

Republic of Iraq
Federal Supreme Court
Ref 155/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 3/7/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, Khaled Taha Ahmed, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mayada Abdel Amir Diab – Her agents the barristers Najm Abed Aoun and Hassan Thamer Jameel.

The Defendant: Speaker of the Council of Representatives / being in this capacity - His two agents the official jurist Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiff claimed by her two agents, that the applicant for provisional detention (Azim Abdul Hur Obaid) filed a lawsuit against her No. (31/Provisional Attachment/2024) before the Karbala Court of First Instance for provisional attachment of her funds under deposit in the Karbala Execution Directorate in the executive file No. (1754/2023) in exchange for an amount of debt attributable to him amounting to (44,110,000) forty-four million one hundred and ten thousand Iraqi dinars, which the aforementioned court ruled him by virtue of its decision No. (6477/Beh/2023 on 31/3/2024), which was not approved by appeal or cassation, basing his claim on Article (235) of the code of civil procedure, which stipulates that (provisional attachment may be placed on the basis of an official document organized by the notary public or on the basis of a judgment, whether or not it has the degree of definitive, in this case, the applicant for seizure shall be exempted from

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providing bail or insurance) and the text of this article violates Article (19/12th/Alif) of the Constitution, which stipulates that (seizure is prohibited) which there is no clear interpretation of this text if it is intended to seize people only without funds, especially since article (24) of the Constitution guaranteed the free movement of funds between regions and governorates, so according to article (93) of the Constitution, the plaintiff asked this court to rule the unconstitutionality of the phrase (not obtained)of article (235) of the amended Civil Procedure Law, and obliging the defendant to issue legislation that requires amendment this article is in the following format (with the reservation being based on a decision acquired by the degree of definitive only) or any amendment the court deems it necessary, or to give a constitutional interpretation of the text of paragraph (a) of article (19/12th) of the Constitution, the meaning of the phrase (prohibition of seizure), and requested to bring the file of the urgent judiciary lawsuit and link it with the petition and notify the Court of First Instance of Karbala to choose a decision until the case is decided. After registering the case with this court No. (155/Federal/2024) and 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, his agents responded with the reply regulation dated 6/6/2024 and requested to reject the lawsuit as the phrase - the subject of the challenge - is one of the legislation in force based on Article (130) of the Constitution, which stipulates that (the legislation in force shall remain in force, unless repealed or amended, in accordance with the provisions of this Constitution), and the obligation to issue legislation to amend the text - the subject of the challenge - falls outside the jurisdiction of the court stipulated article 93 of the Constitution, as for the request for interpretation of the constitutional

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text, violates Article 24 of the Court's Rules of Procedure. After completing the procedures required by the Court's Rules of Procedure, a date was set for the consideration of the case without pleading in accordance with Article (21/3rd) thereof, in which the court was formed and scrutinized the plaintiff's requests and supports and the defenses of the defendant's agents, after completing its scrutinies the end of the minutes 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's claim is summarized in demanding a ruling on the unconstitutionality of the phrase (not obtained) contained in Article (235) of the Civil Procedure Law No. (83) of 1969, as amended for violating the provisions of Article (19/12th/Alif) of the Constitution, and obliging the defendant, the Speaker of the Council of Representatives, in addition to his job, to issue legislation that requires the amendment of Article (235) and be in the following form: (provided that the seizure is based on a decision that has acquired the degree of bits only) or any amendment that the court deems necessary, or giving a constitutional interpretation of the text of Article (19/12th/Alif) of the Constitution, and a statement of the true meaning of the phrase (prohibition of seizure), as the plaintiff requested to bring the file of the urgent judiciary lawsuit in number (31/ Pretrial detention/2024) considered by the Karbala Court of First Instance of the Presidency of the Karbala Court of Appeal and linked to the file of this lawsuit. Through scrutinizing the case file, reviewing the defenses and requests of the dilapidated parties, and scrutinizing Article (235) of the Code of Civil Procedure, it was found that it stipulates that (provisional attachment may be placed on the basis

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of an official document organized by the notary public or on the basis of a judgment, whether it has the degree of definitive or not in this case, the applicant for seizure shall be exempted from providing the guarantee or insurances), and since the purpose of the legislator of the provisional seizure it is to prevent the debtor from disposing of his seized property to protect the rights of creditors based on an order issued by a competent court In accordance with the judge's discretion in the place of provisional detention, this legal passport is restricted to the fact that the request for attachment is based on an official document certified by the notary public or on a judicial judgment that has acquired or did not obtain the degree of definitive based on the provisions of Article (235) of the Code of Civil Procedure and without the need to provide a guarantee or insurance from the applicant for attachment, contrary to what is stipulated in Article (234/2) of the Civil Procedure Law, which stipulates that the creditor requesting the attachment provides a guarantee or insurances for the purpose of inflicting the attachment, in addition to the foregoing the legislator required that there be a proportion between the amount of the debt and the amount of money to be seized in accordance with the provisions of Article (231/1) of the Civil Procedure Law, and that the money to be seized should not be of the property that may not be seized mentioned in Article 248 of the same Law, through the foregoing, the court finds the Iraqi legislator left the seizure order in accordance with Article (235) of the Code of Civil Procedure to the discretionary power of the judge, despite the decision to seize the debtor's funds is based on a court ruling or an official document organized by the notary public, and therefore the means stipulated by the legislator and considered to protect the rights of creditors and ensure that the debtor does not smuggle his money or selling or disposing of them in order to weaken the general guarantee of

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the creditor does not violate any constitutional provision, in particular the text of Article (19/12th/Alif) of the Constitution, and thus the plaintiff's lawsuit is subject to reject and for the foregoing, the Federal Supreme Court decided the following:

First: Ruling on rejecting the plaintiff's lawsuit (Mayada Abdul Amir Diab) regarding the challenge to the constitutionality of the phrase (not possessed) mentioned in Article (235) of the Civil Procedure Law No. (83) of 1969, as amended, for lack of a constitutional violation.

Second: Charging the plaintiff with fees, expenses and attorneyship fees of the defendant's agents the Speaker of the Council of Representatives, in addition to his job, each of the human rights employees Saman Mohsen Ibrahim and Aseel Samir Rahman, an amount of one hundred thousand dinars it shall be distributed in accordance with the law.

The decision has been issued unanimously, final and binding on all authorities in accordance with the provisions of 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 the Law No. (25) of 2021, it has been edited in the session dated 26/Dhu al-Hijjah/1445 A.H. corresponding to 3/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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