

Decision of the Constitutional Court regarding appeal case No (3) of 2022

**Rendered in the esteemed name of His Majesty King Abdullah II Ibn Al
Hussein,**

Monarch of the Hashemite Kingdom of Jordan,

The court is chaired by Deputy Chief Judge Mohammad Al-Mahadeen, and composed of the distinguished members Dr. Akram Masa'eed, Taghrid Hikmat, Dr. Maysa Baydoun, Mohammed Talal Al-Homsi, Hani Qaqish, Mohammed Ass'aid, and Hussein Al-Qaisi.

The Court's decision regards the appeal brought forth by the appellant (plaintiff) Marcini Chuladi Darus, an Indonesian national, represented by legal counsels Mahmoud Al-Aqtash, Iman Ayyash, and Ahmed Mutalqa, pertaining to the civil lawsuit No. (5408/2022) filed with the Court of Cassation to challenge the constitutionality of Article 3, paragraph (3), Article 5, paragraph (2), and Article 8 of the Crime Prevention Law No. (7) of 1954, alleging that these articles breach the provisions outlined in Articles (8, 27, 101, 102, 103, and 128) of the Constitution.

After perusal of all documents, records, and judicial decisions enclosed with the case file forwarded by the Court of Cassation, in accordance with the ruling handed down in application no. (3/T/2022) dated (8/23/2022), including the present challenge to constitutionality alongside case file No. (5408/2022) presented to the Court of Cassation, as well as case file No. (9157/2021) submitted to the Amman Court of Appeal and case file No (8706/2020) examined by Amman First Court of Instance, it is evident that on 6/4/2016, the appellant "the plaintiff" lodged a civil action lawsuit No. (5726/2016) with the Amman Arbitration Court, subsequently renewed as case No (28659/2019) against the defendants:

1. The Prime Minister, in his capacity, including his title,
2. The Ministry of Interior and the Minister of Interior, including his title,
3. The Public Security Directorate and the Director of the Public Security Directorate, including his title,
4. The Directorate of Correction and Rehabilitation Centers and the Director of Umm Al-Lulu Correction and Rehabilitation Center, including his title,
5. The Governor of Mafraq, including his title

to seek compensation for both material and moral damages, as well as for the loss of earnings resulting from her nearly three and a half years of administrative detention, based on the facts outlined in her statement of claim.

On March 11, 2020, the Amman Arbitration Court ruled that it lacked jurisdiction to adjudicate the case due to its value exceeding the mediation threshold, as stated in the expert report. Consequently, the case was referred to the Amman First Court of Instance, where it was officially registered under No (8706/2020).

On January 27, 2021, the First Court of Instance handed down its judgement, dismissing the case against the Prime Minister and sentencing the remaining defendants, represented by the Deputy Director of the State Cases Administration, to pay to the plaintiff the amount of 17,220 dinars in compensation, inclusive of fees, expenses, attorney's fees, and legal interest.

The Deputy Director of the State Cases Administration lodged an appeal against this judgement, while the plaintiff contested both the dismissal of the case against the Prime Minister and the amount of compensation awarded.

On March 4, 2022, the Amman Court of Appeal issued judgment No. (9157/2021), overturning the previous decision upon the appeal made by the Deputy Director of the State Cases Administration. Consequently, the appealed judgment was nullified. The court directed the dismissal of the plaintiff's lawsuit and the inclusion of associated fees and expenses. Additionally, the plaintiff's appeal was largely rejected, with only the contested portion being considered. Furthermore, the court mandated the appellant to cover the expenses of the lodged appeal, including the plaintiff's attorney fees, totaling (1312) JD for both stages of litigation.

The plaintiff filed an appeal against the appellate judgment with the Court of Cassation, designated as case number (5408/2022). Additionally, she submitted an application challenging the constitutionality of Articles (3/3, 5/2, and 8) of the Crime Prevention Act, which was formally recorded by the Court of Cassation as case number (3/I/2022). Following due process, the Court of Cassation opted to forward this constitutional challenge to the Constitutional Court for review and examination.

