



Revoking Permanent Residency: a Legal Review of Israeli Policy

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General Background

The Occupation and the Annexation of "East Jerusalem."

On 7 June 1967 the Israeli army completed its occupation of East Jerusalem.¹ Ignoring the United Nation's and the international community's position and violating international law, the Israeli government decided unilaterally on 25 Jun

¹ See Meron Benvenisti, *Jerusalem, The Torn City* (Jerusalem: Israel Typeset, 1976).

1967 to annex occupied East Jerusalem.² Seeking a legal cover for this decision, on 26 June the government submitted to the Knesset—the Israeli parliament—three law proposals (bills) concerning Jerusalem which were approved one day later. The three laws enacted were:

(1) Law and Administration Ordinance (Amendment No. 11) Law, 5727-1967³

According to this law a new article was added to the original ordinance, article 11B, which provides as follows: "the law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the Government by order."

(2) Municipalities Ordinance (Amendment No. 6) Law, 5272-1967⁴

Pursuant to this law, section 8A was added to the ordinance. The new article empowered the Minister of Interior "at his discretion and without an inquiry under section 8 being made, [to] enlarge, by proclamation, the area of a particular municipality by the inclusion of an area designated by order under section 11B of the Law and Administration Ordinance, 5708-1948."

(3) Protection of Holy Places Law, 5727-1967⁵

This law provides that "the Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of different religions to the places sacred to them or their feelings with regard to those places."

Following the enactment of the said laws, on 28 June 1967 the Israeli government issued the Law and Administration Order (No. 1), 5708-1967. Pursuant to this order, the law, jurisdiction and administration of the State of Israel were extended to an area of 72,000 dunams stretching from the village of Sur Baher in the south to Kalandia airport in the north. On the same date, the minister of Interior issued a proclamation enlarging the area of jurisdiction of the West Jerusalem municipality by including the area designated by the Law and Administration Order within the municipal boundaries. Finally, on 29 June 1967, in response to the repeated requests of Teddy Kollek, the then Israeli mayor of Jerusalem, the military commander of Jerusalem ordered the dissolution of the Jerusalem Arab Municipality.⁶

Thus, according to Israeli law, without using the word "annexation," East Jerusalem had become part of Israel. However, Arab inhabitants of the city were

² See Usama Halabi, *The Legal Status of Jerusalem and of its Arab Inhabitants* (Beirut: Institute for Palestine Studies, 1997), pp. 45-78 (Arabic). See also John Quigley, "Old Jerusalem: Whose To Govern?" *Denver Journal of International Law & Policy* 20, no. 1 (Fall 1990), pp. 145-165.

³ Published in "Sefer Ha-Chukkim," No. 499, 20th of Nisan, 5727 (28 June 1967), p. 74. An official English translation of the law is attached as "appendix 1."

⁴ Published in "Sefer Ha-Chukkim," No. 499 (28 June 1967), p. 74. For the official English translation, see the attached "appendix 1."

⁵ Published in "Sefer Ha-Chukim," No. 499 (28 June 1967), p. 75. For the official translation of the law, see the attached "appendix 1."

⁶ Usama Halabi, *The Jerusalem Arab Municipality* (Jerusalem: The Palestinian Association for International Affairs (PASSIA), 1993), p. 28 (Arabic).

not granted Israeli citizenship. Instead, Israel allowed them to continue holding Jordanian passports, and, following a population census that took place on 26 June 1967, gave them Israeli identity cards (IDs) that defined their status as that of permanent residents of Israel rather than full citizens.

