



The Law of Return

By Mike Decker

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Messianic Legal Analysis

The nation of Israel has the right to define itself as a Jewish nation and the definition given, as of today, is that a Messianic Jew is not considered Jewish for the purposes of the "Law of Return."

The Messianic Jewish community claims that it is another stream within Judaism that is resurrecting after 2,000 years of silence. The Messianic Jewish community explains its legitimacy by historical and theological claims. Theologically, Messianic Jews claim that Yeshua is really the promised Messiah according to the Messianic prophecies revealed in the Jewish scriptures, and historically they claim that all the first followers of Yeshua were devout Jews. With the establishment of the Jewish nation, many Jewish people have been convinced that Yeshua is truly the Messiah according to the Jewish scriptures and have consequently begun to believe in Yeshua, while insisting on keeping their Jewish identity.

Today, the Messianic Jewish community consists of approximately 15,000 members within the nation of Israel and approximately 300,000 members from around the world. This is a religious community, which believes both in the Tanach and in the New Testament, and that Yeshua is the Messiah of Israel, according to the many prophecies revealed in the Tanach. The Messianic Jewish community is recognized as having a very Zionistic and pro-Israel approach, among many other reasons, because they see the reestablishment of the nation of Israel as the fulfilment of scriptural prophecy. Therefore, the members of the Messianic Jewish community are loyal citizens of Israel that are prompt to serve in the army and to fulfil all their legal obligations.

Notwithstanding the abovementioned, the personal definition of the Messianic Jewish community is not yet accepted by many within the Jewish nation and is thoroughly rejected by the different orthodox streams within Judaism. This fact is revealed as it relates to the Law of Return. The "Law of Return" is a secular law, which is the central, legal expression of the nation of Israel as being a nation for all the Jewish people. This law was made in the Knesset on the 5th of July 1950 and it grants every Jew, being secular or religious, the right to immigrate into Israel and to receive an Oleh Certificate, which according to the Law of Citizenship, is an immediate prerequisite before receiving an Israeli citizenship.

In the year 1970 and as a result of two very famous constitutional court decisions, e.g. Roffeisen v. the Minister of Interior and Binyamin Shalit v. the Minister of Interior, an amendment was made to the "Law of Return" wherein a definition for a Jew was made which indicates that a Jew is a person born of a Jewish mother, and is not a part of a different religion. Furthermore, after an additional amendment which grants the right of return also to family members of Jews, this right was conditioned to the ones who did not willfully change their religion. Now, and subsequent to the abovementioned amendment of the "Law of Return", I wish to review all the court decisions which have determined that a Jew who believes in Yeshua is a part of a different religion, according to the definition given to a Jew in the "Law of Return"; and as a person who willfully changed his religion according to the section which grants family members of Jews to immigrate into Israel.

The first court decision which I will briefly review is in regards to Hatshins v. the Minister of Interior. This court decision deals with a family, belonging to the Christian religion, who decided to convert to Judaism in order to immigrate into Israel, by virtue of the "Law of Return", and to establish a congregation to teach Jews that it is possible to both believe in Yeshua and to remain Jewish. Immediately, when their plot was discovered, their conversion was cancelled, along with their right to immigrate into Israel.



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Justice Berenzon wrote words in his decision that echo in all the similar court decisions which were made after this particular one, and they are: "Concerning Yeshuim who are considered and recognized as Jews, we have never yet heard of. This is absolutely unacceptable...ask any Jew on the street if this phenomena is probable and their definite answer will be: 'no'."

Two years after this an additional case had transpired in Dorflinger v. the Minister of Interior. This case was in connection with a Jewess named Ester Dorflinger. Her request to immigrate into Israel and to receive an Israeli citizenship as a Jew was rejected, since the Ministry of Interior decided that she is part of a different religion. Ms. Dorflinger fervently insisted that there is no contradiction between the fact that she is Jewish and the fact that she believes that Yeshua is the Messiah. However, to the regret of the members of the Messianic Jewish community, she did not succeed in convincing the judges. In the wording of Justice Victor: "She has raised many extended and tortuous claims as to the possible link of a Jew believing in Yeshu(a) as the Messiah, as if we are living today in the beginning of the first century, and as if since then nothing has transpired as it relates to different religious structures that have been established and that have disconnected themselves from Judaism, and for all those who choose to join those different paths."

After very solid and broad precedents had already been determined, as it is related to Jews who believe in Yeshua, an additional court decision was made. In Beresford v. the Minister of Interior, a Messianic Jewish family attempted to immigrate into Israel by virtue of the "Law of Return" and was denied of this right. In spite of the fact that this issue had already been settled and very negative precedents had already been determined, this family decided to appeal before the Israeli Supreme Court of Justice against the governmental decision that had been made concerning their steps toward immigration. In a court decision that is spread over tens of pages given by Justice Elon (an obvious Religious Judge) it was unquestionably determined that any Jew who believes in Yeshua in any shape or form and/or any Messianic Jew is part of a different religion and has decided to willfully change his/her own religion.

