



NORWEGIAN
REFUGEE COUNCIL

Legal Memo

The Absentee Property Law and its Application to East Jerusalem

OBJECTIVE:

This fact sheet sets out the main provisions of the Absentee Property Law 1950, the implementation of which has resulted in thousands of properties being defined as “absentee” and consequently taken by the Israeli Custodian of Absentee Property. Also examined are the application and effects of the Absentee Property Law in East Jerusalem since Israel’s occupation and unilateral annexation of the area in 1967, with a focus on the consequences for Palestinian-owned property in East Jerusalem.

What is the Absentee Property Law?

The ‘Israeli Absentee Property Law 1950’ (‘Absentee Property Law’) is the main law in a series of laws that regulate the treatment of property belonging to Palestinians who left, were forced to flee, or were deported during the 1948 War. These Palestinian refugees left behind a great deal of property and the Absentee Property Law has served as the legal basis for transferring such property into the possession of the State of Israel.

In recent years, the Absentee Property Law has become a significant obstacle, hindering Palestinians from successfully establishing rights to property or land, particularly in East Jerusalem. This has had serious effects on, amongst other things, obtaining Israeli-issued licenses to build, completing property transactions and planning procedures. Given the automatic application of the Absentee Property Law to property considered to be “absentee property,” people often only find out that they have lost ownership of their property when trying to deal with it (e.g. sell, transfer, build on it). This has led to an understandable reluctance to engage in property transactions, especially in East Jerusalem, where applications to the Custodian of Absentee Property are an integral part of the process of transferring most rights in property, planning procedures and requests for receiving Israeli-issued construction permits. The Absentee Property Law has moreover been used over the years as a tool by Israeli settler associations for the takeover of Palestinian owned properties in East Jerusalem.

General Provisions of the Absentee Property Law

How does the Absentee Property Law Define “Absentee”?

The definition of “absentee” under the Absentee Property Law is very broad. This definition applies to anyone residing in any of the countries listed in the Absentee Property Law (Lebanon, Egypt, Syria, Saudi Arabia, Jordan, Iraq, Yemen or parts of Palestine that are outside the 1948 borders of the State of Israel) at any time between 29 November 1947 and the day on which “it shall be declared that the

state of emergency shall cease to exist.”¹ It further applies to any person who had or received a citizenship or nationality of those countries during this period and anyone who merely departed for a short time, between 29 November 1947 and 1 September 1948, from his/her ordinary place of residence in Palestine to another place in Palestine that was held at that time by anyone fighting against Israel and then returned to his/her home shortly afterwards.² Due to the fact that the declaration of a state of emergency in Israel is still valid, the Absentee Property Law continues to apply to this day to those defined as “absentee.”

How Does the Absentee Property Law Define “Absentee Property”?

The Absentee Property Law provides that if a person is an “absentee”, any property that he/she owns, or has a right to, located inside Israel automatically becomes “absentee property.” The actual existence of a property in Israel is key in determining that a person is an absentee. The Custodian of Absentee Property (see below) may not declare a person as an “absentee” if the said person does not fulfill the requirement of being an owner of a property within the territory of Israel (including East Jerusalem). The Absentee Property Law also defines what is considered “property.” Similar to the definition of “absentee,” this definition is also extremely broad and includes, for example, land, any kind of building or other structure, any movable property, money and stocks, etc.

Who is the Custodian of Absentee Property?

The Custodian of Absentee Property is appointed by the Israeli Minister of Finance for the purpose of taking property defined as “absentee” into the Custodian’s possession and retaining it in a prescribed manner. The Custodian of Absentee Property may submit claims and initiate legal actions, and be a plaintiff, defendant or contestant in any legal action regarding absentee property. The Custodian of Absentee Property is entitled to representation by the Attorney General of Israel or another lawyer from the Attorney General’s office.