The Legal Implications of Permanent Residency Status

As permanent residents of Israel, Arab Jerusalemites became subject to a system of Israeli law applicable and relevant to all fields of their life. While the system granted Arab inhabitants of East Jerusalem some rights, it also imposed on them many duties. On the one hand, they became eligible for National Insurance allowances (for children, the elderly, the disabled, etc.), and they received the right to participate in municipal (but not national) elections. On the other hand, they were required to pay taxes to both the Israeli government and the Jerusalem municipality. In addition, all businesses, companies and merchants that had been functioning before the city was occupied and annexed were forced to register with the Israeli Companies Registrar or obtain Israeli business licenses. Moreover, travel abroad and entry into East Jerusalem had to be with an Israeli "travel document" (*laissez passer*) through Ben Gurion Airport, or with an Israeli "exit permit" through the Allenby Bridge to Jordan. Furthermore, the Israeli construction and planning authorities implemented a discriminatory policy that restricted the right of Palestinians of East Jerusalem to build their houses on their own privately-

held lands. Since then, these authorities have systematically suppressed planning and construction in the Arab neighborhoods, while expediting plans for new Jewish settlements and constructing thousands of housing units in Jewish-only "neighborhoods."⁷ For the sake of illustration, out of the total number of 9,070 housing units constructed between 1990 and 1993, only 463 units (5.1 percent) were built in Arab neighborhoods. Private building of houses has been limited as well. This is because many areas remain unplanned, which means Arabs living there cannot obtain building licenses, and also because in some planned Arab areas 25 percent of the land is designated as "green areas" (open public areas) where building is forbidden.⁸ When one adds to all this the fact that since 1967 more than twenty-four thousand dunams of Arab land in East Jerusalem have been confiscated—on which thirty-five thousand units have been built for Jews only—the reason for the housing crisis among the Arab population of Jerusalem becomes easier to understand.⁹

The Revocation of Permanent Residency Status

Following the annexation of East Jerusalem, the Israeli Government adopted what became known as "the open bridges

⁷ "A Policy of Discrimination": *Land Expropriation, Planning and Building in East Jerusalem* (Jerusalem: B'TSELEM, the Israeli Information Center for Human Rights in the Occupied Territories, 1995).

⁸ Sarah Kaminker, "Planning and Housing Issues in East Jerusalem," Report Prepared for the Society of St. Yves, in Response to High Court Petition 1091/94, (June 1994).

⁹ *Ha'aretz*, 2 May 1995, p. A2.

policy." According to this policy, initiated by then Defense Minister Moshe Dayan, Palestinians living in the 1967 Occupied Territories were allowed to leave their place of residence and travel through the Jordanian bridges to Arab and other countries to work, to study, and to keep family ties with their relatives overseas.¹⁰ To the writer's knowledge, for twenty-nine years after this policy began, the Israeli Government, through the Ministry of Interior, never revoked the permanent residency status of Jerusalemites who acted in accordance with the said policy, except when they obtained citizenship of another country (other than Jordan) or moved to live in another country, and resided there (and did not come back to Jerusalem) for a continuous period of seven years or more. Moreover, the Israeli government did not, at any time between 1967 and 1996, warn Arab residents of Jerusalem that they might pay a price for the open bridges policy in the future and lose their right of permanent residency in their hometown.

The following are Israeli Supreme Court cases that deal with petitions submitted by Arab residents of Jerusalem against decisions to revoke their right of permanent residence taken by the Ministry of Interior. It should be noted that the first case in the list of cases mentioned below stood "lonely" for almost seven years. This is because during that period the number of decisions revoking permanent residency status was relatively low: in 1988, two decisions; in 1990, thirty-six; in 1991,

twenty; in 1993, thirty-two. Then the pace of revocations intensified, with 96 in 1995 and 689 in 1996.¹¹ This prompted waves of petitions to the Israeli Supreme Court. However, the harsh policy of the Israeli Ministry of Interior continued through the years 1997 (606 revocation decisions), 1998 (788 revocation decisions),¹² and 1999 (127 revocation decisions).¹³

(a) *The Mubarak Awad Case (1988)*

In the *Mubarak Awad* case,¹⁴ the Supreme Court of Israel, sitting as the High Court of Justice, ruled that Israeli laws and administration apply to the "Eastern part of Jerusalem" and thus that the eligibility for the right of residence (of Palestinian Jerusalemites) and the loss of this right has to be decided in accordance with the Entry into Israel Law of 1952¹⁵ and with the Entry into Israel Regulations of 1974 issued in accordance with the said law. The Court rejected the argument that Palestinian Jerusalemites have special status which provides them with "quasi-citizenship" or "constitutional residency" that cannot be revoked by the minister of Interior.¹⁶ The court added that inhabitants of East Jerusalem who have not received Israeli citizenship by naturalization reside in Israel (that is, in East Jerusalem)

¹⁰ See the speech of Moshe Dayan before the Knesset on 4 February 1994, published in "Devre Hakneset" (Protocol of the Knesset meetings), Volume of 1974, booklet 12, pp. 696-699.

