

Republic of Iraq
Federal Supreme Court
Ref. 189 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 7/3/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Barrister Mazin Shakir Ali Khudaida.

The Defendant: the Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed that on 5 January 1931, the Senate and Representatives Council enacted the Liquors Law No. (3) of 1931 and published in the Iraqi Gazette (943) on 15/1/1931, this law was listed in chapter (5th) (penalties), including those in (28 drinks) which impose financial and criminal penalties on anyone who manufactures, transports, imports, exports, sells, receives or retains alcoholic beverages, so this article is contrary to the Iraqi Constitution, which is generally legal. 2005 for the following reasons: 1. It violates the Republic of Iraq Constitution in the article (2/1st-Beh- No law may be enacted that contradicts the principle of Democracy, Jim- No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution), and the article (1) which approved that Iraq is a state ruled by a democratic Regime, and the Constitution is a guarantor for the unity of Iraq, as well it's a

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guarantor for the right of all religions and sects, and article (17/1st- Every individual shall have the right to personal privacy so long as it does not contradict the rights of others and public morals). 2. The Ministry of Finance/The General Tax Authority imposes 200% on alcohol as a customs fee. 3. The challenged article is negative for the rights of non-Muslim minorities in Iraq, as there is no legal prohibition on the prohibition of drinking alcohol in non-Muslim communities. 4. . It is not legal logic for the Iraqi government to grant a license to open local production plants and liquor industries located within Iraqi territory, for example (Al-Farida plant located in Baghdad/Saffroniya) or, for example, (many factories in Erbil governorate), where these factories produce and sell alcohol to shops and citizens, while the security services of the Ministry of Interior hold alcohol users accountable and confiscate them and imprison violators, as is the case in Babel governorate and the rest of the southern governorates. 5. It is not social and legal justice for a person belonging to the Muslim community to be tried in accordance with the provisions of the challenged article (28 drinks) with a fine in the presidency of the appeal of Al-Karkh / Mahmoudiyah Misdemeanour Court in the numbered case (429/Jim/2021) on (28 April 2021) At the same time, a non-Muslim person is tried by simple imprisonment for (4 months) in the presidency of Babylon's federal appeal/misdemeanors of Hilla in the numbered case (3251/Jim/2018) on (19 September 2018) although a license is attached to sell alcoholic beverages, the court did not go into these details, and such provisions are a serious indication of the disintegration of the social fabric of Iraqi society. For these reasons, he requested to reconsider implementing the challenged article which was considered unfair against the minorities. The case was registered with this court in

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number 189/Federal/2021 and the legal fee for it was completed in accordance with the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and notifying the defendant of its petition and documents in accordance with the provisions of article (2/1) from the same Bylaw above, his agents replied in the answering draft dated 19/12/2021 that the plaintiff's request was to review the application of article (28) of the Liquors Law No. (3) of 19931, and since this request is being considered outside the jurisdiction of the Federal Supreme Court provided for, in the article (93) of the Constitution, the case must be dismissed from this aspect, therefore, they requested to reject the case of the plaintiff and to burden him with all judicial fees, expenses and advocacy fees, and after completing the procedures stipulated in the Bylaw above, a date has been set for the case, based on the provisions of article (2/2nd) of it, and notifying the parties of it. On the set day of the argument, the Court has been convened. The plaintiff by himself attended, Barrister Mazin Shakir Ali Khudaida, and on behalf of the defendant, his agent the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim attended. The public in the presence of argument proceeded, the plaintiff repeated what was listed in the petition of the case and requested to judge according to it, the agents of the defendant answered by repeating what was listed in the answering draft dated 19/12/2021 and they requested to reject the case for the reasons listed in the aforementioned draft. The plaintiff repeated his sayings and previous requests, as well as the agents of the defendant. Whereas nothing was left to be said, the Court decided to make the end of the argument clear, and issued the following decision:

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The decision:

After scrutiny and deliberation by the Federal Supreme Court, the plaintiff's case was found to be based on judging by unconstitutionality of article (28) of the Liquors Law No. (3) of 1931 because, according to the plaintiff's claim, it contradicted several constitutional articles, namely articles (1) And (2/1st/Beh, Jim) and (17/1st) of the Constitution of the Republic of Iraq for 2005, considering that Iraq is a multi-national, multi-religious and multi-sects country, that the view of religions is not the same regarding the handling of Liquors and that the Constitution has not been permissible enact laws contrary to the principles of democracy and fundamental rights and freedoms listed in the Constitution, and the prohibition of the handling of spirits also conflicts with the individual's right to personal privacy and through the scrutiny and study of constitutional texts relevant to the subject matter of the proceedings, as well as by identifying the plaintiff's requests and defences, the court finds that article (28) of the Liquors Law No. 3 of 1931 does not conflict with any of those texts referred to by the plaintiff in his petition, since the regulation of the handling of spirits by the legislator does not violate the basic principles of democracy or rights and freedoms stipulated in the Constitution because the democracy is a means of popular participation in governance and political action to ensure the peaceful transfer of power, which belongs to the people, and has nothing to do with partial issues such as the state organization of how to deal with spirits, and the same with regard to the subject of fundamental rights and freedoms listed in the Constitution, which relate to fundamental rights and freedoms in terms of their adoption and recognition in principle, and this does

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not prevent some restrictions by the legislator on how a person exercises his rights and freedoms to ensure that the rights and freedoms of others are not violated because the exercise of the rights and freedoms of others Rights, freedoms and personal privacy are restricted by the rights and freedoms of others and by public order and morals. On the other hand, the legislator has never prevented the handling of spirits, as well as for the relevant government agencies, support this by not preventing the import of spirits, as well as giving licenses to open factories for their production, as the plaintiff himself pointed out in his petition, but the subject is to regulate how to deal with those drinks, which is a legislative option for the legislator based on the state policy reflected through the bills submitted to the legislature. Accordingly, and for not finding any constitutional violation in the provision of the challenged article (28) for unconstitutionality, the FSC decided to reject the case of the plaintiff (Mazin Shakir Ali Khudaida) and to burden him with the expenses and the advocacy fees for the agents of the defendant/ being in this capacity amount of one-hundred thousand Iraqi dinars. The decision has been issued unanimously, decisive and binding for all powers according to the provisions of the 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 on 3/Shab'aban/1443 Hijri coinciding 7/March/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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