

Republic of Iraq
Federal Supreme Court
Ref. 201 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 16/10/2023 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: Mishan Rikadh Dhamin Al-Juboori – his agents, the barristers Ali Kamil Rasool and Omar Ahmed Al-Abdli.

The Defendant: President of the Federal Supreme Court/ being in this capacity – his agent the official jurist Samira Abdul Rahman Khadhim.

The Claim

The plaintiff, by his agent, claimed that Article (36) of the Bylaw of the Federal Supreme Court stipulated that (the decisions of the court are binding and binding on the authorities and all persons and do not accept the appeal in any way of appeal) and that Article (94) of the constitution stipulates that (the decisions of the Federal Supreme Court Bat and binding on all powers), and since the internal system added the phrase (and does not accept the appeal in any way of stabbing), so his client is stabbing the constitutionality of this article and requesting its amendment in a manner consistent with the provisions of the constitution and does not contradict it for the following reasons: the Federal Supreme Court is concerned, according to item (1st) of Article (93) of the constitution by monitoring the constitutionality of the laws and regulations in force, and it specializes in accordance with item (2nd) of this article by interpreting the texts of the constitution, and everything that is issued from it according to this jurisdiction has become a direct effect and it is not permissible to appeal in any way, but this does not prevent the court from refraining from its ruling on the constitutionality of the laws and regulations in force if the constitutional and public interest is required, and this is stipulated in Article (45). The Bylaw of the Federal Supreme Court has been amended from some of its decisions, for example, the court accepted an appeal in the constitutionality of a legal text that has previously been judged by its constitutionality, and it may judge its abolition in terms of its previous decision,

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and such a lawsuit is not an appeal in the court decisions, rather, an independent lawsuit is considered to be decided to refrain from its previous ruling, and that the constitution granted this court other specializations that differ the nature of the litigation under its shadow from the ones that it practiced in accordance with the two items above, including its specialization contained in item (52/ second) of the constitution, and some cases of separation in issues Which it considers according to item (93/3rd) from it, as the court issues its decisions in the cases that it considers in accordance with these two items based on the material or objective evidence that the opponents provide them with, as the ordinary courts that drew the law of civil pleadings and the law of criminal trials law are more than a way to appeal in it to protect public and private rights, and the Federal Supreme Court may issue a ruling based on evidence that may be proven or falsified after the ruling is issued, so what is the fate of the ruling based on the forged evidence? What is the fate of the right that the ruling is wasted to the forged evidence, and assuming that the court following Article (52/2nd) ended the membership of the deputy of what the plaintiff presented his death certificate, and obligated the Council of Representatives to replace the plaintiff in place of the representative, who died by the court's decision, what are the results of the application of the challenged article? According to the challenged article, the Council of Representatives is obligated to implement the court's decision to replace the plaintiff in place of a false death certificate, and following item (3/160) of the Civil Procedure Law, the ruling issued by the court remains a pasture and is considered unless it is nullified or amended by the court itself or is seized by a court higher following the legal methods, and because the Federal Supreme Court is the Supreme Court in Iraq, and its decisions are an argument in what is separated in it, and the article closed all the methods of appeal because the ruling is constitutional that it is not permissible to appeal it at all, meaning that the living deputy remains in the previous example dead, and his rights that are protected by the constitution are lost, and the Federal Supreme Court issued a decision that ended his client's membership based on false documents presented. The plaintiff did not accept the court to appeal his client in this decision despite the evidence of forgery based on the contested article, as the Federal Supreme Court's decision did not draw up a lawsuit to appeal the ruling's decision not to validate the membership of his client

