

Republic of Iraq
Federal Supreme Court
Ref 156/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/7/2024 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 Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: The President of the Republic / being in this capacity - His agent the Chief Legal Expert Ghazi Ibrahim Al-Janabi.

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:

In addition to his job through his agent the plaintiff claimed that the Council of Representatives had voted in the affirmative on Law No. (10) of 2024 - Law No. 111 of 1969 amending the Penal Code in its session dated 27/3/2024 article (4) was among the articles of the amendment law, which stipulated: (This law shall be implemented from the date of voting on it in the Council of Representatives and published in the Official Gazette), this text violates the provisions of Articles (19, 129 and 73 / 2nd and 3rd) of the Constitution, as one of the most important powers article 67 of the Constitution stipulates that: (President of the Republic he is the head of state and the symbol of the unity of the nation, representing the sovereignty of the country, and ensuring compliance with the constitution...) among those obligations: (Ratifies and promulgates laws enacted by the Council of Representatives, and they are considered ratified after the lapse of fifteen days from the date of their receipt) in accordance with the provisions of item (3rd) of Article

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(73) of the Constitution, and since the Constitution has granted the President of the Republic the authority to publish laws in the Official Gazette and to come into force from the date of their publication in accordance with the provisions of Article (129) thereof, therefore, laws must be sent to the President of the Republic for ratification without adding any stipulation on the manner and date of publication, but based on the end of Article 129, which stipulates: (... Unless otherwise stipulated) it is an exception to the basic rule stipulated in the introduction to this article that the law shall apply from the date of its publication, for the purpose of everyone's knowledge of it in order to apply it to the general public, and even the exception brought by the article is specific to cases of extreme necessity and may not be expanded. In the interpretation of the exception as long as the original that (the law shall come into force from the date of its publication), and thus (the laws of taxes and fees penal laws shall not come into force from any date before their publication in the Official Gazette, in accordance with the provisions of items (9th) and (10th) of Article (19) of the Constitution, and the legislative context applied in most countries of the world is that the law is not considered a law unless it completes all the procedures for its legislation, including the ratification of the competent authority to ratify in accordance with the law of the country from which the legislation is issued, and then granting it a number added to the year of its issuance, and then it is published in the Official Gazette in accordance with when it was reported articles (1 and 4) of the Law of Publication in the Official Gazette No. 78 of 1977, before that, even if it is voted on (Parliament, Council of Representatives or National Assembly) in accordance with the designations of States, it shall not be considered a law before the aforementioned due process has been taken, and the Council of Representatives for its current session has adopted

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the aforementioned approach to many laws and in different terms and sentences once it stipulates that the law will enter into force from (the date of its issuance), once (from the date of its vote), and again from the date of its approval from the Council of Representatives) without the support of the law and without the existence of an urgent and exceptional necessity and need for the purpose of enforcing the law before publication, especially since the law came as an amendment to the Penal Code, and that penal penalties do not apply retroactively frankly a constitutional text, the existence of such provisions is also a withdrawal of the authority of the President of the Republic provided for in items (2nd and 3rd) of Article (73) of the Constitution, it represents a clear violation of the principle of separation of powers established under Article (47) of the Constitution, and that ratification is one of the stages of the legislative process because the legal existence of legislation is not complete except by completing the three stages required by its enactment, namely proposing legislation, approving it, and ratifying, as ratification is one of the basic competencies prescribed by the head of state in most constitutions of the world and most jurisprudence believes that legislation does not become effective until after its ratification from the head of state, so the plaintiff / being in this capacity asked this court to rule on the unconstitutionality of Article (4) of Law No. (10) of 2024 - Law amending the Penal Code No. (111) of 1969 published in the Official Gazette No. (4776) on 27/5/2024 and amending it to stipulate: (The law shall enter into force from the date of its publication in the Official Gazette) in accordance with the provisions of Article (129) of the Constitution and charge the defendant fees, expenses and advocacy fees, after registering the case with this court No. (156/Federal/2024), collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with the provisions of Article (21/1st and

