

ILF-West Bank

The International Legal Foundation – West Bank

CASE NOTES — October through December 2011

Editor's Notes: This edition of the ILF-West Bank Case Notes features one interesting appellate decision in favor of our client; one important appeal on the right to counsel in conciliation courts, which is still pending after one year; and an update on the delays discussed in the last edition. It also highlights several acquittals that illustrate the weak, if not altogether frivolous, nature of some criminal cases pursued by the prosecution.

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After some delay, the court finally agreed to hear arguments on a case that ILF-West Bank appealed. The court agreed with ILF-West Bank and reversed the conviction.

In the Matter of H.R. (ILF-WB 115) (Attorneys Musa Qaddoura / Nael Grammm)

This case was discussed in the September issue of the Case Notes and we are happy to report that a decision in our client's favor was finally issued.

Our client, a juvenile, was convicted of theft and sentenced, in the absence of his father or guardian, to two years in detention on February 27, 2011. ILF-West Bank stepped into the case in August 2011. By then, the time to file an appeal had passed. ILF-West Bank filed an application asking the court to excuse the delay in the filing of the appeal and to reverse the conviction because of a violation of the right to counsel in the conciliation court and the absence of a parent or guardian at the time of sentencing.

The timeliness of the appeal was a fairly simple issue. Criminal Procedure Code Article 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 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." The Juvenile Code also requires the presence of a parent at other stages of the proceedings. Indeed, Article 11 provides:

1. If a juvenile is brought before any court to stand trial for any crime, the court shall, before the start of the hearing, explain to him in simple language a summary of the charge against him and to ask him if he admits or denies the charge.
2. If he does not admit the charge, the court shall start hearing the prosecution witnesses. On completing the interrogation of every witness, the court shall ask the juvenile, his parent or guardian — if he has no defense lawyer — if he would like to question the witness. The court shall question witnesses, as it deems necessary. It may ask the witness the questions it deems necessary to justify or explain anything in this statement.

In this case, neither a parent nor guardian ever attended the court sessions. Only the social worker was present. 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," as defined by the Juvenile Code, requires the presence of a parent or guardian. Therefore, the 15-day requirement for the appeal filing did not apply because proper notice of the judgment had not been given. The court agreed, and addressing the

merits of the appeal, found that the trial court had erred in proceeding without a parent or guardian present and reversed the conviction.

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In the previous case, the court did not address the issue ILF-West Bank has been raising for a year, which is whether the conciliation court must inform a defendant of the right to counsel in a misdemeanor case by asking whether the defendant has chosen counsel. That issue is still pending in the following case.

The Matter of I.H.I.R. (ILF-West Bank 25) (Attorney Nael Ghannam)

This is a case of delay on appeal. The defendant was charged with possessing drugs in violation of a provision of Articles 7 and 8 of the [Israeli] Military Order Number 558 of 1975. He was arrested on October 31, 2010. All proceedings were conducted in the absence of counsel and the defendant was convicted.

ILF-West Bank has been litigating the question of the conciliation court's obligation to inform a defendant of his or her right to counsel since the first month it opened in September 2010. While the right to free counsel assigned by the court is limited to felony cases in first instance courts under Basic Law 14, Article 307 of the Criminal Procedure Code provides that all procedures applicable to first instance courts — including Article 244 — are applicable to the conciliation court.

Article 244 provides that at the time of the reading of the charges “the court asks the accused if he has chosen a defense counsel, and if he has not done so because of the paucity of his financial resources the president of the court appoints one for him.” ILF-West Bank has been arguing that under this article, a conciliation court dealing with a misdemeanor does not have to appoint free counsel, but nevertheless must “ask the accused if he has chosen counsel” according to the first clause of the article and Basic Law Article 12 and 14 ensuring the right to counsel for the accused. By posing that question, the court informs the defendant of his right to counsel.

The defendant in this case was convicted on January 2, 2011. ILF-West Bank stepped into the case the next day and on January 13, 2011, filed an appeal arguing that the conviction should be reversed because the defendant was never asked if he had chosen counsel; and therefore, the conviction was obtained in violation of the right to counsel.

