

Republic of Iraq
Federal Supreme Court
Ref. 26 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 22/5/2023 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 , and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Hayder Abid Badin.
2. Akeel Radhi Muhsin. } Their agent the barrister
Murtadha Mohammed Sahib

The Defendants: Speaker of the ICR/ being in this capacity – his agents are legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiffs, through their agent, claimed that they were Muslims and were harmed by the Spirits Law No. (3) of 1931, article (1/Dal) of which stipulates that (spirits: means alcohol and alcohol containing methylation, alcohol, drink, beer and any liquid consisting of more than two percent alcohol or containing more than this amount, but does not include perfumes, aromatic scents, or other decorative preparations or medical preparations consisting of alcohol or containing on it), the law also includes in articles 2 and 27 the provisions regulating spirits in terms of their manufacture, sale, storage and other things, and that this law violates the Constitution of the Republic of Iraq for the year 2005 in article (2/1st) thereof, which stipulates: (Islam is the official religion of the State, and it is a basic source of legislation: Alif. It is not permissible to enact a law that contradicts the constants of the provisions of Islam), since the true religion forbids drinking spirits, there are verses in the Holy Qur'an that indicate the prohibition of alcohol from the words of God Almighty (**They ask you about intoxicants and gambling. Say, "There is gross sin in them, and some benefits for people,**

saady

Republic of Iraq
Federal Supreme Court
Ref. 26 / federal /2023



Kurdish text

but their sinfulness outweighs their benefit.” And they ask you about what they should give: say, “The surplus.” Thus God explains the revelations to you, so that you may think.) –Surat Al-Baqarah- verse (219), as well as the holy verse (Satan wants to provoke strife and hatred among you through intoxicants and gambling, and to prevent you from the remembrance of God, and from prayer. Will you not desist?). – Surat Al-Ma’ida – verse (91), (O you who believe! Intoxicants, gambling, idolatry, and divination are abominations of Satan’s doing. Avoid them, so that you may prosper.) – Surat Al-Ma’ida – verse (90), Many accidents and problems occur due to drinking alcohol, spirits and amusement parks, which led to the harm of a large segment of Muslims, and since this law was not specified for a specific segment, and it came absolutely and the absolute is being launched, so the plaintiffs asked this court to rule the unconstitutionality of the Spirits Law No. (3) of 1931 in its entirety, and its cancellation for violating the provisions of the Constitution in Article (2 /1st - Alif) thereof, the lawsuit was registered with this court No. (26/Federal/2023) and the legal fee was collected for it in accordance with Article (21/1st) of the Court's Rules of Procedure No. (1) of 2022 and the defendant is informed of its petition and documents in accordance with paragraph (Second) of the same article, and the defendant's agent replied with the reply list dated 1/3/2023 Conclusion that the law - the subject of the lawsuit - is no longer in force with the issuance of the Municipal Imports Law No. (1) of 2023 and its publication in a newspaper The Iraqi Gazette No. (4708) dated 20/2/2023, where article (14/1st) of it stipulates: (It is prohibited to import, manufacture, and sell alcoholic beverages of all kinds), article 15 of it also stipulates: (No provision that contradicts the provisions of this law shall apply), and thus the plaintiffs' request is outside the jurisdiction of the Federal Supreme Court following the provisions of article 93/1st of the Constitution, so they requested the dismissal of the plaintiffs' lawsuit and charging them fees and expenses. After completing the procedures required by the Court's Rules of Procedure, a date shall be set for pleading following the provisions of Article (21/3rd) thereof, and the parties shall be informed thereof, on the appointed day, the court was formed, and the plaintiff Haider

saady

Republic of Iraq
Federal Supreme Court
Ref. 26 / federal /2023



Kurdish text

Abd Badan attended, as well as the plaintiffs' agent and the defendant's attorney and began to conduct the public presence pleading, the plaintiffs' agent repeated what was stated in the lawsuit petition and requested a ruling accordingly and added that the alcoholic drinks law is contrary to public order and morals, it is not considered as an exercise of personal liberty provided for in the Constitution since freedom must not be interpreted based on prejudice to the freedom of others and public order, the defendant's attorney replied and requested the dismissal of the lawsuit for the reasons stated in the reply sheet attached to the case papers, the representative of each party repeated his previous statements and requests, and where there is nothing left to be said, the end of the argument has been made clear, and the court issued the following judgment decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs' claim is focused on demanding the unconstitutionality of the Spirits Law No. 3 of 1931 in its entirety, and its repeal for violating the Holy Quran and the Sunnah of the Prophet, as well as the provisions of Article (2/I-A) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that Islam is the official religion of the state, and it is a basic source of legislation: Alif. It is not permissible to enact a law that contradicts the constants of the provisions of Islam), and the court finds that one of the conditions that must be met to accept the constitutional lawsuit is the availability of the interest condition for the plaintiff in the application of the provisions of Article (6) of the Civil Procedure Law No. (83) of 1969, as amended, and Article (20/first) of the internal regulations of the Federal Supreme Court No. (1) of 2022, so that the plaintiffs have a current, direct, and influential interest in their legal, financial, or social status, provided that this interest is available starting when initiating the lawsuit until the issuance of the judgment thereon, and that the appealed text has been applied to them.

saady

Republic of Iraq
Federal Supreme Court
Ref. 26 / federal /2023



Kurdish text

Whereas the plaintiffs' interest in filing this lawsuit is not available in the first instance at the time of filing the lawsuit, and the law contested in its constitutionality has not actually been applied to them, and therefore their claim must be dismissed by this authority, accordingly, and for the foregoing, the court decided to dismiss the lawsuit of the plaintiffs (Haider Abd Badan and Aqeel Mohsen Radi) due to the lack of interest when it was established and they charged the judicial expenses, fees, and advocacy fees of the defendant's agents (Speaker of the Council of Representatives /being in this capacity) Legal Counselor Haitham Majed Salem and official jurist Saman Mohsen Ibrahim An amount of one hundred thousand dinars to be distributed between them in accordance with the law. The decision has been issued with majority, 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) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear in the session dated 2/Dhul Qaeda/1444 Hijri coinciding with 22/May/2023 A.D.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court

saady