In a very short period after this, an additional court decision was made in Kendel v. the Minister of Interior wherein the Beresford family, along with several other families who belong to the Messianic Jewish community, appealed before the Israeli Supreme Court of Justice, claiming that they are now inactive in Messianic Jewish activity and that a separation needs to be made between their inner beliefs and their external activities. Justice Netanyahu rejected their claims. As it relates to the other families, Justice Netanyahu also rejected their appeal for different reasons that are needless to review at this point. The last and final court decision was made in 1995 in David Yochanan v. the Minister of Interior. In a very short paragraph written by Justice Aharon Barak, David Yochann, who did not even have any documentation to prove that he was Jewish, was denied any right to immigrate into Israel as he claimed to be a Messianic Jew.

As we can now examine, all the above mentioned decisions created a very negative precedent for the Messianic Jewish community. These are being reviewed in almost every constitutional discussion in Israel, wherein the important question is raised regarding, "Who is a Jew?" Consequently, there are several suggested drafts for basic laws that indicate that the "Law of Return" does not apply to Messianic Jews, such as in the treaty between Professor Ruth Gabizon and Rabi Ya'akov Madan, and which can be found in www.gavison-medan.org.il.



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The legal situation that has been created, as it is related to Messianic Jews, is: i.e. that a Messianic Jew, whose mother is Jewish, is considered a Jew who willfully changed his/her religion, is therefore part of a different religion and is not entitled to immigrate. However, a Messianic Jew whose father, grandfather, or spouse is Jewish, according to the definition in the "Law of Return", is entitled to immigrate into Israel. Such a Messianic Jew immigrates into Israel because he is a family member of a Jew and therefore such a Messianic Jew has never changed his religion and the fact that he is part of a different religion, as defined by the abovementioned court decisions, is altogether irrelevant.

Many obstacles have arisen for the Messianic Jewish community regarding the aforesaid decisions, the major one being a wrong implementation of the precedent that was made. The registration clerks at the Ministry of Interior are not required to be educated about all of these legal matters. Therefore, as being "an average Jew on the street", according to their understanding every person who is a part of the Messianic Jewish community is not entitled to immigrate into Israel by virtue of the "Law of Return". This understanding is felt and interpreted as a decision being made in an exclusive manner. This particular obstacle is intensified and deployed when one considers that the information regarding the different members of the Messianic Jewish community is, for the most part, being communicated to the registration clerks by activists of extreme fundamental religious groups who purpose to prevent Jews from believing in ways different according to their law, from immigrating into Israel.

In other cases after some Messianic Jews have already immigrated into Israel, the Ministry of Interior can refuse to renew their passports, refuse to register their newly born children, and in extreme cases, revoke their citizenship. In essence, the above-mentioned situation reveals an illegal alliance between a governmental office that is obligated to operate in a non-discriminative, legal and equal manner and between fundamental religious groups, their core values being to advance their main objectives of preventing Jews from believing in ways different from theirs.

An appeal that attacks the abovementioned wrong implementation of the precedents that were made in the aforesaid court decisions is Sean Stakbak and others v. the Minister of Interior. This appeal, which was submitted before the Israeli Supreme Court of Justice in February 2005, deals with a group of petitioners who belong to the Messianic Jewish community, are not considered Jewish according to the definition in the "Law of Return", but who are requesting to immigrate into Israel only as family members of Jews. A decision to this appeal has not yet been given.

It must be emphasized, however, that the Messianic Jews who are Israeli citizens have the potential to greatly influence the nation of Israel as a group that is expanding and as of today consists of approximately 15,000 members. All the above mentioned appeals were made by foreigners who have attempted to immigrate into Israel and were refused by the Ministry of Interior. The nation of Israel has the right to define itself as a Jewish nation and the definition given, as of today, is that a Messianic Jew is not considered Jewish for the purposes of the "Law of Return". However, most of the court decisions, which have dealt with discrimination against the Messianic Jews who are citizens of the nation of Israel, were in favour of the members of the Messianic Jewish community who have been harassed simply because of their beliefs. These acts of harassment stand in opposition to the laws of Israel as a Jewish and democratic state. In this Jewish and democratic state, the character of the nation has been formed by its activist citizens.



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It seems to me that one of the main problems here is that the Messianic Jews in Israel have not been active enough in the Israeli society. Perhaps they do not realize that their voice could have a strong influence on the different decisions made by the Israeli leaders and even on the nation of Israel as a whole. It seems that they also may be greatly intimidated by the real threat of ostracism and persecution by those who have proven to be vehemently against their beliefs. It is also likely that the Messianic Jewish community simply does not know its legal rights as citizens of Israel.

The government of Israel certainly has the right to define itself. Yet the citizens of the nation also must have the opportunity and right to have a part in forming this aforesaid definition as well.

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For further inquiries regarding civil rights, social justice and freedom of religion in Israel, please do not hesitate to contact Mike Decker personally at www.jjj.org.il and www.israeltoday.co.il.



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