

Republic of Iraq
Federal Supreme Court
Ref 131/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 23/7/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Jassim Jazaa Jafer who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Haider Fouad Al-Saegh representative of the Syndicate of Pharmacists Iraq / being in this capacity - His agent the barrister Mustafa Kazim Jawaaid.

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 through his agent that the revolutionary command council (dissolved) had previously issued its decision No. (39) of 1994, as amended, in accordance with its authority under Article (42) of the 1970 Constitution, and it included imposing penalties for several acts and considered them crimes of sabotage of the national economy and crimes against honor, including what is mentioned in Article (1/1/Jim) (possession of medicines, medical supplies, devices and spare tools with the intention of trading them if these materials are not processed from a source officially recognized under fundamental lists and this applies to those authorized to deal in these materials and unauthorized) the text imposes the death penalty, life imprisonment, temporary imprisonment or imprisonment for a period of five years and a fine of not less than ten thousand dinars and not more than one hundred thousand dinars with the confiscation of the property of the convict, and since this text when

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applied with the provisions of the Iraqi Constitution in force of 2005, which separated powers, equalized rights and guaranteed freedoms and stressed that no law was enacted that contradicts the principles of democracy, as it contradicts the Law on Practicing the Pharmacy Profession No. (40) of 1970, as it determines the penalty for violators who carry out the acts stipulated in the aforementioned article - the subject of the challenge, therefore, the plaintiff asked this court to rule to annul the text of Article (1/1/Jim) of the decision of the Revolutionary Command Council (dissolved) No. (39) of 1994. After registering the case with this court No. (131/Federal/2024), 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 Internal Regulations of the Federal Supreme Court No. (1) of 2022, his agents replied with the reply regulation dated 26/5/2024, which concluded: The decision - the subject of the challenge - is one of the legislation in force based on the provisions of Article (130) of the Constitution, which states (the legislation in force shall remain in force, unless repealed or amended in accordance with the provisions of this Constitution) there is no constitutional violation therein, as the determination of the penalty for violators and those who carry out the acts stipulated in Article (1) paragraph (1/Jim) of the aforementioned decision was based on a constitution in force at the time, which is the interim constitution of the Republic of Iraq of 1970, which granted in Article (42) of it the dissolved Revolutionary Command Council the power to issue laws and decisions that have the force of law, and the conflict between the law of practicing the profession of pharmacy No. (40) of 1970 and the decision - subject to appeal - is outside the jurisdiction of the Federal Supreme Court specified in Article (93) of the Constitution, and accordingly the defendant's agent requested to reject the lawsuit and charging the

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plaintiff fees and attorneyship fees. After completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties shall be informed of it, in which the court was formed, and the agents of the parties attended and began to conduct the pleading after hearing the statements and requests 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 is the representative of the syndicate of pharmacists Iraq / being in this capacity he filed the lawsuit before this court against the defendant Speaker of the Council of Representatives / being in this capacity, to demand the judgment to annul the text of Article (1/1/Jim) of the revolutionary command council resolution No. (39) of 1994, on the basis of its violation of the principle of separation of powers, equality and freedoms and the inadmissibility of enacting a law that contradicts the principles of democracy, stipulated in the Constitution of the Republic of Iraq of 2005, and for its conflict with the Law No. (40) of 1970 on the Practice of the Pharmacy Profession for the reasons detailed in the petition, and charging the defendant fees, expenses and attorneyship fees, the Federal Supreme Court finds that the plaintiff's claim / being in this capacity is subject to reject for lack of jurisdiction as the powers of this court and its competencies are exclusively stipulated in Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and some other special laws, and these competencies and powers did not include

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anything that gives the court jurisdiction to respond to the plaintiff's lawsuit / being in this capacity and rule according to the request contained therein, as the jurisdiction of the court is held in accordance with the provisions of Article (93/1st) of the Constitution and Article (4/1st) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 to monitor the constitutionality of laws and regulations in force in order to decide on their constitutionality or not when challenging the constitutionality of the laws and regulations in force only and not exceeding the jurisdiction of other legislation, this jurisdiction shall not exceed the judgment of its annulment, as well as the jurisdiction of this court referred to Article (93/3rd) of the Constitution and Article (4/3rd) of the Court Law No. (30) of 2005 as amended by law Decree No. (25) of 2021, this jurisdiction relates to adjudicating cases arising from the application of federal laws this jurisdiction shall not be subject to its revocation either, and since the plaintiff / being in this capacity requested in his petition repeal the text of Article (1/1/Jim) of the Revolutionary Command Council Resolution No. (39) of 1994, on the basis that it violates the provisions of the Constitution of the Republic of Iraq of 2005 and the Law on the Practice of the Pharmacy Profession No. (40) of 1970, and since the lawsuit is restricted by its petition and the plaintiff is a prisoner of his request, which makes it impossible to respond to the request and rule accordingly, for lack of jurisdiction, and thus his lawsuit is subject to reject for lack of jurisdiction, and for the foregoing, the Federal Supreme Court decided the following:

First: Rejecting the lawsuit of the plaintiff Haider Fouad Ibrahim - representative of the Syndicate of Pharmacists Iraq / being in this capacity, for lack of jurisdiction.

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Second: Charging the plaintiff with the expenses, fees and attorneyship fees of the defendant's agents / being in this capacity an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding for all authorities on the basis of 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) for the year 2021 and it has been made clear on 16 Muharram 1446 A.H. Corresponding to 23/7/2024 AD.

Judge
Jasem Mohammed Abood
President of the Federal Supreme Court

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