

ILF-West Bank

The International Legal Foundation – West Bank

CASE NOTES — July and September 2011

Editor's Notes: After the judicial recess, courts continue to grant the prosecution's request for adjournments as a matter of course. Despite the adjournments, ILF-West Bank can report one favorable decision based on purely procedural grounds, showing that courts will — when presented with well-reasoned arguments — make legally sound decisions. The editor is also happy to report progress regarding defense counsel's access to the investigation file.

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Basic Law 12 guarantees a defendant the right to a speedy trial. Nevertheless, as discussed in a prior edition of these Case Notes, adjournments and delays are the rule, not the exception. These delays are wasting a tremendous amount of judicial resources. The following four examples illustrate this systemic problem:

In the Matter of A. B. (ILF-WB 24)(Attorney Ali Bazzar)(12-month delay)

The defendant was charged with drug possession under Israeli Military Order 558. He was indicted and pled not guilty on January 23, 2011. The case was adjourned for three months until April 5, 2011, to give the prosecutor time to call witnesses. On that day, no witness appeared and the case was adjourned for another two months, until June 7, 2011. Again, the prosecution's witnesses did not appear and the matter was adjourned for another four months until October 6, 2011. The witnesses did not appear again and the case has been adjourned until January 17, 2012. By then, nothing will have happened in this case for one full year.

In the Matter of M. M. (ILF-WB 3)(Attorney Ali Bazzar)(12-month delay)

The defendant was charged with deception under Article 417 of the Jordanian Penal Code (JPC). He was indicted on October 18, 2010, one year ago. The case has been adjourned ever since due to the failure of the complainant to appear. The matter was adjourned from October 18, 2010, to December 7, 2010, to February 23, 2011, to April 11, June 13, and September 29, 2011, and finally to January 2, 2012.

In the Matter of L. R. (ILF-WB 27)(Attorney Nael Ghannam)(9-month delay)

The defendant was charged with theft under JPC Article 407. He was indicted and pleaded not guilty on January 13, 2011. At the request of the prosecutor, the case was adjourned until March 31, 2011, then another three months to June 13, 2011, and again to September 25, 2011, and now again until December 25, 2011.

In the Matter of S. D. (ILF-WB 5)(Attorney Musa Qaddoura)(13-month delay)

The defendant was charged with theft under JPC Article 406. He was indicted and pled not guilty on November 1, 2010. At the request of the prosecutor, the matter was adjourned to November 10, 2010, January 25, 2011, March 28, June 6, and September 26, 2011. The next court date is December 22, 2011.

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ILF-West Bank continues to improve the quality of its legal analysis and its presentation before the courts. In this case, the conciliation court agreed with ILF-West Bank's argument.

In the Matter of T.B. (ILF-WB 7)(Attorney Nael Ghannam)

Our client's daughter is a high school student and the complainant is the school's principal. The underlying facts are simple. The daughter was in the habit of arriving late at school. The principal ordered her to read a 500-page book in school during her breaks. Her father went to see the principal to complain about the punishment and words were exchanged. The father and the principal disagree on what was said.

The father was charged under Jordanian Penal Code (JPC) Articles 188 and 191 with defamation and insult of a public official. JPC Article 188, in essence, defines *defamation* as imputing a certain matter to a person "... which might negatively affect his/her honor, dignity and expose him/her to the hate and scorn of society whether or not the matter is punishable by law." It defines *insult* as "assaulting the dignity and honor of another person or his/her reputation ... without accusing him/her with a specific matter."

JPC Article 191 provides that "defamation shall be punishable by imprisonment from three months to two years if it is directed ... to any public official while carrying out his/her duties or as a result of what he/she had done in the course of his/her duty." Finally, JPC Article 364, contained in the general provisions related to defamation, provides that "[t]he victim in the defamation, slander and humiliation cases *has to bring a civil lawsuit in order to initiate a criminal action.*" In other words, a civil complaint is a condition precedent to a criminal action for defamation.

