

Republic of Iraq
Federal Supreme Court
Ref 146/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24/7/2024 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: Younis Mohamed Kazem – His agent the barrister Hossam Qassem Sawadi.

The Defendants:

1. The President of the Republic / being in this capacity - His two agents the Chief legal expert Ghazi Ibrahim Al-Janabi and the legal adviser Salah Lazem Shamkhi.
2. The Speaker of the Council of Representatives, being in this capacity, - His the two agents the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiff claimed in the lawsuit petition that after the enactment of the National Authority for Nuclear, Radiation, Chemical and Biological Regulation Law No. (1) of 2024, its approval by the Council of Representatives, and its ratification by the Presidency of the Republic published on April 8, 2024, this law has dropped the rights of a large segment of radiation workers in state departments, including the Ministry of Health, with various medical, health and support job titles, and canceled their rights and privileges included in the Prevention Law of ionizing radiation No. (99) of 1980, whereas, under article 32 of it, the Ionizing Radiation Protection Law was abolished, and under article (18) thereof, limiting the granting of ionizing radiation allowance

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allocations to the authority's employees, and depriving employees of the Ministry of Health and the rest of the state departments while they were included in the previous law, and under article 20 thereof Limiting the material pension rights of the authority's employees and the employees of the Atomic Energy Commission and by passing the inclusion of the rights of the employees of the rest of the state departments, and since this is unfair to him and harmful to his interest, he took the initiative to file an appeal because the law is contrary to Article (14) of the Constitution of the Republic of Iraq, which affirms that Iraqis are equal before the law without discrimination, he distinguished between the authority's employees and the rest of the employees of state departments despite their equal nature of work, their work on the same devices, and their exposure to ionizing radiation, and asked the court to rule that articles (18, 20, and 32) of the law were unconstitutional, and charging the defendants fees and expenses. After registering the case with this court No. (146/Federal/2024), collecting the legal fee for it, and informing the defendants 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, the first defendant's agent responded with the reply regulation dated 2/6/2024, in which he requested to reject the lawsuit, due to the court's lack of jurisdiction to consider it, and because the litigation is not directed towards his client, and added that the plaintiff has the right to claim his department for the privileges stipulated in the law in the event that it is proven that he practiced the activity which is exercised by the department to which he is affiliated, and the mere fact that he is engaged in an activity falling under the provisions of Article (2) of the Law does not allow him to receive privileges, also, limiting some privileges to the employees of the Commission and the Iraqi Atomic Energy Commission comes from their

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exposure to radiation actually, so they deserve these privileges, and the second defendant's agent replied with the response list dated 3/6/2024 in which they requested to reject the lawsuit, as the law - the subject of the lawsuit - was received by the Council of Representatives in the form of a draft law from the government and legislated by the Council of Representatives in accordance with its competencies stipulated in Article (61/1st) of the Constitution, and with regard to Article 18 of the law, it was stated in the text of the government project Granting FANR employees a radiation exposure allowance at the rates of (50%, 80% and 100%) of the nominal salary without mentioning state employees working in the field of radiation, the Parliamentary Health and Environment Committee proposed granting workers in the field of radiation in other ministries and departments not associated with a ministry, allocations for radiation exposure allowance at the rate of (30%) of the nominal salary in accordance with the provisions of the repealed Ionizing Radiation Protection Law No. 99 of 1980, however, the Parliamentary Finance Committee objected to the proposal because it was not contained in the government project and has financial implications. The Parliamentary Health and Environment Committee submitted a new proposal to amend article (18) of the law and include the rights of radiation workers in other state departments, and obtained the approval of the acting speaker of the Council of Representatives and the deputy speaker of the Council of Representatives to present the proposal on the agenda of the Council at the earliest session because the responsibility of the authority at the local and international levels is different and multiplied, and article (130) of the constitution stipulates that (the legislation in force shall remain in force unless repealed or amended) and therefore there is no constitutional violation in article 32 of the law with regard to the repeal of other laws that conflict with the

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new law. After completing the procedures required by the rules of procedure of the court set a date 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 plaintiff and his agent and the defendants' agents attended and began to conduct the public presence pleading, and after the court heard their statements and requests and completed its scrutinies the conclusion of the pleading has been understood and the court issued the following judgment decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff (Younis Mohamed Kazem) filed the lawsuit against the defendants, the President of the Republic and the Speaker of the Council of Representatives, in addition to their functions, request a ruling on the unconstitutionality of Articles (18, 20 and 32) of the National Authority for Nuclear, Radiation, Chemical and Biological Regulation Law No. (1) of 2024 for the reasons stated in the petition set forth in the preamble to this judgment. The Federal Supreme Court finds that the plaintiff disputed the first defendant against the President of the Republic/in addition to his office, while the law challenged is unconstitutional issued by the Council of Representatives, and therefore the litigation of the first defendant, the President of the Republic, is not valid, on the one hand, on the other hand, the Court finds that what the plaintiff stated in the petition does not constitute any constitutional violation, and that the articles challenged as unconstitutional relate to the allowances granted to the employees of the National Authority for Nuclear, Radiation, Chemical and Biological Regulation - the allowance for exposure to ionizing radiation who are in service and retired, it also guarantees Article (32) repeals laws such as the Protection of Ionizing

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Radiation Law No. 99 of 1980, the dissolved Coalition Provisional Authority Order No. (72) of 2004, as well as the National Control authority for the Prevention of Nuclear, Chemical and Biological Weapons Law No. (48) of 2012, and that the articles challenged as unconstitutional from the said law are a legislative option it does not constitute any conflict with the articles of the Constitution or a breach of its provisions, so the Federal Supreme Court decided the following:

First: Rejecting the plaintiff's lawsuit (Younis Mohamed Kazem) against the first defendant, the President of the Republic / being in this capacity, because the litigation is not directed.

Second: Rejecting the plaintiff's lawsuit (Younis Mohamed Kazim) against the second defendant, the Speaker of the Council of Representatives/ being in this capacity, there is no constitutional violation.

Third: Charging the plaintiff the expenses, fees and advocacy fees of the defendants' agents / being in their capacity an amount of one hundred and fifty thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding 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 in the session dated 17 / Muharram / 1446 A.H. corresponding to 24/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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