

ILF-West Bank

The International Legal Foundation – West Bank

CASE NOTES — May and June 2011

Editor's Notes: This somewhat delayed edition will continue to discuss pretrial detention and describe three cases that illustrate some of the challenges faced by ILF-West Bank in the courts of Ramallah.

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ILF-West Bank has obtained mixed results in its effort to challenge the prosecution's repeated request for additional periods of pretrial detention.

In the Matter of Hamayel (ILF-WB 95)(Attorney Nael Ghannam)

In the first edition of the Case Notes, dated January 1, 2011, we discussed the problems of pretrial detentions governed by Articles 119 and 120 of the Criminal Procedure Code (CPC). The first request for pretrial detention is governed by Article 119. It provides that if the investigation “entails the detention of the arrestee for more than 24 hours,” the deputy public prosecutor may request that the conciliation judge extend the detention by a period not to exceed 15 days. Under this section, it is clear that the needs of the investigation must warrant the detention of the defendant. The need to interview a witness would not merit continued detention. ILF-West Bank has been arguing this point unsuccessfully so far.

The second phase of pretrial detention is governed by Article 120(1) to (4) of the CPC. Under Subsection (1), the conciliation court may grant the prosecution a request for extension of detention of no more than 15 days at a time, for up to 45 days total. Under Subsection (2), the court of first instance may grant additional detention for periods of no more than 15 days at a time, again, up to 45 days total. Unfortunately, the language, “if the investigation procedure requires detention,” is not included in this article and, as a result, courts grant the prosecution's request as a matter of course.

ILF-West Bank has successfully argued that the prosecution must show that it is proceeding with the investigation actively to justify additional pretrial detention. In this case, the conciliation court granted the prosecution's request for the first 15 days of detention under CPC Article 119. It then granted the prosecution additional periods of detention to permit the investigation to continue. When the matter was before the court of first instance, ILF-West Bank again tried to oppose the prosecution's request for further detention. There was no evidence that the prosecution had done anything during the last 15 days of detention. The court refused to listen to the defense's argument. This has happened on a number of occasions; the courts refuse to listen to arguments in opposition to the detention request, then grant the prosecution's request and wait for the defense to file a bail application. ILF-West Bank was ready to file the bail application immediately, and the court granted it on the grounds that the prosecution had not conducted, or even attempted to conduct, any investigation since the last extension was granted. Under CPC Article 120, the court of first instance should have simply denied the request for additional detention. The procedure followed by the court is puzzling. Given the delays and the serious problem of court congestion in Ramallah, ILF-West Bank will continue to try to have courts hear the defense's opposition to renewed detention instead of granting the continued detention and then requiring a bail application.

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Access to the prosecution file during the investigation phase has proven to be as simple as asking for it.

In the Matter of Hamdan (ILF-WB 45)(Attorney Nael Ghannam)

In this case, our client was arrested in February 2011 for allegedly entering a house and stealing two mobile phones. He made a statement to the public prosecutor on February 23, 2011. ILF-West Bank stepped into the case after the accused had temporarily absconded and been placed back in detention. Our client could explain his absence and in order to file a meritorious bail application, ILF-West Bank asked the prosecutor to see and copy the file. We were partially successful in that we were given access to the file but not permitted to copy the file.

Under CPC Article 102(4), “counsel is allowed to review the investigation file preceding the interrogation of his client.” Given the clear language of the statute, there would appear to be nothing special about actually getting access to the file. However, when ILF-West Bank opened less than one year ago, lawyers, believing they had no right to do so, did not ask for the investigation file and believed that they had no right to talk to their clients. ILF-West Bank has convinced the prosecution that both the Basic Law and Criminal Procedure Code give the defense broad access to their client and their files during the investigation phase. For example, CPC Articles 96 and 97 place an affirmative obligation on the prosecution to inform an accused of his or her right to the assistance of counsel and an obligation to wait 24 hours if counsel is requested. Since the right to the assistance of counsel is the right to the effective assistance of counsel and to meaningful representation, counsel must have access to the file to be able to advise his or her client.

In this case, the ILF-West Bank lawyer requested the file in writing with the proper legal support and the prosecutor agreed to show him the file. ILF-West Bank also asked to make a copy of the file under CPC Article 63, which provides in essence that the accused may request copies of “the documents and papers of the investigation at [his or her] own expense.” While this section does grant the defense the “right” to copy the file, it cannot deny a copy of the file arbitrarily. The right to request a copy of the file includes an obligation on the prosecution to state its reasons for fulfilling or denying the request. ILF-West Bank will report on the reasons given by the prosecution for denying the right to copy the file in a future issue of the Case Notes.

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This last case illustrates some of the puzzling challenges faced by ILF-West Bank lawyers in the courts. In this case, our client was mistakenly named by the prosecution.

In the Matter of Musleh (ILF-WB 47)(Attorney Ali Bazzar)

In 2006, the defendant, Mr. P.H., was charged with using and possessing drugs in violation of Israeli Military Order No. 558, Articles 7 and 8 (1975). Mr. P.H. was never notified of these charges and in December 2009, after three years of adjournments, the court dismissed the case as barred by the statute of limitations, CPC Article 13. The prosecution immediately appealed the decision to the court of first instance, but in doing so named our client, Mr. Musleh, as the defendant instead of Mr. P.H. The court of first instance affirmed the dismissal of the charges and issued a decision on March 4, 2010. The prosecution appealed to the Cassation Court, which on April 11, 2011, reversed the prior decisions, returning the case to the court of first instance and reinstating the charges. However, the charges were now against our client and not Mr. P.H.

Shortly thereafter, our client was arrested on a minor charge and ILF-West Bank stepped into the case. When reviewing the file, ILF-West Bank found the 2006 drug case against Mr. P.H. which was now

pending against our client. CPC Article 283 provides that if “a material error” occurs in the judgment, the court may “correct the error either sua sponte or at the request of the parties.” The correction is made in the deliberation chamber. In the court of first instance, ILF-West Bank argued that our client had absolutely no connection to the case and that there had been a simple mistake that required correcting. This seemed to be a fairly simple and straightforward request. The court kept the application *sub judice* for three months and on July 13, 2011, finally dismissed the charges against our client.

The ILF is happy to welcome Mousa Q. Qaddoura to its legal staff at ILF-West Bank. Mr. Qaddoura is scheduled to open the Jenin office of ILF-West Bank in January 2012. Enjoy the judicial holiday and see you back in October.

Natalie Rea, ILF-West Bank Director
New York
July 25, 2011