

ILF – West Bank

The International Legal Foundation – West Bank

CASE NOTES – Spring and Summer 2014

Motions practice has been a key point of development for the ILF-West Bank lawyers in the past year. The following cases highlight the strong pre-trial motions that the attorneys have submitted. While most judges remain resistant to granting pre-trial motions to dismiss on procedural grounds—preferring instead to have the parties litigate the case fully on the facts, and then possibly dismiss on procedural grounds at the end of the trial—it is important for ILF-West Bank’s lawyers to continue developing their motions practice while gradually educating judges on the validity of these arguments. Ideally, over time more judges will evolve their thinking to understand that regulations setting out statutes of limitation, the age of culpability, and other procedural safeguards both enhance justice overall and allow the court system curb unnecessary resource expenditures.

IN THE MATTER OF IYHAB MAHMUD MUHAMAD JABARIN (ILF Ramallah 5261/2013) (Attorney Nour Bustami)

ILF-West Bank defended a client who was accused of defamation, slander, and humiliation to an employee. According to the arresting officer, who is also the accuser, the client allegedly cursed and damned the officer. While the client pleaded his innocence, he was taken to the Ramallah police station, and a penal action was initiated against him. According to Article 191 of the Penal Code, defamation is punishable with imprisonment if it is directed at any public official while carrying out his or her duties, or as a result of work done in his or her official capacity. The prosecutor undertook investigation.

Attorney Bustami argues that this investigation and prosecution are illegal because Penal Code Article 364 stipulates that “The victim in the defamation, slander and humiliation cases has to bring a civil lawsuit in order to initiate a criminal action.” If the victim—here, the arresting officer—does not bring a civil suit against the accused in this matter, the criminal suit cannot be initiated. This requirement is a preventative measure against frivolous criminal complaints. In this case, the officer/alleged victim has not initiated a civil claim, and thus the criminal case should be dismissed. Attorney Bustami has made this argument clearly and forcefully in her motion to halt the investigation and dismiss the criminal charges against her client. As of the time of publication, this case has been adjourned until November 26, 2014, at which time the court should—in all fairness and in compliance with the Penal Code—grant Attorney Bustami’s motion.

IN THE MATTER OF MUHAMAD ABUFARHA (ILF Jenin J113)(Attorney Maryam Jaradat)

ILF-West Bank is defending an eleven year old client who is charged with riding his bicycle in a way inconsistent with the Palestinian Traffic Code. On July 3, 2013, the 11-year-old client was crossing a street on his bicycle when the claimant, who was driving behind him in a Jeep, hit the client from behind, causing the client to fall off of his bicycle and break his leg. There was a small mark left on the front of the Jeep as a result of the collision.

Attorney Jaradat filed a motion to dismiss on procedural grounds. According to relatively new regulations in the Code of Penal Procedure, the age at which an accused can be held responsible for his or her actions has been raised from nine to twelve. This regulation was passed in 2012, and went into effect in 2013 (the year of this incident). The goal of this policy is to prevent undue harm to a child, as the legislature has decided that prosecuting children under 12 does not benefit society. Attorney Jaradat's motion argued that this statute clearly applies to her client, and thus the case should be dismissed. Fortunately, the judge granted the motion and dismissed the case.

IN THE MATTER OF ABDALRAHMAN ILIYAT (ILF Jenin J123) (Attorney Maryam Jaradat)

ILF-West Bank defended a client who was charged with defamation and slander. The claimant (the client's ex wife) accused the client of cursing her, humiliating her, and insinuating that she was having an illegal relationship with one of the client's relatives in the client's house.

Under Criminal Procedure Code Article 5, the statute of limitations for raising a defamation or slander claim is 3 months from the date the alleged victim became aware of the relevant incident. In this case, the claimant raised her claim at least 6 months after the alleged incident. Attorney Jaradat filed a motion to dismiss the case on the basis of this provision, and the prosecution did not submit any argument against this affirmative defense. The ILF-West Bank attorney's motion was denied, and the case went to trial. Attorney Jaradat appealed the denial of the motion, but the Appeals Court refused to hear her appeal and returned the case to the Conciliation Court, where it is still pending. This stands as a clear example of the time and resources that are wasted taking to trial cases that are statutorily clear-cut, and the protracted work that must be done by criminal defense lawyers to use motions practice to strategically educate judges on the appropriate use of statutes of limitation and other procedural rules.

IN THE MATTER OF ABDALRAHMAN ABUFARAJ (ILF 326 Ramallah) (Attorney Suad Jawan)

ILF-West Bank contracted a juvenile client at the prosecution stage and attended the prosecution's interrogation of the client. During the interrogation the ILF-West Bank lawyer, Saud Jawan, witnessed the prosecution speak aggressively to the juvenile

and fail to inspect the juvenile for injuries, along with other procedural and rights violations. The ILF-West Bank lawyer objected to each violation and demanded that the objection and basis be written into the record. The prosecution refused. Although the juvenile did not invoke his right to remain silent, the statement that was presented by the prosecution for the juvenile's signature did not reflect the statement made by the juvenile during interrogation. Again, the ILF-West Bank lawyer objected, refused to sign the document and instructed the juvenile client to do the same.

