

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 116/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 1. 12 .2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Rahim Hassan Jerio Al-Ugaili - his attorneys are Shawkat Sami Al-Samarrai and Hassan Hadi Dair.

The Defendants: 1- The Council of Representatives / Speaker of the Council of Representatives /being in his capacity his agents are legal advisor Haitham Majed Salem and human rights officer Saman Mohsen Ibrahim.

The Claim:

The plaintiffs claimed (1. Rahim Hassan Jerio Al-Ugaili 2. Jassem Muhammad Sohrab Al-Halfi 3. Saadoun Mohsen Damad 4. Qais Hassan Bresseem 5. Ali Bakht Lafta 6. Ofoq Organization for Human Development / sponsored by Mr. Ali Bakht Lafta, Chairman of the Board of Directors 7. Al-Munqith Rights Organization The person / represented by the authorized person Hadi Muhammad Najm 8. Bushra Salman Hussein 9. Ahmed Sadiq Hussein) through their representative that Article (226) of the Iraqi Penal Code No. (111) of 1969 as amended it

criminalizes anyone who publicly insults the National Assembly, the government, the courts, the armed forces, other regular bodies, public authorities, official or semi-official departments or departments), and thus violates the provisions of Article (38) of the Constitution that guarantees freedom of expression. The freedoms of the press, printing, media, and publishing are also violated, and the freedom of protest and peaceful demonstration is violated, according to the following grounds: **First:** The contested article uses a flexible term - whose meaning cannot be controlled - as a material element of the crime, which is the word (insult), which is a serious threat to the aforementioned freedoms, It can include any criticism or any expression of discontent against the authorities and state institutions. It is not possible to give a disciplined meaning to this word, which makes its use contrary to the principles of punitive legislation that require the use of categorically criminal, inflexible, and inflexible terms, because the criminal texts constitute the most serious threat to the freedoms guaranteed by the constitution. And that the criterion for determining that the legal text is considered a threat to freedom of expression is: Does it intimidate people or frighten them, so that they hesitate to use their right to that freedom, then it is a violation of that freedom, and since the text under challenge intimidates and frightens those who express their opinions, which makes them hesitant about using their freedom of expression Expressing their opinions is therefore contrary to the constitution and punishes those who express their opinions, and that international human rights law protects the shocking and offensive expression of the authorities as one of the most important pillars of freedom of expression, publication, and media. **Second:** The Penal Code criminalizes insult, slander, and slander in Articles (433, 434, and 435), and these terms can be considered outside the framework of freedom of expression in the light of the culture of society. There is no justification left - with the criminalization of defamatory, insult, and slander in special texts - for criminalizing (insulting) the authorities and public institutions. So what does the legislator want to criminalize from the criminalization of

the insulting word in Article (226), which criminalizes insult and defamation in other articles. The criminalization of (insult) besides insulting, defamation, and slandering, means the criminalization of a very wide range of expressions and expressions - other than insulting, insulting, and slander - which makes the criminalization of insults a muzzle and an exaggerated restriction of freedom of expression and freedoms of the press, publishing, printing, and media. **Third:** The position of international humanitarian law on insulting the authorities: In one of its famous publications, Amnesty International answered the question (Is insulting the authorities illegal) as follows: ((International human rights law protects the right to freedom of expression, including expression that is shocking and offensive to the authorities, as long as it does not encourage discrimination based on race, gender, class, etc., and does not call for violence against a particular social group, or stimulate violent acts in general)), therefore, insulting the authorities according to international humanitarian law is one of the guaranteed rights and freedoms, and the legislator may not criminalize it. **Fourth:** The contested Article (226) incriminates what cannot be criminalized, because the insult does not fall on legal persons, and does not affect them because they do not have feelings for them. Therefore, the Federal Court of Cassation settled on the civil side not to award compensation to the legal person for the insult because he does not feel pain or offended. The Federal Court of Cassation ruled in No. (2453/Appellate Body/2017) as follows: (The right to claim moral compensation is for natural persons and not for legal persons, as the legal person enjoys all rights except for those that are inherent in the capacity of a natural person within the limits determined by law) . **Fifth:** Article (226) and the other (humiliating) articles (225, 227 and 229) of the Penal Code were used under the previous regime to punish those expressing their opinions and those who were discontented against the injustice of the authorities and those holding an opposing opinion, which is a realistic indication that those articles (including the challenged article in it) a sword hanging over the necks of those who express their opinions.

