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In the response please cite:
31490

To:
Mr. Yaacov Ganot, Head of the Population
Administration
24 Hillel St.
Jerusalem

By fax: 02-6294860
And registered mail

Dear Sir,

Re: **Government resolution 2492 – temporary permits for West Bank residents present in Jerusalem for an extended period of time without a permit**

1. On 13 December 2007, an announcement by the Ministry of the Interior was published in the Al-Quds newspaper. The announcement called on West Bank residents who have lived in Jerusalem continuously and without a permit since 31 December 1987 to submit applications for temporary permits. The announcement referred to government resolution 2492, which was passed on 28 October 2007 and which had not previously been published (hereinafter: **the resolution** or **the government resolution**). As HaMoked has handled the issue of the status of East Jerusalem residents for many years, we wish to raise several reservations regarding the resolution and its expected implementation below.

The government resolution, the announcement printed in Al-Quds and the Hebrew translation thereof are attached and marked **A**, **B** and **C** accordingly.

2. First, we wish to note with satisfaction the option given to persons who have been present in Jerusalem for a long time, and whose center of life is, for all intents and purposes, in the city, to remain in Jerusalem by means of a permit. This is, however, a temporary permit, which does not constitute any kind of status, and does not entitle the bearer to social rights and health insurance. As we shall specify below, there is also a limited number of individuals who are able to meet the strict criteria established for eligibility for the permit.

Nevertheless, the government's decision to allow those individuals to receive even a temporary permit reflects recognition that any separation between the Palestinian residents of East Jerusalem and their brethren living in other parts of the West Bank is artificial and in many ways – impossible. The recognition, in Article B(1) of the resolution – according to which the separation wall in the Jerusalem area *causes substantial damage to the fabric of residents' lives and prevents or greatly impedes their ability to maintain ties with the territories of the West Bank* – is also notable.

3. As noted, the resolution is not flawless - its defects are not cosmetic and cannot be amended by the Interior Ministry personnel who will implement the resolution in practice. These flaws are at the basis of the resolution, and they call into question the sincerity of its drafters' intentions, to the extent that it is unclear whether the drafters intended to help those individuals who are present in Jerusalem without a permit or aggravate their situation. We shall elaborate below.

Cancelling the granting of permanent status

4. Article A of the resolution establishes the following:

The Interior Minister shall not grant a permit for residency in Israel under the Entry into Israel Law, 5712-1952, to a resident of the Judea and Samaria Area who is unlawfully present in Israel, and who seeks a permit for residency in Israel based on the claim that his center of life was in East Jerusalem, in the territory to which the State of Israel applied its jurisdiction, law and administration in 1967 (hereinafter – East Jerusalem), prior to June 1967, despite not having been enumerated in the 1967 population census as a resident of East Jerusalem.

This article constitutes a retraction of the Interior Ministry's policy which has been in practice until now.

As is well known, residents of East Jerusalem who were enumerated in the 1967 population census received permanent status in Israel. However, the Interior Ministry's policy prior to the current government decision was to grant **permanent status** to those persons who were not enumerated in that census, but proved that they were living in the city when the census was taken, and have lived there continuously since 1967 (in this regard see: HCJ 3652/96 Abu Sa'ed et al. v. the Military Commander – West Bank Area *Dinim Elyon*, volume 73 221 (2005); Adm. App. 10811/04 Surhi v. Ministry of the Interior, *Piskei Din* 59(6), 411 (2005); Adm. Pet. (Jerusalem) 834/06 Shqeirat et al. v. Interior Minister, *Takdin – District Courts* 2007(3), 11658). The reasoning behind that policy is clear – to avoid arbitrarily harming those who, for various reasons, were not included in the census, despite the fact that they were Jerusalem residents for all intents and purposes during the relevant period. Thus, such residents were able to obtain permanent status, even if only after exhausting legal battles, and their wrongful discrimination, as compared to residents who were enumerated in the census, was prevented.

5. The government resolution therefore cancels the Interior Ministry's previous policy, and does not allow such persons to receive permanent status, even if they meet the burden of proof and demonstrate that they have lived within the municipal limits of Jerusalem continuously since 1967.
6. Indeed, an administrative authority has the right to change its policy and the directives it has established for exercising its own discretion, however, only when the reasons for the change meet the test of reasonableness, and are free of extraneous considerations.

