

Republic of Iraq
Federal Supreme Court
Ref. 149 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/8/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, 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: the Medical Assistant Muthafer Abdul Majeed Ibrahim/
his agent the barrister Intisar Ahmed Naser Mulla.

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 agent that the dissolved Revolutionary Command Council had previously issued its decision No. 1559 of 1978 on the law on the dissolution of the Health Professions Syndicate established by Law No. 153 of 1969 and the confiscation of its movable and immovable property, and that this decision was contrary to the Constitution of the Republic of Iraq of 2005 in articles 22/3rd, 23 and 39. 22 and 23), as opposed by the aforementioned decision Article (39) to oblige affiliation by judgment, and since the legislative authority (currently the Council of Representatives) has not issued anything to remove constitutional irregularities in this decision challenged by its constitutionality, Therefore, the plaintiff requested the Federal Supreme Court ((ruling on the invalidity of the dissolved Revolutionary Command Council decision No. (1559) of 1978 for violating the provisions of Article (13/II) of the Constitution and the unconstitutionality of Law No. (189) of 1978 issued thereunder and

saady

Republic of Iraq
Federal Supreme Court
Ref. 149 / federal /2022



Kurdish text

what was based on it, and the restoration of its rights taken away arising from its invalidity and the re-entry into force of Law No. (153) of 1969 (the Health Professions Syndicate Law) in a manner that does not contravene the provisions of the Constitution, taking into account the sequence of legally binding degrees of force in the implementation and application of its provisions, and charging the defendant with expenses and fees)). The case was registered with this court in the number (149/federal/2022) and the legal fee for it was met in accordance with Article (21/I) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and informs the defendant of its petition and documents in accordance with Article (21/2nd) thereof, and his agents replied with the Reply Regulation dated 3/7/2022 to conclude that the plaintiff did not indicate the interest from his initiation of the lawsuit and did not provide evidence of the realization of the damage suffered by him from his action based on the Bylaw of the Federal Supreme Court, the annulment of the Health Professions Syndicate Law No. 153 of 1969 was under the Law on the Dissolution of the Health Professions Syndicate No. 189 of 1978 and its classification (Iraqi Law) and not the decision of the Revolutionary Command Council dissolved under the rule of Iraqi legislation, and dissolved under the said Law (Health Professions Syndicate) established under it and in accordance with the provisions of Article 130 of the Iraqi Constitution of 2005, it is considered effective unless it is repealed or amended and does not contravene any of the constitutional provisions, and that the plaintiff's request for the restoration of his rights and the restoration of the validity of the Professions Syndicate. Law No. (153) of 1969 is outside the jurisdiction of the Court in accordance with the provisions of Article (93) of the Constitution. The Federal Supreme Court has also already issued its decision No. (53/Federal/2022), which dismissed the plaintiff's

saady

Republic of Iraq
Federal Supreme Court
Ref. 149 / federal /2022



Kurdish text

case for lack of adversarial orientation, which became an argument with the rulings adjudicated, so they requested that the plaintiff's case be dismissed and that he be charged judicial fees, expenses, and advocacy fees. After completing the procedures required by the rules of procedure of the Court, mentioned above, an appointment was set for the pleadings following the provisions of Article (21/3rd) thereof and notified to the parties, and on the appointed day the Court was formed and the plaintiff (Muzaffar Abdul Majeed Ibrahim) and his attorney Intisar Ahmed Nasser Mulla were present, On behalf of the defendant (Speaker of the Council of Representatives / in addition to his position), his two agents, Legal Counsel Haitham Majed Salem and the human rights officer Saman Mohsen Ibrahim, attended and proceeded to conduct the public case in person, the plaintiff himself and his agent repeated what was stated in the petition and requested the verdict according to what it stated. The agents of the defendant replied and requested to reject the case for the reasons listed in the answering draft attached to the case's papers, they repeated their previous sayings and requests. Whereas nothing was left to be said, 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 medical assistant plaintiff (Muzaffar Abdul Majeed Ibrahim), a member of the founding body of the Association of Health Professionals, filed this lawsuit through his agent, requesting the ruling invalidating the dissolved Revolutionary Command Council Resolution No. (1559) of 1978 for violating the provisions of Article (13/II) of the Constitution of the Republic of Iraq of 2005 and Law No. (189) of 1978