Sixth: The penalty in Article (226) of the Penal Code is up to seven years in prison, which is an extremely severe penalty, and it violates international standards for the protection of freedom of expression that prohibit freedom-restricting penalties for speech and publication crimes, and the harshness of the penalty in the contested article is another threat to freedom of expression, because this very severe punishment intimidates those who express their views. **Seventh:** The Administrative Director of the Coalition Provisional Authority, pursuant to Section (2-2) of Order 7 of 2003, forbids filing a lawsuit in crimes related to publication, and other crimes, including Article (226) of the Penal Code, without his written permission, because it is a violation of freedom of expression. In preparation for its subsequent abolition, and instead of its abolition, it was reinstated by virtue of the order to reintroduce the death penalty No. (3) of 2004. **Eighth:** The Iraqi constitution of 2005 considered freedom of expression and the freedoms of publishing, press, printing and media among the freedoms that may not be violated by amendment under Article (126/2nd) because it is one of the basic principles. **Ninth:** The international standards for freedom of expression, publication, media and printing are binding on Iraq through its ratification of many covenants, and that the text of the article under challenge contradicts Iraq's international obligations in this regard. **Tenth:** The (the plaintiff) was sentenced to one year in prison in absentia by the Karkh Criminal Court No. (882/jim3/2021 on 9/6/2021) according to the article under appeal, and the press and printing, where he was sentenced under the pretext of insulting the government of Mr. Al-Maliki after the end of his term, that is, it went to the conclusion that insulting the government is not limited to the existing government, but extends to protect the outgoing governments, and this interpretation means that insulting previous governments is a criminal matter according to Article (226). And that he was sentenced because he provided information about crimes that occurred when Mr. Nuri al-Maliki was Prime Minister, and requested an investigation to determine his responsibility for those crimes real against expressing their

opinions. For all of the foregoing, the plaintiffs' request to invite the defendant to plead, and the ruling unconstitutional Article (226) of the Iraqi Penal Code No. (111) of 1969, as amended, for violating the text of Article (38) of the Iraqi constitution in force for the year 2005 because it violates freedom of expression, and the freedoms of the press, publishing, printing and media. The case was registered with this court in No. (116/federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the internal system of the FSC No. (1) of 2005, and it informs the defendant of its petition and documents in accordance with the provisions of Article (2/1st) of the same system, and his two attorneys replied with the answer statement dated 21/9/2021 that the FSC had previously decided on the subject matter of the case under its decisions No. (37/federal/2019) and (204/federal/media/2018), and they became an argument with the provisions they decided upon, and the plaintiff's lawsuit becomes it is obligatory to respond and is not supported by the constitution and the law. Therefore, they requested that the plaintiff's lawsuit be dismissed and that he be charged with fees, expenses and attorney's fees. After completing the procedures in accordance with the provisions of the aforementioned rules of procedure, a date was set for the pleading and the two parties were informed of it in accordance with the provisions of Article (2/2nd) of the same rules of procedure. On the appointed day, the court was formed, so the attorney for the plaintiffs, Shawkat Sami Al-Samarrai, attended, as well as the lawyer Hussein Hadi Duair as an agent for the first plaintiff. (Rahim Hassan Jerio) and the defendant's attorney, the legal employee, Saman Mohsen Ibrahim, attended the pleading was commenced in public and in attendance. The plaintiffs' attorneys repeated what was stated in the lawsuit petition and requested a ruling accordingly. The plaintiffs' attorney added, requesting that the lawsuit be limited to the first plaintiff and that the lawsuit be nullified for the rest of the plaintiffs. The defendant's attorney replied that he had no objection to that. The court decided, based on the provisions of Article (88) of the Civil Procedures Law No. Amended (83) of 1969

