



INSS Insight No. 759, October 28, 2015

The Residency Status of East Jerusalem's Palestinians

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With many of the Palestinian lawbreakers and terrorists in the current wave of violence – in Israel in general and Jerusalem in particular – residents of East Jerusalem, Prime Minister Netanyahu is said to be considering revoking Israeli residency of Palestinians living beyond the security fence in East Jerusalem. The idea reportedly arose at a cabinet meeting earlier this month, with some calling it a "dramatic political move." However, it appears that actually implementing this move will be exceedingly difficult, with nearly zero feasibility from a legal and constitutional standpoint.

The approximately 300,000 Palestinian residents in the municipal territory of East Jerusalem hold the status of "permanent resident" of Israel. The Supreme Court defined the status according to entry regulations into Israel as "permanent residents," a status usually granted to foreign citizens arriving in Israel of their own volition and asking to settle here. The Palestinians of East Jerusalem carry blue identity cards, but they are not eligible for an Israeli passport and have no voting rights for the Knesset. They enjoy various civilian rights and are entitled to welfare services such as National Insurance, health services, and municipal services. Among the Palestinian residents of East Jerusalem, some 55,000 lived beyond the security fence when it was erected. According to reports, it is this population whose permanent residency status the Prime Minister wishes to revoke.

Recently, out of security considerations, barriers with the words "Temporary Mobile Police Barrier" were also placed in the neighborhoods located within the fence. It was likewise reported that in situation assessments, the possibility of sanctions (both punitive and preventive) against Arab residents of East Jerusalem has been considered, among them revocation of permits, encirclement of neighborhoods, revocation of permanent residency for terrorists and their families, and restricted freedom of movement.

Thanks to Omri Badash for his help in writing the article.

The Legal Framework

It is highly doubtful whether the legal framework that enables imposition of restrictions and sanctions like encirclement is also valid for revocation of permanent residency status, especially if it involves sweeping revocation for wide segments of Jerusalem's Arab population. The Minister of the Interior is entitled to revoke permanent residency in specific cases that are defined by law and in accordance with the criteria that were stipulated, but not in a sweeping, comprehensive move.

Another ostensible legal source are the Defense Regulations (in times of emergency) - 1945, but these are very general and inflict disproportionate harm on human rights, in violation of Basic Laws. This leads to judicial restriction of their use.

In addition to the Defense Regulations (in times of emergency) – 1945, several laws and regulations deal with the subject and relate to questions regarding permanent residency. The primary ones are: the Citizenship Law - 1952; Entry into Israel Law - 1952; and Entry Regulations into Israel – 1974.

Article 11 of the Citizenship Law authorizes the Minister of the Interior to revoke the citizenship of a person who has been disloyal to the State of Israel, betrayed it, or taken part in terrorist activity. The article is conditional, in that such a person shall not remain without citizenship, but the law qualifies this with, "It is presumed that someone who permanently resides outside Israel will not be left without any citizenship."

Article 11 of the Law of Entry into Israel - 1952 authorizes the Minister of the Interior to revoke visas at his discretion, including permanent residency visas. The law does enable revocation of permanent residency in individual cases, but not in a sweeping and general manner. On the other hand, Regulations 10-11 of the Regulations for Entry into Israel - 1974 enable wider revocation.

According to Regulations 10-11 of the Regulations for Entry into Israel, permanent residency may be confiscated in cases where individuals remained outside Israel for a period of more than seven years, received permanent residency in that country, received citizenship of a foreign nation through naturalization, and where the conditions stipulated upon issuance of the permanent residency were not fulfilled.

Regulations 108 and 109 of the Defense Regulations (Emergencies) - 1945 enable the Interior Minister or military commander to issue directives to insure public order and the security of Israel in cases of a need to quell an uprising, rebellion, or disturbance. Regulations 119-120 are punitive. The regulations authorize a military commander to order confiscation and demolition of property of that person or the area from which the terrorist activity came. Regulation 122 authorizes a military commander or anyone acting

on his authority to ban or restrict traffic, impose a curfew, close a transportation route, and declare a closed military zone.

Possibilities for Action

- a. At present there is no law that expressly authorizes a governmental authority in Israel to exercise sweeping revocation of permanent residency. Furthermore, there is no law that expressly authorizes revocation of permanent residency following terrorist activity against the State of Israel. However, Article 11 of the Citizenship Law enables revocation of the citizenship of a person who is involved in terror activity against Israel, is disloyal, or betrays the country. Thus if it is within the authority of the Minister to revoke citizenship, then he presumably has the authority to revoke a permanent residency status due to the aforementioned actions.
- b. Regulations 10-11 of the Regulations for Entry into Israel enable revocation of permanent residency in a broader fashion. Indeed, wide use of these regulations has been made over the years, and according to several sources, since 1967 Israel has revoked the permanent residency of more than 14,000 Palestinians from East Jerusalem. However, these regulations require fulfillment of the conditions stipulated therein in order for the Interior Minister to be entitled to revoke the status, and therefore this does not allow sweeping revocation.
- c. Regulations 108 and 109 of the Regulations for Defense (Emergencies) - 1945 ostensibly appear to suit the situation of rebellion and uprising in East Jerusalem. While these regulations would apparently enable actions such as encirclement or curfew on East Jerusalem, they are very general and punitive, and such authority should be anchored in Knesset legislation and not only in ministerial regulations.
- d. Over the years several bills have been submitted in the Knesset to revoke citizenship and permanent residency of a terrorist and his family, but these bills were not passed. Despite the authority of the Interior Minister to revoke citizenship from a person engaging in terror activity, disloyalty, or treason against Israel, based on the legal situation at the time, this does not mean revocation of permanent residency of the family based on an act by one family member – although the family is at risk of confiscation of or damage to their property, according to Regulations 119-120 of the Emergency Defense Regulations.

- e. Part 12 of the Emergency Defense Regulations, various penal provisions, deals with the penalties that a military commander is permitted to impose. Regulation 119 enables the demolition of property and/or confiscation of possessions and lands associated with terrorist activity, and this indeed involves punishment after the act. Furthermore, Regulation 122 enables a military commander to prevent freedom of movement for any person. The regulations involved are very general and can cover a wide spectrum of cases.

Conclusion

At present, there is no sustainable legal source in Israeli law that authorizes a governmental entity to exercise a large scale, sweeping revocation of the permanent residency status of the Arab residents of East Jerusalem. Actions such as encirclement, confiscation of property, demolition of property, and restrictions on freedom of movement are within the authority of a military commander pursuant to the Emergency Defense Regulations - 1945.

However, the abovementioned regulations harm basic human rights, and no adjustments to them have been made over the years. At present, they cannot serve as a substitute for the basic legislation by the Knesset, which holds: "Human rights are not unlimited. The needs of state security, public welfare, and its defense and the state's democratic regime constitute a worthy purpose for restricting human rights. The proportionality of the damage will be a central point to which the legislator will be required to direct his attention."

Cautious, limited, and proportional use of the authority granted to the executive branch may be made for purposes of security, prevention, and punishment in face of the current wave of terror. For a sweeping revocation of rights from East Jerusalem residents, however, a more in depth examination of the means and circumstances is required, based on the legal framework cited briefly above. Indeed, in today's situation, such sweeping measures have no actual feasibility – and certainly not in a comprehensive manner – without primary Knesset legislation and without prior judicial proceedings.

