

ILF – West Bank

The International Legal Foundation – West Bank

CASE NOTES – December 2012 – March 2013

Editor's Notes: This edition of the Case Notes reports on decisions that strengthen the right to counsel in conciliation courts (courts with jurisdiction over misdemeanor and noncriminal offenses), and highlight systemic results achieved through proactive litigation, tenacious advocacy, and in depth, working knowledge of the Code of Penal Procedure.

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While the conciliation courts in the West Bank still struggle to implement the right to counsel, court decisions during this period indicate significant progress toward recognition of this right.

In the Matter of M.M.Y. (ILF Jenin 27) (Attorney Ghadanfer Kamanji)

ILF-West Bank represented a client in Jenin charged with theft. On July 2, 2012, the ILF-West Bank lawyer entered the courtroom, approached the court clerk, entered his appearance and explained he was present with his client. While waiting in the courtroom to wait for the case to be addressed by the court, the ILF-West Bank lawyer had to leave to handle another case in another courtroom in the same courthouse. While he was away, the court called the client's case, proceeded with a hearing, and found the client guilty. Standing alone before the court, the client was too nervous to proffer that his counsel was present but had stepped out of the courtroom. The lawyer immediately ordered the court record and discovered that the court did not ask the client whether he was represented by counsel before he began the hearing against the client. On the advice of his ILF-West Bank lawyer, the client appealed the decision.

On appeal, ILF-West Bank argued, among other things, that the Code of Penal Procedure (CPP) requires the conciliation court to ask a defendant if he or she has a lawyer and to appoint a lawyer if the defendant cannot afford one. CPP Article 244 states, "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." While Article 244 does not specifically address conciliation courts, Article 307 makes Article 244 applicable to matters before conciliation courts¹. The ILF-West Bank lawyer argued further that because the court failed to make the inquiry required by Articles 244 and 307, the procedures must be nullified. The appellate court agreed with this argument and reversed the conviction, quoting directly from the ILF-West Bank's pleading in its decision, "If at the time of indictment, the court fails to ask the accused whether he or she is represented by counsel, the trial procedures will be null according

¹ Article 244 appears in Part Two, Chapter V of the Code of Penal Procedure (CPP). Article 307 of the CPP states that, "The provisions of Part Two, Chapter V apply to trial procedures before conciliation courts."

to Code of Penal Procedure Articles 244 and 307.” The court ruled that the trial procedures were null, vacated the client’s sentence and ordered a new trial.

In the Matter of B.A.B. (ILF Ramallah 151) (Attorney Suad Jawan)

A juvenile was arrested on October 20, 2011, and charged with theft under Jordanian Penal Code Article 407. The allegations are that the juvenile, in concert with others, stole car radios from cars near a mosque in Ramallah. ILF-West Bank represented the juvenile, who was arraigned on February 9, 2012.

Over the next year, the case was scheduled for trial approximately five times by either the prosecution or the court. The client appeared at a session scheduled on October 17, 2012, but failed to appear at all other hearings. The trial eventually proceeded on March 7, 2013, but the client failed to appear at that session. The ILF-West Bank lawyer attempted to object to the prosecution’s evidence and submit a final pleading, but the court denied the lawyer the opportunity to make a representation on behalf of the client because the client was not present.

ILF-West Bank lawyers have asserted repeatedly, in applicable cases, that lawyers should be able to make representations to the court when their clients are not present, especially when the prosecution is presenting evidence or a final pleading. The assertion is based on Article 304 of the Code of Penal Procedure, which states, “If the accused ... absents himself from the trial after attending one of its sessions, the court may proceed with its review of the case or continue to review it as though the accused is present, and its judgment may not be challenged except at appeal,” as well as the client’s basic right to present a defense under Basic Law Article 14, “An accused person is considered innocent until proven guilty in a court of law that guarantees the accused the right to a defense. Any person accused in a criminal case shall be represented by a lawyer.” ILF-West Bank has argued that if the client was present, the lawyer would be able to cross examine witness, make objections and submit a final pleading. The denial of the client’s right to assert a defense is a violation of his basic rights and is a disproportionate response to the client’s absence from court, particularly when, as in this present case, the client had previously appeared for a trial that has been repeatedly delayed.

In the past, courts have rejected this argument; not only denying lawyers the right to represent the client but also to have their objection noted for the record. In this case, the court ultimately refused to allow the lawyer to present a pleading; however, the court took the critical step of allowing the ILF-West Bank lawyer’s arguments into the record. This was a key ruling by the court that will allow ILF-West Bank to appeal the matter to further the litigation of this issue.

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After much resistance, courts in the West Bank are showing an increasing willingness to recognize their power subpoena police officers. ILF-West Bank asserts that it is the government's burden to be prepared to present legal and relevant evidence against the accused; however, during this period, courts showed an interest in addressing the issue on an administrative level.

In the Matter of M.H.N. (ILF Ramallah 58) (Attorney Suad Jawan)

On March 25, 2011, ILF-West Bank's client and his co-defendants were allegedly intoxicated in a car near a national security check point. The police officers at the check point requested that the passengers exit the car, which they allegedly refused to do. At some point the client allegedly exited the vehicle, and is accused of assaulting the police officer and resisting arrest. Then, all of the defendants allegedly began cursing and insulting the police officer. The client allegedly threatened to kill the police officer and taunted that his brother works as a presidential guard. All of the individuals were arrested. ILF-West Bank's client was charged with assaulting a public official under Jordanian Penal Code Article 187, and abuse of alcohol under Article 390.

