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Increased Enforcement of Defense Export Control - First Criminal Trial Ruling

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The intent behind the Defense Export Control law, 2007 ("the law"), and the various regulations and orders enacted thereunder, is to regulate defense export on the grounds of national security, foreign policy, international commitments and other crucial interests of the State of Israel.

In a series of articles published by our firm (see links below), we reviewed the foundations of defense export control, ongoing business conduct and procedures relating to various government authorities.

In the aforementioned articles we noted the risks of violating the law, including the possibility of criminal prosecution against an exporter who violates the law.

In this article we will review the first criminal trial of an Israeli exporter for violating the Defense Export Control law, finding him guilty. We will conclude with a review of the trial's implications.

Case Facts:

The accused is a certified practical electronic engineer, as well as a trained broadcast engineer. He possess vast knowledge of both military and commercial two way radio devices. This knowledge was acquired throughout his military service in the Teleprocessing Corps, as well as during his employment in a communications company which, among its other activities, produces two way radio devices.

From 2004 and up until 2013, the accused purchased a massive quantity of two way radio devices, parts and accessories. The equipment included, among other articles, military two way radio devices, receivers for regular and armored vehicles, control consoles, speaker microphones and more. This

equipment was intended for military use, and possessed advanced transmission and encryption capabilities. The accused know of the equipment's characteristics and purpose, and that such equipment is used by security forces, such as the IDF.

Between 2008 and 2013, the accused would regularly purchase the equipment from three different contractors, who at the time supplied the Defense Ministry and a communications company with scrapping and certified destruction Services. The accused built a lab he used to repair the equipment so that he may market and export it. The accused refrained from obtaining a marketing and / or export license from the relevant authorities.

After repairing the equipment, the accused would market and export the equipment beyond the borders of Israel via an online "eBay" account. This platform does not allow for prior knowledge of the identity of the purchasers, nor does it provide any information as to the intended use of the equipment (be it military or civilian in nature).

In most of his transactions, the accused provided false details on his shipping certificate and customs declaration, defining them as "presents", thus significantly reducing the true value of the equipment.

The accused was involved in hundreds of transaction over the said years, worth over 200,000\$ altogether.

The State indicted the accused, charging him with violation of the Defense Export Control law.

Arguments and Verdict:

The state claimed that as a result of the accused actions, the IDF was exposed to military threats, and vital interests of the state were endangered, as well as its foreign relations and international commitments. The head of the Defense Export Control Authority (the "DECA") testified on behalf of the state, pointing out that unlicensed export of equipment marked as property of the IDF may also harm the perceived image of the State of Israel, especially if the destination and end-use of the product are unknown.

The state asked the court for an imprisonment sentence, due to the severity of the damage to the state's interests and the large scope of the violation. Even so, the state emphasized that this is the first criminal trial ruling in Israel for violation of the Defense Export Control law. Therefore, the state deemed it appropriate to request a mitigated sentence, in order to establish deterrence without resorting to the harshest measures sanctioned by law.

In light of the above, the sides reached a plea bargain. The fact that the accused admitted his crimes, claimed responsibility and expressed his regret were all mitigating factors in the plea bargain. Moreover, the accused cooperated with the investigators, leading them to a previously unknown warehouse containing large quantities of equipment. According to the plea bargain, the accused will be sentenced to four and a half months of community service, a probation period and a 70,000 ILS fine to be paid to the state.

The court noted in its ruling that it believes the minimum bar of punishment for defense export crimes will be imprisonment.

Even so, due to the special circumstances of this case, the plea bargain signed by the sides and the fact that it is the first criminal trial ruling for violation of the Defense Export Control law, the court ruled according to the plea bargain. The accused was sentenced to four and a half months of community service, an eight month imprisonment sentence suspended on probation for three years, and a 70,000 ILS fine to be paid to the state.

[Criminal Case (Magistrate Court of Rehovot) 11119-03-15 **State Attorney's Office, the Economic Division Vs. Ilan Shimon Yaakobi**, ruling from 11.10.15, presiding judge: Einat Ron]

Summary and Conclusions - the Implications of the Ruling:

We view this ruling as the onset of a new trend in defense export control enforcement. As stated by the verdict of the court, the proper punishment for violations of defense export law is imprisonment. Even though the actual punishment in the case was community service, it is important to remember that this is due to the special circumstances of the case, the plea bargain signed by the sides and especially the fact that it is the first criminal trial ruling for violation of the Defense Export Control law.

The words of the court were very clear on this subject: "**The prosecution's stance on the proper realm of punishment in such cases, that is to say the minimum bar of punishment being imprisonment, seems appropriate.**"

In view of this sentence, and the trend it may be the precursor to, the importance of complying with defense export control laws and regulations is highlighted. Although compliance is at times complex, requiring the aid of export control experts, it may prevent the exposure of businesses, companies and executives to criminal prosecution.

For previous reviews of Defense Export Control law, please see the following links:

<http://www.nadel-law.co.il/Index.asp?ArticleID=2949&CategoryID=282&Page=1>

<http://www.nadel-law.co.il/Index.asp?ArticleID=2943&CategoryID=282&Page=1>

<http://www.nadel-law.co.il/Index.asp?ArticleID=2942&CategoryID=282&Page=1>

<http://www.nadel-law.co.il/Index.asp?ArticleID=2941&CategoryID=282&Page=1>

<http://www.nadel-law.co.il/Index.asp?ArticleID=2899&CategoryID=282&Page=2>

**The above review is a summary. The information presented is for informative purposes only,
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