

Republic of Iraq  
Federal Supreme Court  
Ref. 178 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 15/10/2023 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: Shakhwan Loqman Hakeem – his agents, the barristers Khalid Majeed Sultan and Ghazi Faisal Ouda.

The Defendant: Speaker of Kurdistan Region Parliament/ being in this capacity – his agent, the official jurist Shirmeen Khudhir Bahjat.

### **The Claim**

The plaintiff, through his agent, claimed that the defendant had previously issued Law No. (42) of 2004, which stipulated in Article (1) of it: “The enforcement of Paragraph (1) of Article (408) of the amended Penal Code No. (111) of 1969 shall be suspended.” In the Kurdistan Region of Iraq, the following shall replace it: 1. Anyone who incites or assists a person in any way to commit suicide shall be punished with imprisonment for a period not exceeding seven years, or cause it if the suicide is committed based on that. The penalty shall be imprisonment in the event of an attempt) where the enforcement of the text of Article (408/1) of the amended Iraqi Penal Code No. (111) of 1969. He was sentenced to severe imprisonment for four years according to the discriminatory decision issued by the Kurdistan Region Court of Cassation, No. (20/General Criminal Authority/2023 on April 2). /2023) based on the provisions of Article (1) of Law No. (42) of 2004, which included adding a new phrase to the text of Article (408), which is (or caused by it), according to which he was sentenced, therefore, he took the initiative to challenge the aforementioned law before this court, because it was enacted by a party that does not have the right to issue laws, as the right to legislate the internal laws of Kurdistan is based on the Constitution of the Republic of Iraq issued in

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 178 / federal /2023



Kurdish text

2005, but before that date there is no constitutional basis for the defendant, and adding the phrase A new law (or caused by it) violates Islamic Sharia, in addition to the fact that enacting the law violates the provisions of Article (13) of the Constitution, which states: (First: This Constitution is the supreme and highest law in Iraq, and it is binding in all parts of it, without exception. Second: It is not permissible to enact a law that conflicts with this Constitution, and every text contained in the regional constitutions, or any other legal text that conflicts with it, is considered invalid, while the defendant's enactment of the law - the subject of the appeal - was not based on a constitution that authorizes him to do so, since the region Kurdistan was established with the issuance of the Constitution of the Republic of Iraq in 2005, and the Constitution of the Republic of Iraq of 1970 under the previous regime did not grant the authorities in the northern governorates the right to legislate laws. Therefore, based on Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, which stipulated That the contested text was applied to the plaintiff and that he did not benefit from it in whole or in part. The plaintiff requested that Law No. (42) of 2004 be ruled unconstitutional, and that it be repealed and that all effects resulting from it and because of it be nullified, and the defendant / being in this capacity shall burden, fees, expenses, and advocacy fees. The case was registered with this court, the legal fee was collected, and the defendant was notified of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the internal regulations of the Federal Supreme Court No. (1) of 2022. His representative responded in the answering draft dated 9/24/2023. Its conclusion: The law Penalties are not among the laws that fall within the exclusive jurisdiction of the federal authorities stipulated in Article (110) of the Constitution, so the regional parliament has the right to amend the application of this law and other laws in force in the region based on Article (121/2<sup>nd</sup>) of the Constitution, which stipulates on: (The regional authority has the right to amend the application of federal law in the region, in the event of a contradiction or conflict between federal law and regional law regarding an issue that does not fall within the exclusive jurisdiction of the federal authorities), also, Article (115) of the Constitution stipulates that: (Everything that is not stipulated in the exclusive powers of the federal authorities shall be the authority of the regions and governorates not organized into a region, and other