The Custodian of Absentee Property should not be confused with the Custodian General, a different government officer who comes under the authority of the Israeli Ministry of Justice. The Custodian General manages, by law, all property in Israel when the

Mr. Ali Ayyad (pictured) and his siblings own the Cliff Hotel, shown here in the background. In 2003, Israeli authorities issued a land requisition order stating that the hotel and surrounding land had been annexed to Israel and came under the jurisdiction of the Jerusalem Municipality. The State, which considers the hotel to be “absentee property,” then took over the hotel, handing it over to the Custodian of Absentee Property. Legal challenges against this confiscation are currently ongoing. Photo: JC Tordai, 2010.

¹ The Absentee Property Law 5710-1950, Laws of the State of Israel No. 37, 20 March 1950, p. 86, Section 1(b) (‘Absentee Property Law’).

² A well-known issue in this context is the problem of “present absentees,” or those individuals who departed to a particular place and consequently became absentees, returned after a short while to Israel and even became Israeli citizens. Under the Absentee Property Law, their properties were still considered “absentee properties” vested in the Custodian of Absentee Property, because they were outside the borders of the State of Israel during the relevant time frame, as defined in the law.

owners cannot manage it or are untraceable. As will be detailed below, the Custodian General also has a significant role with regard to properties in East Jerusalem which were owned by Israelis prior to 1948.

How are the Rights to “Absentee Property” Transferred to the Custodian of Absentee Property?

The ownership rights to an “absentee property” are automatically vested in the Custodian of Absentee Property when the conditions of the Absentee Property Law are fulfilled (i.e. when a property becomes an “absentee property” according to the definition mentioned above). Any rights connected to an absentee property are automatically transferred to the Custodian of Absentee Property. Vesting such rights in the Custodian of Absentee Property is not contingent on any legal action on the part of the Custodian of Absentee Property or registration of the property in its name. The Custodian of Absentee Property does not have to register the absentee property in order to complete the transfer and does not even have to know about the absentee property to have rights to it.

What are the Powers of the Custodian of Absentee Property?

Under the Absentee Property Law, many powers regarding the management of the property are vested in the Custodian of Absentee Property. For example, the Custodian has the power to issue a dispossession certificate to a person that, under the Absentee Property Law, is considered to be illegally holding an absentee real estate property.³ In addition, the Absentee Property Law transfers to the Custodian the power to issue stop work orders and even demolition orders for a building that was constructed, or is being constructed, on an “absentee property” without permission from the Custodian.⁴ On the other hand, the rights of other people, including the absentees themselves, are extremely limited. Thus, for example, a person who holds an absentee property is obliged to transfer it to the Custodian.⁵ Also, section 22 of the Absentee Property Law includes a long list of actions that no person is allowed to perform without written consent from the Custodian: to hold vested property, to manage it or to otherwise tend to it, to hand it over to any other person save the Custodian, to remit debt to any person save to the Custodian and so forth.⁶

As a rule, the Custodian is not permitted to sell a real-estate property or otherwise transfer its ownership.⁷ That stated, the law does permit the selling of the property "if a Development Authority is established under a Law of the Knesset...".⁸ Although the wording states that it is "if a Development Authority is established," at the time the Absentee Property Law was discussed in the Knesset, a draft law concerning the Development Authority had already been published. Therefore, it would have been known by the legislature that the Absentee Property Law would almost immediately legalise the transfer of property to the Development Authority.⁹

The Development Authority is a public body, established under the ‘Development Authority (Transfer of Property) Law 5710-1950’ (‘Development Authority Law’). The list of powers in section 3 of the Development Authority Law is broad and enables almost any possible action. Among others, the

³ Absentee Property Law, Section 10(a).

⁴ There, Section 11(a).

⁵ There, Section 6(a).

⁶ There, Section 22(a).

⁷ There, Section 19.

⁸ There, Section 19(a).

⁹ Moti Banyan, *Land Law: The Principles and Rules*, 2nd edition, Tel-Aviv, 2004, pp. 819-820 [Hebrew]. For further elaboration on the Absentee Property Law and the ‘Development Authority (Transfer of Property) Law’ as a two-statute model, see: Jeremy Forman and Alexandre (Sandy) Kedar, “From Arab land to ‘Israel Lands’: the legal dispossession of the Palestinians displaced by Israel in the wake of 1948”, *Environment and Planning D: Society and Space*, 2004, Vol. 22, 809, pp. 819-820.