A public authority that establishes guidelines or rules for the manner in which it exercises its authorities cannot deviate from the guidelines and rules it has formulated and established for itself, unless there are reasonable grounds for the change, which meet the test of objective criticism, since indeed, this is one manifestation of equality before the law. (HCJ 47/91 Neiman v. the State Attorney's Office, *Piskei Din* 45(2), 872, p. 876).

Prof. Y. Zamir has established, in this context:

The assumption is that the authority will follow the directives, and this assumption creates a justified expectation that the authority will operate accordingly. If, contrary to this expectation, the authority deviates from the guidelines, there is room for concern that the deviation is motivated by extraneous considerations or some other defect. This concern may be sufficient

to challenge the presumption of legitimacy. (Y. Zamir, *The Administrative Authority*, Volume B, p. 787).

7. In the case at hand, it is difficult to find reasonable grounds to justify providing a temporary permit instead of permanent status, as was customary until now. Indeed, the Ministry of the Interior allows such individuals to receive a temporary permit, after they prove, by providing many documents and other evidence, that they have lived in Jerusalem for many years. The decision that at the end of the day these individuals will only receive a temporary permit will not "spare" the Ministry from having to conduct the many tests necessary for ascertaining these persons' center of life in 1967. Why should these people not receive permanent status at the end of this tiresome process?

We note that granting permanent status in Israel, in such cases, should be in the interest of the Interior Ministry itself. Since these are persons who have lived in Jerusalem for over four decades and there is no disputing that they have tied their lives to the city, or at least – were forced into such ties because of the separation wall which cut them off from the West Bank. Introducing a modicum of stability to such peoples' lives, stability which would be achieved by a status which entitles them to social rights, access to medical treatment and relatively free movement – is in the interest of every state entrusted with the wellbeing of those subject to its control.

8. It must be noted that HaMoked's conversations with Interior Ministry officials, who are responsible for implementing the resolution indicate that the Ministry of the Interior intends to implement the resolution not only henceforth but also retroactively. Meaning, individuals whose applications for permanent residency are already being processed by the Ministry of the Interior, or are in the midst of legal proceedings, would be able to receive temporary permits at best (according to Article B of the government resolution). Additionally, the processing of these individuals' applications will cease, and they will have to submit new applications, according to the new arrangement.

The authority's privilege to change its policy is prospective. The authority may act retroactively only given extraordinary reasons. This presumption is necessary for the principle of the rule of law and the defense of human rights (See: *HCI 135/75 Sci-Tex v. Minister of Trade and Commerce*, *Pisekei Din* 30 (1) 673; Y. Zamir, *The Administrative Authority*, Volume B, p. 976).

9. Therefore, the government resolution to revoke the option available to those who were not included in the 1967 census, but have lived in Jerusalem since that time, to receive permanent status, contravenes the basic concepts of administrative law. A deviation from a longstanding policy, especially when implemented in a retroactive and discriminatory manner, cannot stand in the absence of extraordinary, reasonable grounds. As we have shown, there were no such grounds in the case at hand, or at least – we can find none. When it is impossible to point to a reasonable explanation for a decision by an administrative authority, a concern immediately arises that extraneous considerations have been weighed. Could it be that in this case too, a demographic purpose is the basis of the government's policy - to prevent the inclusion of non-Jews in the Israeli population registry?

Establishing a deadline beyond which applications will not be accepted

10. Article 4 of the government resolution establishes that applications for a permit submitted after 30 April 2008 – will not be accepted. The purpose of this article is also unclear, as these are applications which are examined individually, both in terms of the applicants' center of life and in terms of security screenings, as is the case with regards to other applications for status or permits submitted to the Ministry of the Interior. Since applications will not be examined together and simultaneously, why is it necessary to establish a date after which applications will not be accepted?
11. Establishing a deadline – particularly such a near one – greatly burdens applicants. As we shall show below, the demands these applicants must meet, in terms of provision of documents and various confirmations, are numerous and not at all simple. Many months may be required to meet these demands, which include gathering the documents and providing the relevant confirmations. It is therefore possible that for many potential applicants, the time limit is a demand that cannot be met.
12. Of course, this time limit will also harm persons who are not currently present in Jerusalem, although Jerusalem has been their center of life for all purposes for the past 20 years, or persons who did not see the announcement published in the newspapers for one reason or another (as, indeed, not every resident reads Al-Quds). It is possible that such people will not even know that they have a singular opportunity to receive a temporary permit, an opportunity which will dissolve after 30 April 2008. If these individuals meet the criteria – why should they be denied the essential right only on the basis of the date of their appeal?
13. Therefore, this restriction does not, on its face, have a reasonable explanation. Here too, one receives the impression that under the façade of a decision intended to benefit those individuals, more and more restrictions are imposed in order to render the decision void of meaning.

