

Republic of Iraq
Federal Supreme Court
Ref. 172 / Federal / 2021



The Federal Supreme Court (F.S.C.) convened on 11.4.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Alaa El-Din Mahmoud Ahmed - his attorney, Maitham Ali Samin.

The defendant:

The Speaker of the Iraqi Council of Representatives / in addition to his post - his two agents are the Legal Counsel Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim.

The claim:

The plaintiff claimed, through his attorney, that the legal case filed before the Personal Status Court in Tuz No. (247/shin/2020) by the plaintiff Zainab Nasrat Mahmoud, according to which she requests the removal of custody of the child Haura from her father, Alaa El-Din Mahmoud Ahmed, based on the provisions of Article (57/1 and 2) of the Personal Status Law in force, since this article contradicts the Constitution of the Republic of Iraq for the year 2005 in Articles (2) and (29/second) of it, and since the constitution has

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superiority over the rest of the laws and its provisions may not be violated, so the plaintiff asked the Federal Supreme Court to call upon the defendant to plead and judges the unconstitutionality of Article (57/1 and 2) of the Personal Status Law No. (188) of 1959, and charges him with attorney's fees and expenses. The lawsuit was registered with this court in No. (172/Federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005, and informs the defendant of its petition and documents in accordance with the provisions of Article (2/ First) from the same bylaw, his two attorneys replied in the answer draft dated 7/12/2021 that Article (130) of the Constitution stipulated (the legislation in force shall remain in force, unless it is repealed or amended, in accordance with the provisions of this Constitution) and since the article is subject to challenge. It is still in force and is considered a legislative option to preserve the interest of the child in custody, and the text of the case does not constitute a violation of the provisions of the Constitution, and the Federal Supreme Court had previously decided on the subject matter of the case by virtue of its decision No. (189/Federal/2021), which became an argument with its provisions, then the lawsuit becomes obligatory to be dismissed and has no basis for it from the constitution and the law, so the defendant's attorney requested that the plaintiff's lawsuit be dismissed and he is charged with judicial fees, expenses and attorney fees. After completing the required procedures in accordance with the provisions of the aforementioned bylaw, a date for the pleading was set in accordance with the provisions of Article (2/second) of it, and the two parties were informed of it. On the appointed day, the court was formed, so the

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plaintiff's attorney, Maytham Ali Samin, attended as well as the defendant's attorney, Legal Counsel Haitham. Majed Salem and the legal employee Saman Mohsen Ibrahim and the pleading was conducted in public. The plaintiff's attorney repeated what was stated in the lawsuit petition and requested the judgment according to what was stated in it. The defendant's attorneys responded and requested that the lawsuit be dismissed for the reasons stated in their answer list dated 7/12/2021, the attorney of each party repeated his previous statements and requests, and since nothing remains to be said, the court decided the conclusion of the pleading and issued the following ruling:

The decision:

Upon review and deliberation by the Federal Supreme Court and review of the plaintiff's lawsuit, according to which he requested a ruling on the unconstitutionality of Article (57/1 and 2) of the Personal Status Law No. (188) for the year 1959, as amended, which states: (1- The mother is more entitled to the custody and upbringing of the child in the event of marriage and after the separation, unless the child in custody is harmed by that 2- It is required that the incubator be an adult, sane, honest, capable of raising and maintaining the child, and the custody of the divorced mother does not forfeit by her marriage, and the court decides, in this case, the eligibility of the mother or father in custody in light of the interests of the child), for the reasons contained in the petition his claim. This court finds that it has previously issued its decision in No. (189/Federal/2018), in which it stated ((The Federal Supreme Court finds from the noble hadith, the opinions of jurists and similar

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legislation in Islamic countries and the rulings on which the judiciary has settled in the field of personal status as a whole. It does not preclude dealing with the facts of custody, each according to his circumstances, because the principle in legislation is that it is placed in the interest of humanity and the payment of harm from it, especially if it concerns the young among them, because they are the first to take care of the interests of the litigants, taking into account the interests of the child in custody and to ward off harm from him, and the court, when presenting the case to it, investigates this The interest is through the social research that is carried out by the specialists and through the evidence of the litigants and it is estimated in light of this, where lies the interest of the child, so it is in the interest of the mother married to a third party or in the interest of the father if the marriage of the custodian mother causes harm to the child or distracts her from his care because the principle in the provisions of custody is that it revolves with the interests of the child in custody, and it has detailed (the Iraqi Personal Status Law No. 188 of 1959, amended), in its integrated provisions in this regard, especially in Article (57) in its paragraphs (1, 2, 4 and 7) whose illegality and constitutionality is under challenge in this case)) and on the basis of that, the court decided to reject the appeal against Article (57/1, 2, 4 and 7) of the Personal Status Law No. (188) for the year 1959 as amended, and the decision was issued on 5/12/2018. From the foregoing, as the constitutionality of Articles (57/1 and 2) has already been decided by this court in accordance with the aforementioned detail, so the claim of the plaintiff (Alaa El-Din Mahmoud Ahmed) is obligatory to be dismissed. Accordingly, the Federal Supreme Court decided to reject the plaintiff's lawsuit,

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because it had previously decided on its issue and charged him with fees and expenses, an amount of one hundred thousand Iraqi dinars, for the attorney fees of the defendant's attorneys, in addition to his post, legal adviser Haitham Majed Salem and legal employee Saman Mohsen Ibrahim. The decision was issued in agreement final according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/Second) of the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and publicly understood on 9 Ramadan / 1443 AH corresponding to 11.4.2022 AD.

Signature of
The president

Jasem Mohammad Abboud

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