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 178 / federal /2023



Kurdish text

powers shared between the federal government and the regions shall have priority over the law of the regions and governorates not organized. in a territory in the event of a dispute between them), the Parliament of the region, before the entry into force of the 2005 Constitution throughout Iraq, was based on issuing and amending laws on Law No. (1) of 1992 as amended, as well as the internal regulations of the Parliament. Moreover, Parliament, after its formation in 1992, required, by Resolution No. (11) of 1992, the issuance of a law of Parliament to enforce and implement the laws and decisions issued by the Iraqi authorities after the date of 10/22/1992. On this basis, Parliament took over the enforcement of some of the laws issued by those authorities and amending their application in a way that is compatible with the situation in the region. The 2005 Constitution gave legitimacy to all laws and decisions. Which was legislated in the Kurdistan Region from 1992 until the entry into force of the Constitution, in this regard, Article (141) stipulates that: (The laws that have been legislated in the Kurdistan Region since 1992 continue to operate, and the decisions taken by the Kurdistan Regional Government - including court decisions and contracts - are considered effective, unless they are amended or repealed following the laws of the Kurdistan Region, by the competent authority therein, unless they contravene this Constitution), naturally, the challenged law is one of these laws, as it was issued in 2004, that is, before the entry into force of the Constitution, and the plaintiff did not explain the nature of the constitutional violation of the law - the subject of the appeal - and did not specify the constitutional article that was allegedly violated and the reason for the violation, as required by Article (20/4<sup>th</sup>) of the bylaws of the court, except for referring to Article (13) of the Constitution, which is an article that came within the basic principles of the Constitution, which stipulates that this Constitution is the supreme and supreme law of the country, and no law may be enacted that conflicts with it, and any law that conflicts with it is void, this matter, no doubt, cannot be denied or said otherwise, as all laws that violate the constitution are invalid, and what the plaintiff fell into was not specifying the face or content of the constitutional violation, in addition to the fact that the social interest was what justified the regional parliament's issuance of the law - the subject of the appeal - due to the high incidence of causing harm. By committing suicide in a way that causes concern, while the text of Article (408) of the Penal Code before it was

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 178 / federal /2023



Kurdish text

amended was incapable of confronting these cases. Therefore, the application of this article in the region was amended to confront these cases to achieve the highest interest of society, and I requested that the plaintiff's lawsuit be dismissed and that he be burdened with the fees and expenses. After completing the procedures required by the court's internal regulations, a date for pleading was set in accordance with Article (21/3<sup>rd</sup>) thereof and the two parties were notified of it. The court was formed, the representatives of both parties were present, and public in-person pleading began. The plaintiff's two agents repeated what was stated in the lawsuit petition and requested a ruling in accordance with what was stated therein. The defendant's agent responded and requested that the case be dismissed for the reasons stated in her list attached to the case papers, and since the court completed its examinations and there was nothing left to say, the end of the argument has been made clear and the court issued the following ruling:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the plaintiff, Shakhwan Luqman Hakim, had previously been sentenced by the Sulaymaniyah Criminal Court to eight years in prison based on the provisions of Article (405) of the Iraqi Penal Code No. (111) of 1969 as amended, and when the case was presented to the Commission The Criminal Court of Cassation in the Kurdistan Region of Iraq decided to change the legal description of the crime and make it following Article (408) of the aforementioned Penal Code, amended by Article 1 of Law No. (42) of 2004 - issued by the Parliament of the Kurdistan Region of Iraq on 10/13/2004 - and convicted him. Accordingly, he was sentenced to severe imprisonment for four years, this is because he caused his victimized wife to commit suicide as a result of family disputes resulting from the convict's affair with his victim's sister-in-law and because Law No. (42) of 2004 violates the provisions of Articles (2, 13, and 141) of the Constitution of the Republic of Iraq for the year 2005. He requested a ruling of unconstitutionality and the abolition of the law. The aforementioned was published in the Kurdistan Gazette, issue (52, dated 11/28/2004), the first article of which stipulates: ((The enforcement of Paragraph (1) of Article (408) of the Penal Code No. (111) of 1969 as amended in

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 178 / federal /2023



Kurdish text

the Kurdistan Region shall be suspended. Iraq and is replaced by the following: anyone who incites or assists a person in any way to commit suicide or causes it if the suicide is committed based on that shall be punished with imprisonment for a period not exceeding seven years. The penalty shall be imprisonment in the case of an attempt.) The plaintiff also requested this court to nullify all consequences arising from it and to hold the plaintiff accountable. The Speaker of the Kurdistan Regional Parliament must pay, in addition to his job, fees, expenses, and advocacy fees, for public in-presence pleading and for the court to hear the defenses of the defendant's attorney, who requested dismissal of the case for the reasons stated in her answer list dated 9/24/2023, including that the Penal Code is not considered one of the laws that fall within the exclusive jurisdiction of the federal authorities stipulated in Article (110) of the Constitution, It was the social interest that justified the regional parliament's issuance of the law - the subject of the appeal - due to the alarming increase in cases of suicide, while the text of Article (408) of the Penal Code before it was amended was incapable of confronting these cases. Therefore, the application of this article was amended in the region to confront these situations to achieve the highest interest of society. After scrutiny, the Federal Supreme Court finds the following:

