At the Supreme Court Sitting as the High Court of Justice

HCJ 256/01

Before:	**Honorable Justice T. Strassberg Cohen** **Honorable Justice A. Procaccia** **Honorable Justice M. Naor**
The Petitioner:	**1. Ibrahim Rabah** **2. Ahmed Abu Z'atar** **3. Badwan Salaimeh** **4. al-'Atarash Maryam** **5. Abu Dawahi Fathi**
	v.
The Respondent:	**1. Jerusalem Municipal Court** **2. State of Israel**
Petition for *Order Nisi*	
Session date:	25 Tevet 5762 (January 9, 2002)
Representing the Petitioners:	Adv. Yosef Schwartz
Representing the Respondents:	Adv. Malchiel Blass

Judgment

Justice T. Strassberg Cohen:

1. The petition concerns the Petitioners' request for a ruling that the Municipal Court is not competent to hear matters relating to illegal construction by Palestinian residents in Jerusalem as the application of Israeli law to various parts of greater Jerusalem (hereinafter: **East Jerusalem**) is unlawful.

This argument was presented to the Municipal Court where indictments for illegal construction were served against the Petitioners and representations regarding alleged lack of competence for the aforesaid reasons were made to that court.

2. The petition must be rejected as Israeli law, jurisdiction and administration has been applied to East Jerusalem through Israeli legislation applied in a lawful manner. What is at issue?

On June 27, 1967, the Law and Administration Ordinance 578-1948 was amended to include Section 11b, which reads as follows:

> The law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the Government by order.

Pursuant to these aforesaid powers, the government issued the Law and Administration Order (No. 1) on the next day, June 28, 1967. The Order stipulates:

> The territory of Eretz Israel described in the schedule is hereby declared a territory to which the law, jurisdiction and administration of the state apply.

The schedule to the Order provides a geographic description listing various parts of Jerusalem as comprising the aforesaid territory. The provisions of the Law and the Order apply the law, jurisdiction and administration of the state to the territory described in the order issued by the government.

On June 27, 1967, Section 8a was added to the Municipalities Ordinance [New Version]. The Section empowers the Minister of Interior to expand the jurisdiction of any given city at his discretion. The next day, the Minister of Interior proclaimed an extension of the jurisdiction of the Jerusalem Municipality. The schedule to the proclamation includes a description of the area that was added to the Municipality, which includes the area which is the subject of this hearing.

3. Since 1967, state authorities have acted in accordance with the aforementioned legislation and applied the law, jurisdiction and administration of the state to the aforesaid territory. Following these legislative acts, special legislative arrangements were made in order to regulate various matters relating to residents of East Jerusalem as a result of the legal changes in the territory.

On December 7, 2000, Basic Law: Jerusalem, Capital of Israel (hereinafter: **the Basic Law**) was amended to include Section 5, which sets forth:

> The jurisdiction of Jerusalem includes, as pertaining to this basic law, among others, all of the area that is described in the appendix of the proclamation expanding the borders of municipal Jerusalem beginning the 20th of Sivan 5727 (June 28, 1967), as was given according to the Cities' Ordinance.

4. The status of East Jerusalem has been reviewed by this Court on more than one occasion and I need not revisit the issue (see on this issue HCJ 223/67 **Shabtai Ben Dov v. Minister of Religious Affairs**, IsrSC 22(1) 440, 441, 442; HCJ 171/68 **Hanzalis v. Court of the Greek Orthodox Church et al.**, IsrSC 23(1) 260, 269; HCJ 283/69 **Ruweidi et al. v. Hebron District Military Court et al.**, IsrSC 24(2) 419, 424; HCJ 4185/90 **Temple Mount Faithful et al. v. Attorney General et al.**, IsrSC 47(5) 221, 280-281. Some of this case law was produced by this Court prior to the 2000 amendment to the Basic Law and some prior to the enactment of Basic Law: Jerusalem, Capital of Israel in 1980. The Basic Law and the amendment thereto simply reinforced and ratified

the legislation that preceded them and the proclamation and order issued pursuant to this legislation. In the aforesaid rulings, some of the justices held that the law, jurisdiction and administration of the state applied to East Jerusalem due to the annexation and application of sovereignty. Other justices held the position that they applied irrespective of the annexation. In any case, there was no dispute that the law, jurisdiction and administration of the state apply to East Jerusalem and that their application thereto had been carried out lawfully (on the legal situation prior to the amendment to the Basic Law see also: A. Rubinstein, **The Constitutional Law of the State of Israel** (Vol I, 5th edition, 5757) pp. 86-90 [in Hebrew] and R. Lapidot, *Basic Law: Jerusalem, Capital of Israel* in I. Zamir, ed. **Interpreting the Basic Laws**, 5759 [in Hebrew].

