

Republic of Iraq
Federal Supreme Court
Ref 173/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/8/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali ,Munther Ibrahim Husain, and Jassim Jazaa Jafer who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: KhairAllah Moshe Shalaka – His agent the barrister Ammar Rahim Majbel.

The Defendants: 1. Speaker of the Council of Representatives / being in this capacity - His agent the official jurist Saman Mohsen Ibrahim.

2. President of the Political Prisoners Foundation / being in this capacity.

3. Minister of Justice / being in this capacity - His agent the legal adviser Adnan Salman Kazim.

4. The President of the State Council / being in this capacity - His agent the human rights employee Awham Habib Ali.

The Claim:

The plaintiff claimed through his agent that Article (11) of Law No. (35) of 2013, the first amendment to the Political Prisoners Institution Law No. (4) of 2006, which stipulated that (each interested party may request a review of the decisions issued in light of the application of the provisions of Law No. 4 of 2006 and was contrary to the provisions of this law), it has led to the instability of judicial decisions and the instability of citizens' rights protected by law and the judiciary, due to the issuance of the Supreme Administrative Court's decision No. (355 / Administrative Judiciary of Cassation/2024), on the basis of which its

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inclusion in the Political Prisoners Institution Law was reconsidered denying him coverage, on the basis of the aforementioned article (11) according to which a final judicial decision is appealed, contrary to the principle of the authority of judicial decisions stipulated in articles (105 and 106) of the evidence law No. (107) of 1979, whereas the Supreme Administrative Court, by its aforementioned decision, annulled a judicial decision, therefore, the plaintiff asked this court to rule on the unconstitutionality of Article (11) of Law No. (35) of 2013 (the first amendment to the Political Prisoners Institution Law No. 4 of 2006), and to cancel all decisions that resulted from this article regarding it, re-include it in the aforementioned institution law, and charge the defendants fees and expenses. After registering the case with this court No. (173/Federal/2024), collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with Article (21/1st and 2nd) of the Court's Rules of Procedure No. (1) of 2022, the first defendant's agent replied in the reply dated 30/6/2024 to summarize: that the article (subject of the challenge) was issued in accordance with the competencies of the Council of Representatives in legislating federal laws in accordance with the provisions of Article (61/1st) of the Constitution of the Republic of Iraq for the year 2005, and represents a legislative option without constitutional violation, and the plaintiff did not indicate the face of the constitutional violation of Article the subject of the challenge, in addition to the lack of jurisdiction of the Federal Supreme Court to consider the extent of the conflict of laws between them, nor in the annulment of decisions resulting from the implementation of Article (subject to appeal), in accordance with its competencies stipulated in Article (93), of the Constitution, so he asked to reject the lawsuit, the second defendant replied in the reply list with the number (Qaf.Dal/1293/11219 on 30/6/2024) in conclusion: The

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plaintiff had previously filed the lawsuit numbered (85/Federal/2019) before the Federal Supreme Court on the same reasons, details and subject matter, and the court issued its decision on 14/10/2019 rejecting the lawsuit and ruling on the constitutionality of Article (11) of Law No. (35) of 2013 (the first amendment to the Political Prisoners Foundation Law No. 4 of 2006), as previously filed by some of the victims whose decisions were reconsidered lawsuit numbered (45/Federal/2018) before the Federal Supreme Court to challenge the procedures of the institution to reconsider under Article (11) subject to the challenge, and the lawsuit was rejected because Article (11) did not violate the constitution, and that the law has drawn a path to appeal, he added that the court did not have jurisdiction to consider re-including the plaintiff in the political prisoners foundation Law, as he has drawn a way to appeal the decisions of the special committees and the appeal authority and request the reject of the lawsuit, and the third defendant's agent responded with the reply list dated 3/7/2024, and requested to reject of the lawsuit because the litigation was not directed towards his client, and the fourth defendant's agent responded with the reply statement dated 1/7/2024 and requested according to reject the lawsuit for lack of jurisdiction for the reasons stated therein, and after completing the procedures required by the court's internal regulations, a date was set for the consideration of the case without pleading based on Article (21/3rd) thereof, the court was formed and scrutinized the plaintiff's requests and supports and the defenses of the defendants' after completing its scrutinies the end of the minutes has been made clear and the court issued the following decision:

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The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit included a request to rule on the unconstitutionality of Article (11) of Law No. (35) of 2013 (the first amendment to the Political Prisoners Institution Law No. 4 of 2006), as well as the cancellation of all decisions resulting from the aforementioned article related to it and its re-inclusion in the Political Prisoners Institution Law, and then charging the defendants all judicial fees and expenses, including advocacy fees through an examination of the lawsuit file and its documents, this court finds that the plaintiff's claim must be rejected on behalf of the second, third and fourth defendants, because the litigation is not directed, since the litigant in the lawsuit for the unconstitutionality of the contested text is the one who enacted and legislated the text it is required that the defendant be a litigant whose acknowledgment entails a judgment assessing the issuance of a declaration from him, and that he is sentenced or obligated to assess the proof of the lawsuit in accordance with the provisions of article 4 of the Civil Procedure Law No. 83 of 1969, as amended, and if the litigation in the lawsuit is not directed, the court shall rule on its own motion to reject it without entering into its basis, pursuant to the provisions of article (80/1) of the aforementioned law, which requires the reject of the plaintiff's claim on behalf of the aforementioned defendants from the litigation side, as for the first defendant, the court finds that his litigation in the lawsuit is directed as he is the one who legislated the challenged text, and since Article (11) of the Political Prisoners Institution Law was issued in accordance with the competencies of the Council of Representatives stipulated in Article (61/1st) of the Constitution of the Republic of Iraq for the year 2005, and

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that its inclusion in the law does not violate the provisions of the Constitution, but it is a legislative option, so the plaintiff's request to rule that it is unconstitutional loses its support from the Constitution, which necessitates the reject of his said request, as for the plaintiff's requests to annul the decisions resulting from the contested article, and its re-inclusion in the provisions of the Political Prisoners Institution Law, the court also finds that they must be rejected since the competences of this court is defined by 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 (25) of 2021, and not including addressing decisions issued in light of the application of the provisions of Law No. (4) of 2006 and the re-inclusion of the plaintiff in the Political Prisoners Institution Law therefore, the Federal Supreme Court decided as follows:

First: Rejecting the plaintiff's lawsuit (KhairAllah Moshe Shalaka) on behalf of the defendants (the second is the head of the Political Prisoners Foundation, the third is the Minister of Justice, and the fourth is the President of the State Council / being in their capacity), because the litigation is not directed.

Second: Rejecting the plaintiff's lawsuit regarding the challenge of the constitutionality of Article (11) of Law No. (35) of 2013 (Law amending the First Law of the Political Prisoners Institution Law No. 4 of 2006), for the absence of a constitutional violation.

Third: Rejecting the plaintiff's lawsuit regarding the rest of the requests contained in the petition, for lack of jurisdiction.

Fourth: Charging the plaintiff all judicial expenses, including advocacy fees for the defendants' agents in addition to their jobs an amount of one hundred and fifty thousand dinars to be distributed in accordance with the law.

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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, of 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 done in the session dated 7/Safar/1446 Hijri corresponding to 12/8/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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