

Republic of Iraq
Federal Supreme Court
Ref. 108 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 7/8/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayooob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Dr. Ahmed Mohammed Ameen Abdul Rahman - Chairman of the Board of Directors of the Investigator Organization of the Rule of Law/ being in this capacity – his agent the barrister Ahmed Salim Rodhan.

The Defendant: 1- President of the Republic/ being in this capacity – his agent the Head of the legal experts Ghazi Ibrahim Al-Janabi.
2- Speaker of the ICR/ being in this capacity. His agents are the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed through his agent that the Policeman Duties Law No. 176 of 1980 permitted the policeman to use force without a firearm or to use a firearm to the extent necessary without an order from the competent authorities, and in cases specified in the same article, and article 4 of it allowed a policeman to use a firearm by order of the Minister of Interior, his authorized representative, the governor, the mayor, or the military commander in the areas where actual movements are announced, or for extinguishing disturbances that would threaten order and security, As (i.e. the plaintiff) representing a human rights organization that enjoys legal personality under the certificate of incorporation issued by the Department of Non-Governmental Organizations in the Kurdistan Region of Iraq No. (1158)

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on 21/7/2022 issued in accordance with the Law of Non-Governmental Organizations in the Kurdistan Region No. (1) of 2011, which granted it legal personality under Article (1/2nd), he has an interest in filing this lawsuit, under which he challenges the constitutionality of Articles (3 and 4), which guarantee the absolute authorization of a policeman to kill a citizen, without the judiciary having the presence or A role in that, which violates the Constitution in Articles (19 /5th - The accused is innocent until proven guilty in a fair legal trial, the accused shall not be tried for the same charge again after his release unless new evidence emerges) and (88/1st: Judges are independent and have no authority in their judiciary other than the law, and no authority may interfere in the judiciary or the affairs of justice) and (19/1st . The judiciary is independent and has no authority other than the law), article 4 of the challenged law has shown its explicit violation of the constitutional text on the independence of the judiciary when it granted the executive officer, including the governor and the mayor, to give the order to shoot and kill the demonstrating or protesting citizen in order to put down those protests, while the Iraqi constitution considered the right to demonstrate and protest as a basic right and obligated the state to guarantee it under article 38/3rd thereof, especially since 37 of the constitution prohibited the arrest of any citizen except by a judicial decision, law No. 176 of 1980 in its entirety violated the Constitution of 2005, in articles 9/I thereof, which prohibited security forces, including policemen, from being a tool to oppress the Iraqi people, and 84/1st thereof, which obligated security forces and police to work in accordance with human rights, which are the principles contained in the international legitimacy of human rights, including the Universal Declaration of Human Rights, the International Covenants on Civil and Economic Rights, and other international conventions, covenants and covenants related to human rights, which ratified It is considered as a national law, and even the constitution in force in articles 9 and 84 referred to has expanded the granting of supremacy even to international covenants and covenants not ratified by Iraq, so the security forces are obligated by the constitution to observe human

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rights and not to violate these universal and constitutional principles. The ruling that the law is unconstitutional will not constitute any legislative vacuum in the work of the security forces and policemen in particular, because the Ministry of Interior Law No. 20 of 2016 has made it the task of that ministry to maintain security and order, and the Internal Security Forces Service and Retirement Law No. 18 of 2011 when it made the oath taken by a policeman upon assuming office to respect constitutional principles and human rights and in accordance with Article 4 of the law above. As well as the duties prescribed under the Internal Security Forces Penal Code No. 14 of 2008. Whereas the decisions of the Federal Supreme Court were a safety valve for the preservation of rights through the conformity of those contested texts with the constitutional texts in force in all prudence and professionalism, and the clarity of the dictatorial and totalitarian character in the wording of the articles - subject to challenge - towards the protection of the former dictatorial regime, which was clarified in the reasons for the law - the subject of the challenge - so the plaintiff asked this court to rule that articles 3 and 4 of the Police Duties Law No. 176 of 1980 are unconstitutional for violating articles 9, 91, 37 and 38. and 48 and 88) of the Constitution in force, and to burden the defendants with fees, expenses and advocacy fees. The lawsuit was registered with this court at number (108/Federal/2023), and the legal fee was collected for it, and the defendants were informed of its petition and documents in accordance with Article (21 / 1st and 2nd) of the internal regulations of the Federal Supreme Court No. (1) of 2022, and the first defendant's agent replied with the reply statement dated June 5, 2023, which included detailed formal and substantive defenses, the conclusion of which is: The existence of the two articles - the subject of the challenge - is a defense of the freedom of people and their property and the preservation and maintenance of public security because the protection of man in his right to life is much better From the lives of criminals, the use of firearms to the extent necessary for a policeman is an exception; its purpose is to combat serious crimes and there is no basis for the plaintiff's claim of a