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as a path to him to recover his rights that were lost based on false documents, therefore, his appeal was presented in Article (36) of the internal system and the request for the ruling that the phrase is unconstitutional (and the appeal is not accepted in any way of appeal) because it closes all legal methods in front of correcting decisions based on evidence to prove their forgery after its issuance. The case was registered with this court under the number (201/Federal/2023), and the legal fee was paid for it, and the defendant was notified of its petition and documents in accordance with Article (21/1st and 2nd) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and his representative responded with the answer list dated 30/ 8/2023, according to which it requested that the plaintiff's lawsuit be dismissed and that he be charged fees, expenses, and fees for the following reasons: 1. The contested text was following the court's interpretation of Article (94) of the Constitution in many of its rulings and decisions, including, but not limited to Resolution (1/Federal/ Cassation/2012 on 3/31/2012) which stipulated (that the court's decisions are final and binding on all authorities and do not accept any form of appeal), and the decision issued regarding a lawsuit previously filed by the plaintiff (158/Federal/2022 on 8/16/2022 Which stipulates: "The court finds that its decisions are final, binding, and immune from any form of appeal." 2. The Federal Supreme Court is a courtyard of justice and issues its rulings after conducting investigations, investigating the facts, and completing their conviction, and these provisions are not built on assumed facts, but rather financial facts fixed before them according to evidence The court - according to the description contained in the case - is only an imposition that has no support. 3. What the plaintiff seeks is to obtain a decision that enables him to appeal the court's decision to terminate his membership, which is not consistent with the text of Article (94) of the Constitution. In addition, the rulings issued by the Iraqi courts that have achieved finality will be evidence of the rights decided upon if the parties unite. The lawsuit has not changed, and the dispute is related to the same right, based on its subject and cause, and evidence that refutes the validity of final rulings may not be accepted following Articles 105 and 106 of the Evidence Law No. (107) of 1979, as amended. 4. The authority to revoke as approved by Article (45) of the court's internal regulations means reversing a previous principle that the new principle replaces the previous principle, and does not mean reversing the

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rulings, which is what the court stated in its decision No. 158/Federal/2022 mentioned above, where it stated: Reversal (is the substitution of a new ruling in place of a previous ruling on the same subject and requires that the reversal is from one judicial principle to another judicial principle, that is, it does not occur in decisions and rulings of a personal nature that relate to a person or a specific number of persons.). After completing the procedures required by the rules of procedure of the court, a date was set for the pleading and notified to the parties, in which the court was formed, the plaintiff's agent and the defendant's agent attended, and the public presence pleadings proceeded, the court heard the statements of the agents of both parties and after completing its examinations, the end of the argument has been made clear and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the claim of the plaintiff (Mishaan Rakad Damen Al-Jubouri) is focused on demanding a ruling on the unconstitutionality of the phrase (no appeal is accepted by any method of appeal) contained in Article (36) of the Federal Court's internal regulations No. (1).) for the year 2022 because the aforementioned phrase closes the door on all legal methods for correcting court decisions if there is something that requires it, especially if they are based on evidence that was later proven to be falsified, and that the contested phrase was not mentioned in Article (94) of the Constitution of the Republic of Iraq for the year 2005 and for the other reasons mentioned in the petition referred to in the preamble to this decision, and upon careful consideration of the plaintiff's request and the grounds upon which he relied, the court finds that the contested statement of unconstitutionality, the text of which is quoted above, is merely a repetition and confirmation of what was stipulated in Article (94) of the Constitution, which states that: ((The decisions of the Federal Supreme Court are final and binding on all authorities)), the phrase contained in Article (36) of the Court's internal regulations did not bring a new ruling or a new legal addition, but rather it is a confirmation of the constitutional text, and the meaning of finality with regard to judicial decisions requires that they

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cannot be appealed in any way, and it is known that the texts of constitutions are It is brief and does not contain many details, while the lower level legislation ((laws and regulations)) details constitutional texts and principles in more detailed and clear terms, for all of the above and the absence of a constitutional violation, the court decided to dismiss the claim of the plaintiff (Mishaan Rakad Daman Al-Jubouri) and charge him the expenses, fees, and attorney fees of the defendant's agent/being in this capacity, an amount of one hundred thousand dinars, as a final and binding decision. The decision has been issued unanimously 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 edited in the session dated 30/Rabea Al-Awal/1445 Hijri coinciding with 16/October/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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