

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/6/2022 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 Plaintiff: Abdul Sattar Jawad Hamza – his agents the barristers, Abdul Khalik Faisal Shahir and Huthayfa Abdul Khalik Faisal.

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

The Claim

The plaintiff claimed through his agents that the defendant had already enacted the National High Accountability and Justice Commission Law No. (10) of 2008, which stipulated in item (1st) of article 6 of it that (to end the services of all employees who were a division member and referred them to retirement under the Service and Retirement Law which inclusively means that he will be deprived (as a branch member of the dissolved Baath Party) and his segment (members of branches above) will be denied access to pension rights derived from the pension deductions he has placed as a state deposit (retirement fund) for decades as a general in the former Iraqi army and that the same damage has affected a wide range of

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citizens and those are looking after widows and orphans. According to this procedure, they have lost their constitutional and legal pension rights, solely because they are the successors to deceased members of the dissolved Baath Party, and he is aware that this is a legislative option for the Council of Representatives, but he is also aware that the task of the Federal Supreme Court defined by article (93) of the Constitution is (first, to oversee the constitutionality of laws), which means that the legislative options of the Council of Representatives, although expressly or implicitly stated contrary to the Constitution, are not immune from challenging their constitutionality before the Federal Supreme Court, especially if it relates to the crime of mass starvation prepared by the United Nations as one of the forms of genocide under the Convention on the Prevention of Genocide and the Punishment of perpetrators issued by the United Nations in General Assembly Resolution 260,000 (Dal-3) dated 9 December 1948, in addition to the Constitution in article (7) prohibiting Baath and its symbols from political action, this is evidence of the lack of legitimacy of the collective punishment imposed on him and his colleagues without a warrant, no charge or conviction. The item in question was contrary to the Constitution in several articles in chapters 1st and 2nd (basic principles, rights, and freedoms), since the pension rights came from the retirement deductions he and his segment (a deposit with the State) and that the Qur'an emphasized the deposit returns to its people, that it was affected by the prohibition of pension rights and his family who were later behind him and had nothing to do with the Baath Party since the Holy Koran had prohibited to take someone false to others, and warned against confiscating the orphan money, many of whom are affected by the article in question, although it is prohibited from being part of the

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political process, the Constitution did not address the theft of his rights, especially since he was not convicted of any crime and was not charged, but his residence was confiscated. The confiscation included his segment, the confiscation of their livelihood by decision of the Transitional Governing Council No. (76/2003) or its seizure by the same council resolution (88/2003) and the confiscation under Law No. (72 for the year) 2017) and that the challenged clause deprived him of his fundamental rights, the most important of which is decent living and appropriate income, and violates the Constitution in articles (2/1st – Alif- it is not permissible to enact a law contrary to the principles of Islam, Beh- A law that is contrary to the principles of democracy may not be enacted Contrary to the fundamental rights and freedoms listed in this Constitution), such rights and freedoms may only be defined by law and therefore shall not affect that limitation (the essence of right or freedom), article (19/2nd - no crime and no punishment except by text, and no punishment except for the act prepared by law at the time of its committing a crime), (personal punishment). Article 30. The State guarantees social and health security for the individual and the family and the basic ingredients for living a free and dignified life, providing them with the right income and adequate housing. It would also be useful to say that article (7) of the Constitution is already contrary to constitutional articles (2, 14, 15, 19, 20, 22, 29, 30, 38, 39, 42, and 46) as well as to contradict With the Universal Declaration of Human Rights and the Document of the International Covenant, where the legislator may not abuse that article for inhumane purposes for all of the above, the plaintiff's request to the Federal Supreme Court to rule that section (1st) of the article (6) of the Supreme National Accountability and Justice Commission Law No. (10) 2008. The case was registered

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with this court in number (127/Federal/2022) and the legal fee for it was completed in accordance with article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005, and the defendant is informed of its petition and documents in accordance with article (2/1st) from the same Bylaw earlier, his agents replied in the answering draft dated 5 June 2022 that the text in question was a legislative option in accordance with the powers of the Council of Representatives to legislate federal laws under article (61/1st) of the Constitution of the Republic of Iraq 2005, and from through the petition, its subject matter relates to the interpretation of the text and the procedures for its implementation and that this is outside the jurisdiction of the Federal Supreme Court in accordance with the provisions of article (93) of the Constitution, so they requested that the plaintiff's case be rejected and to burden him with fees, expenses, and advocacy fees. After completing the procedures stipulated in the Court's Bylaw aforementioned, a date was set for the case in accordance with article (2/2nd) of it, and the parties were informed, and on the appointed day the court was formed and the plaintiff Abdul Khaliq Faisal Shaher attended and attended for the defendant (speaker of the Council of Representatives /being in this capacity) and his agents legal counsel Haitham Majid Salem and the official jurist Saman Mohsen Ibrahim, and the public in presence argument proceeded, the plaintiff repeated what was stated in the petition and requested to judge according to it and added highlighting an answering draft reviewed by the court and attached within the case papers. The defendant's agents/ being in this capacity replied and requested to reject the case for the reasons mentioned in the answering draft of 5 June 2022, and the agents of the parties reiterated their previous statements and requests and where there is

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nothing left to be said, the court has made the end of the argument clear and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's case (Abdul Sattar Jawad Hamza) was focused on demanding that item (1st) of article 6 of the Supreme National Commission for Accountability and Justice Law No. 10 of 2008 be denied (implicitly) by the plaintiff as well as a segment of the former divisions of the dissolved Baath Party, their fundamental rights away from the constants of the provisions of Islam and away from constitutional legitimacy established by the substance of the Constitution (basic principles, rights, and freedoms) for reasons and merits mentioned in the preamble to this decision and in informing the Court of the requests and payments of the parties and their mutual regulations, it was found that article (6) of the Law of the Supreme National Commission for Accountability and Justice No. (10) of 2008 stipulates that (the Commission must follow the following procedures against the belonging they joined the Baath Party and repressive bodies before 9 April 2003 to achieve the objectives of the Commission and carry out its tasks) and the provision (1st) of which was to (terminate the services of all employees who were a division member and refer them to retirement under the Service and Retirement Law). Whereas the aforementioned item in its text does not contradict any text in the Constitution those mentioned by the plaintiff in his case, and originally the text does not has any indication to the former members of Baath divisions in the dissolved Baath Party. The fact that the provisions of the law of the commission and the decisions of the Court of Cassation fall within

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the authority's powers and decisions are subject to objection before the Federal Court of Cassation based on the provisions of articles (15, 16, and 17) of the Law of the Commission and the decisions of the Court of Cassation are final and decisive, but the text of the article (6) of the Commission's law, specifically item (1st), does not contain any violation of any provision of the Constitution or the constants of the provisions of Islam, and that the said law in all its articles and provisions came in the context of the transition of Iraq from the domination of an authoritarian and dictatorial regime to a democratic system, the provisions of the said law relate to the achievement of transitional justice and the prevention of a return to the system of repression and tyranny and that the branches of the dissolved Baath Party were part of the party's leadership pyramid and its members are considered party leaders and decision-makers. Accordingly, for the non-existence of a constitutional violation, the Federal Supreme Court decided to reject the case of the plaintiff (Abdul Sattar Jawad Hamza) and to burden him with the expenses, fees, and advocacy fees for the agents of the defendant/ being in this capacity amount of 100 thousand Iraqi dinars, to be divided between them in accordance with the law. The decision has been issued unanimously, decisive and binding for all powers according to the provisions of the 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 made clear on dated 21/Dhul Qaeda/1443 Hijri coinciding 21/June/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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