

Republic of Iraq
Federal Supreme Court
Ref 149/ 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: Omar Muhammad Eyal Mazloum – His agents the barristers Munir Abbas Abed and Omar Mohammed Alwan.

The Defendant: Speaker of the Council of Representatives/ in addition to his job- His agents the official jurists, Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiff claimed through his agent that malicious criminal cases were initiated against him in numbers (2146/Jim/2021), (2916/Jim/2021) and (2689/Jim/2022) before the Karkh Misdemeanor Court in accordance with the provisions of Article 434 of the Penal Code by his opponents and their exchange of legal positions in every case, as sometimes the father is a complainant and the daughter and son are witnesses, and at other times one of the sons is a complainant and the father and mother are witnesses, and sometimes they are witnesses of defense to each other in the cases filed against them, and the aforementioned court rules in the light of these testimonies, whereas the testimony has an important and influential role in resolving the dispute presented between the litigants before the judiciary because it is (the eyes of justice) as one of the methods of proof, especially in criminal evidence, which the Iraqi legislator gave to it great importance in the Code of Criminal Procedure in force, and that Islamic law requires that

Zainab

Republic of Iraq
Federal Supreme Court
Ref 149/ federal/2024



Kurdish text

it be free from suspicion (favoritism and accusation), and not to be (an advocate to push the harm and bring the benefit), and since the penal provisions must be based on certainty and certainty and there is no certainty or certainty in the reasoning of judgments on the certificate of assets of the branches or vice versa, or the wife to her husband or vice versa, especially the judiciary has absolute authority to assess testimony, whereas Article (68) of the Code of Criminal Procedure No. (23) of 1971, which stipulates (Alif-one of the spouses shall not be a witness against the other spouse unless he is accused of adultery or of a crime against his person or property or against the child of one of them. Beh-The asset shall not be a witness to its branch or the branch shall be a witness to its origin unless it is accused of a crime against its person or property. Jim- It may be one of the persons applying Mention them as a defense witness to the other and waste part of the testimony which leads to the conviction of the accused.) it has violated the provisions of Islamic Sharia and its constants, and Article (2/1st) of the Constitution, which affirmed however, Islam is the official religion of the state and it is not permissible to enact a law that contradicts its constants, as it violates many Quranic texts and the hadiths of the Prophet, so he requested a ruling that article (68) of the Code of Criminal Procedure No. (23) of 1971 in force is unconstitutional, and that a state order be issued to stop trials in the cases filed against him until this case is resolved after registering the lawsuit with this court No. (149/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 Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the defendant's agent responded with the answering draft dated 5/6/2024, and requested to reject the lawsuit, as the article (subject to the challenge) of the legislation in force based on the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 149/ federal/2024



Kurdish text

provisions of Article (130) of the Constitution, which confirmed that the legislation in force remains in force unless repealed or amended, it represents a legislative option whose purpose is that the legislator wanted to preserve the family and preserve it from disintegration. After completing the procedures required by the Court's Rules of Procedure, a date has been set for the pleading in accordance with Article (21/3rd) thereof , the parties were informed, and the court was formed, the plaintiff's agent, the barrister Omar Mohammed Alwan, attended the defendant's agents attended and began to conduct the public presence pleading, and after the court heard their statements and requests and completed 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 (Omar Mohammed Eyal Mazloun) had filed this lawsuit adversarial (Speaker of the Council of Representatives / being in this capacity) requesting a ruling on the unconstitutionality of the provisions of Article (68) of the Law Criminal Procedure No. 23 of 1971, which stipulates: (Alif- One of the spouses shall not be a witness to the other spouse unless he is accused of adultery or a crime against his person or property or against the child of one of them. Beh- the asset shall not be a witness to its branch or the branch shall be a witness to its origin unless it is accused of a crime against its person or property. Jim- one of the aforementioned persons may be a defense witness to the other and the part leading to the conviction of the accused shall be wasted from the testimony.), this is due to violating the provisions and constants of Islamic Sharia, and the provisions of Article (2) of the Constitution, and also requested the issuance of a state order to stop trials in cases

