

Decision of the Constitutional Court on appeal case No (3) of 2023

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

Monarch of the Hashemite Kingdom of Jordan,

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

It is noted that esteemed member Mohammed Essaid has chosen to recuse himself from participating in the deliberations concerning the current appeal, citing his previous role as the presiding judge of the panel that has rendered the judgment by the Court of Cassation in criminal lawsuit No. (1646/2022), a case subsequently registered post-cassation under No. (3922/2022).

In response to the appeal filed by the appellant (defendant), Emad Mohammed Khalaf Muflih, represented by counsel Luay Abaidat, in case No. (3922/2022) before the Court of Cassation, an argument was raised regarding the purported unconstitutionality of Article (98/2) of Penal Code No. (16) of the year 1960 and its subsequent amendments. This assertion is based on the claim that the said provision is in conflict with the stipulations of Article (6/1) of the Jordanian Constitution.

Upon review of all relevant documents and judicial decisions enclosed within the dossier forwarded by the Court of Cassation, in accordance with its decision rendered in application No. (5/2022) dated (13/12/2022), which includes the submission of the constitutional challenge alongside the case file of Cassation lawsuit No. (3922/2022), as well as the case file of lawsuit No. (1368/2022) presented before the Grand Criminal Court, it is evident that the Public Prosecution at the Grand Criminal Court, through its decision No. (667/2020) dated 12/7/2020, has referred the accused, Emad Mohammed Khalaf Muflih, for trial at the Grand Criminal Court on the following charges:

1. The felony of attempted intentional murder, as stipulated in Articles (328/1 and 70) of the Penal Code, constituting a repeated offense.
2. The misdemeanor of unlawfully carrying and possessing a firearm without a license, as stipulated in Articles (3, 4, 11/d) of the Firearms and Ammunition Law

The Grand Criminal Court proceeded to adjudicate criminal case No. (972/2020). On 27/4/2022, it sentenced the defendant, Emad Mohammed Khalaf Muflih, to eight years of penal labor, taking into account the time served during detention, and ordered the defendant to bear associated court fees. This decision followed the court's assessment of mitigating circumstances, particularly the plaintiff's waiver of her personal rights.

On 10/5/2022, the defendant lodged an appeal against the aforementioned judgment with the Court of Cassation.

Subsequently, on 15/8/2022, the Court of Cassation rendered its decision No. (1646/2022), overturning the appealed decision.

Following the cassation and remand proceedings, on 21/9/2022, the Grand Criminal Court issued its decision No. (1368/2022), convicting the accused, Emad Mohammed Khalaf Muflih, of the felony of attempted intentional murder, in accordance with the provisions of Articles (326, 70) of the Penal Code as amended. The court imposed a sentence of eight years of penal labor, with credit given for time served during detention. Additionally, the court directed the accused to bear associated court fees. This decision was made subsequent to the court's consideration of mitigating circumstances, particularly the plaintiff's decision to waive her personal rights.

On 4/10/2022, the accused lodged an appeal registered under No. 3922/2022 against the judgment rendered against him to the Court of Cassation.

Subsequently, on 10/11/2022, the appellant's counsel submitted an application to the Court of Cassation registered under No. (5/2022), challenging the constitutionality of Article (98/2) of the Penal Code, alleging its violation of the provisions outlined in Article (6/1) of the Constitution.

On 13/12/2022, the Court of Cassation decided to refer the challenge regarding the constitutionality of paragraph (2) of Article (98) of Penal Code No. 16 of 1960 and its amendments to the Constitutional Court.

