

ILF-West Bank

The International Legal Foundation – West Bank

CASE NOTES — March and April 2011

Editor's Notes: This edition describes positive developments in the courts' response to careful legal and procedural arguments. Unfortunately, delays remain the main problem in the criminal courts of Ramallah. However, the situation continues to improve for juveniles.

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Basic Law 12 guarantees a defendant the right to a speedy trial. The right is meant to protect individuals from living under the "cloud" of unproven accusations and guarantee a fair trial by ensuring that evidence is not lost. Unfortunately, courts in Ramallah rarely refuse an adjournment requested by the prosecution. Even when defendants are not detained, justice delayed is justice denied.

In the Matter of Tamir M. (ILF-WB 11)(Attorney Hani Jahaleen)(Eight-month delay)

This case began last year on September 29, 2010. The defendant was charged with assaulting the complainant and breaking his leg. The prosecutor has been asking for adjournments to get a medical report ever since then. On September 29, 2010, the court adjourned the case until November 24, 2010. On that day, the complainant did not show up, and the case was adjourned for one month until December 30, 2010. Again, the complainant did not come to court, and this time the case was adjourned for three months to March 24, 2011. The complainant did not come to court, and the matter was adjourned yet again for two months, until May 26, 2011. In other words, our client has been under the dark cloud of serious accusations for eight months and the complainant will not even come to court. ILF-West Bank is filing an application seeking the dismissal of the charges for violation of Basic Law 12.

In the Matter of Ahmed S. (ILF-WB 21)(Attorney Ali Bazzar)(Six-month delay)

The defendant was charged with threatening the use of a weapon under Penal Code Section 349 and 155. The complainant never saw the alleged weapon. The defendant pleaded not guilty last year, on December 12, 2010. The prosecution witnesses have yet to come to court. The case was adjourned from December 12, 2010, to January 19, 2011, to April 17, 2011, and now to June 19, 2011.

In the Matter of Ahmad H. (ILF-WB 30) (Attorney Nael Ghannam)(Three-month delay)

The defendant was charged with using and selling drugs under Israeli Military Order 558. He pleaded not guilty on March 3, 2011. The prosecution asked for time to call witnesses. The matter was adjourned for six weeks to April 24, 2011. When the witnesses did not appear, the prosecutor

asked for still more time, and the court adjourned the case for another six weeks to June 13, 2011. By then, three months will have passed with no legal progress.

In the Matter of Mohammad S. (ILF-WB 41)(Attorney Nael Ghannam)(Three-month delay)

The defendant, a juvenile, was charged with criminal mischief or damaging property. He pleaded not guilty on February 16, 2011. At the prosecution's request, the matter was adjourned for one month to March 15, 2011. On that day, the juvenile detention center did not bring the defendant to court and the case was adjourned for two months, until May 17, 2011. Between February 16 and May 17, three months, there will have been no progress in this case.

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ILF-West Bank is attempting to improve the quality of legal analysis as well as discipline in its presentation. The courts are responding positively. In the following case, the court acquitted our client for lack of evidence instead of adjourning the case over and over again.

In the Matter of Abbas Fruk (ILF-WB 52)(Attorney Nael Ghannam)

Under Jordanian Penal Code Section 354, a person is guilty of "threatening" when he or she makes a threat, verbal or otherwise, which causes the complainant "strong fear." This is a fairly common charge brought by prosecutors in Ramallah.

In this case, the complainant accused our client of taking her money to buy land on her behalf but keeping the money and never buying the land. In her statement to the police, she said that when she confronted our client, he told her that if she filed charges against him, he would sue her. She told the police that she had been "terrified." In another statement, made in court, the complainant changed her story. She said that our client threatened to kill her nephew and she was scared. On the last court date, when faced with her inconsistent statements and asked if she had been scared by the threat of a lawsuit, she said "no." She said that she was not scared of our client. Even before her court admission that she was not scared of our client — let alone suffered "strong fear" — there was no evidence of fear. She never claimed that her fear had interfered with her activities, that she lost sleep, sought medical attention, or had any other symptoms.

ILF-West Bank decided to ask the court to acquit our client rather than accept repeated useless adjournments. In a written petition, ILF-West Bank asked the court to acquit our client, pursuant to Criminal Procedure Code 206, because of the absence of any evidence of "strong fear." When counsel tried to present his argument, the court said that it did not want to listen. Counsel respectfully requested time to show that the charges were without merit. The court refused. Counsel asked to submit his written application, and the court took it but barely looked at it and returned it to counsel. The court would allow counsel to argue only at the end of the entire case.

Given the lack of evidence to support the charges, counsel had decided not to call any defense witnesses. He so informed the court and asked again that the petition be placed in the file. The court accepted the application this time and both judge and prosecutor finally read it. ILF-West Bank argued that the court should acquit in light of the complainant's testimony and the written application. The court agreed and acquitted our client that day.

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After holding a case sub judice for three months, the Court of First Instance, acting as an appellate court to the Conciliation Court, agreed with ILF-West Bank and modified a judgment erroneously entered under Israeli Military Order 890. The case involved a “bad” check. Instead of dealing with the matter as a matter of commercial law, the prosecution criminalizes the conduct.

In the Matter of H. (ILF-WB 26) (Attorney Ali Bazzar)

This case was reported in the January/February edition of the Case Notes. Our client was charged under Jordanian Penal Code Article 421 for “passing a bad check.” Article 421 provides that any person who maliciously issues a check without having sufficient deposited funds to cover such check shall be punished by imprisonment for a period not to be less than one year and not to exceed two years, and a fine no less than 100 and no more than 250 Jordanian dinars (JD100-250). Military Order 890 amended the sentence available under this section to a fine of up to four times the amount of the check and no more than 10,000 Israeli Shekels.

Our client was convicted of violating Penal Code 421 but sentenced under the Israeli Military Order to three months imprisonment. The custodial sentence was converted to a fine equivalent to five Jordanian Dinars for each day of imprisonment (at 90 days, that is JD450). Unable to pay, the client began to serve his sentence. He served 17 days when ILF-West Bank began representing him and obtained his release on bail.

On appeal, ILF-West Bank raised number of points and argued that the prosecution had improperly changed its theory of the case at sentencing from the Jordanian Penal Code to the Israeli Military Order without prior notice to the defense and in violation of due process. The appellate court agreed. On appeal, the court modified the sentence to a fine of 1JD per day for the 3 months of imprisonment (90JDs). The client had served 17 days and could pay the difference so he was released.

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In response to the ILF-West Bank’s legal arguments, courts continue to facilitate the appointment of counsel to juveniles.

In the Matter of Jihad J., (ILF-WB 84)(Attorney Ali Bazzar)

In the November/December edition of the Case Notes, ILF-West Bank reported on its success in persuading the courts to waive the parental approval requirement for children over 15 to sign a contract with free defense counsel. This led ILF-West Bank to represent many juveniles and obtain their release on bail, and these children have been able to return to school and their families.

In this case, the child was 12 years old. His parents were unavailable to sign a document approving his representation by counsel. Under Section 975 of the Ottoman Code, which governs contracts in Palestine, “if it deems it in the interest of a minor . . . and a senior tutor of such minor

refuses to give permission, the Court may give the minor permission.” Under this section, the court allowed the child to accept the free services of ILF-West Bank.

The ILF would like to welcome Andrew Bowen, a barrister from Edinburgh, Scotland, who has volunteered his services as an International Fellow at ILF-West Bank. For additional information about ILF-West Bank, its lawyers, and its mission, please visit the ILF website at www.TheILF.org.

Natalie Rea, ILF-West Bank Director
New York
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