

Constitutional Court judgement No (5) 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 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, Hussein Al-Qaisi and Basel abu-Anza.

It is noted that esteemed member Mohammed Essaid has elected to recuse himself from deliberating on the present appeal as he has been the chair of the panel responsible for the ruling rendered 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, the argument was raised concerning the alleged unconstitutionality of Article (98/2) of Penal Code No. (16) of the year 1960 and its subsequent amendments. This contention is based on the assertion that said provision contradicts the provisions outlined in 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. Nonetheless, the Constitutional Court issued Judgment No. 3/2023 on 19/03/2023, rejecting the application on procedural grounds.

After remanding case No 1/2023 dated 05/04/2023 to the Court of Appeals, said Court referred the challenge regarding the purported unconstitutionality of Paragraph (2) of Article (98) of the 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 (234, 236, 235)

A correspondence dated 11/05/2023 from the Prime Minister, along with a memorandum from the President of the Legislation and Opinion Bureau dated 1005/2023, 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.

On the merits:

Upon thorough review and deliberation, and after considering the memoranda and decisions issued by the Grand Criminal Court, the Court of Cassation, and the Constitutional Court/Criminal Chamber, the following findings are made:

The appellant disputes the constitutionality of the paragraph 2 of Article (98) of the Penal Article (98/2) No. (16) of 1960 and its subsequent amendments which stipulates that: "(The perpetrator of the crime shall not benefit from the mitigating excuse stipulated in the first paragraph of this article if the act is committed against a female outside the scope of the provisions of Article (340) of this law)." The contention arises from an alleged violation of the provisions of Article 6/1 of the Constitution, which stipulates 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."

It is noteworthy that the first paragraph of Article (98) of the Penal Code referred to above states: " Whoever commits a crime while in a fit of rage which is the result of an unjustifiable and dangerous act committed by the victim, benefits from a mitigating excuse"

Responding to the appellant's grounds for the constitutionality challenge:

The Constitution is the supreme law that establishes public rights and freedoms, prevails over other legislations, organizes the fundamental guarantees to protect them, and is based on the principle of separation of powers, defining the legislative, executive, and judicial functions and powers, and setting the limits and regulations controlling their activities to prevent any interference or encroachment by one authority into the functions of another, as defined by the Constitution.

It is established in the jurisdiction of this court in the exercise of its oversight of the constitutionality of the laws and regulations in force, is that that the determination of the constitutionality, or lack thereof, of a piece of legislation is the legality of the

legislation and the extent of its compliance with, or deviation from what is stipulated in the Constitution.

The primary objective of the Court's oversight is to safeguard and uphold the provisions of the Constitution, preventing any violations thereof. It must be noted that the jurisdiction of the Constitutional Court does not extend to assessing the appropriateness of legislation or the motives for their enactment as the Court lacks authority to assess the approach adopted by the legislature on a particular matter, nor can it base its judgment on objectives other than those intended by the legislator. Such matters are the exclusive province of the legislative authority and its discretionary powers.

The legislative authority holds the responsibility for enacting laws to regulate various subjects. It is crucial to recognize that legal texts enacted by the legislator to regulate specific matters should remain aligned with their intended purposes and objectives. Legislative regulations are not formulated in isolation; rather, they are designed to serve specific objectives aimed at advancing the public interest. In doing so, they must adhere to the principle of constitutionality and its requisites. As a fundamental principle, laws and regulations issued by the legislative and executive authorities are presumed to be constitutional.

The legislator's approach to criminalizing actions or omissions and prescribing corresponding penalties is inherently tied to societal needs, the maintenance of public security, and the promotion of social harmony. It entails striking a delicate balance between safeguarding societal interests to ensure the security and stability of the society while upholding the freedoms and rights of individuals.

In legal doctrine and constitutional jurisprudence, it is well-established that criminal law, while akin to other legal domains in its aim to govern interpersonal relationships and their societal implications, diverges in its utilization of punishment as a mechanism to induce compliance with prescribed conduct or to deter prohibited behavior, thereby delineating from a societal standpoint what actions are deemed unacceptable. The legislator, within the realm of criminal law, delineates suitable penalties for offenses and legal justifications originating from the law itself, whether they entail exemptions from punishment or mitigating circumstances. It employs various measures and balances among different methods and alternatives to regulate specific matters, either to prevent proscribed conduct or to respond to it should it occur.

Additionally, legal doctrine and constitutional jurisprudence have established that equality before the law is not an unbending doctrinal precept antagonistic to pragmatic necessity or an inflexible mandate ensuring the numerical precision

demanded by absolute justice. The principle of equality, as articulated in paragraph (1) of Article (6) of the Constitution, encompasses parity among Jordanians concerning rights and obligations.

In essence, equality is a relative concept among individuals with similar circumstances or legal standing, rather than an absolute one. The legislator possesses discretionary authority to establish the conditions that define the legal status under which individuals are considered equal before the law. Consequently, when a specific category of individuals meets these conditions, equality must be upheld to align with their circumstances and legal status. These conditions, determined by the legislative authority, pertain to regulatory aspects influenced by diverse circumstances and considerations. The evaluation of these factors falls within the purview of the legislator, provided that such actions do not violate or diminish the rights and freedoms safeguarded by the Constitution.

The legislative body has the authority to distinguish between positions that possess different characteristics and circumstances by establishing specific conditions. If these conditions vary in that they are satisfied by some but not by others, then equality between them is not required, as it would not serve the public interest

Given that the disputed provision applies to all individuals without discrimination or differentiation, there exist no grounds to declare it unconstitutional, thereby rendering the challenge baseless.

Accordingly, the Court hereby orders that the challenge be dismissed

This judgment is hereby rendered on 24 Dhu al-Qi'dah 1444 AH, corresponding to 13 June 2023 AD.

Member	Member	Chief Judge
Taghrid Hikmat	Dr. Akram Masa'ida	Mohammad Al-Mahadeen
Member	Member	Member
Hussein Al-Qaisi.	Hani Qaqish	Mohammed Talal Al-Homsi
		Dr. Maysa Baydhoun