Development Authority may "develop, complete, meliorate, merge, cultivate and reclaim property".¹⁰ Under the provisions of the 'Basic Law: Israel Lands' and the 'Israel Land Law of 1960', the Development Authority may also "sell or otherwise dispose of, let, grant leases of, and mortgage property".¹¹ These laws facilitated the way in which the Development Authority has served as a "land laundering" agency whose main purpose was to distance the government from direct involvement in the process of acquiring rights in absentee properties and transferring them to settler organisations or political groups.¹²

As explained in this fact sheet, many properties in East Jerusalem that were declared "absentee" and were consequently vested in the Custodian of Absentee Property, ultimately found their way to the hands of settler organisations. The transfer of these properties was made possible, due, among others things, to the extensive powers vested with the Custodian and the Development Authority mechanism.

Can an "Absentee" Acquire His/Her Property Back After Confiscation Under the Absentee Property Law?

Yes, but it is a very difficult process, which seldom succeeds. The property owner may claim that he/she should not be considered "absentee" and, therefore, that the Absentee Property Law should not apply in his/her particular case. However, once the Israeli authorities have established that the property in question is "absentee property," the process of acquiring the property back is very problematic.

When a property meets the criteria of "absentee property," its ownership is vested in the Custodian of Absentee Property and the "absentee" automatically loses his or her ownership rights and any other rights he/she may have to the property. Following the transfer of rights, as a general rule, such property is not released. There is, however, an exception, which allows the Custodian of Absentee Property to consider whether to release a vested property to its previous owner or to a successor.¹³ That stated, the Custodian of Absentee Property cannot use its authority to release property it holds, unless the release has been recommended, in respect to each case or a particular class of cases, by a special committee that is appointed by the government.¹⁴ There are no specific criteria for the special committee to release property. A review of relevant Israeli case law on the subject demonstrates that the property owner will have a better chance to have property released if he/she can show that he/she is a resident of Israel; that he/she is not in a country that was defined as an enemy country; that he/she did not act against Israel in any way; that diplomatic reasons oblige the release of the property; or that relevant special humanitarian considerations exist.¹⁵

Yet individual considerations do not suffice. A survey of Israeli jurisprudence also reveals that, for such property, the interests of the State need also be taken into account in any determination by the special committee on whether property may or may not be released by the Custodian of Absentee Property. State interests include the ability to utilise absentee property for furthering the development of Israel until the consolidation of political arrangements between Israel and its neighbours, at which point the

¹⁰ Development Authority (Transfer of Property) Law 5710-1950, Section 3(3).

¹¹ Development Authority Law, Section 3(4).

¹² See more on this issue: Yifat Holzman-Gazit, "Land Expropriation in Israel: Law, Culture and Society"(2007), p.110.

¹³ Absentee Property Law, Sections 28-29.

¹⁴ There.

¹⁵ See, e.g., HCJ 518/79 *Cockran v. Committee under Article 29 in the Absentee Property Law, 5710-1950*, (1980) 34 (2) PD 326; Civil Case (Haifa District Court) 458/00 *Baha'i v. Custodian of Absentee Property* (published in "Nevo", 19 September 2002).

fate of the property is to be decided on the basis of mutuality between the countries. State interests include, for example, the establishment of public institutions.¹⁶

In 1973, Israel enacted the Absentee Property (Compensation) Law ('the Compensation Law'), which, in certain cases, enables "absentees" to claim compensation for their seized property. The Compensation Law applies only to absentees residing in Israel (often referred to as "present absentees" – as they are physically present but considered "absentee" according to the Absentee Property Law). The right to demand compensation was given to them exclusively. However, the sums that were offered as compensation were unreasonably low and, due to political considerations, the successful implementation of the right by Palestinian "absentees" residing in Israel has been very limited.¹⁷ Moreover, the Compensation Law set a maximum period for submitting a claim for compensation at fifteen years from the Compensation Law's effective date (1 July 1973) or two years from the day that the claimant became a resident of Israel, whichever comes later. Thus, in most cases, the Compensation Law has been irrelevant since July 1988.

Application of the Absentee Property Law to East Jerusalem

When and How Does the Absentee Property Law Apply to East Jerusalem?

