recognized Jewish community and that was not met (Protocol no. 181 of the Aliyah, Absorption and Diaspora Committee, 2017).

b) The representatives of the Ministry read a document stating that a recognized Jewish community is long established and active, has a Jewish identity, has fixed frameworks of community management and belongs to one of the three branches of Judaism as recognized by that branch's institutions and/or recognized as a Jewish community by the JA. The defenders of the Venezuelans brought up that it is common in Latin American countries for Jewish communities not to accept persons that want or are in the process to convert (a fact known by the JA and the Ministry) which makes conversion in a recognized community problematic (Protocol no. 181 of the Aliyah, Absorption and Diaspora Committee, 2017).

All parties gathered in the meeting did acknowledge that the nine Venezuelans were in danger in their country of origin, and committed to

living a Jewish lifestyle and be part of a community. Therefore, the Committee came to the conclusion that they somehow had to be brought to Israel. The Committee accepted the claim that even though Conservative conversions are recognized by the State, the fact that these nine persons were not a part of a known Jewish community before and during their conversion constituted a difficulty in granting immigration status. The proposed solution was that as now they were part of a recognized community, namely that of Valencia in Venezuela, they should be converted there again. Following the conversion, they would be brought to Israel (though not on the LOR), where they would have to stay for a period of nine months. The nine months stay in a Jewish community (which could be completed in Israel) is a mandatory condition for those who underwent conversion abroad in order to receive immigrant status on the LOR. The families therefore did not receive the 'Absorption Basket' upon arrival to Israel. However, another party - the International Fellowship of Christians and Jews - offered to aid them during the initial nine months. The Venezuelans did receive the same benefits as any other immigrant on the LOR after the nine months passed (Summary of the committee's activities, Aliyah, Absorption and Diaspora Committee, 2017).

Members of the Conservative Movement who were present at the Committee, including rabbi Andrew Sacks and adv. Yizhar Hess, clearly viewed the decision made as a defeat for Conservative Judaism. Hess stated that *"the State of Israel is spitting in the faces of millions of Jews around the world, saying to them "you are a second-rate Jew, enter through the servants' door."* MK Paran called the discussion Kafkaesque and the solution delusional. She stated that *"we just need to embrace everyone who joins our people and not make a distinction between the rabbis that converted them."* Thus, those defending the position of the Venezuelans were of the opinion that such a situation would not have occurred if the conversion was done the Orthodox way. Whether this was a founded claim or not, others - especially

abroad - also viewed it this way. The representative of the Ministry of Foreign Affairs at the Committee meeting mentioned that foreign Jewish media, rabbis and leaders complained and had expressed concern with regard to the refusal of the Conservative converted Venezuelans (Protocol no. 181 of the Aliyah, Absorption and Diaspora Committee, 2017).

3.7 The meaning of the meeting and policy suggestions

Prior to this case, the information legislation provided on Jewish converts and the LOR is this sentence in LOR Article 4B: ‘Jew’ means a person who was born of a Jewish mother or has become converted to Judaism, and the Supreme Court’s ruling in 2005 stating that converts through the Orthodox, Conservative and Reform branches of Judaism abroad are recognized to be eligible for LOR. In practice, emissaries of the Jewish Agency would collect information on an immigration applicant to check whether the person is eligible for LOR. That information would then be passed on in the form of a recommendation to the State of Israel, e.g. the Ministry of Interior, who would then decide to provide an immigration visa or not.

While in 2017 various amendments and court rulings had already come to pass the LOR, parties defending and opposing the aliyah of 9 Venezuelan Conservative converts each strongly imposed that their own conviction was truly in accordance with the Law of Return. They were all convinced to be right, as the provided limited definition of a Jew by legislation, the subjectiveness of ethnicity, and the different definitions by different branches within the religion allow for multiple interpretations. This causes any debate on who belongs a highly symbolic and often emotional one, making reaching an agreement incredibly difficult.

By the time a conclusion was reached at the Committee’s meeting, MK Paran stated she had tears in her eyes (Protocol no. 181 of the Aliyah, Absorption and Diaspora Committee, 2017). For Paran the debate was not

only about these 9 specific Venezuelans, but about the principle of accepting Conservative converts. Thus, really the identity of a Jew and therefore the State of Israel – a state entangled in a power struggle between Orthodox and secular groups since its establishment. Defendants of the Venezuelans time and again claimed that if the conversion was done in an Orthodox manner, the same situation would not have arisen.

Both representatives of the Jewish Agency and the Ministry of Interior repeatedly stated during the Committee meeting that they are not the ones to decide on who is a Jew or not, but that each branch of Judaism decides in accordance with their own criteria. What these criteria and their sources are, remains unclear. The Venezuelan converts did not receive an official explanation on which grounds their immigration application was denied. The persons that stood by them and were present at the Committee meeting claimed they were not able to find the criteria anywhere (Protocol no. 181 of the Aliyah, Absorption and Diaspora Committee, 2017), even though they themselves were the persons belonging to the Conservative branch that according to the JA and Ministry were the ones deciding upon them. Additionally, the information on any criteria is not available (until today) on the official websites of the JA and the Ministry.