It follows that the application of the law, jurisdiction and administration of the State of Israel to East Jerusalem was established in primary Israeli legislation and in an order and proclamation which were issued pursuant thereto as well as in the Basic Law and its amendment which completed the legislation on this issue. Needless to say, this legislation does not contradict Israeli constitutional law.

5. The main argument proposed by counsel for the Petitioners is that the legislation is afflicted by unlawfulness as it is inconsistent with customary international law (the Hague Regulations of 1907 and the Fourth Geneva Convention). Therefore, it must be held that Israeli sovereignty was never applied to East Jerusalem *de jure* and that Israeli law and jurisdiction must not be applied thereto. I reject this argument.

6. Even if I were to accept the supposition that domestic Israeli legislation is inconsistent with customary international law – and I do not accept this supposition as it is baseless – Israeli law trumps international law. This issue has also been reviewed on more than one occasion in the case law of this Court. In HCJ 103/67 **The American European Beit El Mission v. Minister of Welfare (Dr. Yosef Bourg) et al.**, IsrSC 21(2), 325, 333, the Court, in the words of Justice H. Cohen states: "I am satisfied by the common law rule that international legal norms, inasmuch as they are generally accepted by the majority of nations **and do not contradict laws enacted by the Knesset**, constitute part of the law applicable in Israel." (Emphasis added – T.S.C). In HCJ 253/88 **Sajdiya v. Minister of Defense**, IsrSC 42(3), 801, 815, the Court, in the words of President M. Shamgar, stated: "[T]he presumption should be that the legislature sought to have its law correspond to the principles of international law (which have received general acceptance). **However, when the law the latter enacted indicates a clear counter tendency, this presumption loses its value and the court must not consider it**". (Emphasis added – T.S.C). On Israeli law trumping international law in cases of inconsistency between the two, see also HCJ 591/88 **Tareq Nidal Tahah et al. v. Minister of Defense et al.**, IsrSC 45(2), 45, 52, 53.

7. In CrimFH 7048/97 **A. v. Minister of Defense**, IsrSC 54(1), 721, the Court, in the words of President Barak, reiterated our rule that there is a presumption that the purpose of a law is, *inter alia*, to uphold the provisions of international law rather than contradict them and a presumption of compatibility between the two (p. 742). These remarks are consistent with the remarks of President Shamgar quoted above and do not contradict common law, according to which, "when the law… indicates a clear counter tendency, this presumption loses its value and the court must not consider it" (HCJ 253/88 above, p. 815). In CrimFH 7048/97, the Court did not address the conflict between domestic and international law, as it reached its conclusions by way of interpreting the domestic law in a manner that did not contradict international law.

In our matter, domestic law on the issue is clear and unequivocal and it trumps international law inasmuch as it is inconsistent therewith.

7. [*sic*] With respect to the argument that various legal methods had been undertaken in order to apply Israeli law to certain areas, we shall say that the fact that various legal methods may be used for applying the law of the State of Israel to certain areas does not mean that a given method used for a given area is unlawful. As for the argument that the majority of [East] Jerusalem's residents are not Israeli citizens, we shall state that if the question of citizenship is relevant to the matter at hand – and it is doubtful that this is so – indeed, East Jerusalem residents were given the option of receiving citizenship and those who chose not to do so remained permanent residents.

8. The aforesaid suggests that the structure at issue is located in an area to which the law, jurisdiction and administration of the State of Israel apply, as confirmed in a document signed by the Minister of Foreign Affairs which was presented to the Municipal Court. Ostensibly, this document alone provides sufficient grounds for rejecting the petition (see CrimA 126/51 **al-Tourani v. State of Israel**, IsrSC 6, 1145; HCJ 283/69 above; HCJ 2717/96 **Wafa 'Ali v. Minister of Defense**, IsrSC 50(2) 848). However, I have chosen not to reject this petition for this reason alone and base the rejection on the above detailed reasoning.

9. Finally, the petition does not present a solid legal case for the unlawfulness of applying the law, jurisdiction and administration of the State of Israel to East Jerusalem. The outcome is that the Municipal Court is competent to hear the cases against the Petitioners.

The petition is dismissed.

Delivered today, 3 Shvat 5762 (January 16, 2002)

Justice Justice Justice
