

Republic of Iraq
Federal Supreme Court
Ref. 104 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/5/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. The Barrister Abbas Ali Jassim.

2. The Barrister Ali Kamil Rasool.

The Defendants: 1. The President of the Republic/ being in this capacity- his agent the legal experts Ghazi Ibrahim Al-Janabi and the legal counselor Salah Lazim Shamkhi.

2. The Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiffs claimed that the Council of Representatives had already enacted the Legislative Order Amendment Law No. (30) of 2005 (The Order for the Establishment of the Federal Court) in accordance with the provisions of section (1st) of Article (61), item (3rd) of Article (73) of the Constitution, and the Law was issued by the first defendant/ being in this capacity and published in the Official Gazette in issue (4635) on 7/7/2021 and was considered effective from the date of publication in the Official Gazette of the Official Gazette (4635) on 7/7/2021, since this legislation is unconstitutional and does not comply with the provisions of article (92/2nd) which ensured that the court is defined, functioned and established under special law legislation from the Council of

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Representatives and on the condition of a two-thirds majority, and since the Interim Iraqi Government has already issued Legislative Order No. (30) of 2005 under its powers under the Iraqi State Administration of the Transitional Administration Law and its pursuits under which the Federal Supreme Court was formed. However, the promulgation and enforcement of the current permanent constitution in accordance with article (143) of it, which repealed the Law on the Administration of the Iraqi State for the Transitional Period and its two attachments except in paragraph (Alif) of articles 53 and 58 of it exclusively and recommends, and since the private and the excluded are limited what has been allocated and excluded without the possibility of expanding it to the contrary and inferred, because this is a restriction on the absolute and the release of the restricted, and therefore legislative order No. 30 of 2005 is not considered to exist and is not covered by the provisions of constitutional article (130) Which provided for the legislation in force to remain in force, unless repealed or amended in accordance with the provisions of this Constitution. Since the annulment was expressly stated by the repeal of the State Administration Law and its annexes, which are the constitutional basis for the legislation of the Law, as well as amended the provisions of the Federal Court under the provisions of articles (92-94), these provisions have been amended and defined and described this court, which will be established on the basis of the 2005 Constitution, especially since this legislative order was specifically in determining the court's powers in article (4/2nd) which it has specified only, describing disputes arising from the application of the State Administration Law in the transitional period, and where the allocation is not generalized and the exception cannot be expanded, especially since article

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(92/2nd) of the 2005 Constitution indicated the manner in which a federal court was established in accordance with the spirit and substance of the 2005 Constitution, and did not refer to that institution previously under the provisions of Legislative Order No. 30 of the year 2005. Therefore, according to the article (123) constitutional and the article (1) of the Civil Law and for the reason of not enacting the Federal Supreme Court Law as stipulated in the Constitution and its legal effect which charted by the article (10) of the Civil Law, in this case, the enactment of the ICR for the Law No. (25) for 2021, the first amendment Law (for the legislative order No. (30) for 2005) which amended annulled enactment and amended its provisions from the other side according to the provisions of the Constitution for 2005 (the permanent). Therefore, this legislative amendment is totally and in detail contrary to the Constitution, and it is not valid to amend a law that is non-existent and repealed and is not covered by the articles of exception to the Interim Constitution and previous legislation, so the plaintiffs requested from the Federal Supreme Court to call the first defendant/ being in this capacity as the protector of the Constitution and the guardian of its application and who signed it and ratified its contents, and to call the second defendant in addition to his constitutional capacity as president of the legislative power that initiated this amendment and ruled that the law is unconstitutional and legal No. (25) 2021 as the "amended" law and there is no legal and unconstitutional existence with the text of the Constitution, It is no longer in force in accordance with the rule (the fallen does not return), and as of the date of the decision of this court to preserve and protect the decisions and interpretations issued by the court and to burden the defendants/ being in their capacity with all fees and expenses. The case was registered with this court in

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the number (104/federal/2022) and the legal fee for it was completed in accordance with article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and informs the defendants of its petition and documents in accordance with article (2/1st) of the same Bylaw above. The first defendant's agent (President of the Republic/being in this capacity) replied in the answering draft dated 21 April 2022 that his client does not fit an opponent, in this case, because his liability is not available as determined by article (4) of the Civil Procedures Law No. (83) of 1969, supposing that his declaration is released by him. He should be sentenced or obliged to something, supposing that the case is approved, nor is there an interest for the plaintiffs in a direct and influential case in their legal, financial, or social status and they did not provide evidence that they have been realistically harmed by the legislation of Law No. 25 of 2021, which is to be annulled, which is a legislative option for the Council of Representatives in accordance with its constitutional jurisdiction. Therefore, the matter is outside the jurisdiction of the Federal Supreme Court because there is no constitutional violation. The Legislative Order No. (30) of 2005 was issued in accordance with the procedures established under the Iraqi State Administration of The Transition Act and all laws issued under it is in force and in accordance with article 130 of the Constitution, thus all legislation passed under the Iraqi State Administration of The Transition Act has become effective and applicable to legislation under the Constitution and the Supreme Federal Court Act is one of the sets of legislation issued by the Republic of Iraq and its amendment No. (25) for the year 2021 is a law issued in accordance with the provisions of the Constitution. Moreover, the annulment of the Law on the Administration of the Iraqi State for the Transitional Period in