Zainab

Republic of Iraq
Federal Supreme Court
Ref 149/ federal/2024



Kurdish text

numbered (2146/Jim/2021), (2916/Jim/2021) and (2689/Jim/2022) filed against him before the Karkh Misdemeanor Court in accordance with the provisions of Article (434) of the Iraqi Penal Code by his opponents and their exchange of legal positions, until this case is resolved, the defendant's agent/ being in this capacity requested to reject its topic according to the reply list No. (149/Federal/2024) on 5/6/2024, the fact that the text - the subject of the challenge - represents a legislative option whose goal lies in the legislator's desire to protect the family. Regarding the request to issue a state order to stop trials in cases Nos. (2146/Jim/2021), (2916/Jim/2021) and (2689/Jim/2022) filed against him before the Karkh Misdemeanor Court in accordance with the provisions of Article (434) of the Iraqi Penal Code until the case is resolved, the Federal Court finds that it decided, according to the decision issued by it No. (149/Federal/State Order/2024) on 3/7/2024, to reject the request, as the justifications for its issuance are not realized, due to the lack of urgency there is no case of necessity that requires its issuance, especially since responding to its content means entering into the origin of the right and giving a prior opinion on the constitutional lawsuit filed before this court related to its subject matter, and the lack of conditions for issuing the state order in application provisions of Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, according to the detail referred to in the aforementioned decision, with regard to the plaintiff's claim, the Federal Supreme Court finds that it is admissible in form in terms of jurisdiction, interest and litigation, as it falls within the jurisdiction of this court in application of the provisions of Article (93/1st) of the Constitution of the Republic of Iraq for the year 2005, and Article (4/1st) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, which stipulates that (the Federal Supreme Court shall have the following

Zainab

Federal Supreme Court - Iraq - Baghdad
Tel – 009647706770419
E-mail: federalcourt_iraq@yahoo.com
Mailbox- 55566

Republic of Iraq
Federal Supreme Court
Ref 149/ federal/2024



Kurdish text

competencies: First: Monitoring the constitutionality of the laws and regulations in force), in accordance with Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, which reads (Any private natural or legal person or legally recognized civil society organization has the right to institute direct action before the Federal Supreme Court to rule on the constitutionality of a provision in a law or regulation), the plaintiff also has an interest in filing this lawsuit, which is a case, direct and influential in his legal status, in addition to the foregoing, the litigation of the plaintiff against the defendant is considered to be achieved, especially since the constitutional lawsuit must be filed against an opponent whose approval entails a judgment based on the provisions of Article (4) of the aforementioned Code of Civil Procedure, which requires the acceptance of the plaintiff's lawsuit in form, and upon consideration of its merits, the article - the subject of the challenge - is one of the legislation in force and pursuant to the provision of Article (130) of the Constitution of the Republic of Iraq of 2005 the legislation in force remains in force unless repealed or amended in accordance with the provisions of the Constitution, and it is a legislative option within the competence of the Council of Representatives stipulated in Article (61/1st) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that (The Council of Representatives shall have the following competencies: First: Enacting Federal Laws) the legislator's intention in legislating this article it lies in the fact that he wanted to preserve the family and preserve it from disintegration, and there is no contradiction between the article whose constitutionality is challenged article (2/1st/Alif) of the Constitution of the Republic of Iraq, since the enactment of the aforementioned article does not contradict the constants of the provisions of Islam for all of the above, the Federal Supreme Court decided the following:

Zainab

Republic of Iraq
Federal Supreme Court
Ref 149/ federal/2024



Kurdish text

First: Rejecting the plaintiff's lawsuit (Omar Mohammed Eyal Mazloum), for lack of a constitutional violation.

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

The decision has been issued unanimously, final and binding on all authorities based on Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 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 on 17/ Muharram /1446 Hijri corresponding to 24/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

Zainab