

Republic of Iraq
Federal Supreme Court
Ref. 166/ Federal / 2021



The Federal Supreme Court (F.S.C.) convened on 21.2.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed 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:

Hussein Shaker Jassem - his attorneys are Zaid Hamza Abdullah and Mona Abdel Hadi.

The defendant:

The Speaker of the Council of Representatives / in addition to his position - his deputy, legal advisor Haitham Majed Salem, and legal employee Saman Mohsen Ibrahim.

The claim:

The plaintiff claimed, through his two attorneys, that, as a debtor in the executive dossier (410/Teh/2018), the implementation of the Madaen, was arrested in accordance with the provisions of Article (48) of the Execution Law No. (45) of 1980, and more than two and a half years have passed since his arrest, and that the mentioned article was a violation to the provisions of the Constitution of the Republic of Iraq for the year 2005 in Articles (15 and 37 / first / a, b) thereof, as human freedom is one of the principles affirmed by international conventions and national

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constitutions, including the Constitution of the Republic of Iraq for the year 2005, and that the continued detention of the debtor and not releasing him is an unfair decision and inconsistent with human rights, and since the Federal Supreme Court has ruled in many decisions that some legal articles that are incompatible with human rights and freedom are unconstitutional, accordingly the plaintiff requested from the Federal Supreme Court to call upon the defendant in addition to his post to plead and rule the unconstitutionality of Article (48) of the Execution Law No. (45) for the year 1980, and releasing him and charging the defendant with fees, expenses and attorney fees. The case was registered with this court in No. (166/ 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 it informs the defendant of its petition and documents in accordance with the provisions of Article (2/First) of the same bylaw, and his two attorneys responded with the answer list dated 5/12/2021, which included the following:

1. The plaintiff did not specify the constitutional texts that he claims are being violated by the contested text.

2. Laws are legislated to regulate the relations between members of society and the state and between members of society themselves. When the act constitutes a crime or a violation of the law, and its punishment is determined by deprivation of freedom by arresting or imprisonment, it does not violate the Constitution.

3. The request to release the plaintiff (the debtor) is outside the jurisdiction of the Federal Supreme Court based on the provisions of Article (93) of the Constitution. For these reasons, the defendant's attorney requested that the plaintiff's case be dismissed and that he

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be charged with all judicial fees, expenses, and attorney's fees, and after completing the procedures required by the aforementioned bylaw, a date was set for the pleading, in accordance with the provisions of Article (2/Second) thereof, and the two parties were informed of it, and on the appointed day the court was formed, and attended the attorneys of the plaintiff, lawyers Zaid Hamza Abdullah and Mona Abdel Hadi, and attended on behalf of the defendant, in addition to his post, the legal counsel Haitham Majed Salem and legal employee Saman Mohsen Ibrahim, and started in presence public session, the plaintiff agents repeated what was stated in the case petition requesting ruling according to it and presented explanatory draft, the defendant's attorney, in addition to his position, provided with a copy of it. The defendant's attorney responded and requested that the case be dismissed for the reasons mentioned in the answer list dated 5/12/2021. The parties' attorneys repeated their previous requests and statements, and where there was nothing left to say, the court decided the conclusion of the pleading and issued the following judgment decision:

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff had filed the case before this court to challenge the constitutionality of Article (48) of the Execution Law No. (45) for the year 1980, amended, which stipulated that (if the convict refuses to hand over the minor, he must be imprisoned no matter how long the period until he hand him over, however, imprisonment is not permissible when the delivery is beyond the will of the convict), on the basis of its violation of the