After the interrogation, Attorney Jawan immediately filed a pre-trial motion with the Attorney General asserting the client's right to be free from torture and coercion, to counsel at the prosecution stage, and to equal protection, and requested that the attorney general instruct the prosecution to disregard the existing statement and to re-interrogate the juvenile client. The attorney general did not grant the motion on paper and instead attempted to re-interrogate the juvenile without informing Attorney Jawan. However, the juvenile client was aware of his right to counsel and the protection that having counsel afforded him. He immediately requested that the prosecution provide him with his lawyer and invoked his right to remain silent until Attorney Jawan was able to appear and counsel him.

The following case is an example of the pivotal role that defense attorneys play in ensuring that just decisions are reached by criminal courts. Attorney Nael Ghannam is the Regional Coordinator of the ILF-West Bank, and an exceptional lawyer. His comprehensive and zealous advocacy for the juvenile client in this case stands as an example, to both the ILF's lawyers and all lawyers in the West Bank, of the high professional standards that are both necessary and attainable in indigent defense services.

IN THE MATTER OF I.H. (112 ILF Ramallah) (Attorney Nael Ghannam)

Through a combination of persuasive article-based legal arguments and thorough investigation and preparation, Attorney Ghannam was able to secure a sentence of time-served for his juvenile client, who was convicted of Indecent Acts, in violation of PC Article 298. The prescribed penalty for this crime is hard labor or imprisonment for three to fifteen years, and the prosecutor submitted a written pleading seeking the highest possible punishment in this case. Attorney Ghannam obtained this extraordinary result for his client by using various strategies.

As an initial matter, a reconciliation was obtained from the complainant in the case – also a juvenile – along with his family; as a result of this reconciliation, the complainant withdrew his personal right to proceed against the accused. This kind of reconciliation, consistent with the concept of restorative justice in the United States, does not terminate the public right to proceed with a case in the West Bank, but it can greatly impact the Judge's view of the case and can thus impact the

defendant's sentence. Reconciliations are often obtained in ILF cases by diligent investigation and efforts to reach out to complainants and other affected parties at an early stage in the case.

In preparation for the sentencing of his client, Attorney Ghannam pursued three different approaches in order to demonstrate to the Judge that his client should not serve a prison sentence:

First, he drafted and submitted a thorough pleading that included a detailed legal argument about the Juvenile Code. The Judge had the option to sentence his client under either the Adult Penal Code or the Juvenile Code. Attorney Ghannam prepared a persuasive argument that the Judge should use the Juvenile Code; in addition to statutory interpretation, this argument focused on the fact that there was reconciliation in the case, his client's youthful age at the time of the commission of the offense, and a variety of other mitigating factors. Specifically, Attorney Ghannam's client had a full-time job, earning 1900 NIS per month; his father had passed away, and so he helped to support his family, which enabled four of his sisters to enroll in and attend universities to further their educations; and finally, he had no previous criminal record.

Attorney Ghannam did not end his efforts at this written pleading. The second approach he took was to investigate the mitigating factors so that he could produce actual documents and records for the Judge to consider. He obtained a written letter of proof from his client's employer to support his argument that his client was working, and letters of proof from each of the universities attended by his client's sisters to demonstrate their enrollments. These documents were submitted along with his written pleading.

Finally, Attorney Ghannam prepared for the actual hearing by preparing his client to speak before the Judge prior to being sentenced. By explaining the proceeding to his client, and preparing him to speak in this pressured situation, his client was able to honestly and articulately express himself in court. His request for mercy from the Court was heartfelt and effective – he explained that he was young when he committed the crime, that he has matured significantly since then, and that he would not do anything like this again.

The result of this multi-faceted approach was that the Judge decided to utilize the Juvenile Code, Article 13, Subsection 6, and sentenced Attorney Ghannam's client to the lowest possible sentence under that Article: a period of one month of imprisonment, which had already been served early in the case before the client was bailed. The Judge also imposed a fine of 200 JD, which the client had already previously paid as part of his bail. In the end, the Judge was so completely persuaded by Attorney Ghannam's advocacy that, despite the serious nature of the offense and the prosecutor's request for a lengthy sentence of imprisonment, he effectively imposed a sentence of no jail time and allowed Attorney Ghannam's

teenage client to be immediately released and to return home to his job and to his family.

ILF-West Bank would like to thank all of the ILF's past International Fellows who have so generously lent the ILF their time and expertise. We would particularly like to thank Dominique Day, Senior Rule of Law Advisor in Afghanistan for the US State Department, Premal Dharia, a public defender with the Office of the Federal Public Defender in Baltimore, Maryland, and Kiyomi Bolick, a public defender with the Colorado Office of the State Public Defender, who served as International Fellows during this period.

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