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accordance with article (143) of the Constitution does not consider the repeal of the laws under it, and the exception of articles 53 and article (58) of the Constitution does not mean that all laws passed under it have been repealed because the text of the article (130) is explicit in that the amendment or repeal of the laws previously issued and subsequently amended or repealed in accordance with the provisions of the influential Constitution. For these reasons, the first defendant's agent requested that the plaintiffs' case be dismissed and charged with fees, expenses, and lawyers' fees. The second defendant's agents (Speaker of the Council of Representatives/being in this capacity) responded to the answering draft of 2 April 2022, which included the same argument made by the first defendant's agent regarding the lack of interest and did not achieve the damage and requested a dismissal of the case in the form on the basis of the article (6/1st, 4th and 6th) of the Court's Bylaw. They added, that annulling the Iraqi State Administration Law for the Transitional Period according to the text of the article (143) of the Republic of Iraq Constitution does not mean annulling the enactments issued from this law, therefore, the enactments issued by the Iraqi State Administration Law remains in effect according to the provisions of the article (130) of the Republic of Iraq Constitution, unless it had been annulled or amended according to the provisions of this Constitution, and among these enactments, the legislative order No. (30) for 2005 (the order of establishing the Federal Court). The Federal Supreme Court has already ruled on a similar case under its numbered decision (21/Federal/2021), which became an argument for its rulings and becomes due to restitution and unsubstantiated by the Constitution and the law, so the second defendant's agent requested that the plaintiff's case be dismissed and to burden him

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with all judicial fees, expenses and advocacy fees. After completing the procedures stipulated in the court's Bylaw, mentioned above, a date for the case has been set in accordance with the provisions of article (2/2nd) of it, and the parties have been informed of it, on the appointed day, the court was formed, and the first prosecutor, lawyer Abbas Ali Jassim, attended the second plaintiff despite the reporting and attended the first defendant, the President of the Republic/ being in this capacity, the official jurist Salah Lazim Shamkhi, and the second defendant, the Speaker of the Council of Representatives/ being in this capacity, his agents, the legal counsel Haitham Majid Salem, and the official jurist Saman Mohsen Ibrahim. The public presence argument proceeded and the first plaintiff repeated the statement in the petition and requested to judge according to it. The first and second defendants' agents answered and they both requested to reject the case against his client for the reasons mentioned in the drafts submitted by them, and the first plaintiff and the defendants' agents repeated their previous statements and requests, whereas nothing was left to be said, the Court has been made the end of the argument clear and issued the following decision.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the summary of the plaintiffs' case was the request to rule that Law No. 25 of 2021 amended law No. (30) of 2005, as of the date of the decision of this court for the reasons listed in the petition mentioned in the preamble to this provision, and for the public in the presence argument and to inform the court of the defendants' defenses, the first president of the Republic and the second speaker

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of the Council of Representatives/ being in their capacity through the drafts presented by their agents and during the argument including the defense presented by the agents of the second defendant, the Speaker of the ICR/ being in this capacity that the subject of the case has been already resolved by this Court in the judgment issued in the number (21/federal/2022) on 6/4/2022, and by the Court reviewal for the decision issued by it above-mentioned in the case of the plaintiffs (the barristers Qahtan Hasan Saadoon Al-Suaidi, and Isamil Musabbah Mohammed Al-Waeli) against the defendant (the Speaker of the ICR/ being in this capacity) in which they requested to judge y unconstitutionality of the articles of the Law (25) for 2021 for the reasons listed in their case. Its subject is the same as this case and the judgment paragraph listed in the decision, which is it rejecting the case of the plaintiffs in addition to burdening them with the fees and expenses for the reasons mentioned in detail in the judgment. Since the constitutional proceedings are described as a case in kind because they relate to the constitutionality of abstract public laws and not purely personal rights, the rulings of this court are now binding based on an article (94) of the Constitution of the Republic of Iraq 2005, and if the parties to the case change their argument, their argument applies to all individuals and public authorities, and there is no way to bring the constitutionality of a law before this court if the court has already ruled on its constitutionality, even if the parties to the case change. Accordingly, the FSC decided to reject the case of the plaintiffs the barristers Abbas Ali Jassim and Ali Kamil Rasool preceded by the adjudication of its subject matter by the decision of the numbered judgment (21/federal/2022) on April 6, 2022, and to burden them with the judicial expenses, including the advocacy fees for the agents of the defendants, amount of 100 thousand Iraqi Dinars

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and to be divided between them equally according to the legal proportions. The decision has been issued unanimously according to the provisions of the articles (93/1st and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 28/Shawal/1443 Hijri coinciding 30/May/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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