On September 14, 2022, the legal representative of the appellant filed a memorandum invoking the provisions outlined in Article (12/a/1) of the Constitutional Court Law.

In accordance with subparagraphs (1 and 2) of paragraph (b) of Article (12) of the Constitutional Court Law, the Presidency of the Court transmitted a copy of the aforementioned referral decision, issued by the Court of Cassation, to the following individuals:

- The Prime Minister.
- The Speaker of the Senate.
- The Speaker of the House of Representatives,

through correspondences sequentially numbered (392, 393, 394) dated (2/10/2022).

The Court received a communication from the Prime Minister, numbered (75097) and dated (12/10/2022), accompanied by a memorandum from the President of the Legislation and Opinion Bureau dated (11/10/2022). The memorandum explains that the challenged provisions of Crime Prevention Law No. 7 of 1954 are deemed constitutional and in alignment with the provisions of the Constitution. Furthermore, it was clarified that the grounds for appeal do not pertain to said provisions.

The Prime Minister requested that the memorandum from the Legislation and Opinion Bureau be considered as his response to this appeal, in compliance with the provisions of Article (12/b/2) of the Constitutional Court Act.

The Court relied solely on the memoranda presented concerning this appeal, which underwent thorough examination in accordance with the provisions stipulated in Article (14) of the Constitutional Court Act.

On the merits:

After careful review, deliberation, and examination of the legislation challenged as unconstitutional, the following has been observed:

Firstly: Article (3) of Crime Prevention Law No. 7 of 1954 stipulates that:

(If it is communicated to the district administrator or if he/she has [indications] to lead him to believe that a person within his/her jurisdiction may belong to any of the categories mentioned below, and if the district administrator is of the opinion that there are sufficient reasons to take measures, he/she may issue to the person concerned a notice of appearance in the format included in the first appendix to this law, obliging said person to appear before him/her to explain whether he/she has reasons not to give an undertaking, with or without a guarantee and in the format included in the second appendix to this law, in which he/she undertakes to conduct himself/herself well during a period of time to be specified at the discretion of the district administrator, but not to exceed one year:

1. Anyone present in a public or private place in circumstances that convince the district administrator that he/she was about to commit a crime or to assist in its commission.
2. Anyone who habitually committed burglary or theft or had within his/her possession stolen property, or who habitually protected or sheltered burglars, or who assisted them in concealing stolen property or fencing it.
3. Anyone in a situation in which his/her release without a guarantee would constitute a danger to the people.

Secondly: Article (5/2) of the same law stipulates that:

(If, following the investigation, it becomes apparent to the district administrator that there are sufficient reasons that call for him/her to oblige that person to give an undertaking, then the administrator shall issue an order in this regard provided that this undertaking does not differ from the matter mentioned in the notice to appear or the arrest warrant and that the amount [of money] or the period of time do not differ either from those mentioned in any of the two.

Thirdly: Article 8 of the same law stipulates the following:

(If the person to whom an order to give an undertaking has been issued in accordance with paragraph 2 of article 5 fails to give an undertaking within the dates of the period shown in the order to give an undertaking, he/she shall be imprisoned, and if he/she is already imprisoned, he/she shall remain so until he/she gives the requested undertaking or until the end of the period specified in the order to give an undertaking.)

The appealing party alleged that the articles above contravene Articles (7, 8/1, 27, and 101/4) of the Constitution, which state the following

Article 7:

1. Personal freedom shall be guaranteed
2. Any infringement on the rights and public freedoms or sanctity of private life of Jordanians is a crime punishable by law

Article 8 (1):

No person may be arrested, detained, imprisoned, have his/her freedom restricted or prevented from free movement except in accordance with the provisions of the law.

