

Republic of Iraq
Federal Supreme Court
Ref. 23 / Federal / 2020



Kurdish text

The Federal Supreme Court (F.S.C.) convened on 30.11.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad 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:

The Lawyer Shawkat Sami Fadel Al-Samarrai.

The defendant:

The Speaker of the Council of Representatives / in addition to his position - his two agents are the legal advisor Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim.

The claim:

In the petition, the plaintiff claimed that the Coalition Provisional Authority (CPA) Civil Governor (Paul Bremer) had previously issued Legislative Order No. (19) for the year 2003 entitled (Freedom of Assembly) in force and published in the Iraqi Gazette No. 3979 on 10/7/2003 and that it included inaccurate legal and linguistic formulation and simulated the conditions of the occupying authority at the time, as it was stated in Section (1) of it that the prohibition on freedom of assembly in the Iraqi Penal Code contradicts Iraq's obligations towards human rights, which was a tool to suppress the right of the Iraqi people to freedom of expression and peaceful assembly, Therefore, it stipulated the suspension of the



provisions of Articles (220 and 222) of the Penal Code of 1969, and the order mentioned in Section 3 thereof stipulated that:

(1. Any person, group, or organization is legally prohibited from conducting a march, organizing, gathering, meeting or gathering, or participating in any of these, on public roads or streets or in public places in more than one specified area, or one specified place in any city on any given day unless such activity is carried out under the authorization of the Commander of the Coalition Forces or the Commander of A division or brigade (hereinafter referred to as the licensing authorities).

2. It is prohibited by law for any group, organization, or any individual working in this group or organization, to organize or participate in organizing or directing a march, or to work or participate in work to organize a gathering, meeting, or gathering that takes place on the roads, unless that is limited in numbers. which the licensing authority decides will not unreasonably impede pedestrian or vehicular traffic and the licensing authority shall, within 12 hours of receiving the notice of the meeting under this order, inform the group or organization that provided the notice of the maximum number of persons permitted to participate.

3. It is prohibited by law for any march, meeting, gathering, or gathering held on public roads or streets or in public places to continue for a period exceeding four hours. It is also prohibited by law to hold such a meeting, assembly or gathering in a place less than 500 meters from any facility The Coalition Provisional Authority or the Coalition Forces, as stipulated in Section (5) of it, "It is legally prohibited for any group, organization or individual to lead or participate in any march, or to hold any gathering, meeting, or



gathering on the roads or in public streets, or to participate in Any of that during the periods when traffic reaches its peak, unless you have obtained a permit for this from the competent licensing authority in the area in which the march will take place or in which the gathering will take place, is considered for the purposes of this order, the period from 7:30 to 9:00 morning and the period from 4:30 to 6:00 pm from Saturday to Thursday, excluding official holidays, periods in which traffic reaches its peak if the municipal authorities or the Coalition Provisional Authority do not specify periods otherwise), and the text of Section (7) thereof On (Anyone who violates this order exposes himself to detention and arrest And since this legislative order, in its formulation, had set spatial, temporal, punitive, and administrative restrictions and conditions, the plaintiff took the initiative to challenge its unconstitutionality before the Federal Supreme Court for the following reasons: Although the order is subject to appeal: He permitted the right to demonstrate and peaceful assembly and suspended Articles (220 and 221) of the Penal Code, but he set strict temporal, spatial and numerical conditions for the number of demonstrators, and this right was fundamentally restricted, and consequently its wording was considered flawed and restricting the freedoms contained in Article (38/first and third) of the Constitution and Article (46) of it, which stipulates that “the restriction or neutralization of the exercise of any of the rights and freedoms stipulated in this constitution may only be by law or based on it, provided that such neutralization and restriction does not affect the essence of the right or freedom) in addition to the fact that the right to strike falls within the scope of freedom of expression. For the opinion guaranteed by Article (38/First) of the Constitution, and