First: The federal system in the Republic of Iraq consists of a capital, regions, decentralized governorates, and local administrations based on the provisions of Article (116) of the Constitution of the Republic of Iraq for the year 2005, and the governorates are composed of a number of districts, districts, and villages based on the provisions of Article (122/1<sup>st</sup>) of the Constitution and the governorates are granted Which was not organized within the territory of broad administrative and financial powers to enable it to manage its affairs following the principle of administrative decentralization following what was stated in Clause (2<sup>nd</sup>) of the same article, therefore, since Article (122/2<sup>nd</sup>) granted the governorates that were not organized into a region administrative and financial powers, as they were described according to the same text as broad powers, therefore, the administrative system for those governorates is based on administrative decentralization and not on the basis of political decentralization, considering that the formulation of foreign policy Diplomatic representation, negotiating international treaties and agreements, and borrowing policies, signing and concluding them, and formulating

*saady*



Republic of Iraq  
Federal Supreme Court  
Ref. 178 / federal /2023



Kurdish text

sovereign foreign economic and trade policy, developing and implementing national security policy, including establishing and managing the armed forces, drawing up financial and customs policy, issuing currency, organizing commercial policy across the borders of regions and governorates in Iraq, setting the state's general budget, drawing up monetary policy, regulating matters of measures, measures and weights, organizing matters of nationality, naturalization, residence, and political asylum, and regulating broadcast frequency policy, post office, drafting the general investment budget, planning policies related to water sources from outside Iraq, statistics, and the general population census are among the exclusive powers of the federal authorities, based on the provisions of Article (110) of the Constitution, therefore, it is not permissible for the authorities of the regions and governorates that are not organized into a region to exercise them. However, under Article (123) of the Constitution, the exclusive powers of the federal government may be delegated to the governorates, or vice versa, with the approval of both parties. Under the aforementioned article, it is permissible to delegate the powers of the federal government to the governorates, or vice versa. This includes all governorates, whether they are organized into a region or not. In any case, the exclusive powers of the federal authorities are determined by the Constitution following what is stated in Article (110) thereof. Federal powers are not permissible. It can be exercised by any other authority, given that the Constitution of the Republic of Iraq for the year 2005 is based on the principle of separation of powers following what is stated in Article (47) thereof, and based on the principle of distributing and defining powers following what is stated in Articles (110, 111, 112, 113, 114 and 115) of the Constitution. Second: As for the regions, considering that the federal system consists of a capital and regions based on provisions of Article (119) of the Constitution: Every governorate or more has the right to form a region based on a request for a referendum submitted in one of two ways: either by the request of a third of the members in each of the governorate councils that seek to form the region, or by the request of a tenth of the voters in each of the governorates that seek to form a region. It aims to form the region, and after its formation following what is decreed under the aforementioned article, it shall draw up a constitution for it, specifying the structure of the region's authorities, its powers, and the mechanisms for exercising

