

Republic of Iraq
Federal Supreme Court
Ref 108/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/5/2024 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, and Dyar Mohammed Ali and Jasim Jazaa Jaafar who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mohamed Ali Ghaly.

The Defendant: Speaker of the Council of Representatives/ being in this capacity – his two agents, the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiff claimed that the (Traffic Law) No. (8) of 2019 was previously issued and published in the Iraqi Gazette No. (4550) on 5/8/2019, paragraph (3rd) of Article (28) thereof, stipulates: ((In the event of non-payment of the fine imposed within (30) thirty days from the date of its imposition (double) the amount of the fine for one time and this shall be marked on the registration of the vehicle in the calculator, in the event that the fine amount is paid directly or within (72) hours from the date of imposing the fine, its amount shall be reduced by (50%) whereas paragraph (2nd) of Article 19 of the Constitution of the Republic of Iraq stipulates: (There shall be no crime or punishment except by a stipulation, and no punishment except for the act that the law considers a crime at the time of its commission, and no heavier penalty may be applied than the penalty in force at the time of the commission of the crime), whereas the issuance of paragraph (3rd) of Article (28) mentioned above has made two penalties for one act, and

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that the second penalty is double (aggravated) and is other than the initial penalty prescribed by law at the time of committing the crime, and whereas the fines stipulated in the provisions of Articles (25, 26 and 27) of the Traffic Law are imposed on the traffic officer or commissioner who are granted the authority of a misdemeanor judge in accordance with the provisions of paragraph (28/1st) of the aforementioned law, and that the aforementioned law has omitted to specify the authorized party (by increasing the fine), which makes it issued by an entity that is not legally authorized, so the plaintiff asked this court to rule on the unconstitutionality of the phrase ((in the event of non-payment of the fine imposed within (30) thirty days from the date of its imposition (doubled) the amount of the fine for one time and this is marked on the registration of the vehicle in the calculator)) contained in paragraph (third) of Article (28) of the Traffic Law No. (8) of 2019 for violating the provisions of paragraph (second) of Article (19) of the Constitution, and charging the defendant judicial expenses and fees. After registering the case with this court No. (108/Federal/2024) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, his two agents replied with the reply regulation dated 14/4/2024 and its conclusion: The text - the subject of the challenge - was a legislative option in accordance with the competencies of the Council of Representatives based on the provisions of Article (61) of the Constitution and does not violate any of the constitutional provisions referred to by the plaintiff, and that the imposition of traffic fines, although they involve a penalty for committing a violation, but came to regulate the provisions of the traffic of vehicles, maintain the safety of citizens and traffic in the streets of cities, and urge citizens to abide by

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safety and traffic rules, and it also came to balance between the negligence of the violator in paying the amount of the fine by doubling its amount if it is not paid within thirty days and reducing its amount by (50%) in the event of paying it directly or within (72) hours from the date of imposition of the fine, the court had previously decided on the subject of the plaintiff's lawsuit challenging the constitutionality of the article under challenge by virtue of its decision No. (60/Federal/2023) on 11/6/2023, which became an argument with the provisions adjudicated, so they requested to reject the lawsuit and charge the plaintiff fees, expenses and attorneyship fees, and after completing the procedures required by the court's internal regulations, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, in which the court was formed, and the plaintiff attended and the defendant's agent, the human rights employee, Saman Mohsen Ibrahim, attended the pleading procedure began in attendance, and after the court heard their statements and requests and completed its scrutinies, the end of the argument has been made clear and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff (Mohamed Ali Ghali) asked this court to rule on the unconstitutionality of the phrase ((in the event of non-payment of the fine imposed within (30) thirty days from the date of its imposition (double) the amount of the fine for one time, and this is marked on the registration of the vehicle in the calculator)) mentioned in paragraph (3rd) of Article (28) of the Traffic Law No. (8) of 2019 and for public presence pleading and informing the court of the defendant's defenses, the Speaker of the Council of Representatives, in addition to his

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position. Through the list submitted through the mediation of his two agents and during the pleading, and to inform the court of the judgment decision issued by it No. ((60/Federal/2023 on 11/6/2023- Prosecutor Mohamed Maher Hassan and the defendants, the Speaker of the Council of Representatives and the Minister of Interior, in addition to their functions, which includes the judgment rejecting the lawsuit of the plaintiff Mohamed Maher Hassan to challenge the constitutionality of Article (28) of the Traffic Law No. (8) of 2019 against the first defendant, the Speaker of the Council of Representatives, in addition to his job, for the absence of a constitutional violation)), whereas the subject matter of the lawsuit referred to above is the same as the subject matter of this lawsuit and the judgment paragraph contained therein, which is the judgment dismissing the plaintiff's lawsuit and charging him fees and expenses for the reasons detailed in the judgment decision, and since the constitutional lawsuit is described as a lawsuit in rem because it relates to the constitutionality of abstract general laws and not purely personal rights, and that the judgments issued by this court are final and binding on all in accordance with Article (94) of the Constitution of the Republic of Iraq of 2005 and that the change of parties to the lawsuit applies to all individuals. and public authorities there is no way to raise the issue of the constitutionality of a law before this court if the court has already ruled its constitutionality, even if the parties to the lawsuit change accordingly, and in view of the above, the Federal Supreme Court decided the following:

First: Ruling on rejecting the plaintiff's lawsuit (Mohamed Ali Ghaly) for the previous adjudication of its merits according to the judgment decision issued by this court issue (60/Federal/2023 on 11/6/2023).

Second: The plaintiff shall bear the fees, expenses and advocacy fees of the defendant's agents, the Speaker of the Council of Representatives,

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being in this capacity, the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman, an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding to all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005 and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and it has been made clear on 12/Dhu al-Qa'dah/1445 A.H. corresponding to 21/5/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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