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since the international agreements and treaties ratified by Iraq are considered part of the internal law and its treatment is treated according to the Treaty Contracting Law No. (35) of 2015, and under the law issued in 1992, Iraq joined the 1971 treaty that guaranteed the right to strike, and this right became legitimate, in addition to the fact that the Universal Declaration of Human Rights decided freedom of peaceful assembly as a human right, which was confirmed by the International Covenant on Civil and Political Rights in Article 21 of it. . Therefore, the contested order, the restrictions contained therein, misapplication and interpretation are inconsistent with the most basic principles of human rights, and that the defendant did not initiate legislation regulating the exercise of freedom of demonstration and assembly in accordance with the requirements of Article (38/Third) of the Constitution despite reading it a second reading in Session No. (28) on 10/13/2012, and the punitive provisions contained in section (7) of the order in question are not clear and brief and did not distinguish between the actions taken by the demonstrators, which gives the judiciary wide discretion in imposing them. As it stipulated a one-year prison sentence (described with imprisonment) in the event of a breach of the content - the order under appeal - which constitutes a constitutional violation of Article (38) of the Constitution and Article (19/Second) thereof, which stipulates that (there is no crime or punishment except by a text and no A penalty except for the act that the law considers at the time of its commission a crime), and Article (13) of it that no law may be enacted that contradicts this Constitution. And in light of the demonstrations, since 10/1/2019, about unemployment, corruption of the political authority, poor services, and abhorrent quotas, which were met with a

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violent use of force, causing hundreds of martyrs and thousands of wounded, while the constitution stipulates in Article (9/A) that the forces shall not be The armed forces and security services are a tool for suppressing the people and do not interfere in political affairs, and Amnesty International's statement guarantees that every Iraqi is free to protest peacefully and that the partial and peaceful closure of roads is a legitimate form of peaceful assembly in accordance with international human rights standards, for all of the foregoing, the plaintiff's request from the Federal Court The Supreme Court ruled the unconstitutionality of Legislative Order No. 19 of 2003 (Freedom of Assembly) to legislate it in the exceptional circumstance of occupation by the Coalition Provisional Authority and its feasibility. And the judicial expenses. The case was registered with this court in the number (23/Federal/2020) and the legal fee was collected for it, based on Article (1/Third) of the Federal Supreme Court's internal system No. (1) of 2005. The plaintiff is informed with its petition and its documents, according to what was stated in Article (2/first) of the aforementioned bylaw, his representative replied with the answer list dated February 26, 2020, that freedom of assembly and peaceful demonstration is not absolute, as evidenced by the text of Article (38/Third) of the constitution, freedom of assembly and demonstration. They are regulated by law, where the state guarantees them, without prejudice to public order and morals, and that each organization involves a restriction, and that the restrictions contained in the legislative order in question are organizational restrictions that do not violate the constitution, and that the plaintiff's request is to rule the unconstitutionality of the legislative order in question simply because it is issued by an authority The temporary coalition

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contradicts the text of Article (130) of the constitution, which stipulates that the legislation in force remains in force unless it is canceled or amended in accordance with the provisions of the constitution. The aforementioned date was set for the pleading and the two parties were informed of it in accordance with Article (2/Second) of the same bylaw above. On the appointed day, the court was formed. The plaintiff, lawyer Shawkat Sami Al-Samarrai, attended on behalf of the defendant and his two attorneys. Legal advisor Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim and the public pleading, the plaintiff's attorney repeated the lawsuit petition and requested the ruling according to what it stated and added that he was harmed by the matter under appeal in that it specified the timing for holding demonstrations and thus limiting his freedom and expression of his opinion. The defendant's attorneys answered That they are requesting the dismissal of the case for the reasons mentioned in the answer list dated February 26, 2020, and based on Article 157/2 of the Civil Procedure Code, the court decided to include the Prime Minister and the Head of the Independent High Electoral Commission, in addition to their jobs, third persons to clarify from them what is necessary to settle the case. The Deputy Chairman of the Council replied Ministers according to a reply regulation, the conclusion of which is that the restrictions mentioned in the legislative order in question are organizational restrictions that do not violate the provisions of the Constitution because freedom of assembly and peaceful demonstration is not absolute, guaranteed by the state without prejudice to public order and public morals, and this is what Article (38/Third) of the Constitution stipulates. (The state guarantees in a



way that does not violate public order and morals... Third - freedom of assembly and peaceful demonstration, and it is regulated by law) These restrictions are also stipulated by law Thus, it is in implementation of the text of Article (46) of the Constitution, which stipulates that “the restriction or limitation of the exercise of any of the rights and liberties contained in this Constitution shall only be by or based on law, provided that such limitation and restriction does not affect the essence of the right or freedom), in addition to that These restrictions came in agreement with the international conventions ratified by the Republic of Iraq. The subject of the appeal, as it was read first and second reading and has not been voted on until now, and thus the issue of its abolition has become one of the tasks of the Council of Representatives by completing the procedures for voting on the aforementioned draft law), so the court decided to remove the three persons who were clarified from the case and each party repeated its previous statements and requests, and where there is nothing left to say. The Court decided the conclusion of the pleading, and 11/30/2021 was set as the date for the issuance of the decision, and with it, the court was formed and issued the following ruling:

The decision:

Upon examination and deliberation by the Federal Supreme Court and after reviewing what was stated in the lawsuit of the plaintiff, lawyer Shawkat Sami Fadel, it was found that he was requesting a ruling of unconstitutionality of Articles 1 and 3 in its paragraphs (1, 2, 3), 5 and 7) of the Coalition Provisional Authority Order No. 19) of 2003 entitled (Freedom of Assembly), for violating



the provisions of Articles (9/First/A, 13, 19/Second, 38/First, Third, and 46) of the Constitution of the Republic of Iraq for the year 2005, after dismissing the challenge to the constitutionality of Article (2) According to what was stated in its regulation dated 25/7/2021 and for the reasons included in it, and upon reviewing the provisions of the articles of the aforementioned constitution, it was found that Article (9/First/A) of it stipulated: It is similar without discrimination or exclusion, and it is subject to the leadership of the civil authority, and it has no role in the transfer of power), and Article (13) of it stipulates (First - This constitution is the supreme and supreme law in Iraq, and it is binding in all parts of it, without exception. Second - It is not permissible to enact a law that contradicts this Constitution, and every text contained in the constitutions of the regions, or any other legal text that Land with him), and Article (19/Second) of it stipulates (there is no crime and no penalty except with a text, and no penalty except for the act that the law considers a crime at the time of its commission, and a heavier penalty may not be applied than the penalties in force at the time of the crime), and from this, it is clear that Articles (1 and 3 in their paragraphs (1, 2, 3), 5 and 7) whose constitutionality is challenged by the Coalition Provisional Authority Order No. (19) of 2003, do not contradict the articles of the provisions of the aforementioned articles of the Constitution, as they are not related to the subject of the Coalition Provisional Authority order and its articles. To Articles (38/First and Third) and (46) of the aforementioned constitution, it was confirmed through them the necessity of the existence of a law through which the state guarantees freedom of expression by all means and freedom of assembly and peaceful demonstration, provided that this does not violate public



order and morals, and that it does not The rights and freedoms stipulated in the Constitution are restricted only by virtue of it or based on it (i.e. the law) and provided that this restriction does not affect the essence of the right and freedom, and since Order No. (19) for the year 2003 is considered legislation for its issuance by the authority authorized to issue it at the time, especially since Article (130) of the aforementioned constitution stipulates (the legislation in force shall remain in force with Ha, unless repealed or amended, in accordance with the provisions of this Constitution), so the provisions of the articles of the aforementioned order came in line with the obligation imposed by Articles (38 / first, third and 46) of the aforementioned constitution based on the need for a law under which the state guarantees the regulation of freedom of expression Expressing opinion by all means and freedom of assembly and peaceful demonstration, provided that this does not violate public order and morals, without prejudice to the essence of right and freedom when restricting the rights and freedoms stipulated in the Constitution, and on the basis of the foregoing, the articles of Order No. Articles (38/first and third) and (46) of the aforementioned constitution, which means that the articles of the order whose constitutionality is challenged do not contradict the provisions of the constitution for the following reasons:

First: Most of the different comparative constitutions, including the Constitution of the Republic of Iraq for the year 2005, guarantee the right to freedom of expression By all means and the right to freedom of assembly and peaceful demonstration, except that the exercise of that right or that freedom must take place within the limits regulated by law, provided that it does not affect the essence of



the right or freedom and that such practice does not violate public order and morals, in the application of the provisions of Articles (38/first and second). Third) and (46) of it, since not every opinion or expression is necessarily the product of a free and honest will that expresses a specific reality, as the expression of some may be merely misleading the public opinion or the opinion of others, or obscuring the truth in the voice of falsehood, or achieving personal goals on the Calculation of the public interest, and all these images and other aspects of expression of opinion extend their impact not only to the opinion holder, but also to others and to society, and therefore the aforementioned Constitution of the Republic of Iraq, even if it releases freedom of expression, opinion, peaceful demonstration and the right to exercise rights and freedoms, but it restricts That divorce and that practice within the limits of the law The legislator alone has permitted to organize them and set the controls restricting them, in order to ensure their preservation within their legitimate framework to ensure that those rights are not misused in a way that causes harm to others or society. It necessarily requires that it be accompanied by the development of the members of society themselves to exercise their rights to express their opinions and to demonstrate peacefully in a manner that does not contradict the essence of the right.