Despite international law and the position of the international community—according to which East Jerusalem is occupied territory and subject to the relevant laws of occupation¹⁸ — Israel annexed East Jerusalem in 1967,¹⁹ subjected it to Israeli jurisdiction²⁰ and has ever since applied its domestic law to the area.

Consequently, in 1967, the Absentee Property Law was applied, exactly the way it is written, to East Jerusalem. As a result, nearly all properties in East Jerusalem were considered from that day on "absentee property," because they were: (a) within the territory of Israel (according to Israeli law), yet (b) the Palestinian owners were Jordanian citizens due to Jordan's period of control over East Jerusalem from 1948 to 1967.

In 1970, the Knesset passed the 'Law and Administration Procedures Law' ('the 1970 Law'), which decreed that residents of East Jerusalem are not to be considered absentees in relation to property within the annexed territory. However, the 1970 Law did not solve the problem of those Palestinians who lived outside the new municipal boundaries of Jerusalem yet owned land or property inside the city limits. These owners remained defined as "absentees." This was also the case of East Jerusalem

¹⁶ HCJ 4713/93 *Golan v. Special committee under Article 29 of the Absentee Property Law 5710-1950*, (1994) 48(2) PD 638, p. 644.

¹⁷ Eyal Benvenisti, Eyal Zamir, "Private Claims to Property Rights in the Future Israeli-Palestinian Settlement", *The American Journal of International Law*, Vol. 89, No. 2 (April, 1995), 295, p. 301.

¹⁸ There have been numerous UN Security Council and General Assembly Resolutions rejecting Israel's unilateral annexation of East Jerusalem and recognising its status as occupied. These include SCR 242 of 1967 which demanded Israel withdraw from territories it occupied in 1967; and SCR 478 of 1980 which set out that annexation by force is forbidden under international law and confirmed the application of international occupation law to East Jerusalem. This position was recently confirmed by the ICJ Advisory Opinion on the Wall on 9 July 2004.

¹⁹ Between 1948 and June 1967, West Jerusalem was under Israeli control and East Jerusalem was under Jordanian control. Following the 1967 War, Israel unilaterally annexed East Jerusalem. Further to gaining control of East Jerusalem, Israel immediately increased the area from 6 sq. km to 70 sq. km (mostly land from 28 Palestinian villages in the West Bank) which it annexed to West Jerusalem.

²⁰ According to Israel, this situation was further formalised in 1980 when the Israeli parliament passed the Basic: Jerusalem, Capital of Israel, Laws of the State of Israel, No. 980, dated 5 August 1980 p. 209 which declared a "united" Jerusalem to be the capital of Israel.

residents who owned property located within the Israeli boundaries of the 1949 Armistice “Green Line”. They too continued to be considered absentees in relation to the property that they owned.

The 1970 Law also pertains to property owned by Jews prior to the 1948 War (who later became Israelis with the establishment of the state of Israel) and was subsequently transferred to the Jordanian Custodian of Enemy Property between 1948 and 1967, as a result of the Jordanian occupation. Following the 1967 War and the annexation of East Jerusalem, control over these properties was transferred to the Israeli Custodian General. The 1970 Law requires the Custodian General to release these properties to their pre-1948 owners or the owners’ heirs. In practice, this was implemented only in the case of Jewish Israeli owners.

Thus, Palestinian residents of East Jerusalem who, prior to 1948, owned property in West Jerusalem or elsewhere in what is now considered Israel (west of the Green Line) cannot reclaim their property because it has been transferred to the Custodian of Absentee Property. In contrast, Jewish Israelis who owned property prior to 1948 in East Jerusalem (or have inherited such property) are able to claim this property and, if successful, return to their houses.

Has the Absentee Property Law Been Implemented in East Jerusalem?

