

In the name of God most gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 10/federal/2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 26.5.2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Munthir Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Salah Faleh Faisal Mohammed/ his attorney Ali Nasser Sharqi.

The First Defendant: Speaker of Council of Representation/ being in his capacity his deputy, legal advisor, Haitham Majed Salem.

The Second Defendant: Head of the National Accountability and Justice Authority his jurist Azhar Amori Algebra.

The Claim:

The plaintiff claimed that the first defendant passed the National Accountability and Justice Commission Act No. (10) on 14/2/2008, which in some paragraphs violated the provisions of Articles (22/1st) of the Constitution, which stipulated that (Work is a right for all Iraqis in a way that guarantees a dignified life for them) and the article (29/1st) which stipulated that (The family is the foundation of society; the State shall preserve it and its religious, moral, and national values) and that

the legislator in these articles linking a decent life to work that can improve the human being and build his life to reach a better future and that the loss of a person's work leads to the real guarantee of the family that the Constitution must preserve its entity from the factors that affect it. On 4/12/2001, he was accepted to the Higher Institute for Security and Administrative Development, On 21/7/2002, he graduated with the rank of a police lieutenant, and on 16/3/2015, his relationship with a major was severed without any retirement rights, although his service is approximately fifteen years old and arises from his work in the Ministry of Interior and is not the result of his work in Fedayeen Saddam. Therefore he requested that the defendants be invited to plead and rule that article (6/4) of the Supreme National Accountability and Justice Authority Law No. (10) of 2008 (amended) for violating the provisions of the mentioned articles of the constitution valid and obliging the first defendant/ being in his capacity to issue the necessary legislation the second defendant/ being in his capacity was obliged to abide by the provisions of the Constitution, grant him legal rights, as well as his peers, and hold the defendants accountable/ being in their capacity judicial expenses and legal fees. The case was registered with this court in No. (10/federal/2020) and the legal fee was paid in accordance with article (1), paragraph (3rd) of the Bylaw of FSC No. (1) of 2005, and the defendants/ being in their capacity are informed of the petition based on the provisions of paragraph (1st) of the article (2) of the bylaw of this court, the agent of the first defendant (the Speaker of the Council of Representatives/ being in his capacity) answered in his draft dated 9/2/2020 as following: 1- The text in question was initiated by the House of Representatives based on the provisions of Article (61/1st) of the Constitution and came as a legislative option in accordance with its terms of reference defined by the Constitution.

2- The plaintiff refers to the obligation of the first defendant (the Speaker of the Council of Representatives/ being in his capacity) to pass

the necessary legislation and the application shall be outside the jurisdiction of the FSC defined by Article (93/1st) of the Constitution. For all of the above reasons for the request to dismiss the case and hold the plaintiff accountable for judicial expenses, the second defendant's agent (Head of the Supreme National Authority for Accountability and Justice/ being in his capacity) answered by his draft dated 5/2/2020: First, article (4) of the Civil Arguments Law No. (83) Of 1969 amended by the defendant stipulated that his decision should result in a ruling assessing his approval and that he be sentenced or obliged to do anything at the discretion of the case. This description does not apply to his client because he is not the body that initiated the law and that the Accountability and Justice Commission Law No. (10) of 2008 was initiated by the Council of Representatives and is competent to legislate it in accordance with the provisions of Article (61/1st) of the Constitution of the Republic of Iraq of 2005, which represents the legislative will and thus the antagonism is not directed. Second, his client can't be an opponent in this case because he doesn't have the right to legislate laws. Third: One of the reasons for the legislation of the National Authority for Accountability and Justice law is the suffering suffered by the Iraqi people for (35) years during which they were subjected to the most horrible forms of persecution, oppression, and deprivation at the hands of the most arbitrary and criminal totalitarian regimes and the great role played by the leaders of the elements of that regime Baathists and workers in the repressive organs in the injustice and persecution of the Iraqi people and their attempt to weaken the sense of citizenship and belonging to the homeland for the role played by Fedayeen Saddam from suppressing the Iraqi people in all ways of repression, including killing, displacing and mass graves, the National Accountability and Justice Authority Act have been enacted. Fourth: The contested text does not violate any provision in the Constitution.