saady

Republic of Iraq
Federal Supreme Court
Ref. 149 / federal /2022



Kurdish text

issued thereunder and what was based on it, and the restoration of his stolen rights arising from the invalidity of Law No. (189) of 1978 and the decision based on it. The foregoing, and the re-entry into force of Law No. (153) of 1969 (Health Professions Syndicate Law) in a manner that does not contravene the provisions of the Constitution and take into account the sequence of legally binding degrees of force in the implementation and application of its provisions and the charging of fees, expenses, and fees to the defendant / being in this capacity. This court noted that the plaintiff requested the ruling invalidating the dissolved Revolutionary Command Council Resolution No. 1559 of 1978 for violating the provisions of Article 13/II of the Constitution of the Republic of Iraq of 2005, as well as the invalidity of Law No. 189 of 1978 issued under the aforementioned resolution, as stipulated in the first article of the aforementioned Law ((1- The Law of the Syndicate of Health Professionals No. 153 of 1969 and its amendments shall be repealed and the Health Professions Syndicate shall dissolve the institution thereunder. 2. All rights and obligations of the dissolved Health Professions Union shall devolve to the General Confederation of Trade Unions)). The plaintiff also requested the re-entry into force of Law No. 153 of 1969 (Health Professions Syndicate Law), and the Federal Supreme Court finds that the Constitution is the supreme and supreme law in Iraq and is binding throughout it and without exception based on the provisions of Article (13/I) of the Constitution, and the principle of the sovereignty of the Constitution is linked to the principle of legality, which means the rule of law, that is, the subordination of the federal authorities in the State (legislative, executive and judicial) in all their actions and activities to the provisions of the law and this sovereignty must be guaranteed because It remains merely an empty meaning if the various authorities and bodies can depart from the

saady

Republic of Iraq
Federal Supreme Court
Ref. 149 / federal /2022



Kurdish text

constitutional rules and violate the principles contained therein, especially if it concerns the legislative authority, the legislation, if issued, becomes effective as soon as it meets the formality necessary for its promulgation and is applied to all, and the ordinary courts are not able to violate it because their task is limited to the application of the law, Constitutional jurisprudence unanimously agrees that the existence of control over the constitutionality of laws is the best way to protect the rights contained in the Constitution and gives this control an inevitable result of the supremacy of the Constitution, and the method of judicial control is almost the dominant character of constitutions in most countries, which is currently in force in Iraq, where the Federal Supreme Court assumes judicial control over the constitutionality of laws in accordance with paragraph (1st) of Article (93). From the Constitution, in force of 2005, this is from the side, On the other hand, if the law is repealed in whole or in part, what was repealed shall no longer be effective by repealing the law that abolished it, and this is what is stipulated in article (5) of the Publication Law in the Official Gazette No. (78) of 1977, stipulates that "if the law is repealed in whole or in part, what was repealed shall no longer be effective by repealing the law that abolished it unless it expressly states otherwise. Article (2) of the same law requires that publication in the Official Gazette of Laws and Decisions issued by the dissolved Revolutionary Command Council and the texts of treaties or agreements and what is attached thereto and is considered complementary to them with the laws of their ratification, the republican regulations and decrees, instructions and everything that the laws or decisions of the dissolved Revolutionary Command Council or the regulations stipulate to be published therein, therefore, and for all of the foregoing, and since the plaintiff bases his claim on the re-entry into force of the Health Professions Syndicate Law No. 153 of 1969

saady

Republic of Iraq
Federal Supreme Court
Ref. 149 / federal /2022



Kurdish text

after the annulment of the dissolved Revolutionary Command Council Resolution (1559) of 1978, and since this is not productive of its effects and because there is no constitutional violation. The FSC decided to reject the case of the plaintiff Muthafer Abdul Majeed Ibrahim for the non-existence of a constitutional violation and to burden him with the expenses and the advocacy fees for the agent of the defendant the Speaker of the ICR/ being in this capacity, each of the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim amount of one hundred thousand Iraqi dinars, to be divided in accordance with the law. The decision has been issued unanimously, final and binding for all authorities according to the provisions of 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 1/Sufur/1444 Hijri coinciding 29/August/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

saady