¹¹ This information was released by the Legal Advisor's Office of the Ministry of Interior in a letter to Mr. Malkiel Balas of the State Attorney's Office dated 15 January 1997.

¹² See *Ha'aretz*, 4 April 1999.

¹³ "Update on Jerusalem ID Card Confiscations," Badil Resource Center, press release, 16 September 1999.

¹⁴ *Mubarak Awad v. Prime Minister of Israel et al.*, H.C. 282/88, 42 Supreme Court Decisions, p. 224.

¹⁵ Published in "Sefer Ha-Chukkim," No. 11, of 15th of Elul, 5712 (5 September 1952), p. 354.

¹⁶ *Mubarak Awad*, note 13, p. 430.

according to a residency permit, and that every person who was included in the Population Census of June 1967 is considered to have been possessing a permanent residency permit since then.¹⁷ According to article 11A of the Entry into Israel Regulations, a permanent resident of East Jerusalem will be considered to have changed his or her domicile and to reside in another country (and thus to have lost his or her right of permanent residency) if he or she has (a) stayed outside Israel for at least seven years, (b) obtained a permanent residency permit in another country, or (c) obtained citizenship of another country by naturalization.

Given the fact that Dr. Mubarak Awad had resided outside Jerusalem (his hometown) for more than ten years, settled in the United States, married an American, and obtained American citizenship *before* he returned to Jerusalem and petitioned the Israeli Supreme Court, the Court ruled that he had lost his right of permanent residency in Israel (that is, in East Jerusalem) and thus that the minister of Interior could expel him from the country.¹⁸

(b) The Sheqaqi Case (1995)

On 6 June 1995 the Israeli High Court of Justice in the *Sheqaqi* case expanded its ruling in the *Mubarak Awad* case by deciding that a Jerusalemite loses his or her right of residence even if none of the three categories mentioned in the said article 11A of the Entry into Israel Regulations apply to him or her.¹⁹ The court said: "the fact of residing in a state out of Israel could

also be determined by *other facts that are not mentioned* in regulation 11A of the said regulations. The appearance of a new reality, replacing the reality of permanent residency in Israel, might be clearly indicated by circumstances other than those mentioned in regulation 11A of the said regulations" (emphasis added).²⁰ The court disregarded the fact that the petitioner left Israel with a valid "exit permit" and entered Israel by a valid "entry permit," and decided that she had lost her right of residence because she had stayed out of Israel for six years and given birth to three children while in Syria with her husband (who was deported some years before).

(c) The Bustani Case (1996)

Until mid-1995, the policy of confiscating Israeli identification cards and revoking Jerusalem residency status had been applied from time to time, but mainly against Arab Jerusalemites who had lived in another country (other than Jordan) for a long time and who usually had obtained a citizenship and a passport of that country. However, by mid-1996 the Israel Ministry of Interior had changed its policy, and at present the new policy is being intensively used against any Jerusalemite whose "center of life is not in Israel."²¹ This includes Jerusalemites who have moved to live in Jordan for work purposes or family

¹⁷ *Mubarak Awad*, note 13, p. 431.

¹⁸ *Ibid.*, p. 433.

¹⁹ *Fathiya Shiqaqi v. Minister of Interior*, H.C. 7023/94 (not yet published).

²⁰ *Ibid.*, note 18, p. 3.

