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Military Court in Ramallah

Misc. Mot. 256/91

## **DECISION**

On 27 August 1992, the minor son of the appellant was arrested while throwing stones at IDF soldiers. In accordance with the minors' procedure, the minor's brother was directed to post a bond of NIS 1,000. The parents were not required to post the bond because of the brother's contention that the father had a serious health problem, and the brother stated that he agreed to serve as the minor's guardian.

Subsequently, the demand that the brother post the bond was cancelled upon the recommendation of the legal advisor, who determined that the procedure taken was improper because the parents of the minor, being alive, were his guardians.

The minors' procedure began anew, and the appellant, the mother of the minor, was required to post a bond in the amount of NIS 2,000.

The appellant filed this motion appealing against the said requirement to post bond, and written briefs were filed by the military prosecutor and defense counsel. In its opening comments, the prosecution stated that, as an act of benevolence, it agreed to reduce the sum of the bond from NIS 2,000 to NIS 1,000.

Defense counsel raised four arguments against the legality of demanding the said bond, which I shall discuss in order:

A. The entire proceeding, including hearing the appellant, must be conducted before a "military commander" as he is defined in the Order Regarding Supervision of Minors' Conduct (Imposition of Bond) (Temporary Order), 5748 – 1988 (hereafter: the Order). In Section 1 of the Order, "military commander" is defined, inter alia, as "an IDF officer holding the rank of major or above who has been empowered in the matter of this Order..." Appellant's counsel argues that the documents were not written and the arguments of the appellant were not heard by a "military commander" as defined, but by an officer holding a rank lower than major (apparently Second Lieutenant Hamdi).

The prosecution agrees that, in the present case, it may be that Major Amir Safdi, who signed forms B & C, and who imposed the bond did not write the bond instrument with his own hands, nor did he personally hear the appellant. However, the prosecution contends there was no flaw in doing so.

In my opinion, the act was done as an auxiliary power of the "military commander" that is necessary for the proper operation of administration, and that it was technical in nature, and thus was not improper.

As regards hearing the appellant, this, too, does not have to be conducted by the military commander himself. Section 4 of the Order grants the right to the appellant to state her arguments prior to an order that bond be posted, but it does not state that the military commander himself must hear the appellant (see H CJ 290/65, *Altgar v. Mayor of Ramat Gan, Piskei Din* 20 (1) 29).

B. The appellant was not advised of her right to appeal the demand that she post the bond – This contention is unfounded. Section 7 of the bond instrument expressly mentions in Hebrew

and in Arabic that the appellant has the right to appeal to the court regarding imposition of the bond. The appellant signed this form.

In any event, even if the appellant's contention is correct, her said basic right was not infringed because she filed an appeal to the court and a ruling was given.

C. The legal advisor or the military prosecutor did not confirm that there was prima facie evidence against the minor. Section 2 of the Order supports the requirement that there be prima facie evidence against the minor before imposing the bond on the parents. Study of Form D indicates that a discussion was held between Second Lieutenant Shachar, of the Civil Administration, and Captain Avinoam Sharon, of the office of the legal advisor, in the said matter, at the end of which, as mentioned in the said form, "imposition of the bond is approved," which indicates to me that the conversation between the two revolved around the question of whether there was prima facie evidence against the minor, and when the representative of the legal advisor was convinced in that conversation, even if it was held by telephone, that there indeed was prima facie evidence, the said confirmation was given. It should be noted that discussion with the prosecutor or representative of the legal advisor in the said matter can be done also by telephone, and that such action does not contradict the provisions of the Order.

D. The little evidentiary material is insufficient to justify imposition of the bond – This argument is unfounded. The Order requires that there be prima facie evidence only. The arrest by soldier in the field form, a photocopy of which is before me, also constitutes prima facie evidence against the minor, and more than one defendant has been convicted by this court in reliance on the sole testimony of a soldier who completed such a form following his arrest of a suspect.

E. The administrative power should not be used against the minor twice for the same incident, following the demand that the brother post the first bond – First, it should be said that the power in this matter is not exercised against the minor, but against the guardian, and the first decision, which was cancelled, was against the brother of the minor and not against the appellant. Furthermore, requiring the minor's brother to post the first bond was done without authority, and its cancellation does not prevent another decision from being made in the same matter against the appellant (see in this matter Civ. App. 433/80, *Piskei Din* 37 (1) 337, 351, and H CJ 727/88, *Piskei Din* 42 (4) 487, 492 – where it was held that a decision of an authority that contravenes statutory law or is made without due authority, does not prevent the authority from retracting it and giving another decision in its place).

In closing, I would like to state my displeasure at the manner in which authority officials fill out the forms related to the imposition of bonds. The forms should be completed with greater attention and not casually. The officials should mention if, indeed, the legal advisor or the military prosecutor confirmed that there was prima facie evidence. The form should also set forth the details of the official who conducted the meeting at which the parents of the minor were able to state their case, and whether he was authorized to act in this matter by the "military commander."

Filling out the forms precisely will save much of this court's valuable time in hearing at least some of the appeals filed with it.

Lastly, I reject the arguments raised by appellant's counsel in this appeal, and, in light of the prosecution's declaration, I direct that the instrument of bond against the appellant be altered such that the amount of obligation be only NIS 1,000. All the other terms of the instrument of bond shall remain in effect.

The court clerk's office will inform the parties of the contents of this decision

Given in the absence of the parties, today, 29 April 1992

*[signed]*  
True Copy of Original  
Rami Yuval, Attorney

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*[signed]*  
Major I. Tsarum