Yes. The Absentee Property Law, combined with the provisions of the 1970 Law, provide the Custodian of Absentee Property with the authority to determine whether properties located in East Jerusalem qualify as “absentee properties.” And yet, shortly after the Israeli annexation of East Jerusalem in 1967, the Israeli government decided to refrain from applying the Absentee Property Law to certain properties in the area. According to a decision taken by government authorities,²¹ the Absentee Property Law was not to be applied to any property in East Jerusalem that was occupied by tenants. Only a vacant property belonging to a resident of an “enemy country,” for which there was no legal representative from Jerusalem or the West Bank, could be administered by the Custodian of Absentee Property and, in such a case, could be transferred only to governmental institutions. The main reason for this decision was that at least some of the policy makers assumed that the conditions and circumstances in East Jerusalem were completely different than those which brought about the original legislation of the Absentee Property Law.

However, this policy changed completely at the end of the 1970s. A new decision of the Israeli government enabled the seizure of almost all property that complied with the broader definition of “absentee property”.²² This decision had very severe consequences for East Jerusalem Palestinians. For example, during the 1980s, an accelerated process of settler take-over of properties began, in the heart of Palestinian neighbourhoods in East Jerusalem. This process was often facilitated by

²¹ This decision was made in a meeting that took place on 22 November 1968 and 3 February 1969, with the participation of the Minister of Justice, the Attorney General, the Minister of Agriculture and representatives of the Israeli Security Forces, the Counselor on Arab Matters, the Israel Land Administration and the Custodian of Absentee Property.

²² In a forum headed by the Minister of Justice at the time, Shmuel Tamir, and the Minister of Agriculture at the time, Ariel Sharon, it was decided that “properties in East Jerusalem belonging to legal permanent residents of East Jerusalem, Judea and Samaria, whose owners held them and used them in fact continuously from June 5th 1967, may address themselves to the Custodian ... and request permission to continue to hold and to use the property. The request shall be brought to the advisory committee under section 29 of the law, and if the petitioner shows in a manner that satisfies the committee that he held and used the property in fact during the entire said period, he shall be allowed to continue to hold it, if in the committee’s opinion all the rest of the circumstances justify that. The procedure for handling requests in this matter shall be according to what is mentioned in the Absentees’ Property Law...” [this decision was cited in an April 1993 document: “Government Policy Concerning Absentee Property in East Jerusalem – Draft Resolution” [Hebrew], section 3(c) (under the heading: “explanatory notes”). The document, that was never published, was written according to a government resolution 193, dated 13 September 1992, passed following the *Klugman* report (see below). To the best of our knowledge, this draft resolution was never submitted to the cabinet].

government transfer of absentee properties held by the Custodian of Absentee Property to settler groups, supported by the Absentee Property Law and an Israeli cabinet resolution from 1977 taken on the matter.

In 1992, the application of the Absentee Property Law by the Custodian of Absentee Property to facilitate settlement expansion in East Jerusalem was revealed in a report concluded by the Klugman Committee ('the Klugman Report').²³ The committee was a body appointed to examine the way in which the State of Israel and its authorities assisted settlement activity. The Klugman Committee identified 68 properties in East Jerusalem that were somehow transferred, with the assistance of the State of Israel, from Palestinians to Jewish organisations. The Klugman Report strongly criticised the Custodian of Absentee Property's actions, including its transfer of the absentee property to settler organisations in East Jerusalem.

Following the submission of the Klugman Report to the government, the then-Attorney General, Yosef Harish, ordered the Custodian of Absentee Property to stop exercising the Absentee Property Law in this manner and to return to the policy that had prevailed prior to December 1977. However, since then, no real steps have been taken to prevent the transfer of absentee property to settler organisations. Properties that were taken from their legal owners were not returned and no supervision or control mechanisms over the Custodian of Absentee Property's conduct were established. On the contrary, in 1997, the limitations on exercising the Absentee Property Law were further reduced and, in June 2004, the Ministerial Committee for Jerusalem Affairs decided to revive the use of the Absentee Property Law in the manner observed between 1977 and 1992.²⁴

Following the 2004 decision by the Ministerial Committee, the then-Attorney General, Meni Mazuz, sent a strongly-worded letter to Binyamin Netanyahu, the Minister of Finance at the time (and, hence, the Minister responsible for the office of the Custodian of Absentee Property) ordering the immediate cessation of the application of the Absentee Property Law to East Jerusalem property belonging to residents of the West Bank. Attorney General Mazuz ordered the Government to return to the policy that preceded the ministerial decision, namely not to use its powers regarding those properties except in special circumstances and subject to the approval of the Attorney General.²⁵

