* **Case 313/2015**

**Court of First Instance Decision on 02/05/2017**

**Date of Appeal 30/06/2017**

**Court of Appeals Decision on 14/11/2018**

**Case Name**: {*Defendants Identity Protected*} *v. Public Prosecutor*

**Decision Date**: 14/11/2018

**Court (Supreme, Constitutional, Appeals, etc.)**: The Misdemeanors Court of Appeals in Beirut

**Primary Issue**: The Court refused to convict the defendants, based on their feelings and sexual orientation.

**Case Abstract;**

The Misdemeanor Court of Appeals in Beirut issued a decision revoking the prosecution of three young men, Lebanese and Syrian, who were alleged to have had sexual relations.

The Syrian defendant had been subject to torture and inhuman treatment and his privacy rights violated by forcing him to open his mobile during the preliminary investigations.

After assigning the Syrian defendant to the “Office for the Protection of Morality”, he was surprisingly faced by the subpoena of two Lebanese young men who previously contacted him through text messages, and then they were investigated and asked about their private and sexual life.

The Public Prosecutor, based on these investigations, filed a suit against the defendants claiming that they had “unnatural sexual intercourse”.

The Individual Penal Judge in Beirut proceeded with the trial and convicted the three defendants for the offense of having “unnatural sexual intercourse”, based on Article 534 of the Lebanese Penal Code in addition to fining each one of them 500,000 L.L (333$ at the time) basing the decision on the confessions extracted under torture and the information extracted from the defendants’ mobiles without a judicial order.

The Misdemeanors Court of Appeals in Beirut[[1]](#footnote-1) appealed the decision by revoking the investigation of the three defendants based on failing to present the material element of the crime.

**Facts;**

1. Investigations:

A young Syrian man residing in Lebanon, who sought refuge from war and destruction in his home country, studying at a Lebanese university. He went to the General Directorate of Public Security to renew his student permit and he did not return until 9 days later.

He was arrested on suspicion of homosexuality and alleges that he was subjected to violent beatings in order to extract confessions from him that he is gay. Also, it was said in the investigations that the arrest was based on information, only the investigator did not state the source of that information. The investigators also opened an investigation report with him without prior permission from the Public Prosecution and forced him to open his mobile for inspection.

Then he was referred to the “Office for the Protection of Morality” for further investigation.

He was surprised, then, that two Lebanese young men were subpoenaed that contacted him using text messages through dating app (Grinder), and they were interrogated about their private lives and their sexual orientation as well. The two youths were not subjected to beatings and torture, as was the first.

The authorities released the two Lebanese men, and after a few days, they released the Syrian young man after completing his residency papers.

The Syrian young man recounts that he was subjected to: “Excessive beatings by a creepage consisting of a set of electric cables, slaps, punches, kicks in the hands and legs all over his body, a threat of rape and anal examinations, and they subjected him to compulsion to test for AIDS (which resulted in a negative result), and also subjected to insults and degrading treatment throughout his detention”.

1. Appealing Public Prosecutor:

The Appealing Public Prosecutor Office appealed the findings of the investigations and claimed that the three young men committed the act of “unnatural sexual intercourse” mentioned in Article 534 of the Penal Code.

The number of arrests on this charge increased from less than 50 people in 2012 to more than 75 people annually in 2015 and 2016, according to statistics from the “Office for the Protection of Morality”, which in 2014 became the "Office Anti-human Trafficking and the Protection of Morality". The actual number of arrests related to homosexual tendencies is likely to be more than the number stated in the Office’s records, as not all detainees are referred to the mentioned authority, especially those arrested outside Beirut and Mount Lebanon or by other security agencies.

1. Court of First Instance (The Individual Penal Judge in Beirut):

The Individual Penal Judge in Beirut, competent for infractions and misdemeanors, proceeded with the trial charging the three defendants with "unnatural sexual intercourse".

The first defendant asked the judge to hear his testimony as a victim and invalidate what the investigations concluded from him as torture crimes and demanded the suspension of his trial, in accordance with his legal right stipulated in [Article 73 of the Penal Procedural Law](http://www.legallaw.ul.edu.lb/LawArticles.aspx?LawArticleID=979513&LawId=244483) that says the defendant can request the annulment of the preliminary investigation procedures before his interrogation and proceeding with the case against them.