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constitutional violation, as he did not provide evidence that the policemen violated the rights of citizens, requested the dismissal of the case, and to burden the plaintiff with fees, expenses and advocacy fees. The second defendant's agent replied in the answering draft dated 11/6/2023 that the law - the subject of the challenge - is one of the laws in force in accordance with Article (130) of the Constitution, which stipulates that (the legislation in force shall remain in force, unless repealed or amended, in accordance with the provisions of this Constitution), and it came as a legislative option that does not violate the constitutional provisions and within the cases of self-defense and is restricted by the provisions mentioned in the articles - the subject of the challenge - and it is not absolute as it is subject to the discretionary power of the judiciary when considering cases that apply and these texts, so request to dismiss the lawsuit and to burden the plaintiff with fees, expenses and advocacy fees. After completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, on the specified day, The court was formed, so the plaintiff's agent and the first defendant's agent attended, and the official jurist Saman Mohsen Ibrahim attended as an agent for the second defendant, and the public presence pleadings were initiated. The plaintiff's agent repeated what was stated in the lawsuit petition and requested a ruling according to which the defendants' attorneys answered and each of them requested the dismissal of the lawsuit for the reasons stated in his drafts linked within the case papers and where there is nothing left to be said, the end of the argument has been made clear, and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's claim in addition to his position is focused on challenging the constitutionality of Articles (3) and (4) of the Police Duties Law No. (176) of 1980, which reads: (Article 3 - First: A policeman may use force

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without a firearm or use a firearm to the extent necessary without an order from the competent authorities: 1. In case of legitimate defense of himself, his property, the same of others or his property. 2. In the case of chasing a criminal or an armed suspect. Second: A policeman may use a firearm if he wants to pay for one of the following things, even if this leads to intentional killing: 1. An act that is feared to cause death or serious injuries if such fear has reasonable reasons. 2 – Kidnapping a person. 3 – Arson, intentional. 4 – Arrest a criminal or accused of a crime punishable by death or life imprisonment if this criminal or accused resists upon arrest or tries to escape. 5 – Occupation or destruction of the place where the internal security forces are stationed. 6. Occupation or destruction of places, equipment, or property responsible for their preservation or exposing the lives of persons in such places to grave danger. 7. Committing the crime of intentional sabotage of public vital facilities.) (Article 4 - A policeman may use a firearm by order of the Minister of Interior, his authorized representative, the governor, the mayor, or the military commander in areas where actual movements are declared or to put out disturbances that may threaten public order and security). Alleging that they violated Articles (9), (19), (37), (38), (84), and (88) of the Constitution of the Republic of Iraq for the year 2005, and upon careful consideration of the plaintiff's claim and requests and to the extent that they relate to the first defendant, the President of the Republic, in addition to his position, the Court finds that legislation issued in the form of (law) is attributed to the legislative authority, which is in fact represented by the Council of Representatives, therefore, in a lawsuit of unconstitutionality, including this lawsuit, the President of the Republic is not an adversary in it, i.e. his litigation is not valid, as for the plaintiff's claim in addition to his position towards the second defendant, the Speaker of the Council of Representatives, in addition to his job, the court finds that the two articles whose constitutionality is contested do not violate any of the constitutional provisions mentioned by the plaintiff in his petition, and that the powers granted to the policeman under the two articles challenged are at the heart of

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the work of the security authorities and their tasks to maintain the security of the homeland and the stability of society, and do not violate the basic principles of human rights and public freedoms stipulated in the Constitution, and it is necessarily known that rights and freedoms of the public is not absolute concepts, but the Constitution allows in article (46) thereof to restrict and limit it by law, provided that this does not affect the essence of the right or freedom, the two articles - the subject of the proceedings - do not affect the essence of the rights and freedoms provided for in the Constitution, because this restriction came to protect society from crime, as well as for the proper administration of justice and law in society, part of the powers granted to a policeman under those two articles is the application of the provisions (reasons for permissibility) stipulated in the Penal Code No. 111 of 1969, as amended in articles 39-46 thereof, and in all cases, the exercise by the policeman of the powers granted to him is also not absolute, rather, it is bound by strict controls and conditions and subject to the discretionary power of the judiciary when cases relating to the exercise of these powers are brought before it, for all of the above, this court has decided the following:

First: Dismissing the plaintiff's lawsuit (Ahmed Mohamed Amin Abdel Rahman / Chairman of the Board of Directors of the Rule of Law Investigator Organization/ being in this capacity) against the first defendant (President of the Republic/ being in this capacity) for not directing the litigation.

Second: Dismissing the plaintiff's lawsuit against the second defendant (Speaker of the Council of Representatives / being in this capacity) for lack of a constitutional violation.

Third: The plaintiff shall charge the expenses, fees, and advocacy fees to the defendants' agents /being in their capacity an amount of one hundred thousand dinars to be distributed between them following the law.

The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93) and (94) of the Constitution of the Republic of Iraq for 2005 and Articles (4) and (5) of the

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FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 19/Muharram Al-Haram/1445 Hijri coinciding 7/August/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court