In this case, the school principal – a public employee – never filed a civil complaint and ILF-West Bank filed an application to dismiss the charges because the necessary condition precedent had not been satisfied. The prosecutor disagreed, arguing that since JPC Article 191 made no mention of a prior civil complaint and, since it applies to public officials, the condition precedent does not apply to public officials. ILF-West Bank responded that JPC Article 191 increased the punishment for defamation of a public official but did not remove the requirement of a prior civil complaint imposed by JPC Article 364. The conciliation court agreed and dismissed the charges. The prosecutor has appealed.

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Prosecutors now accept that defense counsel has a right to see and copy the investigation file.

In the Matter of K.B. ILF-West Bank 114 (Attorney Ali Bazzar)

Our client was arrested and charged with circulating forged bank notes under Jordanian Penal Code (JPC) Article 240. JPC Article 240 (1) provides that "whoever counterfeited a banknote in order to commit fraud, amended or traded with a banknote whose appearance clearly shows it is counterfeited" will be punished by temporary imprisonment for no less than five years. Subsection 2 of JPC 240 provides that "whoever possesses a banknote whose appearance shows that it is a counterfeit or amended ... shall be punished by imprisonment from one month to three years."

Given the definition of the offense and the importance of the appearance of the note, it was critical for the defense to see the bank notes allegedly counterfeited. The Palestinian Criminal Procedure Code (CPC) Article 63 provides that "the accused ... may request copies of the documents and papers of the investigation, at their own expense." In addition, CPC Article 102(3) provides counsel the right to review the investigation file before the prosecutor interrogates the suspect. These provisions clearly give counsel the right to see the investigation file.

In addition, Article 233 of the Judicial Instructions for the Attorney General, published in 2009, provides that:

The member of the prosecution is required to allow the defense attorney to look at the case file in its entirety without removing any documents, including all the procedures that took place, even if such procedures took place in the absence of the accused. The defense attorney must be permitted to make copies of all documents in the case file. The defense attorney should never be forbidden from looking at the case file otherwise the prosecution, as an adversary in the case, would have an advantage over the accused, which is not permitted.

In this case, the prosecutor originally refused to give ILF-West Bank access to the bank notes. During a subsequent visit, defense counsel brought a copy of the Instructions to the prosecutor. Surprised that counsel had a copy of the instructions, the prosecutor showed counsel the bank notes and provided access to the entire file. A review of the file made it clear that the prosecutor had not yet conducted any investigation. ILF-West Bank filed a bail application on the grounds that the prosecution should not be allowed to extend the pretrial detention to investigate by doing nothing. The court agreed and granted bail for lack of investigation. The prosecutor is appealing.

In the Matter of H.R. ILF-WB 115 (Attorney Musa Qaddoura)

Our client, a juvenile, was convicted of theft and sentenced in the absence of his father or guardian on February 27, 2011, to two years in detention. ILF-West Bank stepped into the case in August 2011. By then, the time to file an appeal had passed. The first question for ILF-West Bank was to determine whether an appeal could be deemed timely despite the delay.

Criminal Procedure Code 328 provides, in essence, that an appeal must be filed within 15 days of the judgment pronounced “in the presence of the parties or from the date of its notification if it was deemed to have been pronounced in their presence.” In addition, Juvenile Code Article 8 provides that where “a juvenile is accused of a crime, the court shall ask his father, or guardian to appear before it and to order whatever it deems necessary to ensure the appearance of the defendant.” Neither parent nor guardian ever attended the court sessions. ILF-West Bank argued that under the circumstances, the judgment could not be “deemed” to have been pronounced in the juvenile’s presence since presence requires the presence of a parent or guardian. Therefore, the time had not run on the filing of the appeal. A decision, of course, has not been issued, but the court agreed to release our client pending appeal.

The ILF would like to thank Gabby Brown, a lawyer from Adelaide, Australia, for her tremendous contribution to ILF-West bank during the past two months. For additional information about ILF-West Bank, its lawyers, and its mission, please visit the ILF website at <http://theilf.org>.

Natalie Rea, ILF-West Bank Director
New York
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