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provisions of Article (15) of the Constitution of the Republic of Iraq for the year 2005, which stipulates (everyone has the right to life, security and freedom, and it is not permissible to be deprived of these rights or Restricting it except in accordance with the law, and based on a decision issued by a competent judicial authority), and Article (37/First/ A, B) thereof, which stipulates (First - human freedom and dignity are inviolable. B - no one may be arrested or investigated except by virtue of a judicial decision) for the reasons referred to in detail in the petition of the case, as well as his request to be released from detention, the Federal Supreme Court finds that the plaintiff's lawsuit must be rejected in form as far as his request for his release from detention is concerned. As the federal supreme court jurisdictions are stipulated in article (93) of the constitution of Iraq of 2005 and Article (4) of Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, proves that releasing the accused from detention does not fall within the jurisdictions stipulated in the aforementioned articles, which means that no jurisdiction of this court to decide on the aforementioned request, so the plaintiff's lawsuit is obligatory to be dismissed in form of the jurisdiction. As for the plaintiff's lawsuit related to challenging the constitutionality of Article (48) of the Execution Law No. (45) for the year 1980 as amended, this court finds that the legislator's goal in legislating the aforementioned Article is to find a mechanism that guarantees the means of forced execution through which the debtor (the convict) who has been procrastinating in execution is forced to hand over the young child to his custodian and not allow him to procrastinate, evades and not surrender, whenever he can do so unless the non-delivery is out of his control. To preserve the interests

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of the child in custody, which is one of the interests of obligatory care and protection and takes precedence over the interests of the convicted debtor, due to the necessary and actual need of the child in custody to stay with his custodian in implementation of the decision of the executive judgment, to receive the necessary and obligatory care that he needs from those who have the right to his custody, and since the interests of the child in custody are paramount, therefore, it takes precedence over the interests of the convicted debtor, which requires his imprisonment no matter how long the period until the custody of the child is delivered. His imprisonment would prejudice his dignity as long as the imprisonment was based on the provisions of the law and pursuant to a decision issued by a competent judge, especially since Article (15) of the Constitution of the Republic of Iraq for the year 2005 permitted the deprivation or restriction of rights or freedoms in accordance with the provisions of the law, and based on a decision issued by the A competent judicial authority, and this is in accordance with the provisions of Article (37/first/a, b) of the aforementioned constitution. Thus, Article (48) of the aforementioned Execution Law does not conflict with the rights and freedoms stipulated in the constitution that are guaranteed to all. Consistent with the provisions of Article (29) of the aforementioned Constitution of the Republic of Iraq, which stipulates (First - A - the family is the basis of society, and the state preserves its entity and its religious, moral, and national values. b- the state guarantees the protection of motherhood, childhood, and old age takes care of children and youth and provides them with the appropriate conditions for the development of their talents and capabilities. Second - children have a right over their parents to education, care ... Fourth -

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All forms of violence and abuse in the family, school and society are prohibited), and Article (30/first) thereof, which stipulates (the state guarantees to the individual and the family - especially the child and woman - social and health security, and the basic ingredients for living a free and dignified life that secures them an adequate income and adequate housing), and Article (33/first) of it, which stipulates (everyone has the right to live in good environmental conditions), and Article (46) of it, which stipulates (there shall not be restriction of exercise any of the rights and freedoms contained in this Constitution or their limitation except by a law or based on it, provided that such limitation and restriction does not affect the essence of the right or freedom), and because Article (48) of the aforementioned Execution Law does not violate the provisions of the aforementioned Constitution, which necessitates the dismissal of the plaintiff's case in question. Thus, the plaintiff's lawsuit is obligatory to be dismissed in form and objectively in accordance with the aforementioned detail, the Federal Supreme Court decided to rule the following:

1- Refusal of the plaintiff Hussein Shaker Jassem's lawsuit in form, regarding his request to release him from detention for lack of jurisdiction, and the subject matter of the appeal against its unconstitutionality Article (48) of the Implementation Law No. (45) of 1980, as amended, as there was no constitutional violation.

2- The plaintiff shall charge the expenses, fees, and attorney fees of the defendant's attorney, in addition to his post, to the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim, an amount of one hundred thousand dinars distributed according to the law. The ruling was issued in agreement

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based on the provisions of Articles (93/First and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/First and 5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 as a final and binding ruling on All authorities. and understand it publicly on Rajab 19 / 1443 AH corresponding to 2 / 21 / 2022 AD.

Signature of
The president

Jasem Mohammad Abbood

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