Even though this study's analysis has shown that the lack of precise definitions of the terms 'Jew' and 'Jewish convert' and criteria for eligibility form the core of issues arising around the LOR throughout the history of modern Israel, no one in the Committee meeting actually intended to make adjustments to it. The meeting was called for by secular groups to point out that Orthodox groups do not have a monopoly over the LOR. Yet, comparable cases are bound to end up at the Committee or Supreme Court again as long as the terms and criteria are not defined in the Law in such a way that everyone will be treated equally before it. More research on the eligibility for the LOR has to be done in order to be able to provide policy (amendment) recommendations that limit randomness in the selection of

who is and who is not a Jew. The analysis in this study provides some starting points. These include:

a) Clarifying who should be responsible for verifying who is a Jew. Should the responsibility be placed with only one institution or with multiple? Should only the state or also private institutions be involved? Which individuals should be the ones deciding, a JA emissary, a clerk from the Ministry of Interior, a recognized local rabbi, etc.?

b) Listing a set of criteria that a person should meet in order to be eligible for LOR. Should a person identify as a Jew on the national and/or the religious level, and how does one prove that? Should a person have certain knowledge about Israel and the Jewish people as citizenship exams in various European countries expect new citizens to have?

As this research has shown, Jewish identity is intertwined with a power struggle between Orthodox and secular forces. Such things can thus only be decided upon once the struggle has at least somewhat subsided. Only then, crystallization of what the Jewish identity of the State of Israel means can be concluded. Until then, absurd cases such as a second conversion and even second circumcision processes will continue happening. Supreme Court decisions and Knesset proposals can strengthen either party in their bid for power over Jewish identity. Once that happens, policy recommendation should be readily available. Therefore, this study is an invitation for others to continue analyzing and comparing cases in Supreme Court and the Knesset in order to create sound policy propositions and advice.

4. Conclusion

The Law of Return is a most interesting one to study. It was enacted on the symbolic anniversary of the death of Herzl, it is the first and only law that gives a definition of who is a Jew even though Israel is defined as a Jewish State, and it was the first law to which an amendment made went

against a Supreme Court ruling. The highly symbolic nature of the LOR makes it not only the focus of debate, but an indicator of how Israel identifies itself as well. The aim of this study was to clarify how this unique Law of the State of Israel led to complex issues surrounding the question of ‘who is a Jew’ and who gets to decide so.

The analysis of the development of the LOR leads to the conclusion that issues arise from its lack of clear definitions and criteria of the terms written in it. These terms include ‘Jew’ and ‘Jewish convert’. The legislative power has originally left these definitions broad and open, to avoid a complex political discussion between secular and Orthodox parties on who should be included. Paradoxically, the ambiguity led the complex political discussion to drag on until today. As a result, different groups of immigrants and individuals have been treated differently before the LOR. This became clear through the cases discussed in this paper, from Russians, to Ethiopians, and Venezuelans, evident in allowing non-Jewish spouses to immigrate, re-circumcising Jewish decedents upon immigration, and re-converting non-Orthodox Jews. These absurd situations have to be understood as the outcomes of an ongoing power struggle between Orthodox and secular parties.

The Venezuelan case study in this paper was relevant as it consisted a more recent and overlooked one by scholars. Moreover, Venezuela is considered a country of origin that exactly fitted the justification for the LOR to be in existence. Persecution of Jews was perceived to be imminent in the Latin-American country, and migration to Israel deemed urgent and a form of rescue. Yet, the case of nine Venezuelan Conservative converts (a branch of Judaism not recognized by Orthodox groups) became the center stage of the power struggle between secular and Orthodox parties in the political heart of the state, the Knesset. Analyzing this particular case helped gaining insight into the political struggle over the identity of the country and laid bare the issues arising from it. Secular and Orthodox

representatives viewed the nine Venezuelans as Jewish converts and not as such respectively, based on the same Law, due to its vagueness. The debate went beyond the nine individuals and directly challenged the present parties' power to decide upon this case, as a settlement for all future cases.

Following the analysis of the LOR and the Venezuelan case, it becomes clear that without clear definitions and criteria for terms used by the Law, the power struggle between secular and Orthodox will continue to play out, causing differential treatment of persons who make a claim to LOR – just like the Venezuelan case demonstrated.

While the solution is to design clear definitions and criteria, to reach consensus on them is very difficult due to the ongoing power struggle. Some would argue the situation has led to an impasse. Nevertheless, a Supreme Court decision or Knesset proposal could initiate a starting point. Therefore, this study provides suggestions for approaches to dealing with the randomness of the LOR. These consist of two main points: clarifying who should be responsible for verifying who is a Jew, and listing a set of criteria that a person should meet in order to be eligible for LOR.

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