

Republic of Iraq
Federal Supreme Court
Ref. 47 / federal /2020



Kurdish text

The Federal Supreme Court (F S C) has been convened on 15/9/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Sahar Salih Abid – her agents the Barristers Hayder Hussein Alwan and Ahmed Jassim Abbood.

The defendant: the Speaker of the Iraqi Council of Representatives/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed that the defendant, the Speaker of the Iraqi Council of Representatives/ being in this capacity, passed the Nursing Union Law, which came into force on the date it was published in the Official Gazette on 16 October 2020, and that it represented a large segment of nurses and midwives where she was serving as "Chief of Nurses of Iraq", and that the above-mentioned law caused them considerable harm because, under article (37/1st), the Nurses' Union Law was repealed, and it challenged the unconstitutionality of the Nursing Union Law for the following reasons:

1. The defendant/ being in this capacity included the Nursing Union Law in a public session of the Council of Representatives numbered (8) on 24 September 2020 for a vote and thus violated the provisions of article (59/1st) of the Constitution because the attendance quorum

saady



was not complete and violated paragraph (2nd) of the same article because the quorum was not completed during the vote.

2. The defendant/ being in this capacity did not take into account article (27) of the Bylaw of the Council of Representatives by accepting the legal interventions made by members of the Council of Representatives, particularly the proposal submitted by the Committee of Civil Society Organizations, which is the committee competent to legislate the Law of Syndicates, and it was not discussed by the Committee and the defendant/ being in this capacity violated the legal articles of the Nurses Union Law No. (33) of 1959, especially Article (8) paragraphs (5.4) and the defendant did not take into account the decision of the General Authority of the Nurses' Union which notified to the Council of Representatives by the letter of the Nurses Union Numbered (117) on 20 July 2019, which includes that the law of the nurses' union should not be repealed and respect the specificity of the work of the Iraqi nurse and midwife and that the nurses' union registered its objection to the bill before sending it to the Council of Representatives. The union also addressed the President of the Republic with its numbered letter (171) on September 3, 2020, and the union was answered by the listed presidential letter (1/46/2309) on 20 September 2020, not to Repeal of the Nurses' Union Law, so she requested that the defendant/ being in this capacity shall be called upon to pleading and rule that the law of the nursing union is unconstitutional in all its legal articles as requested and based on the provisions of article (151) of the Civil Procedure Law to issue a custodian order to stop the implementation of the challenged law and to burden the defendant/ being in this capacity the fees and expenses. On the basis of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1)

saady



of 2005, the case was registered with this court in the number (47/Federal/2020) and informs the defendant/ being in this capacity with its petition and the attached documents according to article 2/1 of the above-mentioned Bylaw. The agents, Legal Counsel Haitham Majid Salem and official jurist Saman Mohsen Ibrahim, replied that the plaintiff's case was due to be rejected for the reasons mentioned in their draft which is represented by the following: 1. The plaintiff's agents did not indicate the immediate and influential interest in the plaintiff's legal, financial or social status and did not provide evidence that factual, direct, and independent damage to its elements had been caused by the challenged legislation and could be removed if it was ruled unconstitutional. 2. One of the tasks of professional unions is primarily to regulate the practice of the profession and the reasons for the legislation of the impugned law are (changes in the nursing and midwifery professions and increasing the number of males involved in the profession and line with the Law on the Practice of Nursing and Midwifery No. (96) of (2012) as the law was enacted to integrate the nurses' union and the nursing and midwifery union as they organize the same profession and therefore the Council of Representatives does not find a call for the continuation of the separation of the two unions mentioned earlier. 3. Article (37/1st) of the Nursing Law, challenged by its unconstitutionality, was enacted on the basis of the principles of the Iraqi constitution in force, where article (14) stipulates that (Iraqis are equal before the law without discrimination on the basis of sex, race, nationality, origin, color, religion, belief, opinion, economic or social status), and therefore the Council of Representatives considers that there is no need to form a union on the basis of sex. 4. The plaintiff's claim that the quorum was not achieved either in the presence of the Representatives or

saady



during the vote on the law challenged as unconstitutional, the quorum is achieved in both cases. 5. The challenged law was a legislative option in accordance with the jurisdiction of the Council of Representatives and for the reasons mentioned, the defendant's agent requested that the plaintiff's case should be dismissed and that all judicial fees, expenses, and fees shall be burdened by her in addition to the advocacy fees the lawyer. Under the explanatory draft of 3 February 2021, the plaintiff's agents replied by repeating what was listed in the petition of the case. After completing all the proceedings, a date was set for the case, and the parties were notified on the basis of the provisions of article (2/2nd) of the Bylaw, and on the day appointed to the case, the court was formed and the plaintiff was present and her attorney Ahmed Jassim Abboud attended the defendant/ being in this capacity legal counsel Haitham Majid Salem and the public in presence argument proceeded, the agent of the plaintiff repeated what came in the petition and requested to judge to what listed in is, the defendant's agent/ being in this capacity replied that the case is due to be rejected for the reasons mentioned in his draft dated 4 January 2021 When the Court decided at its hearing of 23 June 2021 to refuse to issue a custodian order containing the suspension of the implementation of the challenged law due to lack of urgency and the issuance of a custodian order of suspending the implementation will give a kind of pre-opinion by the Court for the result of the case. Moreover, the court also decided to reject the request of the plaintiff's agent to record the statements of the witness the Representative Khaled Al-Jashami regarding the incomplete quorum because the verification of the completion of the quorum is proved by official documents through the minutes of the sessions of the Council of Representatives regarding the vote on Law No. (8) for