Fifth: The plaintiff is covered in accordance with the text of the article (6/4th) of the Law on the Supreme National Authority for Accountability and Justice and has appealed the decision of the Authority to the discriminatory body competent to hear appeals, and the said authority issued its decision No. (83/discriminatory body/2015) on 10/5/2015 which stated in its decision to reject the objection of the objector (plaintiff) and to ratify the decision to include the law of accountability and justice and that the plaintiff has taken the legally drawn path to appeal the decision of the body, so he asked for the case to be dismissed and the plaintiff to be charged with judicial expenses. After completing the procedures required in accordance with article (2), paragraph (1st) of the Bylaw of the FSC No. (1) Of 2005, he appointed on 9/5/2021 a date for the case and informed the parties to the case based on the provisions of article (2), paragraph (2nd) of the mentioned system. On the appointed day of the case, the court was formed, and the agents of the parties to the case attended and the immanence and public hearing was initiated the prosecutor repeated the petition and requested a verdict and he added that his client's case focuses on the unconstitutionality of Article (6/4th) of the Supreme Mechanism for Accountability and Justice Law No.(10) of 2008 (amended) and that what was stated in it came absolutely to anyone who worked under the term Fedayeen Saddam and is deprived of the pension rights of their work in the mentioned body, on 9/5/2021, the court submitted two lists, the first list of which included the answer to the list of the first defendant / being in his capacity on 9/2/2020 included in the following: 1- His client did not challenge the jurisdiction of the Council of Representatives in accordance with Article (61/1st) of the Constitution, but on the contrary, his client requests to act in accordance with the Constitution and legislate a law in accordance with the authority mentioned to fair a wide segment of society. 2- What his client, the first defendant's agent, paid in the second paragraph of the list is at the discretion of the distinguished court. 3- The legislation of the Supreme National Authority for Accountability and Justice included

members of Fedayeen Saddam without taking into account the perpetrator of crimes against the people and between groups that were forced to belong, for example, school and college students whose client was one of them and did not commit any crime, and that his affiliation was a formality and he was able to leave the organ and started a new life. 4- A large segment of the Iraqi people and some of them were affected by article (6/4) of the body law, where the guilty person was not preferred without the guilty, but came absolute, and the article in question talks about preventing the retiree from being granted to members of the guerrillas as a result of serving in the agency and here there is no harm in it, but his client was expelled from the Ministry of Interior and prevented from his pension rights that came as a result of serving in the ministry, thus depriving his client and many of his colleagues of decent livelihood this is not for anything but that their names have been mentioned in the lists of members of the above organ, knowing that many of this segment have families to support and that his client performed his duty to the fullest, so he asked for a ruling that article (6/4th) is unconstitutional and that the defendants/ being in their capacity be held accountable judicial expenses, the second draft included the answer to the draft of the second defendant's agent / being in his capacity which stated: 1- Under article (60) of the Iraqi Constitution, the Council of Ministers submits draft laws and that among the institutions of the Council of Ministers is the National Authority for Accountability and Justice, which has the competence to submit a draft amendment to the law of the authority if it finds injustice in its law and that the authority does not accept the injustice of the Iraqi people who signed on to his client and colleagues by expelling them from service. 2- His client did not contribute to the suffering of the Iraqi people, and that the period during which he belonged to Fedayeen Saddam System does not exceed several years only and not (35) years, as the second defendant's agent stated, on the one hand, and the other hand, there are repressive bodies with a date equivalent to the date mentioned, the rights were not

prevented from them and his client only demands fairness and justice.

3- In response to the paragraph (4th) of the second defendant's agent's draft / being in his capacity the contested text violates the following constitutional texts: (A) The article (2/ paragraph Jim) state that (No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution). (B) The article (22/1st) state that (Work is a right for all Iraqis in a way that guarantees a dignified life for them) this right was unjustly taken from his client except that he belonged to a body in which he did not commit any significant crime during his work and did not attack any member of the Iraqi people. (C) The article (29/1st) which state that (The family is the foundation of society; the State shall preserve it and its religious, moral, and national values) the loss of the person's work leads to the loss of the real guarantee of this family, so he requested that his client be sentenced to unconstitutionality of the article in question and that the second defendant/ being in his capacity charged with judicial expenses, the first defendant's agents replied that they were repeating the draft provided before the hearing, that article (6) of the Supreme National Accountability and Justice Authority Law was a legislative option, and that the plaintiff's request to the court to oblige his client to issue the necessary legislation was outside the jurisdiction of the FSC, the second defendant's agent replied by repeating his list submitted before the date of the case and that the plaintiff's claim of his rights resulting from his service in the Ministry of Interior and Fedayeen Saddam can be claimed before the administrative court by filing the case, as for being covered by accountability and justice procedures, this is the prerogative of the discriminatory body competent to hear appeals for those covered by accountability and justice procedures. The plaintiff's agent replied that the contested text violates the provisions of Articles (2), (22), and (29) of the Constitution and that the legislative option must be in accordance with constitutional principles, and that the National Commission for Accountability and Justice erred in interpreting the contested article as unconstitutional by depriving his

client of his pension rights outside the Saddam Fedayeen System, The plaintiff's attorney repeated his requests and sayings, as the defendants' agents/ being in their capacity repeated their statements, and when there was nothing left to be said, the hearing has been made clear, the court issued the following ruling:

The Decision:

After scrutiny and deliberation found that the plaintiff's case (Salah Faleh Faisal Mohammed) the request to rule that paragraph (4th) of Article (6) of the Supreme National Accountability and Justice Authority Law No. (10) of 2008 is unconstitutional, as well as the obligation of the first defendant (Speaker of the Council of Representatives/ being in his capacity) to pass legislation requiring that Fedayeen Saddam not be deprived of pension rights, the second defendant (Head of the Supreme National Accountability and Justice Authority/ being in his capacity), was also obliged to abide by the provisions of the Constitution, grant him legal rights like his peers, and Charging the defendants/ being in their capacity with judicial expenses. Referring to the provisions of Article (93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the FSC's Law No. (30) Of 2005 (amended), we find that the aforementioned articles have defined the FSC's competencies of reference by First: Control of the constitutionality of laws and systems valid. Second: Interpretation of the texts of the Constitution. Third: Adjudication of cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the Federal Authority, the law guarantees the right of both the Council of Ministers and individuals and others to directly appeal to the court. Forth: Adjudication of disputes between the federal government, the government of the regions, provincial, municipal and local administrations. Fifth: Adjudication of disputes between governments of the regions or provinces.