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2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, his agents replied with the reply regulation dated 12/6/2024, which concluded: The text - the subject of the challenge - represents a legislative option issued in accordance with the competencies of the Council of Representatives based on the provision of Article (61/1st) of the Constitution of the Republic of Iraq the Constitution has granted the Council of Representatives, as the legislative authority, the right to choose the date of entry into force of the law and in accordance with the provisions of Article (129) of the Constitution, which states (laws shall be published in the Official Gazette, and shall come into force from the date of their publication, unless otherwise stipulated) that is, a text other than the date of publication in the Official Gazette shall be in accordance with a provision in the law, and this text shall be drawn up by the Council of Representatives by virtue of its legislative authority and constitutional powers, article (1/2nd) of the Law of Publication in the Official Gazette No. (78) of 1977, as amended, has allowed the law to apply on a date other than the date of publication, whether prior to or after the date of publication, and in accordance with the following text: All published in the Iraqi Gazette shall be considered the official and reliable text and shall come into force from the date of its publication article 6 of the same law mentioned above considers publication as being aware of the content of the law and in accordance with the following text (ignorance of the content of what is published in the Iraqi Gazette) and article (37) of the Penal Code No. 111 of 1969 does not consider ignorance of the law after its issuance if it is not published this presumption becomes by virtue of nothingness because it is absent, and therefore the act is not criminalized because of the absence of the moral element represented by criminal intent, and one of its most important elements is the knowledge that the act constitutes a crime, and this is

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something that the judiciary addresses and does not affect the rights of the citizen at all thus, it does not constitute a violation of the Constitution, and the text - the subject of the challenge - does not violate Article (19/10th) of the Constitution, which states (the Penal Code shall not apply retroactively unless it is more suitable for the accused) because this article decided to protect the accused and not to infringe on his constitutional rights, and it made the accused a beneficiary of any law that reduces the penalty, whether the law is in force at the time of committing the offence or after it, and the criminalization contained in Article (1) of the amendment law had no precedent and is new, therefore, there is no defendant before the enactment of this law, so it will not affect the rights of any accused because there is no defendant in the first place, according to what is stated therein, but will make the acts described in it a crime and the perpetrator will be convicted after the law comes into force the failure to mention the date of voting in the law does not affect its constitutionality, because there is no constitutional violation, and the criminal judiciary can cover the period between the decision of the Council of Representatives to consider the amendment effective from the date of voting on it in the Council of Representatives and between its publication in the Official Gazette, through action when acts that fit the description of the crime of parental disobedience are committed it will undoubtedly be considered effective criminalization from the date of its publication because Article (37) of the Penal Code No. (111) for the year 1969, ignorance of the law after its issuance is not considered, and Article (6) of the Law of Publication in the Official Gazette has considered publication as knowledge of the content of the law and in accordance with the following text (ignorance of the content of what is published in the "Iraqi Gazette") since the law was published only at a later date, the presumption of citizen knowledge of the act that

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has been criminalized disappears because the knowledge was associated with publication, and if it is not published, that presumption becomes by virtue of nothingness because it is absent, and therefore the act is not criminalized because of the absence of the moral element represented by criminal intent, and one of its most important elements is the knowledge that the act constitutes a crime, and this matter is dealt with by the judiciary and does not affect the rights of the citizen at all, and therefore does not constitute a violation of the Constitution, therefore, the defendant's agent requested to reject the plaintiff's lawsuit and charge him fees, expenses and advocacy fees, and after completing the procedures required by the court's internal regulations, a date was set for the consideration of the lawsuit without pleading based on Article (21/3rd) thereof, in which the court was formed and the lawsuit began to be heard the court scrutinized the plaintiff's requests and substantiations and the defenses of the defendant's agents and 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 was the President of the Republic, being in this capacity, in his lawsuit, he requested a ruling on the unconstitutionality of Article (4) of Law No. (10) of 2024 - Law amending the Penal Code No. (111) of 1969, as amended, for violating the provisions of Articles (19, 129 and 73/2nd and 3rd) of the Constitution of the Republic of Iraq of 2005, and for the reasons stated in his petition detailed in the preamble to this provision, and upon careful consideration from this court, at the request of the plaintiff/ being in this capacity found that the challenged text was a legislative option, it was promulgated in

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accordance with the competences of the Council of Representatives stipulated in Article (61) of the Constitution and does not contradict the provisions of the Constitution therefore, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit/ being in this capacity and charging him all judicial fees and expenses, including advocacy fees, the defendant's agents, the Speaker of the Council of Representatives, being in this capacity, the two official jurists each of (Saman Mohsen Ibrahim and Aseel Samir Rahman) 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 for the year 2005, and (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 23 / Muharram / 1446 A.H. corresponding to 30/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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