saady



2020 and to inform the court of the minutes (session No. 8) Thursday (24/9/2020) the hearing began with a quorum (194) representatives). The minutes aforementioned also contain the paragraph (5th) to vote on the law bill of the nursing syndicate (Committee of Civil Society Institutions and Parliamentary Development Committee health and environment committee) also included a vote on all paragraphs of the law challenged as unconstitutional, and the agents of the parties repeated their requests and sayings and where it is not left to be said, the conclusion of the case and was appointed on 15 September 2021 as the date of the decision, and on the appointed day of the decision the court was formed and the agent of the plaintiff attended as well as the defendant's agents/ being in this capacity and the court issued the following decision publicly.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Sahar Salih Abid claimed that the defendant the Speaker of the ICR/ being in this capacity had issued the nursing syndicate law No. (8) for 2020 and this law was published in the Iraqi Gazette by issue number 4604 on 16/November/2020. While the plaintiff represented a wide segment of nurses and midwives, whereas she was occupying the post of (Chief of Iraqi nurses) and the above-mentioned law caused them considerable harm, as the Nurses' Union Law was repealed under article (37/1st) of it and challenged the unconstitutionality of the Nursing Union Law No. 8 of 2020 because the attendance of members of the Council of Representatives was not achieved and the vote on the bill was not achieved, so the defendant/ being in this

saady

Republic of Iraq
Federal Supreme Court
Ref. 47 / federal /2020



Kurdish text

capacity violated the provisions of the article (59/1st and 2nd) of the Constitution, the defendant did not take into account article (27) of the Bylaw of the Council of Representatives by accepting the interventions made by members of the Council of Representatives, and the challenged law violated the provisions of article (8/4 and 5) of the Nurses' Union Law No. (33) of 1959. The Federal Supreme Court finds that the plaintiff requested to judge that the Nursing Union Law No. (8) of 2020 was unconstitutional in order to violate the defendant's function in addition to the provisions of article (59/1st and 2nd) of the Constitution of the Republic of Iraq 2005, as paragraph (1st) stipulated (first) that the sessions of the Council of Representatives shall be met in the presence of the absolute majority of its members) and paragraph (2nd) stipulates (decisions are taken in the sessions of the Council of Representatives by a simple majority, after the quorum is achieved, unless otherwise stated), by reading the minutes of Thursday's (24 September 2020) session, the Court found paragraph (5th), including a vote on the nursing union bill (Committee of Civil Society Institutions and Parliamentary Development Committee, Health and Environment Committee) and the hearing began with a quorum of (194) Representatives and voters (172) Representatives, so that the quorum of the Council of Representatives is achieved from the beginning and during the vote, so the plaintiff's case is due to be rejected from this aspect, but in relation to the violation of the law challenged by the provisions of article (8/4 and 5) of the Nurses' Union Law No. 33) For 1959, this does not require a judgment on unconstitutionality, as the judgement on unconstitutionality requires that the law or the challenged legal text of the Constitution be violated and this is not achieved in relation to the Nursing Union Law No. 8 of 2020, so the plaintiff's

saady

Republic of Iraq
Federal Supreme Court
Ref. 47 / federal /2020



Kurdish text

case is also due to be rejected in this respect, but the plaintiff's claim that the interventions of members of the Council of Representatives were not accepted during the vote on the bill, the minutes of session No. 8 prove the contrary. Accordingly, the Federal Supreme Court decided to reject the case of the plaintiff (Sahar Salih Abid) and to burden her with all the fees, expenses, and the advocacy fees for the agents of the defendant/ being in this capacity, both of the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim amount (100,000) one-hundred thousand Iraqi dinars shall be divided between them in accordance with the law. The judgment has been issued unanimously, decisive, final, and binding for all powers according to the provisions of the articles (93/1st) and (94) of the Constitution of the Republic of Iraq of 2005 and article (5/2nd) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) Of 2021, and has been made clear on 7/Sufur/1442 Hijri, coinciding 15/September/ 2021.

**Signature of
The president**

**Jasem Mohammad
Abbood**

**Signature of
The member**

**Sameer Abbas
Mohammed**

**Signature of
The member**

Haidar Jaber Abed

saady

Republic of Iraq
Federal Supreme Court
Ref. 47 / federal /2020



Kurdish text

**Signature of
The member**

Haider Ali Noory

**Signature of
The member**

Khalaf Ahmad Rajab

**Signature of
The member**

**Abdul Rahman
Suleiman Ali**

**Signature of
The member**

**Diyar Muhammad
Ali**

**Signature of
The member**

**Ghalib Amir
Shunayen**

**Signature of
The member**

Ayoob Abbas Salah