In accordance with the directives set forth in subparagraphs (1, 2) of paragraph (b) of Article (12) of the Constitutional Court Law, the court presidency forwarded a copy of the referral decision issued by the Court of Cassation, as referenced above, to the following dignitaries:

- The Prime Minister
- The President of the Senate

- The President of the House of Representatives, as per the dated letters of 18/1/2023, sequentially numbered (68, 69, 70)

A correspondence dated 29/1/2023 from the Prime Minister, along with a memorandum from the President of the Legislation and Opinion Bureau dated 26/1/2023, was received. The memorandum succinctly stated that paragraph (2) of Article (98) of Penal Code No. 16 of 1960 and its subsequent amendments are considered to be in conformity with the provisions of the Jordanian Constitution. Moreover, it indicated that the grounds presented for challenging its constitutionality lack validity and require a response.

Our court reviewed the memoranda submitted in this appeal and conducted a thorough examination in accordance with the provisions outlined in Article 14 of the Constitutional Court Law.

In terms of procedure:

Upon meticulous review of the provisions outlined in Articles (59, 60) of the Constitution and Article 4 of the Constitutional Court Law No. (15) of 2012, it is apparent that the Constitutional Court is tasked with supervising the constitutionality of prevailing laws and regulations, as well as interpreting constitutional texts. In order for our court to execute its duty of directly overseeing the pending appeal within its constitutional jurisdiction and to effectively accomplish the objective of this oversight, it is essential that the appeal is submitted to our court in a manner that adheres to constitutional and legal requirements, satisfying all necessary conditions and elements for considering constitutional claims.

Referring to the provisions outlined in paragraphs (A / 1, 2) and paragraph (B) of Article nine of the Law on the Establishment of Regular Courts No. (17) of 2001, the following provisions are highlighted:

A-1- The Court of Cassation, headquartered in Amman, comprises the President of the Judicial Council serving as the Court's Chief Judge and a requisite number of judges. The Court convenes for regular sessions with a minimum of five judges, led by the most senior judge.

2- The Court of Cassation sets up a three-judge panel when considering appeals aimed at reconciliatory judgments.

B- Specialized judicial chambers are established within the Court of Cassation to adjudicate civil and criminal suits, respectively. Each chamber is comprised of one or more panels, as determined necessary by the court president.

Additionally, Paragraph (A) of Article 10 of the same law outlines the jurisdiction of the Court of Cassation, which encompasses:

1- In its criminal capacity:

1. Appeals against judgments or decisions forwarded to it by the Court of Appeal in criminal cases.
2. Appeals against judgments and decisions designated for review by cassation through any applicable law.

Similarly, paragraph (A) of Article (13) of the Grand Criminal Court Law and its amendments No. 19 of 1986 states the following:

1- Considering the provisions delineated in paragraphs (B) and (C) of this article, judgments issued by the court shall be appealable to the Court of Cassation within fifteen days from the date of notification if announced in court, and from the date of service if issued in absentia. This right of appeal is extended to the Public Prosecutor, the convicted individual, the financially liable party, and the claimant.

Pursuant to the law, claims of unconstitutionality must be forwarded from a lawfully constituted court. It is necessary for the Court of Cassation to refer such claims through a panel consisting of five judges.

Upon examination of the case documents, it is apparent that the Court of Cassation/Criminal Chamber referred the claim regarding the unconstitutionality of paragraph (2) of Article (98) of the Penal Code to a panel consisting of only three judges. This action violates the provisions outlined in Articles (9, 10) of the Law on the Establishment of Regular Courts, as well as paragraph (C) of Article (11) of the Constitutional Court Law No. (15) of 2012 and its subsequent amendments under Law No. 22 of 2022, effective from 16/10/2022. Such deviation from the legislator's intent necessitates the procedural dismissal of the appeal due to improper referral to our court, as per the established legal conditions.

Therefore, the court decides to dismiss the appeal on procedural grounds

This judgment is hereby rendered on 26 Sha'ban, 1444 AH, corresponding to 19 March 2023 AD.

Member	Member	Deputy Chief Judge
Taghrid Hikmat	Dr. Akram Masa'eel	Mohammad Al-Mahadeen
Member	Member	Member

Hussein Al-Qaisi.	Hani Qaqish	Mohammed Talal Al-Homsi
		Dr. Maysa Baydhoun