

Republic of Iraq
Federal Supreme Court
Ref. 43 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 10/10/2023 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1- Ameer Ghazi Dohi.

2- The Representative Saoud Saadoun Ali Al-Saidi.

Their agent,
the barrister
Mahdi Abdul
Ridha Al-
Sbihawi

The Defendants: 1. Speaker of the ICR/ being in this capacity – his agents, the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

2. President of the Republic/ being in this capacity – his agent, the Head of legal experts Ghazi Ibrahim Al-Janabi.

The Claim

The plaintiffs claimed through their representative that the defendant legislated Personal Status Law No. (188) of 1959 and legislative amendments were made to Article (57/4th) thereof to stipulate: (The father has the right to look into the affairs, upbringing, and education of the child until he reaches the age of ten, and the court may authorize the extension of custody. The child until he reaches the age of fifteen if it is proven to them after referring to the specialized medical and popular committees that it is in the interest of the child that he does not spend the night except with his custodian), and since the last part of the article (that he does not

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sleep except with his custodian) conflicts with the Constitution of the Republic of Iraq of 2005 in Article (2/1st) thereof, which does not permit the enactment of a law that conflicts with the principles of Islam and with the fundamental rights and freedoms contained in the Constitution, article (14) of it that emphasizes equality between Iraqis before the law without discrimination due to sex, Article (41: Iraqis are free to adhere to their personal conditions, according to their religions, doctrines, beliefs, or choices. There is no punishment except with a text ...), Article (29/ First/ B: The state guarantees the protection of motherhood and childhood ...), and Article (29/ Second: The children have a right for their parents in education, care and education ... Fourth: It prevents all forms Violence and arbitrariness in the family, school and society), and Article (30/ first) that the state must guarantee the child the basic ingredients to live in a free and dignified life, and Article (37/ First/ A: Human freedom and dignity is protected, Jim: It prohibits all types of psychological and physical torture and inhumane treatment. Article (7) of it criminalizes the adoption of a racist approach. It also contravenes what is stated in the preamble of the Constitution regarding achieving justice, equality, attention to children and their affairs, and no racist tendency, discrimination, or exclusion, based on the aforementioned constitutional articles. It is necessary to establish equality between the mother and the father in the issue of the child's sleep and not deprive him of spending the night with his father because this constitutes a violation of the principles of the Constitution and entails a criminal penalty not stipulated in the Penal Code, considering the father guilty, with the interest of the mother taking precedence over the interest of the child and the father, in addition to raising racism and distinguishing between men and women, in addition to the fact that the Convention on the Rights of the Childing does not have a text that permits depriving the child of the overnight with his father, so the two plaintiffs asked this court the ruling that the last part of Article (57/4) of the Personal Status Law No. (188) For the year 1959 amended the aforementioned reasons. The lawsuit was registered with this court in the number (43/federal/2023) and the legal fee was met according to the provisions of Article (21/First) of the internal system of the Federal Supreme Court No. (1) of 2022 and the defendant is informed of their broad and documents following item (2nd) of the article itself, the first defendant's agent responded in the response statement dated 3/13/2023, its

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conclusion: that the text - the subject of the appeal - does not constitute a violation of the provisions of the Constitution, according to Article (130) of the Constitution, which states: “The legislation in force shall remain in force, unless they are repealed or amended, in accordance with According to the provisions of this Constitution), the court had previously decided on the appeal under Article (57), the subject of the appeal, with its paragraphs (1, 2, 4, and 7) in its decision No. (189/Federal/2018), and they requested that the case be dismissed and that the plaintiffs be charged the fees and expenses. The representative of the second defendant responded in the answer statement dated 3/19/2023, its conclusion:

The text under challenge has been in force for more than (60) years, and none of the Muslim jurists or the general public has objected to it, and the plaintiff (the father) was not deprived. From looking into the affairs of his young children, if he has the absence of the incubator with its legitimate duties in caring for the custodians, he may file a lawsuit before the competent court to prove this and remove the custody of it, and he did not provide evidence of the bad incubator to sponsor children, and if the plaintiff relies on some of the provisions of the constitution is not correct; Because the topic is not related to the man’s distinction from the female, equality, or conflict with the principles of Islamic law, because custody is legally and law that belongs to the mother. Each state grants the right to apply this agreement according to the customs, traditions, and religion it adopts to agree and protect the child, he requested to reject the plaintiff’s lawsuit and to burden him with fees, expenses, and advocacy fees. After completing the procedures required by the court’s internal regulations, a date for pleading was set in accordance with Article (21/3rd) thereof, and the parties were notified of it. On the appointed day, the court was formed, the first plaintiff and the parties’ representatives attended, and the public in-person pleading began. The plaintiff and his representative repeated what was stated in the lawsuit petition and requested a ruling. According to what was stated therein and in the list presented before the court, the defendants’ agents responded and each of them requested that the case be dismissed from his client for the reasons stated in the answer lists attached to the case papers. Each party repeated its previous statements and requests, and since there was nothing left to be said, the end of the argument was made clear and the court issued the following decision:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the plaintiffs' lawsuit was focused on demanding a ruling on the unconstitutionality of the phrase (provided that he does not spend the night except with his custodian) contained in the last part of Paragraph (4) of Article (57) of the Personal Status Law No. (188) of the year 1959 amended; This is due to its violation of the provisions of Articles (2/First, 7, 4, 19/1st and 2nd, 29, 30, 37/1st/Alif, 41) of the Constitution of the Republic of Iraq for the year 2005, in addition to its violation of Sharia, law, international agreements, customs, and traditions, according to the claim, through the court's examination of the case file, its annexes, and the defenses and requests of the two litigating parties, the court found that the plaintiffs' dispute towards the second defendant, the President of the Republic, in addition to his job, was not directed, due to its lack of relation to the legislation of the text whose unconstitutionality is being challenged. If the dispute was not directed, the court would decide on its initiative to dismiss the lawsuit without entering. In its basis, based on the provisions of Article (80/1) of the Civil Procedure Law No. (83) of 1969, as amended, as for the first defendant, the Speaker of the Speaker of Representatives, being in this capacity, is the real and legal opponent in this case. However, the court, through reviewing the ruling decisions issued by it and attached to the case file, related to the issue of custody and the appeal of the unconstitutionality of Article (57) of the Personal Status Law, including the decision to rule on the number (189/Federal/2018) on 12/5/2018, and the plaintiff's attorney appealed it with paragraphs (1, 2, 4, and 7) of Article 57 referred to above, because it violated Article (2/1st) of the Constitution, as well as its violation of Sharia, the law, and the fatwas of the religious authority, which the court judged by rejecting the lawsuit because it lacked legal substantiations, therefore, this lawsuit must be rejected because its subject matter has previously been decided. Accordingly, the Federal Supreme Court decided the following decision:

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- 1- The lawsuit of the two plaintiffs (Amir Ghazi Dohi and Saud Saadoun Ali Al-Saadi) was dismissed against the second defendant, the President of the Republic, in addition to his job, as there was no dispute.
- 2- The lawsuit of the two plaintiffs (Amir Ghazi Dohi and Saud Saadoun Ali Al-Saadi) concerning the first defendant, the Speaker of the Council Representatives, was dismissed/ being in this capacity because the matter had previously been decided, and the plaintiffs were charged the fees and legal expenses and the fees of the defendants' agents in addition to their jobs, an amount of one hundred thousand dinars to be distributed between them according to the law.

The decision has been issued with the 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 edited in the session dated 24/Rabea Al-Awal/1445 Hijri coinciding with 10/October/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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