

Republic of Iraq
Federal Supreme Court
Ref 163/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/6/2024 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: Walid Saleh Mahdi.

The Defendant: President of the Supreme Judicial Council / being in this capacity - His agent the official jurist Labib Abbas Jaafar.

The Claim:

The plaintiff claimed in his petition that on 24/5/2024, the Judicial Institute announced the opening of the application for the proficiency exam for the sessions (50 and 51) for the year 2024-2025, and the conditions for submission included adding a new condition to the conditions followed for admission to the Judicial Institute since its establishment, which is that the applicant to participate in the proficiency exam must have an average of (70%) in university study, and because this condition is contrary to the constitution, which took the principle of equality of all citizens in rights and duties, the Judicial Institute act No. 33 of 1976 does not contain this condition, article (7/1st/ Waw) of it stipulates ((First, whoever is accepted to study at the Institute must have the following: Waw - To be a graduate in one of the faculties of law and politics (Department of Law) in Iraq, or a recognized college of law, provided that he passes an exam in Iraqi laws, the Institute Council determines its materials, and how to conduct it)), therefore, the plaintiff asked this court to rule obliging the defendant, being in this

Zainab

Republic of Iraq
Federal Supreme Court
Ref 163/ federal/2024



Kurdish text

capacity, to cancel the amended condition and consider it illegal and unconstitutional, and also requested the issuance of a state order to oblige the defendant to accept his application and other applications for submission because the application period is very short and limited to a period of one month to ensure his rights and fear of its expiry and until the lawsuit is decided and the defendant is charged with fees, expenses and attorneyship fees. After registering the lawsuit with this court No. (163/Federal/2024), collecting the legal fee for it, and informing the defendant of its petition and documents based on Article (21/1st and 2nd) of the internal regulations of the Federal Supreme Court No. (1) of 2022, his agent replied with the answering draft dated 12/6/2024, its conclusion: The subject matter of the lawsuit is outside the jurisdiction of the court specified under Article (93) of the Constitution of the Republic of Iraq, article (4) of the Court Law No. (30) of 2005, as amended, whereas the jurisdiction of the Court under (93/I) of the Constitution is limited to oversight and to the laws and regulations in force and does not extend to the decisions issued by various institutions, including the decisions of the Judicial Institute, regardless of their nature and content, and that the jurisdiction of the Federal Supreme Court is limited to what is issued by the three federal authorities and independent authorities and does not include decisions or procedures issued by other institutions, which is what the Court's judiciary has settled on, specifically the decision issued in the case (250/Federal/2022) on 9/1/2023, as stated by the plaintiff regarding the illegality of the condition of the amendment (70%), this condition does not conflict with any article of the Constitution, and that the absence of this condition in the Judicial Institute Law No. (33) of 1976 amended, Specifically in Article (7/ 1st) thereof, concerning the conditions for admission to the Institute, does not necessarily mean that it violates the provisions of the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 163/ federal/2024



Kurdish text

Constitution, as the Council of the Institute, which is the supervising authority of the Judicial Institute, exercises the competencies entrusted to it in accordance with the provisions of Article (4) of the Law of the Judicial Institute mentioned above, and setting the conditions that are considered one of the organizational matters necessary for admission to the institute and can be expanded or determined if this is found necessary and does not conflict with the principle of equality or equal opportunities stipulated in the Iraqi constitution, which is what happened according to the minutes of the meeting of the eighth session of the Judicial Institute Council for the year 2024, according to which the condition was approved (that the general average of the applicant for the courses of judges and members of the Public Prosecution is not less than (70%) for the baccalaureate degree, in addition to the conditions stipulated in Article 7 / 1st of the institute's law the aforementioned judicial committee) and for the reasons stated in the minutes of the meeting, therefore, he requested to reject the lawsuit and charging the plaintiff with fees, expenses and advocacy fees. After completing the procedures required by the rules of procedure of the court, set a date for the consideration of the lawsuit without pleading based on Article (21/3rd) thereof, in which the court was formed and began to consider the case, the court scrutinized the requests of the plaintiff and his support and the defenses of the defendant's agent and after completing its scrutinies, the end of the minutes has been made clear and issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff (Walid Saleh Mahdi) filed this lawsuit in dispute with the President of the Supreme Judicial Council/ being in this

