

Republic of Iraq  
Federal Supreme Court  
Ref 112/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 5/5/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Khalid Taha Ahmed who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Khudair Abbas Hussain, Managing Director of Saf Saf Company for Food Industries and General Trading Ltd/ being in this capacity- his agent the barrister Wissam Abed Mahmoud.

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

**The Claim:**

The plaintiff claimed through his agent that the Director General of the Companies Registration Department, one of the departments of the Ministry of Commerce, issued a decision on 7/12/2020 according to which he imposed a fine on his client's company, based on the decision of the dissolved Revolutionary Command Council No. (110) of 1998, which stipulated in paragraph (1<sup>st</sup>) that: ((The Director General of the Companies Registration Department at the Ministry of Commerce is authorized to have the authority of a misdemeanor judge to consider cases arising from violating the provisions of Articles (213, 214, 216 and 217) of the Companies Law No. (21 of 1997)) the fact that the said department relied on this decision is contrary to the law as it was repealed by Law No. 17 of 2005, which stipulates in Article 1 that: (Legal texts shall be repealed wherever they appear in the laws and decisions issued by the dissolved Revolutionary Command Council

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from 17/7/1968 until 9/4/2003 that prohibit the courts from hearing cases arising from the application of laws and decisions of the dissolved revolutionary command council) and published in the Iraqi Gazette No. (4011) on 22/12/2005, and accordingly, the penal powers of non-courts and the judiciary have been abolished, and therefore the department of the Registrar of Companies relies on the decision of the dissolved and canceled Revolutionary Command Council does not originally entitle it to impose fines because it does not have this power, so the procedures for imposing the fine are invalid, and where paragraph (2<sup>nd</sup>) of Article (19) of the Constitution stipulates that: (There is no crime or punishment except by stipulation...), the Companies Registrar imposes a fine penalty without any legal provision in force, this is contrary to the Constitution, and the decision in question violated the principle of separation of powers stipulated in Article 47 of the Constitution, so the prosecutor asked this court to rule that the dissolved Revolutionary Command Council decision No. 110 of 1998 is unconstitutional, and that the defendant be charged fees, expenses, and advocacy fees. After registering the case with this court No. (112/Federal/2024) and informing the defendant of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Court No. (1) of 2022, his agents replied with the reply list dated 21/4/2024, its summary: that the plaintiff's agent has replaced the person who has the right to appeal this decision, namely (Supreme Judicial Council), and that the decision subject to challenge from the legislation in force based on the provisions of Article (130) of the Constitution, and did not prevent the courts from hearing lawsuits arising from the application of laws, but authorized the director general companies registration department at the Ministry of Commerce the power of a misdemeanor judge to hear cases arising from violating the provisions of Articles

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(213, 214, 216 and 217) of the Companies Law No. (21) of 1997, applying the penalty of fine only without deprivation of liberty penalties to facilitate and accelerate the imposition of the fine amount on companies that violate the provisions of the aforementioned law, it was a legislative option that does not contradict the constitutional provisions to which the plaintiff refers, therefore, they asked the court to reject the plaintiff's lawsuit and charge him judicial fees, expenses and attorneyship fees after completing the procedures required by the rules of procedure of the court, a date was set for the pleading and the parties were informed of it, in which the court was formed, and the agents of the parties attended and began to conduct the public presence pleading after listening to the statements of each party and completing 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's lawsuit focused on a request to rule the unconstitutionality of the dissolved Revolutionary Command Council Resolution No. 110 of 1998, the first item of which empowered the Director General of the Companies Registration Department at the Ministry of Commerce to have the power of a misdemeanor judge to hear cases arising from violating the provisions of Articles (213, 214, 216 and 217) of the Companies Law No. (21) of 1997, as the contested decision is considered null and void under Law No. (17) of 2005, the Companies Registration Department imposes a fine without a legal basis in addition, the contested decision violates the principle of separation of powers stipulated in article (47) of the Constitution of the Republic of Iraq for the year 2005, so he requested to invite the defendant to plead

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and rule on it unconstitutional the aforementioned decision and charging the defendant expenses, fees and advocacy fees, upon closer consideration by the court of the plaintiff's lawsuit and the defenses of the defendant's agents, it finds that the contested decision is valid and not annulled, since Law No. 17 of 2005 repealed the legal provisions contained in the laws and the decisions of the dissolved revolutionary command council, which prohibited the courts from hearing lawsuits arising from the application of laws and the decisions of the dissolved revolutionary command council, companies registration department the power of a misdemeanor judge to hear cases arising from violating the provisions of Articles (213, 214, 216 and 217) of the companies Law No. (21) of 1997 on the one hand, and on the other hand, the challenged decision does not violate the principle of separation of powers stipulated in Article 47 of the Constitution of the Republic of Iraq for the year 2005 the fine imposed by the director general the companies registration department at the Ministry of Commerce in accordance with the first item of the contested decision shall not be replaced by imprisonment as stipulated in the Iraqi Penal Code No. 111 of 1969, as amended, the legislator enacted the aforementioned decision to expedite the resolution of violations that may be committed by companies in accordance with the provisions of companies law No. 21 of 1997, and granting the legislator the authority of a misdemeanor judge to the Director General of the companies registration department at the Ministry of Commerce in accordance with the contested decision does not prejudice the basic rights of companies from the decision to impose the fine to follow the legal means prescribed to challenge it before the competent authorities, and based on the foregoing, the plaintiff's lawsuit lacks its basis from the constitution and the law and must be rejected, and for the foregoing, the Federal Supreme Court decided to reject the lawsuit of the plaintiff

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Khudair Abbas Hussein, the Managing Commissioner Saf Saf Company for food industries and general trading Ltd. / being in this capacity and charging him all judicial fees and expenses, including advocacy fees of the defendant's agents, 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, in accordance with the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq for the year 2005, and Articles (4 and 5/2<sup>nd</sup>) 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 26/Shawwal/1445 A.H. corresponding to 5/5/2024 AD.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

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