Annulment of the lawsuit petition for plaintiffs (2, 3, 4, 5, 6, 7, 8 and 9) and charging them with attorney fees for the defendant's attorney /being in his capacity the plaintiff's attorney answered, the defendant's attorney answered, requesting that the case be dismissed for the reasons mentioned in the answer draft dated 9/21/2021 the following ruling:

The Decision:

After scrutiny and deliberation by FSC, it was found that the plaintiffs requested to invite the defendant /being in his capacity to plead and rule the unconstitutionality of Article (226) of the Penal Code No. (111) of 1969, as amended, due to its violation of the text of Article (38) of the Constitution of the Republic of Iraq for the year 2005 and the prosecutor's request in a session on 20/10/2021 Annulment of the case for the plaintiffs in the sequence (9,8,7,6,5,4,3,2) and for what the court decided in the aforementioned session and based on the aforementioned request, and the defendant's attorney did not object to annulment of the case for them based on the provisions of Article (88/ 1) From the Civil Procedures Law No. (83) of 1969 (amended) and limiting the case to the first plaintiff, as his attorney claimed that he had an interest in filing this case, due to the issuance of a ruling by the Karkh Criminal Court, the third panel, No. (882/jim3/2021) on 9/6/2021, which includes a sentence of severe imprisonment for one year in accordance with the provisions of Article (226) of the Penal Code No. (111) of 1969 for the crime of insulting the Iraqi government through the media and social networking sites in Baghdad Governorate in 2019. This court finds that it has previously issued its decision No. (204/federal/2018) which includes (Article (19/4th) has guaranteed the right of defense in all stages of investigation and trial, but it did not guarantee that the limits of this right were exceeded a penalty for this transgression, because the right stops when the one who owns it exceeds the rights of others. Therefore, the legislation of Article (226) of the Penal Code, regardless of the time of its enactment, does not violate the provisions of the constitutional articles on which the plaintiff

relied dismissal of the plaintiff's claim) it also issued its decision No. (37/federal/2019) on 21/5/2019 containing (The FSC finds that it has considered an appeal against the unconstitutionality of Article (226) of the Penal Code, through the lawsuit numbered (204/federal/2018) according to which it ruled Refusal of the challenge to the unconstitutionality of the aforementioned article according to the reasons contained therein. Accordingly, as the final rulings issued by the FSC pursuant to Article (94) of the Constitution and the final rulings are evidence of what it has decided if the matter is related to the same subject, based on the provisions of Article (105) of the Evidence Law No. (107) of 1979, so the plaintiff's lawsuit is It lost its legal and constitutional support because its issue had already been decided upon, and the ruling decided to reject it). Therefore, this court had previously considered the challenge to the constitutionality of Article (226) of the Penal Code No. (111) of 1969 amending and ruling in accordance with the aforementioned two resolutions whereas, the provisions of this court and based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005, which stipulates (the decisions of the FSC are final and binding on all authorities) and Article (5) of the FSC Law No. (30) of 2005 amended by Law No. (25) for the year 2021, which stipulated (the judgments and decisions issued by the FSC are final) and since the precedent of ruling on constitutional cases represents the most important foundations of the final decisions and the obligation of the decisions issued by this court so the plaintiff's claim is obligatory to respond from this aspect to him, the FSC decided the following:

First - The ruling dismissing the plaintiff's claim regarding the constitutional challenge of Article (226) of the amended Penal Code No. (111) of 1969

Second - To charge the plaintiff the fees, expenses, and attorney's fees for the defendant's attorney, an amount of one hundred thousand dinars, distributed in accordance with the law and issued by agreement based on

the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 and Article (5) of the FSC Law No. (30) of 2005 As amended by Law No. (25) of 2021 a final and binding provision for all authorities and publicly understood on 24/Rabi' Al-Thani/1443 coinciding with 1/December/2021.