



The Federal Supreme Court (F.S.C.) convened on 11.1.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiffs:

1. Thamer Fayadh Abd Ali.
2. Malik Aboud Matar.

their attorney Ahmed Fadel Al-Maamouri.

The defendants:

1. The President of the Republic / In addition to his position - his deputy, the chief legal expert, Ghazi Ibrahim Al-Janabi.
2. The Prime Minister / in addition to his position - his deputy, the legal advisor Haider Al-Sufi.

The claim:

The plaintiffs claimed, through their attorney, that the stability of states is part of the stability of legal systems because they represent the stability of societies and they are going through a new experience at the social, economic, and political level, which are the rights and freedoms stipulated by the permanent constitution of 2005, and that the mechanism for enabling individual (citizens) to enjoy these rights and freedoms, while claiming them judicially in the Constitution,

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which referred to in Article (93/Third) of it, which stipulates (the decision on cases that arise from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority, and the law guarantees the right of each of the Council of Ministers, concerned individuals and others, the right to appeal directly with the court). Since sovereignty is for the constitution and the people are the source of the authorities and their legitimacy, and it is one of the foundations and principles of the constitution that the Iraqi people voted on, and since Article (13) of the constitution stipulates (first - this constitution is the supreme and supreme law in Iraq, and it is binding in all parts of it without exception, second - It is not permissible to enact a law that contradicts this constitution, and every text contained in the constitutions of the regions or any other legal text that contradicts it shall be considered null). As the priority of the process of empowering individuals is to enjoy rights and freedoms without restrictions, instructions, or regulations that limit them, or to challenge the federal authorities' violations of the constitution, and to reach this goal and make them available to the public among the people as individual citizens, with what he possesses in terms of adversarial character and the public interest that the constitution expressed by those concerned with many challenges. Among the constitutional articles before the Federal Supreme Court, the court adhered to the provisions of the court's bylaw. The bylaw of the court No. (1) of 2005 in Article 6 of it – which stipulated the conditions for filing a case and Article 19 – which stipulated the application of the Civil Procedures Law and the Evidence Law in what is not stipulated in a law the court and its bylaw, and that this

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restriction is not commensurate with the rights acquired after the adoption of the constitution, and since the aforementioned bylaw and some articles of the Civil Procedure Code restrict the right of access to the rights and freedoms guaranteed by the constitution, any legislation, system or instructions that limit, restrict or limit the rights of individuals is contrary to the Constitution, and Article (19/ Six) of the Constitution stipulates that (Everyone has the right to be treated fair treatment in judicial and administrative procedures), and the Prime Minister / in addition to his position is responsible for issuing regulations, instructions and decisions with the aim of implementing federal laws in accordance with Article (80) of the Constitution. Accordingly, the plaintiffs requested the Federal Supreme Court to invite the defendants to plead and issue its just, decisive, and binding reform decision for all authorities and to appeal Articles (6 and 19) of the Federal Supreme Court's bylaw No. (1) of 2005, which relied on Articles (4) and (80) of the Law Civil Procedure No. (83) for the year 1969, amended, as procedural articles in issuing its decisions, and because it violates the spirit and essence of right and freedoms and the rest of the other articles of the constitution that nullify the basis of the public interest and the right to appeal to individuals (citizens) to achieve the principles of people's authority. The case was registered with this court in No. (163/Federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005, and the defendant is informed of its petition and documents in accordance with the provisions of Article (2/First) from the same bylaw, so the attorney for the first defendant answered the President of the

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Republic, in addition to his position, in the answer list dated December 5, 2021, which included the following:

1. The bylaw of the Federal Supreme Court No. (1) of 2005 was issued with an effective legislative authorization based on what is stated in Article (9) of the Federal Supreme Court Law No. (30) of 2005, and that this authorization granted the court the right to issue the bylaw in which the procedures and how accepting requests and pleading procedures, in a manner that facilitates the implementation of provisions regulating workflow in the law.

2. In the implementation of this, the Federal Supreme Court issued the aforementioned bylaw and published in the Official Gazette No. (397) on 2/5/2005 in which it specified the procedures and conditions of the case and the application of the Civil Procedures Law in its procedures, including what is stated in Article (6) of it.

3. The legislative regulations issued by the Council of Ministers or the authority authorized to issue these regulations are part of the practical application that Iraqi legislation has followed since the inception of the Iraqi state to this day, and it is consistent with the legislation in the world.

4. The Federal Supreme Court, when issuing the rules of procedure, examined what is required when filing a lawsuit and what the litigants require from the qualities, they have to accept their appeal. Pleadings, and cases of appeal increase without reason, which leads the litigants to shade justice in some aspects of the case.

5. Concerning the application of the provisions of the Civil Procedures Law No. (83) of 1969, it is a procedural course of the case, which requires proceeding with the case procedures according to it to organize the pleadings in order to reach the result in the

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easiest way and without the presence of these procedures and follow them means loss of the right due to the difference of opinion in how Proceeding in the case and that this approach is considered part of the public order and may not be violated. Thus, violating the procedures regulated by the Civil Procedures Law to proceed in the case from the date of its filing and until the judgment acquires the degree of finality is in the interest of the litigants and achieves the public interest, and to say otherwise is only a move away from reality, it is in the interests of the opponents and achieves the public interest.