Sixth: Adjudication of charges against the President of the Republic, the Prime Minister, and ministers is regulated by law. Seventh: Approval of the final results of the general elections for the Council of Representatives. Eighth: A- Adjudication of jurisdiction disputes between the federal judiciary and the judiciary of the provinces and irregular provinces in the region. B- Adjudication of jurisdiction disputes between the judicial bodies of the provinces or provinces that are not regulated in the province. These terms of reference were mentioned in article (4) of the FSC's Law of (30) of 2005 (amended), and none of the terms mentioned was mentioned in the plaintiff's requests regarding the obligation of the first defendant/ being in his capacity by issuing legislation requiring Fedayeen Saddam to be granted pension rights and obliging the second defendant/ being in his capacity to grant the said category legal rights, the FSC is not competent to consider the requests mentioned and according to the above, the plaintiff's claim regarding the two applications in question is rejected for lack of jurisdiction, on the other hand, this court considers that the second defendant's liability / being in his capacity is not addressed in the plaintiff's case, as article (4) of the Civil Procedure Law No. (83) of 1969 required that the defendant be an opponent whose decision entails a judgment and that he is sentenced or obliged to do anything at the discretion of the proof of the case, the second defendant/ being in his capacity, is not a law legislation body, but is competent to apply the Supreme National Authority for Accountability and Justice Law No. (10) of 2008 and is as much an enforcer of the mentioned law as far as his work is concerned, as a basis for the above, his opponent in the case is not directed and if the antagonism is not directed at the case, the court rules on its own to reject it without entering into its basis pursuant to the provisions of article (80) of the aforementioned Civil Procedure Law. As for the plaintiff's request to rule that article (6), paragraph (4th) of the National Accountability and Justice Authority Law, which provided for the prevention of Fedayeen Saddam from any retirement rights for their

work in the mentioned system, this court considers that the aforementioned paragraph challenged for unconstitutionality does not constitute a violation of the Constitution, but rather a legislative option that the legislator considered for the considerations contained in the reasons for the Supreme National Authority for Accountability and Justice Law and is in accordance with Article (7/1st) of the Constitution of the Republic of Iraq of 2005, which stipulated that (Any entity or program that adopts, incites, facilitates, glorifies, promotes, or justifies racism or terrorism or accusations of being an infidel (takfir) or ethnic cleansing, especially the Saddamist Ba'ath in Iraq and its symbols, under any name whatsoever, shall be prohibited. Such entities may not be part of political pluralism in Iraq. This shall be regulated by law) in particular, the work of the National Accountability and Justice Authority and the continuation of its procedures are in accordance with the provisions of Article (135/1st) of the Constitution, which stipulates that (The High Commission for De-Ba'athification shall continue its functions as an independent commission, in coordination with the judicial authority and the executive institutions within the framework of the laws regulating its functions) and when the reasons were given, the FSC decided. First- Ruling to reject the case of the prosecutor (Salah Faleh Faisal Mohammed) regarding his requests contained in his petition concerning the obligation of the first defendant, the (Speaker of the Council of Representatives/ being in his capacity) to issue legislation requiring the granting of rights to members of Fedayeen Saddam System and the second defendant (Head of the Supreme National Accountability and Justice Authority/ being in his capacity) was also obliged to grant him legal rights from a jurisdiction. Second- Ruling to reject the case of The Plaintiff Salah Faleh Faisal Mohammed, uncle of the second defendant (Head of the Supreme National Authority for Accountability and Justice/ being in his capacity) regarding his request for the unconstitutionality of article (6), paragraph (4th) of the Supreme National Accountability and Justice Authority Law No. (10) Of 2008 from the

litigation. Third- Ruling to reject the case of the plaintiff (Salah Faleh Faisal Mohammed) for the first defendant (Speaker of the Council of Representatives/ being in his capacity) regarding his request for the unconstitutionality of article (6), paragraph (4th) of the Supreme National Accountability and Justice Authority Law for the absence of a constitutional violation. Forth- The plaintiff charged judicial expenses and the fees of the lawyers of the defendants' agents/ being in their capacity amount of one hundred thousand dinars, distributed according to the law, the decision was issued by agreement decisively and obligating on all authorities based on the provisions of Articles (93 & 94) of the Constitution of the Republic of Iraq for 2005 and Article (5) of the FSC's Law No. (30) Of 2005 (amended) on 26/May/2021 coinciding with 13/Shawwal/1442.