

Republic of Iraq  
Federal Supreme Court  
Ref. 293 / federal /2023



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 17/1/2024 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Saud Saadoon Ali Al-Saidi – his agent the barrister Mahdi Abdul Ridha Jassim.

The Defendants: 1. Speaker of the ICR/ being in this capacity – his agents, the Director-General of the legal department Sabah Jumaa Al-Bawi and the official jurist Aseel Sameer Rahman.

2. President of the State Council/ being in this capacity – his agents, the Assistant Counselor Jihad Ali Jumaa and Legal Department Director Awham Habeeb Ali.

3. President of the Republic/ being in this capacity – his agent the Head of Legal Experts Ghazi Ibrahim Al-Janabi.

### **The Claim**

The plaintiff claimed through his agent that the first defendant had previously enacted Law No. 17 of 2013 (the Fifth Amendment Law of the State Shura Council Law No. 65 of 1979), which stipulates in Article 1 thereof, that (Third: The Speaker of the Council, his deputies, the Chancellor and the Assistant Counselor shall be considered a judge

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for the purposes of this Law when exercising the functions of the administrative judiciary), and Article (2) thereof stipulates (First: The Council consists of the following: (e) Administrative Courts and Personnel Justice Courts) The phrase "Administrative Court" and "Staff Justice Court" are repeated in many provisions of the law, including Articles (5/1<sup>st</sup>, 2<sup>nd</sup>) and (9), without including the provisions of the aforementioned law or the practical reality of the formation of administrative courts, and the Staff Justice Court The inclusion of any of the judges working in the Supreme Judicial Council in the membership of these courts, and without stipulating that these courts formed in the State Council are linked to the Supreme Judicial Council. From the technical or administrative aspects, in addition, article 27 of the State Shura Council Law No. 65 of 1979, as amended, stipulates that "the president, the vice-president, the counsellor, the delegated counsellor and the assistant adviser may not be arrested or penal proceedings taken against them other than in the case of committing a flagrant felony except after obtaining the permission of the Minister of Justice." To suspend the implementation of the articles - the subject of the challenge - until the case is resolved, and also requested a ruling on the unconstitutionality of articles (1/3<sup>rd</sup>, 2/1<sup>st</sup>, 5/1<sup>st</sup>, 2<sup>nd</sup>, 9, 27 and 7/10<sup>th</sup>) of the State Council Law No. (65) of 1979, and charging the defendants fees and expenses. After registering the lawsuit with this court No. (293/Federal/2023), collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Court's Rules of Procedure No. (1) of 2022, the first defendant's representative, the second defendant, and the third defendant's attorney responded with the response lists attached to the lawsuit file, which included detailed formal and substantive defenses in which they concluded their request to dismiss the lawsuit, due to the

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lack of interest condition of its filing required by Article (20/1<sup>st</sup>). of the Rules of Procedure of the Court No. (1) of 2022. After completing the procedures required by the Court's Rules of Procedure, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, in which the court was formed, so the plaintiff or his representative did not attend, and his agent, the human rights employee, Aseel Samir Rahman, and the representatives of the second and third defendants attended, and the public presence of the pleading began, and after the court heard their statements and requests, the end of the argument has been made clear, and the court issued the following judgment:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, the court noted that the summary of the lawsuit of the plaintiff Saud Saadoun Ali Al-Saadi is the ruling on the unconstitutionality of Articles (1/3<sup>rd</sup>, 2/1<sup>st</sup>, 5/1<sup>st</sup>, 2<sup>nd</sup>, 9, 27 and 7/10<sup>th</sup>) of the State Council Law No. 65 of 1979 and the issuance of a state order to suspend the implementation of these articles until the lawsuit is resolved, and after the public presence pleading and the court's review of its decision No. (293/Federal/State Order/2023 on 26/12/2023), which rejected the request to issue an order I am loyal to the reasons stated in the decision, and to inform the court of the reasons of the lawsuit that the plaintiff detailed in his regulations and referred to in the preamble of this decision, and reviewed the list of the first defendant's agent, the Speaker of the Council of Representatives, in addition to his job dated 11/12/2023, in which he requested to dismiss the lawsuit in form and substance, and the court

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also reviewed the list of the second defendant, the President of the State Council, in addition to his job dated 12/12/2023, and the list of his agents dated 17/1/2014, in which they requested to dismiss the lawsuit in form and substance for the reasons detailed therein, as well as the court reviewed the list of the third defendant's agent, the President of the Republic, being in this capacity dated 12/12/2023, in which he requested the dismissal of the lawsuit for the reasons and the most important of which was that the litigation was not directed against his client and that the plaintiff has no apparent, direct and known interest in filing this lawsuit, after reflection and scrutiny of the submission of the parties to this lawsuit, this court finds that one of the conditions for filing a constitutional lawsuit, like all other lawsuits, is the availability of the interest condition stipulated in Article (6) of the Civil Procedure Law, the content of which is the personal practical benefit that accrues to the plaintiff if he is sentenced to his requests, which is within the limits of the constitutional lawsuit that the text or texts whose unconstitutionality is required to be ruled unconstitutional has violated one of the constitutional rights in a way that caused damage Directly to the plaintiff, and this is what has been detailed in Article (20) of the rules of procedure of this court No. (1) of 2022, that the plaintiff in the subject matter of the lawsuit has a case, direct and influential interest in his legal, financial or social status, and this condition has been lacking in this lawsuit on the part of the plaintiff, so this court did not find the plaintiff a case, direct and known interest as specified in the texts mentioned above, and since the lack of the lawsuit of the interest condition that must be met with the other conditions for its acceptance requires dismissals for this reason, accordingly, the Federal Supreme Court decided to dismiss the lawsuit of the plaintiff Saud Saadoun Ali Al-Saadi against the defendants, the Speaker of the Council of

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Representatives, in addition to his job, the President of the State Council, in addition to his job, and the President of the Republic, in addition to his job, for lack of interest in establishing it, and charging the plaintiff with judicial fees and expenses and attorney fees for the first defendants' attorneys, Director General of the Legal Department, Sabah Juma Al-Bawi, human rights employee Aseel Samir Rahman, and the second defendant's agents, human rights officers Jihad Ali Juma'a, Waham Habib Ali, and the third defendant's attorney, head Legal experts Ghazi Ibrahim Al-Janabi an amount of one hundred thousand dinars distributed equally among the defendants' agents and 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) 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 5/Rajab/1445 Hijri coinciding 17/January/2024 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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