

October 13, 2015

To:

Mr. Silvan Shalom
Minister of the Interior

Re: Revocation of residency status of East Jerusalemites due to security incidents

Media reports indicate that you have directed the Population and Immigration Authority to initiate proceedings to revoke the permanent residency status of East Jerusalem residents Subhi Abu Khalifa and Shuruq Dawiat due to suspicion of their involvement in security incidents. The two have not yet been convicted in a court of law. We urge you to rescind this order.

The Minister of the Interior is not authorized to revoke residency on grounds of breach of trust. There is no provision in the Entry into Israel Law, 5712-1952 that permits residency to be revoked on these grounds, and the law does not provide a procedure for revocation. Therefore, and in light of the conditions in the limitation clause of the Basic Law: Human Dignity and Liberty, and the unique status of the right of residency – in particular that of the residents of East Jerusalem, whose residency has been determined to be a right and not a privilege - residency cannot be revoked in the absence of clear and explicit legislation (HCJ 282/88 **Awad v. Prime Minister and Minister of the Interior**, 42(2) PD 424, 431 (1988)).

Needless to say, the Entry into Israel Law does not address the special status of East Jerusalem residents, protected residents who were annexed to Israel, nor does it address the State of Israel's obligations to them. Revoking residency status of East Jerusalem residents contravenes international law. The International Court of Justice (ICJ) ruled in its 2004 advisory opinion to the UN Assembly on the subject of the separation barrier that East Jerusalem is occupied territory, like the rest of the West Bank and the Gaza Strip, and that the measures that Israel took to annex East Jerusalem are not valid according to international law. Both international human rights conventions and international humanitarian law apply to this area. These norms do not permit the expulsion of protected persons on the basis of breach of trust, and even forbid requiring them to swear loyalty to the occupying force (article 47 of the fourth Geneva Convention and article 45 of the Hague Convention).

In the course of the proceedings currently underway at the High Court of Justice, a conditional court order was issued instructing the respondent, the Minister of the Interior, to explain why he will not reverse his decision to revoke the residency status of East Jerusalem residents on grounds of “breach of trust,” including “due to lack of explicit and detailed authorization by primary legislation, and lack of primary arrangement in primary legislation for revoking permanent residency of persons born in East Jerusalem on grounds of breach of trust or other grounds claimed by the respondent.” The matter was heard by a forum of nine judges, who are expected to issue a ruling on the matter (HCJ 7803/06 **Abu Arafa vs. Minister of Interior**). We believe that given the harm involved in revocation of residency status, as long as the High Court has not ruled on the matter and in light of the conditional order issued by court, such a severe measure should be avoided.

Revocation of status is a very extreme measure characteristic of oppressive totalitarian regimes. The prevailing view today in comparative law is that breach of trust is not grounds for revoking status. This is also the prevailing view in Israel. In 1996, the High Court of Justice heard a petition demanding that the Minister of the Interior revoke the citizenship of Yigal Amir, who assassinated Prime Minister Yitzhak Rabin. The petition argued that Amir's citizenship be revoked in order to express society's clear condemnation of the Prime Minister's murder. The High Court ruled that society should express its disapproval and revulsion from the murder in other ways, not through the revocation of citizenship, which is one of the most basic fundamental rights (HCJ 2757/96 **Alrai v. Minister of Interior** PD 50(2) 18, 24, (1996)). The US Supreme Court also ruled in 1958 that revoking a person's citizenship due to "breach of trust" contravenes the American constitution because it constitutes cruel and unusual punishment (**Trop v. Dulles** 356 U.S. 86 (1958)). The court ruled that "citizenship is not a license that expires upon misbehavior," adding that revoking status for these reasons is primitive and cruel punishment.

The right to citizenship and status must be defended equally. Article 5 of The International Convention on the Elimination of All Forms of Racial Discrimination (1966) enshrines the right to status and all of its related rights (the right to freedom of movement and residence within the border of the State; the right to leave any country, including one's own, and to return to one's country; the right to nationality), and the corresponding obligations – "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law." Notably, even though Jews have also been involved in severe security and criminal incidents, and some of them have also been sentenced, the status of residency or citizenship has never been revoked from a Jewish person for reasons of "breach of trust." Every time the Minister of Interior has ordered a revocation of status for any reason, or considers doing so, the subject is always an Arab resident or citizen. This is nothing other than using status revocation as a tool to send a degrading and discriminatory message that the status of Arab citizens and residents is not to be taken for granted.

Therefore, we urge you to reconsider your position on this matter.

Respectfully,

Att. Oded Feller

Att. Sawsan Zaher

Association for Civil Rights in Israel

Adalah, The Legal Center for Arab Minority Right in Israel

CC: Mr. Yehuda Weinstein, Attorney-General of Israel