6. The emergence of these courts in Iraq gives rise to hope that it will evolve until it reaches what civilized countries have reached, especially since the constitutional judiciary in Iraq is recent inception and the Federal Supreme Court may introduce modern procedural rules that devise them, in which many foundations are set in how to proceed in the case without relying on the Civil Procedures Law, and that the application of some of the texts contained therein to the constitutional case is the correct procedure at present, as long as the principles contained in it are valid for application, and do not diminish the rights of the litigants. This law may not be underestimated in defining some of the plaintiffs' claims, and for the foregoing, there is nothing in the court's bylaw to indicate any restrictions on the citizen's freedom to file a claim that he considers violating the provisions of the Constitution, except that freedom is not absolute but rather restricted by the supreme interest of the state in the sense that The opponent is completely free to quarrel with any government agency, except that this litigation requires that it not infringe on people's freedoms, interests, or the public interest. Thus, what was stated in the plaintiffs' lawsuit is not based on the facts or

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the nature of the lawsuit procedures filed in the Federal Supreme Court, because Article (6) of the bylaw is fully consistent with the supreme interest of the state, and that the application of some provisions of the Civil Procedure Code in that lawsuit stems from the stability The legality of the procedures and their complete agreement with the provisions of the Constitution. Therefore, the attorney for the first defendant requested that the case be dismissed and that the plaintiffs be charged with fees, expenses, and attorney fees. The second defendant's attorney, the Prime Minister, in addition to his post, responded to the answer list dated December 19, 2021, requesting that the case be dismissed on behalf of his client because it is not suitable as a deduction in it based on the text of Article (4) of the Civil Procedures Law No. (83) of 1969 (amended), in addition to the lack of Availability of the condition of interest to raise it because the application of the two articles in question does not prejudice the constitutional rights of the plaintiffs in a way that causes them direct harm, as the plaintiffs did not provide evidence that actual harm had been inflicted on them by the two articles in question, and the text of the article in question was a legislative option, not a violation. It contains the provisions of the Constitution and the laws in force, and there is no violation in this of the text of Article (80) of the Constitution. And if the bylaw is based on the civil procedure law in force, it conforms to the provisions of Article (130) of the Constitution, which states that (the legislation in force shall remain in force unless it is repealed or amended in accordance with the provisions of this Constitution). Therefore, the second defendant's attorney requested a ruling to dismiss the appeal in form and subject and to charge the plaintiff with expenses, fees, and attorneys' fees.

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After completing the procedures in accordance with the provisions of the aforementioned rules of procedure, a date was set for the pleading, in accordance with Article (2/second) of it, and the two parties were informed of it. The judgment according to which both the attorney of the first defendant and the attorney of the second defendant answered and asked each of them to dismiss the case on behalf of his client for the reasons stated in the list of each of them. The Court decided the conclusion of the pleading, and a date was set as the date for the issuance of the decision, and with it, the court was formed and issued the following ruling.

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiffs, Thamer Fayadh Abd Ali and Malik Aboud Matar, are requesting through their attorney, lawyer Ahmed Fadel Al-Maamouri, to challenge the constitutionality of Articles (6 / first, second, third, fourth, fifth and sixth) and (19) of the bylaw of the Federal Supreme Court No. (1) for the year 2005 due to their violation of the provisions of Articles (5, 13, 19, 27 and 80) of the Constitution of the Republic of Iraq for the year 2005. The agent of the first defendant argued that the challenged texts do not violate the Constitution requesting to dismiss the lawsuit. The agent of the second defendant prime minister, in addition to his lawsuit, has to plead a formality, which is the absence of the litigation of his client, and a substantive defense, which is not violating the contested texts of the Constitution, asking for it to be dismissed in both formal and subject terms. The court finds that the constitutional lawsuit, like other civil lawsuits, requires from a formal point of view the

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conditions that are required to be met in the civil lawsuit for its acceptance based on the general rules stipulated in the Civil Procedures Law No. (83) of 1969, as amended, outlined by the legislator in Articles (3, 4 and 5 and 6), of the aforementioned law, with three conditions, namely (eligibility, litigation, and interest). It is not available in the plaintiff's lawsuit, as it is stipulated that whoever is a litigant that his declaration entail a judgment on the estimation of the issuance of a declaration from him, and this cannot be imagined if the defendant is not a party to the relationship between him and the plaintiff, and the litigant is also required to be judged or bound by something on Assessing the evidence of the case, that is, the judgment issued in the case must have an effect by obligating the defendant to it, and since the bylaw of the Federal Supreme Court No. (1) of 2005 was issued by the Federal Supreme Court based on the legal authorization stipulated in Article (9) of Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and was not issued by any of the defendants, therefore, the acknowledgment of either of them in the case cannot result in a judgment in it, and neither of them can be obligated to do anything based on the assessment of the proof of the case for the same reason. This is what prompted the legislator to consider the litigation a public order and obligated the court, in the absence of its orientation, to rule to dismiss the case, even on its initiative and without entering into its basis. Against him and for all of the foregoing, and because the litigation was not directed towards each of the defendants, the court decided to dismiss the claim of the plaintiffs, Thamer Fayadh Abd Ali and Malik Aboud Matar in form, and to charge them fees and judicial expenses and attorney fees for the attorney of the first

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defendant in addition to his post as chief legal experts Ghazi Ibrahim Al-Janabi and the agent of the second defendant In addition to his position as legal advisor Haider Ali Al-Sufi, an amount of one hundred thousand dinars is distributed between them in accordance with the law, and the agreement was issued a final and binding judgment for all authorities based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 and articles (80/1) of the Civil Procedure Code No. (83) for the year 1969, as amended and (5/Second and 9) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and (19) of the Federal Supreme Court's bylaw No. 1 of the year 2005 and publicly understood on 7/ Jumada al-Akhirah/ 1443 AH corresponding to 1/1/2022 AD.

**Signature of
The president**

***Jasem Mohammad
Abbood***

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