It should be noted that the recommendations of Attorney General Mazuz in his letter are concerned only with the specific issue of exercising the Absentee Property Law on East Jerusalem property belonging to residents of the West Bank. The recommendation did not concern property that had become "absentee property" as a result of other circumstances (such as when an East Jerusalemite owner has moved to an "enemy state"). In any case, it is clear that this recommendation did not prevent the continuation of the exercise of the Absentee Property Law in East Jerusalem, neither for properties belonging to West Bank residents nor for other properties.

Thus, up until the Supreme Court ruling of 2015 (see below), the Israeli practice following the 2004 decision by the Ministerial Committee allowed the Custodian of Absentee Property to seize all property falling under the broader definition of "absentee property" in East Jerusalem against the advice of the previous Attorney General Mazuz.

²³ Report of the Committee to Examine Buildings in East Jerusalem; dated 10 September 1992 (the Klugman Report). The Report was not published. A translation to English can be found in "The Klugman Report – Report of the Committee to Examine Buildings in East Jerusalem", *The Palestine Yearbook of International Law* Vol. 9, 1996/1997, p. 417.

²⁴ Resolution No. JM/11 of the Ministerial Committee for Jerusalem Affairs dated June 22, 2004, which was validated as a cabinet resolution on July 8, 2004 (cabinet resolution 2207 (JM/11)).

²⁵ "The application of the Absentee Property Law to property in East Jerusalem belonging to residents of Judea and Samaria", a letter to the Minister of Finance at the time, *Binyamin Netanyahu*, dated 31 January 2005 [Hebrew] (not published)

How have the Courts Ruled on the Implementation of the Absentee Property Law in East Jerusalem?

The Israeli Supreme Court has addressed the application of the Absentee Property Law to East Jerusalem in few cases throughout the years. These cases have mostly pertained to properties in East Jerusalem that belonged to individuals residing in the West Bank. The Israeli Supreme Court has ruled that the Absentee Property Law does indeed apply to these properties and that ownership of these properties, therefore, is vested in the Custodian of Absentee Property.²⁶ In one of the cases, the Supreme Court did mention that the ‘absence’ of individuals residing in the West Bank is of a “technical” nature, meaning that such property became “absentee property” due to the expansion of the boundaries of Jerusalem, while their owners, residents of the West Bank, stayed put. The Supreme Court added that it is possible that these absentee properties could be distinguished from other absentee properties, but that such a distinction could be made only on a case by case basis and in the occurrence of particular circumstances that allow releasing a property on humanitarian grounds.²⁷

After the publication of Attorney General Mazuz’s letter, the District Court ruled, in two cases, in accordance with Mazuz’s recommendations.²⁸ However, two contradictory verdicts have also been issued in the District Court.²⁹ These four verdicts were appealed. On 15 April 2015, the Supreme Court ruled on these four appeals, affirming the applicability of the Absentee Property Law to properties in East Jerusalem belonging to Palestinians living in the West Bank and approving all past expropriations that were carried out under the Law.³⁰

However, while dismissing the appeals and approving the overall application of the Law to East Jerusalem properties owned by West Bank Palestinians, the Supreme Court established important criteria regarding the implementation of the Law in East Jerusalem. **The Court held that as a general rule, the Law shall be implemented to East Jerusalem properties owned by West Bank Palestinians only in very rare and extreme cases** (some of the judges could not even imagine that such cases exist). The ruling is forward looking, in the sense that the Custodian of Absentee Property could take over property in East Jerusalem owned by ‘absent’ West Bank residents only in rare cases. However, in cases in which the Custodian had already taken steps to takeover or transfer the property, such actions will not be reversed. Yet, the owner may request that the property be released, while giving consideration to the former Attorney Generals’ opinions which, as a general rule, limit the implementation of the Law in East Jerusalem.³¹ In such cases, where the authorities have already exercised their powers according to the Law, releasing the properties back to their owners should be done by applying to the Special Committee (see above). The Committee and the Custodian, in their decisions regarding such cases, should also consider the problematic aspects of applying the Law to East Jerusalem properties owned by West Bank Palestinians, as set out in the verdict.³²

²⁶ Civil Appeal 54/82 *Edmund Levi vs. The Late Afane Mahmud*, 40(1) PD 374; HCl 4713/93 *Golan vs. The Special Committee under Section 29 of the Absentees Property Law – 1950*, 48(2) PD 638.

