

# Certification of Judaism in Israel

Shuki Friedman | Elad Caplan | Alon Shalev

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Abstract



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## **ABSTRACT**

Many Jews, both in Israel and abroad, attribute great significance to being recognized as Jews—by the Orthodox rabbinical establishment, by the State of Israel, and by society in general. There are diverse reasons for this: for some, it is a question of personal identity; for others, the ability—their own or that of their children in the future—to be integrated into Israeli society; and there are some who wish to be recognized as Jews mainly in order to enjoy the rights and privileges associated with Jewishness in the State of Israel.

Israel, as a Jewish and democratic state, has both an obligation to assist those of its citizens who wish to be recognized as Jews, but also, an interest in doing so. It has an obligation because Israel's was founded on the principle of the ingathering of the exiles and with the goal of preserving the Jewish people's solidarity in their land. It has an interest, because today, the country is home to hundreds of thousands of Israeli citizens whose Jewishness is called into question by the establishment—a situation with serious social and cultural implications.

What does it mean to investigate whether a person is Jewish? In Israel, the Chief Rabbinate holds statutory authority over marriage and divorce. The religious establishment requires every man and woman who wishes to marry through the rabbinate to prove that they are Jews. This is especially the case with regard to those who immigrated to the country – they or their parents, from the 1990s on. To meet this requirement, already in the early 1990s, the Chief Rabbinate sought to formalize the procedure whereby a rabbinical court investigates the Jewishness of those whose parents do not hold a marriage certificate from the Chief Rabbinate.

This move represented a major departure from the halakhic tradition, which holds that individuals' declaration that they are Jews is sufficient for them to be recognized as such. It also deviated from the principle of relying on halakhic rulings to establish the "presumption of Jewishness."

The introduction of a procedure for verifying a person's Jewishness impacts the lives of many persons living in Israel today, most of them immigrants from the former Soviet Union, along with smaller numbers who made aliya from Ethiopia or other countries. According to our analysis, it is possible that the Chief Rabbinate's current policy will require some 550,000 Israeli citizens to go through this procedure in the near future. From 2010 to 2017, there were between 3,800 and 4,800 such proceedings each year, while the rate of certifying applicants' Jewishness remained stable, at 85%.

On the other hand, the proportion of cases that ended with a ruling that the applicant was not Jewish, increased from 2.9% in 2011 to 6.1% in 2016, and 6.7% in 2017. The remaining cases are still under study. What this means is that individuals whose Jewishness is still being investigated cannot marry, and their names are added to the rabbinate's list of those

ineligible to wed.<sup>1</sup> The current procedure for determining a person's Jewishness is a combination of a two procedures—one bureaucratic, and the other—evidential, halakhic, and judicial. It has four stages: (1) the initial application, in which the appropriate forms and documents that could prove the applicant's Jewishness are submitted; (2) the person's data is put into the rabbinical court's Ma'ayanot system, which crosschecks the information on the applicant's Jewish ancestry; (3) an interview with an investigator employed by the rabbinical courts or an outside investigator recognized by the courts; (4) a hearing before the rabbinical court culminating in a ruling on the applicant's Jewishness, based on the opinion submitted by the investigator.

In its current format, this procedure suffers from both substantive and administrative defects. A more fundamental question haunts the entire procedure—that of the very need for it, given that many halakhic authorities, including leading lights of the last generation, have held that Jews from the former Soviet Union enjoy a “presumption of Jewishness”, and there is no need for a further factual and halakhic investigation. Nevertheless, since the mid-1990s, and even more so since the guidelines for verifying Jewishness were updated in 2010,<sup>2</sup> the procedure has become part of the Chief Rabbinate's official halakhic policy. Its boundaries are constantly being expanded to include immigrants from the West as well, who in the past did not have to prove that they are Jewish.

Since this procedure became institutionalized, it has impacted on thousands of individuals each year and will affect hundreds of thousands more in the future. Nevertheless, the halakhic concept on which it is

1 "List of those whose Jewishness must be Verified: Background Material for a Discussion by the Knesset Committee on Immigration, Absorption, and the Diaspora (update document)," Knesset Research and Information Center, June 12, 2018.

2 "Guidelines for Verification of Jewishness," 5770/2010

based has never been fully fleshed out. What is more, there are very few judges and clerks in the rabbinical court system today who are experts in the halakhic and factual aspects of clarifying a person's Jewishness. Even though the guidelines specify that special tribunals will be established for this purpose, this has been done on a very small scale. As a result, the system's capacity to meet the demand for verifying individuals' Jewishness is limited.

What is more, we have found that the rabbinical courts almost always ratify the investigator's recommendation, and that in effect, lacking expertise in this area, in effect—they function as a rubber stamp for the investigator's opinion. It seems, then, that as both a halakhic and a practical matter, and with the exception of special cases, there is no real need for the court to hold a hearing and certify an applicant's Jewishness.

The procedure is also beset by administrative flaws: (1) By its very nature it pries into applicants' private life and probes deeply into their past lives and identity, as well as those of their family members. Such a procedure infringes on applicants' dignity and privacy.

(2) According to the guidelines, a marriage registrar may refer persons who are *prima facie* Jewish for an investigation of their Jewishness if he believes that there are "special circumstances," and without informing the applicants as to the nature of those circumstances. This practice leads to unnecessary investigations, whose only purpose is to implement the strictest and most inflexible halakhic opinion on the determination of an individual's Jewishness.

(3) Since at present, there is no clear and uniform standard for determining a person's Jewishness, the rabbinate's investigators apply changing and sometimes even unclear criteria.

To make the process more efficient and more respectful of those required to undergo it, we propose the following:

**1. Codify a halakhic policy:** We recommend formalizing a halakhic policy with regard to the procedure and granting marriage registrars the authority to certify applicants' Jewishness in a way that takes account of the full range of halakhic opinions. The dominant direction should be to adopt a halakhic approach that makes it possible to recognize the Jewishness of the many persons who in the past were not subjected to the process, one that recognizes the presumption of Jewishness and rules of evidence that were the norm for the Jewish people over the generations.

**2. Eliminate the need to go through the rabbinical courts.** We recommend stipulating that there is no need for the rabbinical courts to be involved in the certification of a person's Jewishness, except in cases in which the marriage registrar and the investigator are not satisfied with the documentation submitted to them and believe that a formal halakhic decision is required.

**3. Train rabbinical court judges so that they acquire expertise on the issue.** To the extent that the procedure continues to include a formal rabbinical court hearing, rabbis who specialize in this issue must be trained in sufficient numbers to satisfy the demand for the procedure and to help formulate the halakhic policy which is applied.

**4. Reduce the infringement of individual rights.** We recommend that the number of investigations of Jewishness be reduced; that the procedure be improved and be less threatening and less intrusive; that those who wish to register for marriage no longer be required to undergo an investigation of their Jewishness by a rabbinical court if there is no special reason for this; and that the information collected as part of the process not be used for any other purpose, without the applicant's express permission.

**5. Make the procedure more efficient and more transparent.** We recommend streamlining the services provided by the rabbinical courts and making the entire process fully transparent for those who are required to verify their Jewishness.

We are confident that the Chief Rabbinate and officials of the Ministry for Religious Services will hear the pleas of those required to undergo the process of verifying their Judaism. We are confident that they will agree to repair the current flaws in the system so as to create a situation in which the vast majority of olim and their descendants in Israel are accepted as full members of the Jewish people without being forced to undergo a humiliating and convoluted procedure that infringes on their rights in order to marry, and all the more so—since the procedure does not always seem to be necessary.

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