The judge rejected these requests without giving reasons despite the law obligating him to do so and continued the case.

The defendant challenged the course of the trial and demanded that the case be dismissed and be heard before another court. However, the court didn’t just reject his request but also imposed a fine of 300,000 L.L (200$ at the time) for the misuse of the right to litigate.

After rejecting these requests without an investigation and based on the confessions extracted under torture and the information extracted from the mobile phones without judicial permission. The Individual Penal Judge in Beirut convicted the three defendants for having “unnatural sexual intercourse” as stipulated in Article 534 (1 year in prison) in addition to fining them for 500,000 L.L (333$ at the time).

**Decision Overview:**

Court of Appeals:

The Court of Appeals in Beirut appealed the ruling of the Court of First Instance against the three defendants after they appealed before it.

Members of the Court agreed on the suspension of the trial of the three defendants, for failing to prove the material element of the crime. In other words, there is no proof that the three defendants had engaged in “unnatural sexual intercourse”.

The Court relied on the fact that the three defendants weren’t arrested in the act, and that the first defendant was arrested based only on information from Anti-human Trafficking and the Protection of Morality office. In addition, one of the defendants denied having sexual relationships with men, and that there was no personal knowledge between him and the other defendant with whom he corresponded.

Among the Court’s body was judge Rabih Maalouf. He supported the court’s decision to drop the charges against the appellants in relation to Article 534 of the penal code. However, he registered his opposition to the legal basis of the Court’s decision. Stating that same-sex relationships are a practice of a natural right without any violations to any laws, based on [Article 183 of the penal code](http://www.legallaw.ul.edu.lb/LawArticles.aspx?LawArticleID=984250&LawId=244611) that states “An act conducted as an exercise of a right without transgression is not a crime”, and another ruling[[2]](#footnote-2) that he issued in Metn Court on 26/01/2017 under the number 15/2017. In which he relied on Article 183 of the Penal Code, where he considered that the alleged actions constitute an exercise of fundamental rights without transgression. And the decision refuted the three conditions imposed to remove the character of the offense from the act, namely: the existence and exercise of the right and non-transgression. In his analysis of the "right", the decision considered that the principle of equality between human beings is one of the most important pillars of a democratic society, on the basis of which everyone has the right to enjoy all rights and freedoms, considering that these rights are attached to the human person because he is a human being, so there is no need to acquire it even if it is rejected by Before the majority of society. This provision has enshrined the right of homosexuals to establish human or intimate relationships with people they want, without any discrimination as to their tendencies, as this is one of the simplest natural rights attached to them as human beings. The decision also indicated that the "World Health Organization" considered that homosexuality is not a disorder or disease, and therefore does not require treatment, "especially so-called remedies or sexual transformation therapies", stressing in return that "it would deprive homosexuals of their natural right in establishing intimate relations between them without discrimination or interference from anyone, compelling them to what is contrary to their nature to be compatible with the nature of the majority, and thus prevent them from enjoying and permitting their close rights to their person, which constitutes a violation of the most basic human rights enshrined in the Lebanese constitution and the laws of universal human rights”.

Also, one of his reasons is the refusal to search the mobile phones without judicial permission, and the statement of the first defendant is inadmissible, citing it as a statement under torture and duress. And the last reason is the invalidity of all investigations after some were marred by major irregularities, according to the rule that what is built on falsehood is false.

The main issue before the Court was to determine if the defendants had violated Art. 534 of the Penal Code and if the First Instance Court had applied the law correctly.

The Court refused to convict the defendants, based on their feelings and sexual orientation. At the same time, it tightened the evidence required to convict them for their sexual activity (the act of sexual intercourse), as long as it was not proven that they had any sexual relationship and/or they haven’t been caught in the act. This position comes in a completely different direction from the position previously adopted by the Felony Court in Beirut (June 2016) and the Court of Cassation (October 2016) in one of the cases, where they decided to convict a Lebanese young man just because he said he was gay and had had same-sex relations, without having any evidence of the occurrence of any specific act.