To date, the prosecution has adjourned the session nine times because the police officers failed to appear as witnesses. At each session, the prosecution explained that the court clerk failed to notify the witnesses and requested an adjournment for the clerk to re-notify the police officers. On May 13, 2011, at the request of ILF-West Bank, the court ordered the court clerk to send a memo to the head of police in an attempt to secure the appearance of the witnesses for the next session. The head of police was not notified and the witnesses did not appear.

The ILF-West Bank lawyer objected to the prosecution's adjournments based on the client's right to speedy and fair trial under Articles 12 and 30 of the Basic Law. Article 12 states, "Every arrested or detained person ... shall have the right to contact a lawyer and to be tried before a court without delay," and Article 30 states, "...Litigation procedures shall be organized by law to guarantee prompt settlement of cases." Specifically, the ILF-West Bank lawyer requested that the court either dismiss the case or request that the prosecution end its presentation of evidence without the witness testimony, which would allow the defense to then conclude the case.

On September 12, 2012, the court explained that the responsibility to notify witnesses rests with the court clerk, and though it once again rejected the ILF-West Bank lawyer's argument under Basic Law Article 12 and 30, the court did send a memo to the Head of the Court (HOC) requesting an investigation into the court clerks' failure to send notices. On February 4, 2013, the witnesses were still not notified by the court clerk. The court ordered that the entire case file be sent to the HOC to determine the cause of the court clerk's failure to properly notify witnesses, and requested that legal action be taken where necessary to ensure the presence of the witnesses and to rectify the clerk's error.

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During this period, ILF West Bank lawyer's zealous advocacy and knowledge of the Code of Penal Procedure resulted in successful decisions for their clients.

In the Matter of M.A.A. (ILF Ramallah 195) (Attorney Suad Jawan)

On December 12, 2012, ILF-West Bank's juvenile client was arrested for theft under Article 404 of the Jordanian Penal Code. The client was detained; however, no charges were filed by the prosecution and, to date, no details have been presented regarding what the client allegedly stole. At the time that ILF-West Bank was appointed to the case, the client had been in custody for over a week.

After being arrested, the client was detained and brought before the court for a remand hearing. At the hearing, the prosecutor requested to detain the client for an additional 15 days. The only basis for this request was, "to complete investigation." The ILF-West Bank lawyer objected based on Code of Penal Procedure Article 119, which states, "If the procedures of the investigation entail the detention of the arrestee for more than twenty-four hours, the deputy prosecutor may request the conciliation judge to extend the detention for a period not exceeding fifteen days." The lawyer argued that the prosecution failed to provide evidence that establish that "the procedures of the investigation entailed the client's detention" and failed to establish that there were incomplete interrogation procedures that required the detention of the client. However, the court accepted the prosecution's assertion and extended the client's detention for 15 days.

At the expiration of the extension period, the prosecution made a second request to extend the client detention for 15 days, again stating only that the further detention was needed "to complete investigation." The ILF-West Bank lawyer again objected, arguing that the prosecution's request must be denied because the prosecution must not only show that the investigation entailed the detention of the client, but when making subsequent detention requests must state additional reasons for the detention, or explain the need for more time to complete the previous investigation. The ILF-West Bank lawyer further argued that the general assertion that the client detention was needed "to complete investigation" was wholly insufficient. Despite the ILF-West Bank lawyer's arguments, the judge again granted the prosecution's request.

At the third detention extension hearing, the prosecution once again made the same bald assertions. The ILF-West Bank lawyer argued again that under Code of Penal Procedure Article 120, "The conciliation judge may, after hearing the statements of the representative of the Public Prosecution and the accused, release or detain the accused." Again citing Article 119, she urged the court to review the case file to determine what investigation the prosecution had done over the last 30 days that would require continued detention of the client. Upon reviewing the file, the court found that the prosecution had not done any investigation since the client's initial interrogation, which took place within 24 hours of his arrest. The court granted the client release on bail bond.

In the Matter of I.F.S. (ILF Ramallah 143) (Attorney Sawson Baniodeh)

ILF-West Bank's juvenile client was arrested on September 14, 2011, and subsequently charged with misdemeanor theft under Article 407 of the Jordanian Penal Code. The prosecution alleged that the client stole a laptop from a car parked on a public street.

At trial, the prosecution presented only one witness who testified that he owned the laptop and that it was taken from his car, but had not actually witnessed the theft. The prosecution also attempted to enter the client's statement from a separate and unrelated case to establish a connection between the client and the theft of the laptop. The prosecution did not present any witnesses to testify about the circumstances under which the unrelated statement was taken. The ILF-West Bank lawyer objected, arguing that according to Article 227 of the Code of Penal Procedure, "The statement made by the accused to judicial officers in which he confesses to the crime is admissible if the Public Prosecution presents proof of the circumstances in which it was made and the court is convinced that it was made voluntarily and freely." Therefore, such an uncorroborated statement is inadmissible. The court agreed and, having no evidence other than the owner of the laptop who did not see the theft occur, dismissed the case.

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ILF-West Bank would like to thank Marie Pierre-Py, a public defender from the Public Defender Service of D.C. and Shama Farooq, deputy public defender for the City of Fredericksburg, Virginia who served as International Fellows during this period.

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New York
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