Second: The freedom of opinion and expression and the right to the peaceful demonstration are among the basic freedoms that revert to personal freedom, which is inseparable from any sound democratic system. It believes that sovereignty is for the people alone, and they are the source of authority. The scope of public affairs is to prevent the authorities in the state from deviating from their right course to protect the higher values and the public interest, as the principle is



that they are not allowed to be restricted, otherwise this is considered aggression against them. Organized collective life, which requires achieving compatibility between the reasons for freedom and its exercise in its forms, including the right to freedom of expression, peaceful demonstration, and the necessities of public order and public morals. Organization and this is confirmed by the text of Articles (38/First and Third) and (46) of the aforementioned constitution.

Third: The concept of the right to freedom in its various forms, including the expression of opinion and peaceful demonstration, is of special importance, because through it, democracy reaches its full extent, considering that it is based on free thought and a bold opinion that pulsates with the will of the people who possess sovereignty and authority, and through them the society enjoys security and stability. opinion and not restrict his freedom to express ideas that are not commensurate with his nature, and if the legislator undertakes to regulate that right based on the permissibility established under the constitution and according to the controls it stipulates, then that regulation aims not to protect the one who uses that right only, but rather to protect society as a whole and protect his right To reach it with constructive ideas that would develop it in its economic, social and political aspects, and purify it from negative, destructive ideas that would prejudice the higher values of the individual and the general interests of society.

Fourth: The scope of freedom of expression and peaceful demonstration is not fixed at every time and place. Rather, it changes in one time with the change of place, and in one place with the change of time, according to the circumstances and circumstances



surrounding its use. Based on that, it is not permissible to prejudice what undermines the essence of right and freedom or detracts from Their content, unless their use results in a clear danger that threatens the occurrence of significant harm that would prejudice the security, stability, national unity, or disrupt the work of public utilities. Therefore, restricting the use of the right to freedom of expression and peaceful demonstration under Order No. (19) of 2003, within the limits of temporal, spatial, numerical, and punitive conditions to obtain a permit to exercise that right, like the rest of the comparative laws in other democratic countries. Practicing it in a peaceful, civilized manner away from violence, force, abuse of society, the state and its security and service institutions, obstructing the work of public utilities in them and preventing them from providing services to citizens, and thus the aforementioned order It does not conflict with the provisions of the aforementioned articles of the constitution, especially articles (38/first and third) and (46) thereof.

Fifth: If the Constitution of the Republic of Iraq of 2005 guarantees the right to freedom of expression, assembly, and demonstration in the streets and public places, this requires the competent state agencies to provide the appropriate atmosphere for individuals to exercise that right freely to express their opinions in the system of government and its tools, provided that This should be done by peaceful means, without violating security or compromising public peace, and that this practice does not result in the commission of crimes. Therefore, the constitutional legislator in the 2005 constitution was concerned with setting and defining the basic rights and freedoms of man in the light of their concepts and frameworks accepted in civilized nations and democratic states and empowering



the ordinary legislator. Regulating the use and use of those rights and freedoms in a way that does not violate or impair their essence, especially since the essence of right and freedom is the logical scope of its initiation and to achieve its effectiveness, whether it is in its means or its goals, based on the practical effects that result from that use or use, in a manner that does not lead to a breach of the texts Legal in its correct content that protects public and private interests, and therefore the controls that are established for the exercise and use of rights and freedoms, including freedom Peaceful expression and demonstration must be within the limits of the constitution and its provisions and exclusively through the legislator in a manner that ensures their peaceful use and use without prejudice to public order and morals and in accordance with the temporal, spatial, numerical and punitive limits that are appropriate to them in order to achieve balance and harmony between them and the public interest, and this is what was envisaged by Order No. (19) of 2003 in the provisions of its articles that were consistent with the provisions of the Constitution of the Republic of Iraq for the year 2005. Because there is no constitutional violation in the aforementioned order, which requires dismissal of the plaintiff's lawsuit, and for all of the foregoing, the Federal Supreme Court decided the following:

First - the ruling dismissing the plaintiff's lawsuit regarding the challenge to the constitutionality of Articles (1) And 3 in its paragraphs (1, 2, 3, 5 and 7) of the Coalition Provisional Authority Order No. (19) of 2003 entitled (Freedom of Assembly), for not violating the provisions of the Constitution.

Second – The plaintiff shall be charged with fees, expenses, and attorney's fees and the defendant's attorneys, the Speaker of the

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Council of Representatives/in addition to his position, an amount In addition to his job, an amount of one hundred thousand dinars distributed according to the legal ratios, and the decision was issued by agreement conclusive and binding on all authorities based on the provisions of Articles (93) and (94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4) and (5) of the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and publicly understood on Rabi' Al-Thani 24/1443 corresponding to 11/30/2021 AD.