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 178 / federal /2023



Kurdish text

those powers, provided that it does not conflict with the constitution based on the provisions of Article (120) of the Constitution, the regional authorities have the right to exercise legislative, executive and judicial powers in accordance with the provisions of the Constitution, with the exception of what is stated in the Constitution regarding the exclusive powers of the federal authorities based on the provisions of Article (121/1<sup>st</sup>) of the Constitution. The regional authority has the right to amend the application of federal law in the region based on the provisions of Clause (2<sup>nd</sup>) of The same article, and thus the Constitution granted the regional authority the right (to amend the application of federal law in the region) and not to amend the law itself. The Constitution stipulated two basic conditions: (the existence of a contradiction or conflict between federal law and the law of the region), which requires the existence of two conflicting laws on the same subject in the region. The second condition is (that the conflict or contradiction relates to an issue that does not fall within the exclusive jurisdiction of the federal authorities), and in the absence of these two conditions or the failure of one of them, the regional authorities cannot amend the application of the federal law), whereas federal law is legislated by the Iraqi Council of Representatives and its powers are defined following Article (61) of the Constitution, and the first of these powers is (legislation of federal laws), and since the Constitution describes the laws legislated by the Iraqi Council of Representatives as (federal), and thus the regional authorities cannot amending the subjectivity of these laws, and even amending their application following the two basic conditions mentioned above, based on the provisions of Article (115) of the Constitution, all that is not stipulated regarding the exclusive powers of the federal authorities shall be the powers of the regions and governorates that are not organized into a region, and the other powers shared between the federal government and the regions mentioned in Article (114) of the Constitution shall have priority over the law of the regions and governorates. Not organized in a territory in the event of a dispute between them, here it must be noted that the priority of the law of regions and governorates not organized into a region relates only to (the shared powers between the federal and regional authorities) mentioned in Article (114) of the Constitution and does not include the exclusive powers of the federal authorities, and since the Constitution was approved following Article (117/1<sup>st</sup>) of it (the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 178 / federal /2023



Kurdish text

Kurdistan Region and its existing authorities are a federal region) and according to what is stated in Article (121/Second) of the Constitution, the region's authority has the right to amend the application of federal law with the two basic conditions mentioned above, therefore, the provisions of Article (408) of the Iraqi Penal Code No. (111) of 1969, as amended by the Parliament of the Kurdistan Region of Iraq, shall be amended following what was stated in the law issued by it No. (42) of 2004 on 10/13/2004, which is included in Article (1). From it: ((The enforcement of Paragraph (1) of Article (408) of the Penal Code No. (111) of 1969 as amended in the Kurdistan Region of Iraq shall be suspended and replaced with the following: 1. Whoever incites a person or assists him in any way shall be punished with imprisonment for a period not exceeding seven years. means of committing suicide or causing it if suicide is committed based on that, and the penalty shall be imprisonment in the event of an attempt) in violation of the provisions of Article (121/Second) of the Constitution of the Republic of Iraq for the year 2005, Which requires ruling it unconstitutional, and since the essence of the amendment included adding the phrase (or caused by it) to the text of Article (408) of the Amended Penal Code No. (111) of 1969, which requires that the unconstitutionality of the phrase (or caused by it) comes into force as of the effective date of the amendment on 11/28/2004, as for (ruling the remainder of the provisions unconstitutional) Law No. (42) of 2004 issued by the Parliament of the Kurdistan Region of Iraq is considered effective from the date of issuance of this ruling and not from the effective date of the amendment in the region), the ruling that the amendment is unconstitutional requires applying the provisions of the original text of Article (408) of the Iraqi Penal Code No. (111) of 1969 as amended, which stipulates (1 - Anyone who incites a person or assists him by any means to commit suicide shall be punished with imprisonment for a period not exceeding seven years. Accordingly, suicide is valid throughout the Republic of Iraq.

According to the above, the Federal Supreme Court decided the following:  
First: Ruling the unconstitutionality of Law No. (42) of 2004 issued by the Parliament of the Kurdistan Region - Iraq, as of the date of issuance of this ruling and not from the effective date of the amendment in the region.

*saady*



Republic of Iraq  
Federal Supreme Court  
Ref. 178 / federal /2023



Kurdish text

Second: The ruling on the unconstitutionality of the phrase (or caused by it) contained in Article (1) of Law No. (42) of 2004 issued by the Parliament of the Kurdistan Region - Iraq shall apply as of the effective date of the amendment on 11/28/2004, and the provisions of the original text of Article (408) shall apply. of the Iraqi Penal Code No. 111 of 1969 as amended) in the region as a federal law.

Third: the defendant/ being in this capacity, the Speaker of the Kurdistan Regional Parliament, shall charge the fees, expenses, and legal fees of the plaintiff's two attorneys, lawyers Khaled Majeed Sultan and Ghazi Faisal Odeh, an amount of one hundred thousand dinars, divided equally between them.

The decision has been issued with majority, 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 FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear 29/Rabea Al-Awal/1445 Hijri coinciding with 15/October/2023 AD.

**Judge**

**Jassim Mohammed Abboud**

**President of the Federal Supreme Court**

*saady*