

Republic of Iraq
Federal Supreme Court
Ref. 251 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 28/12/2022 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 Plaintiff: Azhar Abdul Razzaq Mohammed Jawad – his agent the barrister Rafid Hameed Faraj.

The Defendants: 1. Secretary-General of the Cabinet/ being in this capacity – his agent the legal counselor Hayder Al-Sofi.
2. Minister of Trade/ being in this capacity.
3. Head of Iraqi Commercial Chambers Federation/ being in this capacity.
4. Head of Karbala'a Commerce Chamber/ being in this capacity.

The Claim

The plaintiff claimed through his agent that the third defendant legislated the internal regulations of the Federation of Iraqi Chambers of Commerce and Article (54/4th/2/Beh) thereof indicated the mechanism for appealing the penalty imposed by the fourth defendant by objecting by the member punished by one of the disciplinary or disciplinary penalties to object to the Federation Council within fifteen days from the date of being informed of the decision of the Chamber's Board of Directors, and the decision of the Federation Council shall be final, and

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since Article (2/1st/Jim) of the Constitution of the Republic of Iraq for the year 2005 has It indicated that it is not permissible to enact a law that contradicts the fundamental rights and freedoms contained in the Constitution, as well as what is stated in Article (100) thereof, which stipulates (It is prohibited to stipulate in the laws to immunize any act or administrative decision from appeal) and since the fourth defendant issued penalties by withdrawing the identities of members of the General Authority of the Karbala Chamber of Commerce, including (the plaintiff) and the ratification of the third defendant based on the text contained in the internal regulations of the Federation of Iraqi Chambers of Commerce mentioned above, and this text is contrary to the law and was used by the third and fourth defendants to liquidate litigants in the chambers of commerce and remove them from Running for elections. Therefore, the plaintiff asked this court to rule on the unconstitutionality of Article (54/4th/2/Beh) of the Internal Regulations of the Federation of Iraqi Chambers of Commerce No. (43) of 1989, as amended, with the defendants charging fees, expenses, and advocacy fees. The lawsuit was registered with this court with the number (251/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1st) of the Court's Rules of Procedure 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 7/12/2022, the conclusion of which is that the litigation is not directed towards his client because the appeal focused on the unconstitutionality of Article (54/4th/2/Beh) of the internal regulations of the Federation of Iraqi Chambers of Commerce published in the newspaper The facts No. (3279) on 30/10/1989 and not as stated by the plaintiff No. (43) of 1989, whereas Article (15) of the Federation of Chambers of Commerce Law No. (43) of 1989 stipulates that (the

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Federation Council shall issue internal regulations for the Federation and Chambers...) and therefore his client does not have competence or tasks in legislating or amending the text subject to the challenge, so he requested the dismissal of the lawsuit and the plaintiff to bear the expenses, fees, and attorney's fees. In order for the lapse of the period stipulated in Article (21/2nd) of the Court's Rules of Procedure without receiving the answers of each of the second, third and fourth defendants, a date was set for the consideration of the case without pleading in accordance with Article (21/3rd) thereof, in which the Court was formed and began its consideration, the court scrutinized what was stated in the plaintiff's petition, his grounds and requests, and what was stated in the reply list submitted by the first defendant and linked to the case papers, and after the court completed its audits, the end of the minutes had been made clear and the court issued the following judgment decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, the court noted that the summary of the plaintiff's lawsuit and through his agent is a request to rule on the unconstitutionality of Article (54/4th/2/Beh) of the internal regulations of the Federation of Iraqi Chambers of Commerce published in the Iraqi Gazette No. (3279) on 30/10/1989, and that the plaintiff submitted a list on 26/12/2022 in which he stated that the above article stipulates (the member to whom one of the above disciplinary or disciplinary sanctions has been directed may object to the Federation Council within fifteen days. From the date of notification of the decision of the Board of Directors of the Chamber and the decision of the Federation Council shall be final) and since the plaintiff's lawsuit petition focused on Article (54/4th/2/Beh) and that this article in its origin included item (2) only, the text mentioned by the plaintiff in his

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aforementioned regulations is contained in Article (54/4th/3/Beh), as for the content of the lawsuit petition, it focused on Article (54), which was completely canceled and replaced by a new text under Article (14) of the Rules of Procedure No. (1) of 2022 (the second amendment to the rules of procedure of the Federation of Iraqi Chambers of Commerce for the year 1989) published in the Iraqi Gazette No. (4699) on 5/12/2022, so the appeal has focused on a text that is not effective with the entry into force of the aforementioned amendment Whereas the jurisdiction of the Court to consider the constitutionality of laws and regulations falls to the enforcer based on the provisions of article (93/1st) of the Constitution of the Republic of Iraq of 2005, so the case is worthy to be dismissed. Accordingly, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit, as it has become irrelevant, and to charge him the fees, expenses, and attorney's fees of the first defendant's agent (the Secretary of a number of the Council of Ministers / being in this capacity) an amount of one hundred thousand dinars distributed according to the legal ratios. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93/1st 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 in the session dated 4/Jamada Al-Akhir/1444 Hijri coinciding with 28/December/2023 AD.

Judge

Jassim Mohammed Abboud

President of the Federal Supreme Court

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