CASE ANALYSIS

Badna Nhasib Movement & Others vs. Public Prosecutor

**Summary and Outcome**

On December 30, 2019, the Individual Penal Judge in Beirut (the Court) revoked the proceedings against the defendants based on the unavailability of criminal elements in relation to the two offences stipulated in Articles 346 and 347 of the Penal Code.

The Acting Public Prosecutor before the Individual Penal Judge in Beirut opened an investigation on the gathering of around 150 individuals from civil society movements at downtown Beirut across from the Grand Serial, while a Ministerial Session was scheduled to take place, to protest the waste crisis in Lebanon. The defendants later proceeded to the Ministry of Environment where they engaged in a sit-in at the Ministry refusing to leave the premises. After closing the investigation, the proceedings were initiated against the Badna Nhasib Movement before the Court.

The Court justified its decision by insisting that the defendants’ presence and refusal to leave does not fall within the exclusively enumerated cases of riots and disturbances stipulated in Articles 346 and 347 of the Penal Code.

**Facts**

The Public Prosecutor considered that citizens should follow the orders of Security Forces, and thus the defendants should have left the building of the Ministry of Environment as per their request.

The Public Prosecutor also considered that after having arrested the defendants and taken to the Al-Helo Barracks building, they shouldn’t have stood in front of the vehicle that transported the detainees and held onto it, where there was a stampede and conflict that led to injuries.

This led the Public Prosecutor to issue proceedings to prosecute the defendants; Badna Nhasib Movement represented by Wassef Habib Al-Harakeh, Pierre Kalim Al-Hachach, Mohammed Nabil Adeis, Hady Nidal Menla, Hani Ramez Fayad, Sadek Ali Behloue, Waref Nasr Sleiman, Jad Bashir Al-Aridi, Ali Mohammed Hammoud, Khodor Issam Al-Anouar, Abdel Kader Salim Al-Bay, Samer Amin Hamed, Rashid Marwan Oseirat, Mohammed Ghassan Harb, and Hussein Mohammed Al-Mous based on Articles 346 and 347 of the Lebanese Penal Code with respect to the sued defendants concerning the sit-in to protest the waste crisis in Lebanon at the Ministry of Environment for crowding in a place permitted to the public which is considered a riot and punishable by imprisonment from one month to one year: if it consisted of at least seven people with the intention of protesting a decision or measure taken by the public authorities with the intention of pressuring them, and if the number of people amounted to twenty with an appearance that would disturb the general reassurance and peace.

The defendants, represented by Lawyer Wassef Al-Harakeh stated that after their gathering across the Grand Serial, and after having knew that the Ministerial session was postponed, the defendants at his request, they spontaneously went to the Ministry of Environment without any prior agreement, especially since they learned through the media that the Minister of Environment invited any person affected by the waste crisis to go to his office and present his demands, and that they are all members of the “Badna Nhasib” movement whose legal committee had previously submitted several judicial and administrative complaints before the competent ministries, i.e. the Ministry of Environment, Health and Industry, which haven’t been decided upon, neither negatively nor positively, and neither were they informed of their course and the stages they are at.

The defendant explained that upon their arrival to the eighth floor i.e. the office of the Ministry of Environment, they visited the office of the Head of the Department in compliance with relevant regulations, instead of going straight to the office of the minister who was present in his office at the time. The defendants requested to meet the minister to discuss the issue of the waste crisis as well as inquire about the fate of the complaints which they had previously submitted. The Head of the department asked them to wait in the hall while she talks to the Minister, where they waited without any quarreling, screaming, insults, or threats, or any acts that violate security or fall under the framework of riots.

Wassef Al-Harakeh added that ten minutes later, the lights were turned off, the exits were closed, and the Head of the Department was given permission to leave, then the Security Forces came and informed the defendants that a decision had been made to forcibly remove them from their whereabouts. The defendant Al-Harakeh informed the Security Forces that they await the Minister’s decision on their request for a meeting, and in the case of his refusal, they would leave. The Security Forces forced them out by handcuffing them, without warning them that they should leave in a normal and calm manner, but rather in a provocative and cruel manner, and that they couldn’t have possibly have assaulted anyone since they were outnumbered and handcuffed.

The charges of which the defendants were accused are Article 346 of the Penal Code which states that

*“Every crowd or procession on public roads or in a place permitted to the public is considered a riot and punishable by imprisonment ranging from one month to one year: if it consisted of three or more people with the intention of committing a crime or misdemeanor and at least one of them was armed, if it consisted of at least seven people with the intention of protesting against a decision or measure taken by the public authorities with the intention of pressuring them, or if the number of people amounted to twenty and appears to disturb the general reassurance”.*

And Article 347 of the Penal Code stating that

*“If people gather in a way, and are warned to disperse by a representative of the administrative authority, or an officer of the judicial police, he shall announce his coming if the circumstances require a drum beating or blowing in the trumpet or whistle or by any other similar method. Those who act before the authority’s warning or immediately comply with its warning without using their weapons or committing any other misdemeanor shall be exempt from the penalty imposed above”.*

**Decision Overview**

Judge Abir Safa delivered the judgement of the Individual Penal Judge Court in Beirut in regards to the lawsuit filed by the Public Prosecutor against “Badna Nhasib” movement & Others after their sit-in protest at the Ministry of Environment which the Public Prosecutor considered to have disturbed public peace and safety, while the defendants argued that the purpose of their gathering in at the Ministry of Environment was to reach practical solutions to the waste crisis in Lebanon that is threatening citizens’ health, environment, and daily lives, and that their gathering did not include any quarreling, screaming, insults, or threats, or any acts that violate security or fall under the framework of riots.

The Individual Penal Judge in Beirut saw that “the crimes stipulated in Article 346 of the Penal Code is achieved as a result of a gathering of people with the intention of committing a crime or misdemeanor and at least one of them was armed, or with the intention of protesting against a decision or measure taken by the public authorities with the intention of pressuring them, or if it appears to disturb the general reassurance.

However, it is necessary to refer directly to the fact that the material elements that constitutes the aforementioned crime were not present in this particular gathering”.

The Court relied on the fact that the defendants’ gathering at the Ministry of Environment was absolutely peaceful and did not fall under the conditions mentioned in Article 346 of the Penal Code, and that the defendants did not refuse to leave the premises but demanded that their request for a meeting be answered even if it were negatively so.

Reference made to the above, the Court revoked the proceedings attributed to the defendants, and judged in maintaining all legal expenses.

**Decision Direction**

The importance of this decision bythe Individual Penal Judge in Beirut doesn’t lie in acquitting the defendants based on the absence of moral and material elements of the crime mentioned in Articles 346 and 347 of the Penal Code, but in limiting the Public Prosecutor from abusing its jurisdiction to go after activists, through limiting the Prosecutor’s interpretation of vague terms and clauses in the law, since the Court wasn’t able to base its decision on the right to freedom of expression and assembly.

It is also important to note that the timing of the decision (December 30, 2019) came during the country’s largest known demonstrations, which sets forth the principle of freedom of expression especially when many activists have been summoned for investigation and even unlawfully arrested for protesting against the current government and the ruling political parties and their methods of governance.

**Global Perspective**