Zainab

Republic of Iraq
Federal Supreme Court
Ref 163/ federal/2024



Kurdish text

capacity, claiming that on 24/5/2024, the Judicial Institute announced the opening of the door for applications for the two sessions (50 and 51) and announced the conditions that must be met by applicants for the proficiency exam, and has added a new condition to the usual conditions since the establishment of the Judicial Institute, it is that the applicant to participate in the proficiency exam has an average of (70%) in university education, since this condition is contrary to the law and unfair to him and the right of the rest of the applicants, since the Iraqi Constitution guarantees every Iraqi citizen who has completed university studies the right to apply for certain positions and jobs in the future without discrimination or differentiation on the condition of the amendment, taking into account the principle of equality of all citizens in rights and duties, and that the Judicial Institute since its establishment did not include this condition within the conditions for applying for the proficiency exam because of its belief that whoever passes the aforementioned exam is the most worthy to assume the position of the judiciary, and that the aforementioned condition is not contained in the Judicial Institute Law No. (33) of 1976, therefore, he requested to rejected the defendant's invitation / being in this capacity to plead and the ruling obliging him to cancel the amended condition and consider it illegal and unconstitutional, because the period of submission is a specific period of one month - and it is valid when this lawsuit is filed - and to ensure his rights and fear of its expiry request to issue a state order to oblige the defendant/ being in this capacity to accept his application and other applications until the lawsuit is decided and charging him with fees, expenses and attorneyship fees. The court reviewed the defenses of the defendant's agent/ being in this capacity under his regulation dated 12/6/2024, which includes his request to reject the plaintiff's lawsuit, as it is outside the jurisdiction of the Federal

Zainab

Republic of Iraq
Federal Supreme Court
Ref 163/ federal/2024



Kurdish text

Supreme Court, and the condition that the ruling was requested to cancel does not conflict with any text or article of the constitution, the Council of the Judicial Institute is the supervising authority of the said Institute and exercises its competence entrusted to it in accordance with the provisions of Article (4) of the Judicial Institute Law No. (33) of 1976, as amended, the development of the aforementioned condition is one of the organizational matters necessary for admission to the Institute, which can be expanded or determined if it is found necessary, and this does not conflict with the principle of equality or equal opportunities stipulated in the Constitution, and the Federal Supreme Court finds that the plaintiff requests in his lawsuit to cancel the rate condition added to the conditions that must be met by applicants to the Judicial Institute issued by the Judicial Institute Council at its eighth session of 2024, whereas the competences of the Federal Supreme Court are contained exclusively in Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005, and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and it did not include what was stated in the plaintiff's request, especially since it was not mentioned in the lawsuit petition what is based on the constitutional or legal text to file the lawsuit before this court, whereas this court has settled that its jurisdiction to consider cases arising from the application of laws, regulations, instructions, decisions and procedures that these decisions are issued by one of the federal authorities or independent authorities and its jurisdiction does not include considering decisions and procedures issued by other institutions and because the Council of the Judicial Institute is not one of the three authorities, therefore, the consideration of the plaintiff's lawsuit is outside the jurisdiction of this court and his lawsuit must be answered by this authority, and the requests of the summary judiciary and orders on petitions must be

Zainab

Republic of Iraq
Federal Supreme Court
Ref 163/ federal/2024



Kurdish text

submitted to the competent court to consider the subject matter of the lawsuit based on the provisions of Article (141) of the Civil Procedure Law No. (83) of 1969 as amended, since this court is not competent to consider the subject matter of the lawsuit, so the request for the issuance of the state order must be rejected by this authority as well, for all of the above and the request the Federal Supreme Court decided the following: First: Rejection of the plaintiff's request (Walid Saleh Mahdi) to issue a state order obliging the defendant, being in this capacity, to accept his application and other applications to the Judicial Institute.

Second: Ruling on rejecting the plaintiff's lawsuit (Walid Saleh Mahdi), for lack of jurisdiction.

Third: Charging the plaintiff with fees, expenses and advocacy fees of the defendant's agent, President of the Supreme Judicial Council, being in this capacity, the human rights employee (Labib Abbas Jaafar), an amount of 100,000 hundred 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/Second) 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/Dhu al-Hijjah/1445 A.H. corresponding to 30/6/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

Zainab