Documents that must be attached to an application for a permit

14. The above also pertains, to a considerable extent, to documents and confirmations which must be included with the application for a permit. It has been established that an application will only be examined after an applicant provides **all** of the required documents. The very long list of required documents includes, *inter alia*, documents proving the claim that the applicants have lived within the municipal limits of Jerusalem **continuously**, since 1987 at the latest. The demand to provide documents proving the existence of a center of life in Jerusalem is not unreasonable in itself. However, the demand must be proportionate. Proving residency in Jerusalem over 20 years or more may be difficult and complicated in itself, and the demand that applicants provide every contract to rent or purchase an apartment over such a long period of time is overly burdensome.

This is also a deviation from the "substantial evidence test" in administrative law, establishing that in making a decision, an administrative authority will rely on evidence that a reasonable man would consider to have evidentiary value and would rely on (see for instance: H CJ 2394/95 Muchnik v. the Ministry of the Interior, *Piskei Din* 49(3) 274; H CJ 442/71 Lansky v. the Minister of the Interior, *Piskei Din* 26(2) 337). The Ministry's insistence on each and every document, particularly when the documents concerned refer to the distant past, is therefore in contravention of this rule.

15. An areal photograph, signed by the director of the Jerusalem region at the Survey of Israel must be attached to an application for a permit. This is a burdensome and expensive requirement, which is unnecessary. HaMoked's inquiry indicates that in order to obtain the photograph, one must first contact the head office of the Survey of Israel in Tel Aviv. After obtaining a confirmation from the head office, one must obtain a certificate of approval for the photograph from the director of the Jerusalem region of the Survey of Israel. The entire process may cost an applicant more than 500 NIS. In cases where more than one photograph is required (according to a demand occasionally posed by the Ministry of the Interior) the cost may be doubled.

We note that as a rule, an areal photograph is required when there is doubt as to the location of a specific house within Jerusalem's municipal limits. These are very specific cases in which the house in question is located near the city's municipal border. Establishing this demand as a precondition for the processing of **each and every application** even when there is no doubt that the house is within city limits, is superfluous, extremely burdensome to the applicant, and, as noted – expensive.

16. The cost of issuing an areal photograph is added to the payment required for retaining an attorney to handle the application. When an applicant prepares an application for submission to the Ministry of the Interior, he is obligated to have an attorney certify copies of the documents and sign various affidavits. Thus, further, and costly demands are added to the demand to provide many documents relating both to the present and the distant past, which is burdensome in itself. All of this is only a precondition for the processing of the application.

17. **In light of the above, we request the following:**

- A. **The cancellation of the decision to revoke the option of granting permanent residency to persons who prove they have lived in Jerusalem continuously since 1967, both regarding applications currently being processed and those submitted in the future.**
- B. **Submission of applications for a permit will be possible at anytime, and not only until 30 April 2008.**
- C. **Processing of an application will not be contingent on provision of all of the requisite documents. An application may be approved even in the absence of all "center of life documents", and particularly, in the absence of documents referring to the distant past (provided, of course, that the applicant successfully proves, in accordance with the substantial evidence test, that he has lived in the city continuously since 1987 at the latest). The demand for an areal photograph will also be removed, except in extraordinary cases, as stated above.**
- D. **The government resolution, which thus far has not been translated to Arabic, will be translated, and the translation will be published for the benefit of the public immediately, in light of the shortness of time.**

18. I would appreciate your prompt response.

Respectfully,

Yotam Ben-Hillel, Att.

Copies:

MK Meir Shitrit, Minister of the Interior

Att. Meni Mazuz, Attorney General

Att. Daniel Salomon, Office of the Legal Advisor, Population Administration

Yossi Edelstein, Foreigner Division Director, Population Administration

Ms. Tova Amedi, Population Administration Bureau, East Jerusalem

Ms. Hagit Weiss, Population Administration Bureau, East Jerusalem