

Republic of Iraq
Federal Supreme Court
Ref. 20 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 22/2/2023 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, 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 Challengers for Unconstitutionality: Ala'a, Dhia'a, Sawsan. Shaima'a, Noor, sons of Ibrahim Taha/ their agent the barrister Hasan Awadh Al-Kinani.

The Challenged text for Unconstitutionality: article (91/2) of Personal Status Law No. (188) for 1959 (amended).

The Abstract of the Request

The Federal Supreme Court received the letter of the Presidency of the Basra Court of Appeal / Personal Status Court in Zubair No. (3220 / Unconstitutionality / 2022) on 12/12/2022, and attached a true copy of the case file No. (3220 /Shin/ 2022) and the lawsuit challenging the constitutionality of Article (91/2) of the Personal Status Law No. (188) of 1959, as amended, through which it became clear that the applicants for the constitutional challenge, through their agent, pleaded before the Personal Status Court in Zubair, affiliated to the Presidency of the Basra Court of Appeal during its consideration of the case. Numbered (3220/Shin/2022) and in its session dated 15/11/2022, Article (91/2) of the Personal Status Law No. (188) of 1959, as amended, was unconstitutional, and they requested that this court be approached to consider the constitutionality of the said article based on the provisions of Article (18) of the Rules of Procedure of the Federal Supreme Court

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No. (1) of 2022, and the aforementioned court accepted the plea and assigned them to file a lawsuit on the subject of the appeal and paid the legal fee for it, and sent it to the Federal Supreme Court with a certified copy of the file of the legal lawsuit numbered (3220 /Shin/ 2022) in which it was requested to amend the legal section No. (288 /Qaf/ 2022) on 29/5/2022 issued by the aforementioned court at the request of (the defendant - Saba Khaled Abdullah) the wife of the brother of the constitutional appellants - the deceased (Khalil Ibrahim Taha) on the basis that the Personal Status Court withheld their names from the Islamic Inheritance System based on the text of Article (91/2) of the Personal Status Law which stipulated that (the daughter or daughters in the absence of a son of the deceased shall be entitled to the remainder of the estate after the parents and the other husband took their shares from it and all the estate shall be entitled in the absence of any of them) and they asked the said court to amend the aforementioned Islamic Inheritance System, which limited the inheritance of their late brother (Khalil Ibrahim Taha) to (his wife and two minor daughters) and include them among the heirs, because they are followers of the Sunni school (Hanafi) because Islamic jurisprudence according to the Sunni doctrine inherits them by innervation. Therefore, they requested the Federal Supreme Court to consider the constitutionality of Article (91/2) of the Personal Status Law No. (188) of 1959, as amended in accordance with the Constitution of the Republic of Iraq for the year 2005, as it contradicts it in Article (2/1st/Alif) thereof, which stipulated that (it is not permissible to enact a law that contradicts the constants of the provisions of Islam), the appeal was registered with this court with the number (20/federal/2023) in accordance with Article (21/1st) of the Court's Rules of Procedure No. (1) of 2022, and in accordance with

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Article (18/2nd) thereof, and after If the court completed its scrutinies, it issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the constitutional challenge action focuses on Article (91/2) of the Personal Status Law No. (188) of 1959, as amended, which stipulates that (the daughter or daughters in the absence of a son of the deceased shall be entitled to the remainder of the estate after the parents and the other husband have taken their duties from her, and all the estate shall be entitled in the absence of any of them) on the basis of its violation of the provisions of Article (2/1st/Alif) of the Constitution of the Republic of Iraq of 2005. Which stipulated that (it is not permissible to enact a law that contradicts the constants of the provisions of Islam), the Federal Supreme Court finds that the appeal must be dismissed in form, as the appellants did not mention the name of the Respondent as unconstitutional, as the text in the question of unconstitutionality was legislated by the legislative authority represented by the House of Representatives, and thus the Speaker of the House of Representatives, in addition to his job, is considered an opponent of the appellants of unconstitutionality and that the failure to mention his name in addition to his position in the list of appeal is a fundamental formal deficiency in it that requires its dismissal in form for violating the provisions of Article (46) of the Civil Procedure Law No. (83) of the year 1969 as amended which stipulated that (the petition shall include the following details: ... 3- The name, surname, profession, and place of residence of both the plaintiff and the defendant, and if the defendant does not have a known place of residence, then the last place he was in) and in

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accordance with Article (50) of the Rules of Procedure of the Federal Court No. (1) of 2022, which stipulates that ((The provisions of the Civil Procedure Law No. (83) of 1969, as amended, and the Evidence Law No. (107) of 1979, as amended, shall apply, or any other law that replaces them, in the absence of a provision in this system)), and it is not offensive to say that the lawsuit challenging the unconstitutionality is a lawsuit in kind in which the litigation goes to the text of the appeals, because the litigation is from the public order and may not be exceeded or neglected, as the lawsuit must be filed against a discount whose approval entails a ruling, and if the litigation is not directed, the court shall rule on its initiative to dismiss the lawsuit without entering into its basis based on the provisions of Articles (4 and 80/1) of the aforementioned Code of Civil Procedure, The same provision applies a fortiori, to the litigation if it is non-existent because the name of the defendant is not mentioned, and the application of the rule in kind of the constitutional lawsuit does not mean neglecting the litigation, its validity and orientation, especially since the said rule applies to appeals submitted to this court without lawsuits by the court on its own initiative during the hearing of the case or by a member of the Public Prosecution before it based on the provisions of Article (18/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022. Or by any of the three authorities, ministries, independent bodies, the Prime Minister of the Region, entities not associated with a ministry, and governors based on the provisions of Article (19) of the aforementioned system. On the other hand, Article (18 / 2nd, 3rd, and 4th) of the aforementioned rules of procedure of the court set out the procedures to be followed when pleading before the Court of First Instance of unconstitutionality and the necessary periods for that, which stipulated (Second: Any of the litigants may plead the unconstitutionality of a legal text or regulation

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related to a lawsuit pending before the Court of First Instance, and in this case, he shall be assigned to file a lawsuit for that, and pay the legal fee for it, and submit it to the Court of First Instance within ten days from the date of the defense of unconstitutionality. Third: The Court of First Instance shall decide whether to accept or reject the lawsuit within three days from the date of its submission. Fourth: If the case is accepted, the Court of First Instance shall reserve the original lawsuit and send it with a certified copy of the case file to the Federal Supreme Court, within ten days from the date of its acceptance, which requires the Personal Status Court in Zubair to abide by the periods mentioned in the aforementioned article when pleading unconstitutionality before it, and for the foregoing, the Federal Supreme Court decided to dismiss the appeal in the form submitted by the appellants, each of Alaa, Diaa, Sawsan, Shaima and Nour, the children of Ibrahim Taha, and to burden them with the expenses and fees. The decision has been issued unanimously, final, and binding according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated on 1/Shaaban/1444 Hijri coinciding 22/February/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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