

## Absentees against Their Will – Executive Summary

When East Jerusalem was annexed to Israel in 1967, all the laws of the State of Israel were applied to the annexed territory, including the Absentee Property Law of 1950, whose purpose was to transfer to the possession of the State of Israel the property of the Palestinian refugees of 1948.

According to an amendment of the law in 1970, Palestinians who were physically present in East Jerusalem at the time of the annexation would not be considered absentees; but as for anyone who was not in the annexed territory at that time and owned land or property in it, their property is considered absentee and can be appropriated by the Custodian of Absentee Property. Meanwhile, the same law allows Jews to claim their property from before 1948 (as is happening in Silwan and Sheikh Jarrah), in clear national-ethnic discrimination.

Immediately after the annexation, then-Attorney General Meir Shamgar issued an opinion that there was no justification to apply the Absentee Property Law to East Jerusalem: "...we found no relevant justification to seize property that became absentee property at the same time that the owner of the property -- a resident of Judea and Samaria -- came under the rule of the Israeli government authorities. In other words, since the property was not an absentee property a day before the IDF forces entered East Jerusalem, and would not have become an absentee property had East Jerusalem continued to be part of Judea and Samaria, we saw no justification for the annexation of East Jerusalem, and that alone, to lead to the seizing of the property of a person who is not in fact absent, but has been from the same time that his property came into our possession under the rule of IDF forces."<sup>1</sup>

As a rule, the State of Israel rarely applied that law to the annexed territory, but this policy changed in 1977 at the initiative of then-Agriculture Minister Ariel Sharon, and the during the 1980s accelerated use was made in East Jerusalem of the Absentee Property Law, especially in the Old City and the neighborhood of Silwan to the south. In 2004 the policy was reinforced when the ministerial committee on Jerusalem decided that "the Custodian of Absentee Property has powers under section 19 of the Absentee Property Law 5710-1950, including the execution, transfer, sale or leasing of land property in East Jerusalem to the Development Authority."<sup>2</sup> Subsequently Atty. Gen. Meni Mazuz sent a harsh letter to Finance Minister Benjamin Netanyahu, asserting: "I declare immediately that this decision cannot stand. It is not within the power of the ministerial committee on Jerusalem to give a legal interpretation of the boundaries of the authority of the custodian of absentee property, and it is not its job to make policy for the use of powers under the Absentee Property Law [...] I ask you to order an immediate stop of the use of the Absentee Property Law for property in East Jerusalem belonging to residents of Judea and Samaria."

However, parallel to the large expropriations, there has been a de facto "creeping expropriation" of properties and parts of properties in East Jerusalem. It occurs when Palestinians apply to register their land ownership; at that time the authorities initiate an investigation at the end of which, in many cases, the State of Israel becomes a part owner of the property in question.

<sup>1</sup> From a letter from Meir Shamgar to the Israel Land Administration, August 1969.

<sup>2</sup> <http://www.pmo.gov.il/PMO/Archive/Decisions/2004/07/des2207.html>

Even though the opinions of attorneys general objected to application of the law to the annexed areas of East Jerusalem, the law itself was never canceled. The court, which addressed the issue many times over the years, presented different positions: there were judges who accepted the State's right in principle to expropriate property by using the law, and others who adopted the approach of the attorneys general and objected to its use. Now there are four cases pending in court, the hearing of which was united, and the judges have instructed the State Advocacy to present its clear position on the issue. Atty. Gen. Yehuda Weinstein has informed the court through his representative that it is the Advocacy's position that the properties in question are indeed absentee properties, but refrained from making a clear statement clarifying his position in principle on this question.

The current legal situation allows any government that wishes to do so to continue taking over the property of Palestinians who sometimes live within touching range of the cabinet ministers' homes, in blatant discrimination due to nationality. On the political level, use of the Absentee Property Law in East Jerusalem is another tool to deepen the Israeli stronghold of an area whose future is subject to political dispute, by the unilateral dictation of facts on the ground. This matter creates an additional and substantial burden on an already complex situation in Jerusalem, and may also contribute to the difficulties the sides will face when they attempt to decide the future of the area at the negotiating table.