

Republic of Iraq  
Federal Supreme Court  
Ref. 163 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 17/10/2023 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, 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 Plaintiff: Sahar Omar Abdul Kareem – his agent the barrister Maytham Ali Sameen.

The Defendant: Speaker of the ICR/ being in this capacity – his agent the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiff was pushed by its agent before the Personal Status Court in Suleiman Bey during the consideration of the numbered Sharia law The average, according to Article (18) of the internal system of the Federal Supreme Court No. (1) of 2022, and to give the way to its agent to submit the list of constitutional appeals upon his request, the court gave him and the pleading was postponed until 6/14/2023, in which the plaintiff asked her to complete the procedures of the appeal was given to the court, for not submit the regulations, its agent climbed again, then presented it and pushed the legal fee on it, and the court decided on 19/20/2023 to stop the pleading and consider the lawsuit upright until the constitutional appeal was resolved - and sent it with a true copy of the Sharia law of the character in Suleiman Bey in the number (67/St./2023) on 21/6/2023 and under the list of the constitutional appeal claimed that her husband filed the aforementioned legal lawsuit against her and asked her to judge her by disintegration in accordance with the provisions of Article (25/3 and 4) of the Personal Status Law No. (188) of the average year 1959, which provides for (3- The court must wait to issue the ruling that the wife's recalcitrance so that she can stand on the reasons for

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her refusal to comply with her husband after it has exhausted all its efforts in removing the reasons that prevent obedience), and she is challenging the constitutionality of this article to conflict with the principles of the constitution and its violation of the constitution of the Republic of Iraq for the year 2005 in Article (13/ second) of it, which states that: (It is not permissible to enact a law that contradicts this constitution and is considered void every text that is mentioned in the constitutions of the regions or any other legal text that contradicts with him), so the plaintiff asked this court to judge the unconstitutionality of Article (25/3 and 4) above and to burden the defendant with the expenses and advocacy fees. The lawsuit was registered with this court and informed the defendant of its petition and documents according to the provisions of Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the court's internal system, his agent answered the answer regulations dated 7/18/2023 and asked to return the lawsuit that the paragraphs - the subject of appeal - are among the laws in force following the provisions of Article (130) From the constitution, that legislation remains in force and force unless it is repealed or amended following the provisions of the Constitution, their text is in accordance with Islamic law in the Almighty's words (As for those from whom you fear disloyalty) Surat An-nisa (verse-34), The Qur'anic texts are considered one of the sources of law legislation, in addition to being consistent with the Constitution in Article (2/First/Alif) of it, which states: (It is not permissible to enact a law that conflicts with the established provisions of Islam). After completing the procedures required by the court's Bylaw, a date was set for the pleading and the two parties were notified of it. On the appointed day, the court was formed and the representative of each party was present and the public in-person pleading began. The court examined the plaintiff's requests and substantiations and the defenses of the defendant's agent. After completing its scrutinies, the end of the argument has been made clear and the court issued its following decision:

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**The decision:**

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiff challenged the constitutionality of Articles (25/3 and 4) of the Personal Status Law No. (188) of 1959, as amended, before this court through the mediation of the judge of the Personal Status Court in Suleiman Bey, affiliated with the Presidency of the Salah al-Din Court of Appeal, this was during its consideration of case No. (67/Shin/2023) concerning the plaintiff (Yasser Saad El-Din Ahmed) and the defendant (Sahar Omar Abdel Karim), where she appealed the aforementioned article before the Personal Status Court in the pleading session dated 5/29/2023, and her agent was given a period to complete the procedures. The appeal was postponed until 6/14/2023, in which she responded that she was not able to complete the appeal procedures before the Federal Supreme Court. Then the constitutional appeal was submitted according to the drafts submitted by her representative, and the legal fee was collected on her behalf on 6/15/2023 that is, seventeen days have passed since the defense of unconstitutionality. Therefore, the plaintiff's representative has exceeded the period necessary to submit the statement of appeal stipulated in Paragraph (2<sup>nd</sup>) of Article (18) of the Federal Supreme Court's Internal Regulations No. (1) of 2022, which indicated the necessity of Submitting the appeal to the trial court within (10) days from the date of pleading unconstitutionality before the trial court, therefore, the appeal violates Article (18/2<sup>nd</sup>) of the Federal Supreme Court's Bylaws No. (1) of 2022. Given the above, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit (Sahar Omar Abdel Karim) in form and charge her the fees, expenses, and attorney fees of the defendant's agent/being in this capacity, an amount of one hundred thousand dinars shall be distributed in accordance with the law. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93/1<sup>st</sup>) and (94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5) of the FSC's law No. (30) for 2005 which was

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amended by law No. (25) for 2021, and article (18/2<sup>nd</sup>) of the FSC's Bylaw No. (1) for 2022. The decision has been made clear on 1/Rabea Al-Thani/1445 Hijri coinciding with 17/October/2023 AD.

**Judge**  
**Jassim Mohammed Abboud**  
**President of the Federal Supreme Court**