²¹ [This article was completed before Israeli Interior Minister Natan Sharansky announced on 18 October 1999 that the government would stop confiscating the IDs of Jerusalemite Palestinians. However, according to several monitoring groups, including the Orient House, the announced change has yet to be implemented, confiscations are continuing apace, and the residency status of Palestinian Jerusalemites remains in as much jeopardy as ever. *Ed.*]

reasons (e.g. a Jerusalemite woman married to a Jordanian), even if they have left Jerusalem and come back to it legally and within the time limits set forth in the "exit card" provided by the Ministry of Interior itself.²² In its decision in *Bustani* the Israeli High Court discounted the fact that the Bustani family (who all hold Israeli IDs) have for years used valid "exit cards" when entering and leaving Israel. They also ignored the fact that since the occupation of East Jerusalem in June 1967, the Israeli government has adopted an "open bridges" policy. According to this policy, Palestinian Jerusalemites could leave Jerusalem to study, work and even live in Jordan or the Gulf States without harming their right of residence in the city, as long as they complied with the limitations set forth in the "exit card," that is, as long as they came back to Jerusalem within a three-year period. Approving the position taken by the Ministry of Interior, the court ruled that:

The Petitioner's claim is unfounded in that as long as he had an exit card and complied with its provisions, he had the right to permanent residency in Israel. Even his argument that the decision of the Respondents in his case results from a "change of policy" is baseless. ...Indeed, as a rule, an exit card is issued to one who is a permanent resident and has a permanent residency permit. However, where the residency ceases, and the permanent residency expires, the existence of a valid exit

*card also is insignificant.*²³

In its decision, the court emphasized that the petitioner had been living with his wife and their two children in Amman, working there for years, and thus making his center of life in Jordan. The court added that the summer (even yearly) visits of the petitioner to Jerusalem do not change the fact that his center of life is not in Israel (that is, Jerusalem). The new policy is applied also to Jerusalemites who live outside the municipal boundaries of Jerusalem, especially women married to non-resident husbands living in Ramallah and other neighboring Palestinian towns and villages such as al-Ram and al-Ezariyyeh.²⁴ According to the late Shlomo Matania, who served as acting director of the Population Registrar Office in East Jerusalem, this new policy is based on directives issued by the legal advisor of the Ministry of Interior to cancel the residency status of those who are registered, but whose "center of life" is not in the city.²⁵ Finally, in a letter of 19 September 1996 the Ministry of Interior, through the Registration and Passports Department, expressed its position that any Jerusalemite who lives in the "territory" (that is, the West Bank) more than seven years ceases to be an Israeli resident.²⁶

²² "Mubarak Awad," *supra* note 13, at 431.

²⁴ See "The Trap is Closing on Palestinian Jerusalemites," Alternative Information Center, Memorandum No. 1, Jerusalem, 1996, pp. 15-17.

²⁵ See "Action Alert," Alternative Information Center, Jerusalem, 30 March 1996.

²⁶ The letter was sent to Adv. Lea Tsamel, and the author has a copy in his files.

²³ The "exit card" serves at the same time as an "exit permit" and as an "entry permit".

(d) The Ameera Case (1997)²⁷

Until June 1994 family reunification applications submitted by wives on behalf of their husbands were rejected by the Ministry of Interior because of its policy according to which only husbands could apply for family reunification for their wives. When the Ministry of Interior decided to change the policy and treat husbands and wives equally, hundreds if not thousands of Jerusalemite women living in Jordan and other Arab states came back to reside in Jerusalem with their families, including their non-resident husbands. One of those women is Ms. Sahar A'meera. Ms. Ameera married a Jordanian citizen in 1984. From then until August 1994 she entered Jerusalem and left it legally almost every year according to valid "exit cards." On 1 September 1994 she submitted a family reunification application for her husband for the second time (the first time was in 1987) and did not subsequently leave the city. On 19 November 1996 the Ministry of Interior decided to reject the application and notify Ms. Ameera that she had lost her right of residency in Israel. Ms. Ameera petitioned the Israeli High Court. The Court approved the Ministry decision and ruled that Ms. Ameera had lost her status as a permanent resident in Israel because her center of life had changed since 1984 for a period of ten years. Therefore, the petition was denied. It should be noted here that neither the Ministry of Interior nor the court counted the last three years during which the petitioner and her nuclear family had been living in Jerusalem. It seems that, according to the Israeli position, once the

²⁷ *Sahar Ameera v. Minister of Interior*, H.C. 8827/96, court ruling on 23 March (not yet published).