²⁷ HCl 4713/93 *Golan v. Special committee under Article 29 of the Absentee Property Law 5710-1950*, (1994) 48(2) PD 638, p. 646,

²⁸ Originating Motion (Jerusalem) 3080/04 *Daqaq Nuha vs. The Heirs of the Late Naame Atiya Adwi Najar* (Published in *Nevo*) 23 January 2006; Civil case (Jerusalem) 1532/99 *The Estate of the Late Taleb Ali Abdulla Abu Zahariya vs. Berta Hamdan*, (Published in *Nevo*) 28 May 2007.

²⁹ Civil Complaint (Jerusalem) 6044/04 *Hussein vs. Cohen* (published in *Nevo*) 9 May 2006; Civil Complaint (Jerusalem) 6161/04 *Ayad vs. the Custodian of Absentee Properties* (published in *Nevo*), 2 October 2008.

³⁰ Civil Appeal 5931/06 *Hussein v. Cohen*, (published in *Nevo*) 15 April 2015.

³¹ *Ibid.*, Section 39 of the ruling.

³² *Ibid.*, Section 39 of the ruling.

What are the Everyday Implications of the Absentee Property Law?

Transfer of “absentee property” to the Custodian of Absentee Property is not always performed on the initiative of the settler organisations, as was detailed in the Klugman Report. The Custodian of Absentee Property has additional ways by which to locate properties which may be considered “absentee property” under the Absentee Property Law.

In East Jerusalem, applications to the Custodian of Absentee Property are an integral part of the process of transferring most rights in property.³³ Applications to the Custodian of Absentee Property can be made at the stage of ownership transfer or even before. Thus, for example, when a person signs a contract to buy an apartment or a plot of land, he/she may apply to the Recorder of Deeds requesting a warning note to be written for his/her benefit in the land registration. At this stage, the Recorder of Deeds asks the buyer to apply to the Custodian of Absentee Property and get a certificate from him stating that the property is not an absentee property. If the Custodian of Absentee Property claims that the property is vested in it and does not give the requisite authorisation, it is impossible to make any record regarding the property – neither writing a warning note nor concluding a transfer of ownership.

Authorisation by the Custodian of Absentee Property is also required when the Recorder of Deeds is asked to register rights in a property on behalf of the heirs of the registered owners. The heirs, or some of the heirs, might be considered ‘absentees’ and thus, the property, or a part thereof, is in fact vested in the Custodian of Absentee Property.

The Custodian of Absentee Property is also involved in planning procedures and in requests for receiving Israeli-issued construction permits. According to procedures imposed by the Jerusalem Municipality since the early 2000s, applications for construction permits in East Jerusalem require to apply first to the Custodian of Absentee Property, who examines the property owners, both past and present, before giving its approval for continuing the licensing procedures. In some cases, the planning authorities require that the applicant apply to the Custodian of Absentee Property and in other cases the authorities send a notice to the Custodian of Absentee Property.

With regard to requests for planning authorisation, according to Jerusalem Municipality procedures, the Municipality is required to detail the names of all the landowners within the proposed plan and receive their signature. These owners, or some of them, might be considered absentees and may thus have lost their rights in the land. This usually becomes apparent when the planning institution, to which planning requests are submitted, contacts the Custodian of Absentee Property when considering a submitted planning request.

³³ In any request for the transfer of rights in real-estate belonging to an East Jerusalem resident, registered to his name before 1967, the Recorder of Deeds asks the applicant, as a condition for registering the rights, to provide a certificate from the Custodian of Absentee Property stating that the property is not an absentee property. If the applicant refuses, the Recorder of Deeds petitions the Custodian of Absentee Property himself.