

Republic of Iraq  
Federal Supreme Court  
Ref. 250 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 9/1/2023 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 Sulayman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Zahra'a Mohammed Nasir Ali Al-Badawi.

The Defendants: 1- The Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.  
2- Director-General of the Judicial Institute/ being in this capacity – his agent the official jurist Labeeb Abbas Jaafar.

### **The Claim**

The plaintiff claimed in the petition that the first defendant issued the Judicial Regulation Law No. (160) of 1979, which stipulated in Article (36/1<sup>st</sup>) thereof (whoever appoints a judge after the entry into force of this law must be Iraqi by birth, married, and graduated from the Judicial Institute), and based on this provision, the second defendant stipulated that the applicant for admission to the Judicial Institute be married, according to the announcement published on the website of the Supreme Judicial Council / Judicial Institute containing the opening of the door Applying to the Judicial Institute Courses (44 for the academic year 2021-2022) and (45 and 46 for the academic year 2022-2023) according

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to the electronic application form that was based on Article (7) of the Judicial Institute Law No. (33) of 1976, which included the conditions for applying, including that the applicant must be married, as well as the inability to print the electronic form without filling out this field, and that she (i.e. the plaintiff) filled out the form and put in this field the word (none) and when she went to the Judicial Institute to deliver the form, the information officer refrained from receiving it on the pretext of not attaching a marriage contract, so the decision of the second defendant is defective with the defect of legality because it violated the law of the Judicial Institute as it based its decision on Article (7) thereof, which did not include this condition to apply to the Institute, but it is a condition for appointment under Article (36/1<sup>st</sup>) of the Judicial Regulation Law, which stated Contrary to the Constitution in Articles (17/1<sup>st</sup>, 14 and 16) thereof, which affirmed the right to personal privacy of each individual, equality among Iraqis and equality of imposition between them. In addition to violating the preamble of the Constitution, the plaintiff, therefore, requested this court to rule on the unconstitutionality of the marriage condition stipulated in Article (36/1<sup>st</sup>) of the Judicial Regulation Law and to rule on the unconstitutionality of the condition in the decisions of the Judicial Institute as well as its illegality, based on the court's jurisdiction under Article (93/1<sup>st</sup> and 3<sup>rd</sup>) of the Constitution. The lawsuit was registered with this court with the number (250/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1<sup>st</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 and the defendants are informed of its petition and documents in accordance with item (second) of the same article, and the agent of the first defendant replied with the reply list dated 24/11/2022 its conclusion that Article (36/1<sup>st</sup>) of the Judicial Regulation Law in question was amended

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by virtue of the dissolved Revolutionary Command Council Resolution No. (665) of 1981 The subject of the lawsuit is no longer effective and the application is outside the jurisdiction of the Federal Supreme Court, but if the marriage condition of the applicant to the Judicial Institute (the subject of the case) is still within the instructions of the Judicial Institute, this is also outside the jurisdiction of the court, and the Judicial Institute intends to accept qualified people who meet the conditions of appointing a judge, it is useless to accept the applicant without meeting the conditions of appointment in it and then complete his studies at the Institute and may not complete the conditions of appointment, it is a fortiori, that the availability of conditions when applying, Therefore, the first defendant's attorney requested that the lawsuit is dismissed and that the plaintiff be charged the fees and expenses. The answer of the second defendant (Director General of the Judicial Institute / in addition to his job) was received according to the letter of the Supreme Judicial Council / Department of Public Relations and Legal Affairs No. (20878) dated 20/11/2022, concluding that the Director General of the Judicial Institute is not valid to be a litigant in the lawsuit because he does not have a legal personality, as neither the Judicial Institute Law No. (33) of 1976 as amended, nor the Law on Disengagement of the Judicial Institute from the Ministry of Justice and its inclusion in the Supreme Judicial Council No. (70) of 2017 did not include granting him Moral personality, article (1) of the Supreme Judicial Council Law No. (45) of 2017 indicated that the Supreme Judicial Council enjoys legal personality and financial and administrative independence and is represented by its president or his authorized representative, in addition to the futility of its request to rule on the unconstitutionality of the marriage condition in the aforementioned article because it was not stipulated in Article (36/1<sup>st</sup>) after it was amended by the dissolved