The prosecutor's office opposed the appeal and the matter was set for decision on February 17, 2011. On that day, the matter was adjourned to March 24, 2011, then to April 28, then to June 2, June 16, September 8, October 13, October 20, November 24, December 29, 2011, January 12, 2012, and now February 2, 2012. Three adjournments were due to the absence of the defendant. All the others were unjustified adjournments.

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Courts continue to postpone decisions and cases are repeatedly adjourned. The following provides an update on delays discussed in the last edition and describes several additional cases.

In the Matter of L.J.Y.D. (ILF-WB 94) (Attorney Nael Ghannam)

Our client, a juvenile, was accused of throwing a rock in the eye of the complainant during a fight in a schoolyard in May 2011. He was charged with assault pursuant to Article 333 of the Penal Code. Article 333 provides that “whoever intentionally assaults a person through beating or injuring or harming him/her

by any effective act of violence, and the assault resulted in an illness or that the victim is prevented from carrying out the duties of his/her work for a period more than twenty days, he/she shall be punished by imprisonment from three months to three years.”

The defendant admitted to throwing a stone, and the only open question remaining is whether the complainant missed 20 days of school. A medical report shows that the complainant suffered a minor cut under the eye requiring one suture. For months, the court has been waiting for the complainant to see the court doctor to get a document showing the number of days the complainant was out of school. The complainant never came to court, and therefore never saw the court doctor. Aside from the questionable reliability of such a document, it is clear that an injury requiring one suture would not justify staying out of work or school for 20 days. ILF-West Bank asked the court to draw this simple inference and dismiss the charges, but the court has refused.

Since September 6, 2011, the court has been adjourning the matter to get a medical report specifying the number of school days missed. The case has been adjourned until February 21, 2012. Though our client is out on bail, he must miss school every time there is a court date.

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, September 29, 2011, and finally to January 2, 2012. **Since the last edition, the matter has been adjourned yet again until March 14.**

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, and again to September 25, and then to December 25. **Since the last edition, the case has been adjourned yet again until April 10, 2012.**

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, then to January 25, 2011, March 28, June 6, September 26, and then to December 22. **Since then, the matter was adjourned yet again until March 13, 2012.**

In the matter of Q.O. (ILF-WB 51)(Attorney Ali Bazzar) (10-month delay)

The defendant was charged with buying stolen money under JPC Article 412. The defendant pleaded not guilty on March 6, 2011, and the matter was adjourned to March 15, May 17, September 8, December 4, and December 29. **Since the last edition, the matter has been adjourned yet again until January 19, 2012.**

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Acquittals obtained by ILF-West Bank in the past few months illustrate the weakness of the prosecutions undertaken.

In the Matter of M.A. (ILF-WB 31) (Attorney Ali Bazzar)

On January 23, 2011, our client was charged with assault with a weapon. The complainant “believed” the defendant had a gun, but no one saw a weapon. The only witness to the incident saw that the defendant had a mobile phone in his hand. On November 21, 2011, the court acquitted our client. For nearly one year, however, our client had to come to court repeatedly for numerous adjournments.

In the Matter of M.O. (ILF-WB 81) (Attorney Ali Bazzar)

In May 2010, our client was arrested and charged with theft. The offense allegedly took place in April 2007, more than three years before the charges were brought in violation of the statute of limitations. ILF-West Bank submitted an application to dismiss the charges in May 2010. Endless adjournments followed, and on November 29, 2011, 4.5 years after the alleged incident and 18 months after the application to dismiss the charges was filed, the case was finally dismissed.

In the Matter of O.H. (ILF-WB 133) (Attorney Ali Bazzar)

Our client’s mother accused him of breaking a mirror during a dispute and he was charged with criminal mischief for breaking property. The prosecution apparently never asked the complainant about the circumstances of the incident, because at trial she testified that our client had been pushed by another person into the mirror. The charges were pending for six months before our client was acquitted.

ILF-West Bank is pleased to welcome its new International Fellow, Brian Roberts, a lawyer with the Public Defender Service of Washington D.C., and announce the opening of a new office in Jenin.

The new ILF-West Bank office in Jenin is located at Al-Madares Street, Al-Nakheel Building, 6th floor, Jenin (Tel/Fax 04-2503202). 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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