

Judgement of the Constitutional Court on appeal case No (4) 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 Court's 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 ruling pertains to the appeal lodged by the appellant (defendant), Raed Rabhi Mahmoud Al-Shami, represented by attorneys Yasser Shuqair and Ihab Shuqair, before the Court of Cassation under Case No. (5723/2022). The appeal challenges the constitutionality of paragraphs (1) and (2) of Article (191) of the Civil Procedure Code No. (24) of 1988, alleging their inconsistency with the provisions of Articles (6/1) and (128/1) of the Constitution.

Upon careful review of all the documents and judicial decisions enclosed within the file forwarded from the Court of Cassation, pursuant to its decision in application No. (4/T/2022) dated (18/10/2022), addressing the challenge of unconstitutionality, as well as the files of case No. (5723/2022) reviewed by the Court of Cassation, appellate case No. (1919/2022) lodged with the Amman First Instance Court acting in its appellate capacity, and arbitration case No. (2186/2020) filed with the West Amman Arbitration Court, it becomes apparent that the plaintiffs (referred to as defendants in the application) initiated lawsuit No. (2186/2020) on 26/8/2020 with the West Amman Arbitration Court against the defendant (referred to as respondent in the application), seeking the termination of a property lease agreement valued at for an annual sum of (3146.850) dinars.

On 9/9/2021, the West Amman Arbitration Court rendered its decision No. (2186/2020), directing the defendant, Raed Rabhi Mahmoud Al-Shami, to vacate the leased property involved in the litigation and transfer possession to the plaintiffs without any encumbrances, encompassing fees, expenses, and attorney fees.

The defendant lodged an appeal against said judgment with the Amman Court of First Instance acting in its appellate capacity. On 4/10/2021, the Court issued decision No. (5107/2021), wherein the appeal was granted, the appealed judgment was nullified, and the case was remanded back to the Arbitration Court.

Following the nullification and remand, the West Amman Arbitration Court issued its Decision No. (6/2022) on January 26, 2022, ruling against the defendant, Raed Rabhi Mahmoud Al-Shami, who was instructed to vacate the property leased from the plaintiffs free from any encumbrances, including fees, expenses, and attorney fees.

The defendant filed an appeal against this decision with the Amman First Instance Court, acting in its appellate capacity. In Decision No. (1919/2022) dated March 20, 2022, the court dismissed the appeal and upheld the contested decision. Furthermore, it affirmed the appellant's obligation to cover the costs, expenses, and attorney fees.

On April 21, 2022, the defendant filed an application with the Court of Cassation, designated as case No. (1617/2022), requesting permission to appeal the judgment rendered by the Amman First Instance Court in its appellate capacity regarding case No. (1919/2022).

On May 15, 2022, the judge appointed by the President of the Court of Cassation issued a decision to dismiss the application.

Subsequently, on May 19, 2022, the defendant appealed the aforementioned appellate decision, filing it with the Court of Cassation under case No. (5723/2022). Simultaneously, on the same date, the defendant submitted an application to the same court, asserting the unconstitutionality of Article (191/1 and /2) of the Civil Procedure Code No. (24) of 1988. This request was recorded under case No. (4/T/2022). Consequently, the Court of Cassation elected to refer the matter to the Constitutional Court for consideration.

On November 28, 2022, the counsel representing the appellant filed a memorandum invoking the provisions outlined in Article (12/a/1) of the Constitutional Court Law.

Pursuant to the provisions set forth in subparagraphs (1 and 2) of paragraph (b) of Article (12) of the Constitutional Court Law, the Presidency of the Court proceeded to transmit a copy of the referral decision issued by the aforementioned Court of Cassation to the following individuals

- The Prime Minister.
- The Speaker of the Senate.
- The Speaker of the House of Representatives. This communication was transmitted through letters dated November 30, 2022, sequentially numbered (510, 511, 512).

On December 20, 2022, a correspondence from the Prime Minister, accompanied by a memorandum from the President of the Legislation and Opinion Bureau dated December 8, 2022, was received. The memorandum affirmed that the disputed provisions of Civil Procedure Code No. (24) of 1988 and its subsequent amendments are consistent with the Constitution, and the grounds for appeal do not present substantial challenges to them.

In accordance with the provisions outlined in Article (12/b/2) of the Constitutional Court Law, the Prime Minister requested that the memorandum from the Legislation and Opinion Bureau be considered as a response to this appeal.

The Court duly considered the memoranda pertaining to this appeal and conducted a thorough examination thereof, adhering to the provisions delineated in Article (14) of the Constitutional Court Law.

Upon thorough examination and careful consideration of the legislative provisions contested for their constitutionality, the following observations are made:

Firstly, Article (191) of Civil Procedure Code No. (24) of 1988 and its subsequent amendments stipulate the following:

1. The contestation of judgments issued by the Appellate Courts will be accepted before the Court of Cassation in relation with cases the amount of which exceeds five thousand Dinars and within thirty days as from the day following the date of issuance if in presence and from the day following the date of being served if they are issued in audit, as if in presence or in formal presence.
2. Other appellate judgments cannot be contested at the Cassation level unless upon a permit by the Chief Judge of the Cassation Court or he who he shall delegate

The appellant contends that the aforementioned paragraphs contravene the provisions outlined in Article 6/1 of the Constitution, which asserts that "Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language, or religion." Additionally, the appellant invokes Article 128/1 of the Constitution, which states that "The laws issued in accordance with this Constitution for the regulation of rights and freedoms may not influence the essence of such rights or affect their

fundamentals.

Given that legislative acts promulgated by the legislative and executive branches, in the form of laws and regulations, are presumptively constitutional, it follows logically that a challenged provision cannot be nullified based on allegations of unconstitutionality unless a clear contradiction between such provision and the constitutional text is evident. It is well-established that constitutional justice functions as a mechanism for judicial review concerning the constitutionality of legal texts, with the aim of safeguarding constitutional provisions rather than assessing the suitability of legislative texts enacted by the legislature. Additionally, constitutional judicial review primarily focuses on legitimacy review and does not encompass scrutiny of legislative policy.

Consequently, the Constitutional Court's examination is limited to evaluating the compliance of laws and regulations with the Constitution and its underlying principles. Legal precedents and constitutional rulings have emphasized that the equality guaranteed in Article 6/1 of the Constitution is achieved through the enactment of laws characterized by generality and abstraction when regulating rights and duties. Therefore, this equality is not strictly numerical; instead, the legislature retains discretionary power to establish conditions for equality before the law, considering the imperative of the public interest. If these conditions are satisfied for a particular group of individuals, equality must be extended to them to align their circumstances and legal status.

The Constitution assigns the legislative authority the responsibility of creating laws and regulations that govern litigation procedures within the judiciary. With the prerogative to choose among available options to serve the public interest, the legislature has formulated specific provisions for appealing judgments based on the value or nature of the lawsuit. As outlined in the challenged paragraphs regarding their alleged unconstitutionality, these provisions do not violate constitutional objectives or surpass their designated boundaries. Therefore, dismissing the appeal against their constitutionality is warranted.

Accordingly, we hereby determine to dismiss the appeal contesting the constitutionality of paragraphs 1 and 2 of Article 191 of Civil Procedure Code No. 24 of 1988

This judgement is rendered on the thirtieth day of the month of Rajab in the year 1444 Hijri, corresponding to the twenty-first day of the month of February in the year 2023 Gregorian.

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