"center of life" of a Palestinian Jerusalemite has shifted to another country, it can never be changed back to Israel again.

(e) The Makari Case (1997)²⁸

For almost two years the Ministry of Interior, through the Population Registrar Office in East Jerusalem, used to send letters to Jerusalemite families notifying them that their right of residence was revoked and demanding that they give back their IDs and leave the country within fifteen days. Mr. Makari, who received such a letter on 23 March 1997, petitioned the Israeli Supreme Court against the minister of Interior and others, arguing that he was deprived of his right of residence without being heard. Therefore, Mr. Makari argued, the decision of the Ministry of Interior in this case was illegal. In their reply, the Respondents claimed that the right of the petitioner to present his arguments before the Ministry and to try to prove that its position is mistaken had been and would be preserved. The Respondents added that they would agree to give Mr. Makari forty-five days to present to them any proof supporting his right to continue residing in the country or contradicting the information they had according to which he holds an American permanent residency license. The court welcomed the Respondents' reply and decided to reject the petition. Later on, the Ministry of Interior changed the text of the letters sent to the people concerned accordingly. But the main point remains that all Jerusalemites who have not obtained Israeli citizenship have to prove that their "center of life" has remained in Israel and that they

²⁸ *Oliver Makari v. Minister of Interior et al.*, H.C. 3120/97 (not yet published).

are still eligible for their status as permanent Israeli residents.

Conclusion

Several thousand Arab Jerusalemites have already been affected by the hard and unfair policy adopted by the Israeli Ministry of Interior concerning the revocation of the right of permanent residency. This policy leads almost automatically to the revocation of all social and other rights that stem from it such as the right to receive National Insurance allowances according to the National Insurance Law and the right to be insured and receive medical treatment according to the Formal Medical Insurance Law of 1995. According to these two laws only "an Israeli resident" is eligible to receive allowances and medical care.

The final status of Palestinian Arabs living in East Jerusalem will not be determined until the final status of Jerusalem is agreed on during the final status negotiations between the Israelis and the Palestinians. Therefore, the Palestinian National Authority, local and international NGOs, and the international community should demand that Israel uphold the permanent residency status of Palestinian Jerusalemites living outside the Jerusalem municipal boundaries (whether in the West Bank or elsewhere). They should also call upon the Israeli government to refrain from canceling permanent residency status of Jerusalemites until the negotiations on the final status are concluded and a final and just solution to the question of Jerusalem is reached.

However, until a positive change in the Israeli policy takes place or until a solution for the question of Jerusalem is reached, the Arab Jerusalemites who wish to protect their right of residence in the city should

take precautions: they should not stay outside Jerusalem for a period of seven years; when returning to the city, they should extend their stay for at least a few months, since in the eyes of the Ministry of Interior short visits to the city during the summer do not count as a break in their stay outside the country²⁹; and if studying abroad, they should keep copies of such documents as graduation certificates and grade records. In any case, consult with a lawyer or a civil and human rights organization before approaching the Ministry of Interior.

Finally, all efforts should be made to support the draft law initiated by MK Azmi Bishara (and supported by another thirteen MKs from different parties) which aims to amend article 11 of the Law of Entrance into Israel of 1952 so that "the Minister of Interior shall not revoke the permanent residency permit of a person born in Jerusalem, of his spouse, or of a person one of whose parents was born in Jerusalem."³⁰ If this proposed amendment passes, it may not solve all the problems concerning residency in Jerusalem, but it will solve a majority of them. Thus it is an important step in the right direction that deserves support.

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²⁹ This position of the Ministry is based on a directive of the Israeli Government Legal Advisor in December 1995.

³⁰ The said draft law was on the Knesset's agenda on 9 July 1997.