Article 27:

The Judicial Power is independent and shall be exercised by the courts of law in their varying types and degrees. All judgments shall be given in accordance with the law and pronounced in the name of the King.

Article 101/4:

The accused is innocent until proven guilty.

Considering that legislative actions carried out by both the legislative and executive branches, in the form of laws and regulations, are presumed constitutional, it is imperative that a provision contested for its alleged unconstitutionality should not be deemed as such unless there exists a clear conflict between the challenged provision and the constitutional text.

Moreover, the determination of the constitutionality of legal texts alleged to contravene the Constitution is independent of their practical application or interpretation by those responsible for their enforcement. Instead, it relies on the constitutional controls imposed on all legislative actions. Furthermore, any deficiencies in the enforcement, interpretation, or understanding of legal texts do not automatically render them unconstitutional if they maintain legal validity at their core.

It is firmly established in jurisprudence that the role of the constitutional judiciary primarily entails overseeing the constitutionality of legal texts, thereby upholding the constitutional provisions rather than assessing the appropriateness of legislation enacted by the legislature.

The constitutional judiciary serves as a mechanism for legitimacy oversight rather than suitability oversight and does not extend to scrutinizing legislative policy. Consequently, the oversight exercised by the Constitutional Court is confined to evaluating the extent to which laws and regulations are in conflict with the provisions and principles of the Constitution, ensuring consistency with fundamental constitutional principles, particularly the principle of the separation of powers.

Considering that the Crime Prevention Law serves as a preventive measure directed towards crime prevention and applies exclusively to cases delineated in Article 3 of the law, the legislator has opted for specific provisions within this law to uphold public security and social order. The precautionary measures outlined in Articles (3/1, 5, 8, and 10) are tailored to achieve the law's objectives of prevention and deterrence of potential abuses.

Furthermore, the provisions of Crime Prevention Law No (7) of 1954 afford every concerned party basic guarantees to contest decisions made by the governor or their delegate, as such decisions are administrative in nature and subject to appeal pursuant to Article (5/A) of the Administrative Judiciary Law No (27) of 2014. The Supreme Administrative Court, presided over by the Supreme Court, has rendered judgments annulling numerous unlawful detention decisions.

Moreover, the law authorizes the Minister of Interior, in his capacity as a presidential authority, to supervise the validity and legality of decisions made by the governor, who also holds a presidential authority position. Article (10) of the law stipulates:

“The minister of interior may at any time he/she wishes rescind any undertaking given in accordance with this law or amend it to the benefit of the person who gave it.”

This oversight functions as a safeguard to ensure the legitimacy of administrative governors' actions and to facilitate the proper enforcement of the law in accordance with its objectives.

In view of the aforementioned considerations, the legal texts under challenge demonstrate full conformity with the Constitution.

The legislative texts contested for alleged unconstitutionality manifest the legislator's intent without transgressing the integrity of the constitutional text, overstepping its limitations, encroaching upon judicial authority, or violating the fundamental rights and freedoms guaranteed by the Constitution. Consequently, dismissal of this challenge is warranted.

Accordingly, we conclude to reject the appeal.

This judgment is rendered on the twenty-second day of Jumada al-Akhirah in the year 1444 H, corresponding to the fifteenth day of January in the year 2023 AD.

Member	Member	Vice-President
Taghrid Hikmat	Dr. Akram Masa'eed	Mohammad Al-Mahadeen
Member	Member	Member
Hani Qaqish	Mohammed Talal Al-Homsi	Dr. Maysa Baydoun
	Hussein Al-Qaisi.	Mohammed Ass'aid

Appeal No: 1/2023

Subject Matter of the Appeal: The constitutional challenge pertains to Paragraph (3) of Article (3), Paragraph (2) of Article (5), and Article (8) of the Crime Prevention Law, alleging their inconsistency with the provisions of Articles (8, 27, 101, 102, 103, 128) of the Constitution.

Summary of Court decision: The appeal is rejected.

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To view the Court decision, [click here](#).