As for Judge Maalouf’s opposition to the legal basis of the decision, we can conclude that the penal legislator approved the principle of protecting the individual in the exercise of their rights, and made depriving an individual of their rights only an exception, as stipulated in Article 183 of the Penal Code that states “An act conducted as an exercise of a right without transgression is not a crime”. Consequently, the Court considered that homosexuals have the right to establish human or intimate relationships with other people, without any discrimination in terms of their sexual orientation or any preference or interference from anyone, like other people. As this is one of the simplest “natural rights” attached to them as human beings, and depriving homosexuals of their “natural right” to establish intimate relationships with one another without discrimination or interference from anyone, would lead them to be obligated to what is contrary to their nature to fit with the majority’s nature. Hence, preventing them from enjoying their rights inherent to their personality, in violation of the most basic human rights enshrined in international human rights documents, especially [Article 12 of the Universal Declaration of Human Rights](https://www.un.org/en/universal-declaration-human-rights/) and in the Lebanese constitution and laws particularly [Article 2 of the Law | No. 140 dated 10/27/1999](http://www.legallaw.ul.edu.lb/LawArticles.aspx?LawTreeSectionID=277932&LawID=198664&language=ar) on safeguarding the right to the confidentiality of correspondence through any means of communication, stipulating that the judge in charge of the investigation alone and not others have the right to reveal the confidentiality of the correspondence in cases of extreme necessity, and in the context of prosecuting an offense punishable by deprivation of liberty for a period of time Not less than one year, and the decision must be written and justified.

Thus, the ruling draws a silver lining between what is considered private life that the state, the judiciary and society cannot interfere with (feelings and consensual sexual relations between adults in private property with a disregard for the sex of the involved parties), and what falls outside private life and the society can interfere with (sexual relations in public places, non-consensual sexual relations or relations involving minors). In addition to confirming the right to protect private life and privacy. In the hopes that Article 534 of the Lebanese Penal Code be abolished.

**Importance of the ruling;**

The ruling establishes a new jurisprudence of the limits of the law with regard to consensual relations and the Lawyers will be able to rely on it as a judicial precedent, corrects the judicial process and strengthens the role of the judiciary in protecting rights and freedoms. Especially with Judge Maalouf’s registered legal basis providing that same-sex relations are an exercise of a natural right, and the illegality of accessing mobiles and text messages unless there’s an extreme necessity, which wasn’t the case in the appealed ruling.

**The Ruling;**

Available at:

**[https](https://humena.org/wp-content/uploads/2019/12/%D9%82%D8%B1%D8%A7%D8%B1-%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D8%B3%D8%AA%D8%A6%D9%86%D8%A7%D9%81-%D8%A7%D9%84%D8%AC%D9%86%D8%AD-%D9%81%D9%8A-%D8%A8%D9%8A%D8%B1%D9%88%D8%AA-%D9%81%D9%8A-14-11-2018.pdf)**[**://humena.org/wp-content/uploads/2019/12/قرار-محكمة-استئناف-الجنح-في-بيروت-في-14-11-2018.pdf**](https://humena.org/wp-content/uploads/2019/12/%D9%82%D8%B1%D8%A7%D8%B1-%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D8%B3%D8%AA%D8%A6%D9%86%D8%A7%D9%81-%D8%A7%D9%84%D8%AC%D9%86%D8%AD-%D9%81%D9%8A-%D8%A8%D9%8A%D8%B1%D9%88%D8%AA-%D9%81%D9%8A-14-11-2018.pdf)

**International Overview;**

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**Related References;**

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1. Decision of the Misdemeanors Court of Appeals in Beirut available: [https://humena.org/wp-content/uploads/2019/12/قرار-محكمة-استئناف-الجنح-في-بيروت-في-14-11-2018.pdf](https://humena.org/wp-content/uploads/2019/12/%D9%82%D8%B1%D8%A7%D8%B1-%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D8%B3%D8%AA%D8%A6%D9%86%D8%A7%D9%81-%D8%A7%D9%84%D8%AC%D9%86%D8%AD-%D9%81%D9%8A-%D8%A8%D9%8A%D8%B1%D9%88%D8%AA-%D9%81%D9%8A-14-11-2018.pdf) [↑](#footnote-ref-1)
2. Decision of the Misdemeanors Court of Appeals in Metn. Available at: [https://humena.org/wp-content/uploads/2020/01/قرار-محكمة-المتن.pdf](https://humena.org/wp-content/uploads/2020/01/%D9%82%D8%B1%D8%A7%D8%B1-%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D9%85%D8%AA%D9%86.pdf) [↑](#footnote-ref-2)