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Revolutionary Command Council Resolution No. (665 of 1981), whereas the approval of the marriage condition within the conditions for admission to the Judicial Institute for the session (44) came in the minutes of the meeting of the first session of the Council of the Institute for the year 2021 on 17/1/2021, which was considered as binding instructions whose content must be adhered to and announced in the admission conditions annually as it came in line with the provisions of Article (36/I) of the Judicial Regulation Law, which is within the powers of the Institute Council under Article (4) of the Judicial Institute Law, and the plaintiff had to appeal the decisions issued by The Judicial Institute before the Administrative Court pursuant to the provisions of Article (7/4<sup>th</sup>) of the State Council Law No. (65) of 1979, as amended, the second defendant's attorney, therefore, requested a ruling to dismiss the suit. After completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff attended in particular, and the defendants' attorneys attended, and the public pleading was initiated, the plaintiff repeated what was stated in the lawsuit petition and requested a judgment according to it, and highlighted two lists dated 7/12/2022 that the court reviewed and linked within the lawsuit papers and provided the defendants' agents with copies of them, both the agents of the first defendant and the agent of the second defendant responded and requested the dismissal of the lawsuit for the reasons stated in the response lists linked within the lawsuit papers, and the plaintiff and the defendants' agents repeated their previous statements and requests, and since there was nothing left to say, the end of the argument has been made clear, and the court issued the following judgment decision:

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### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit is focused on challenging the constitutionality of Article (36/1<sup>st</sup>) of the Judicial Regulation Law No. (160) of 1979, as amended, stipulates that whoever appoints a judge must be married, or married if she is a woman, in addition to the other conditions contained in the aforementioned law. As is clear in the plaintiff's lawsuit, she disputed in her lawsuit both the Speaker of the Iraqi Council of Representatives and the Director General of the Judicial Institute in addition to their functions, by examining the merits and requests of the plaintiff, the court finds on the one hand that Article (1) of the Judicial Institute Law No. (33) of 1976 stipulates that ((an institute called (the Judicial Institute) linked to the Minister of Justice shall be established in the Ministry of Justice to prepare qualified people to assume judicial functions...)) In mid-2017, a law was issued to include the Judicial Institute in the Supreme Judicial Council No. (70) of 2017, according to which the Judicial Institute was disengaged from the Ministry of Justice and included in the Supreme Judicial Council. The President of the Supreme Judicial Council became the Chairman of the Council of the Institute and return to the articles of the two laws referred to, the Director General of the Judicial Institute, the second defendant in this lawsuit, it did not grant the legal legal personality a representative of the Institute, but the latter's association with the Supreme Judicial Council and that the litigation in any matter related to the affairs of the Institute or its decisions in principle must go to the President of the Supreme Judicial Council in addition to his job and not to the Director General of the Judicial Institute, this on the one hand, and on the other hand, the court finds that what the plaintiff requested to rule the

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unconstitutionality of the marriage clause in the decisions of the Judicial Institute or its illegality is outside the scope of the competences of this court contained In Article (93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) for the year 2005, as amended, as the jurisdiction of this court under Article (93/1<sup>st</sup>) of the Constitution is limited to monitoring the laws and regulations in force and does not extend to the decisions issued by the various institutions, in the case of the subject matter of this case, it does not extend to the decisions of the Judicial Institute, whatever their nature and content, and the jurisdiction of the court under Article (93/3<sup>rd</sup>) of the Constitution, as established by the judiciary of this court, is limited to what is issued by the three federal authorities and independent bodies and does not include decisions or procedures issued by other institutions, as for challenging the constitutionality of Article (36/1<sup>st</sup>) of the Judicial Organization Law No. (160) of 1979 and the plaintiff's request in this regard, the court finds that the text of Article The contested does not contradict any provision or article of the Constitution referred to by the plaintiff in her petition, as what the legislator stated in the contested text is a legislative option and a regulatory order related to the conditions for applying to the Judicial Institute as well as appointment as a judge or deputy prosecutor, article (36/1<sup>st</sup>) as well as Article (7) of the Judicial Institute Law No. (33) of 1976, as amended, set out a number of conditions that are considered necessary in the legislator's view to assume judicial functions and positions, which are organizational matters as referred to above and can be expanded or determined if the legislator finds it necessary and there is no conflict with the principle of equality or equal opportunities stipulated in the Constitution, and for all of the above, the Federal Supreme Court decided to rule by the following:

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1. Dismissal of the plaintiff's lawsuit (Zahraa Muhammad Nasser Ali) against the second defendant, the Director General of the Judicial Institute / being in this capacity for not directing the litigation.
2. Dismissal of the plaintiff's lawsuit regarding her request (ruling on the unconstitutionality of the marriage clause in the decisions of the Judicial Institute and its illegality) due to the lack of jurisdiction of the court in this regard.
3. Dismissal of the plaintiff's lawsuit regarding her request ((ruling on the unconstitutionality of Article (36/1<sup>st</sup>) of the Judicial Regulation Law No. (160) of 1979, as amended)) for lack of a constitutional violation.
4. To burden the plaintiff with the expenses, fees, and attorney's fees to the defendants' agents an amount of one hundred thousand dinars, distributed in accordance with the law.

The decision has been issued unanimously, 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 5/2<sup>nd</sup>) 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 dated 16/Jamada Al-Akhir/1444 Hijri coinciding 9/January/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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