

Republic of Iraq
Federal Supreme Court
Ref 175/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/8/2024 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, 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: The barrister Mohammed Majeed Rasan – His agent the barrister Ahmed Mazen Abdul Wahed.

The Defendant: Speaker of the Council of Representatives / being in this capacity - His agent the human rights employee Saman Mohsen Ibrahim.

The Claim:

The plaintiff claimed through his agent that the Iraqi legislator dealt in Chapter 4th of the Civil Procedure Law No. 83 of 1969 with the subject of (complaint from judges), as Article (286) thereof granted each of the parties to the lawsuit to complain to the judge or the court panel in the cases indicated in paragraphs (1, 2 and 3) of the same article, and Article (291/3) of the same law stipulates: (If the complainant proves the validity of his complaint, the court shall oblige the defendant to compensate the damage caused to the complainant and inform the matter to the Supreme Judicial Council to take the necessary legal measures), and that these legal provisions contradict the principle of independence and protection of the judiciary and the inadmissibility of prosecution for the judgments it issues, as well as the principle of the immunity and protection of the judge, this immunity and constitutional protection requires that the judge's disciplinary accountability must be limited only without prosecuting him and demanding compensation in the event that

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he commits a professional error resulting from his diligence in interpreting the legal text, and that the Judicial Supervision Authority, including Law No. (29) of 2016, entrusted to it with the task of supervising and controlling the work and good performance of judges, as well as the Judges' affairs committee, with the competencies entrusted to it by law, especially since obliging the judge to compensate for professional error will be a psychological obstacle that prevents him from performing his work safely, which will negatively affect the interests and rights of individuals (the plaintiff's clients) and thus expose his interests (as a lawyer for them) to damage, so the plaintiff asked this court to rule to oblige the defendant / being in this capacity the unconstitutionality of paragraph (3) of Article (291) of the Civil Procedure Law No. (83) of 1969, after registering the case with this court with the number (175/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 Court's Rules of Procedure No. (1) of 2022, his agent replied with the reply list dated 30/6/2024 Summary: The lack of interest condition in filing the lawsuit, and the court's lack of jurisdiction to consider it, in addition to indicated that paragraph (subject to appeal) of the legislation in force in accordance with the provisions of 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 plaintiff did not indicate the face of the constitutional violation, so he requested to reject of the case, and after completing the procedures required by the rules of procedure of the court, a date was set for the consideration of the case without pleading according to Article (21/3rd) thereof, in which the court was formed and the case was considered, the court scrutinized the plaintiff's requests and supports and the defenses of

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the defendant's agent, and since the court completed 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 lawsuit focused on a request to rule the unconstitutionality of Article (291/3) of the Civil Procedure Law No. (83) of 1969, as amended, which stipulates ((If the complainant proves the validity of his complaint, the court ruled to oblige the defendant (the judge) to compensate the damage caused to the complainant and informed the matter to the Supreme Judicial Council to take the necessary legal measures)), due to its conflict with the principle of judicial independence stipulated in the Constitution of the Republic of Iraq for the year 2005, and then charging the defendant / being in this capacity fees, expenses and advocacy fees, since the constitutional lawsuit, like all other lawsuits, requires the fulfillment of the interest condition of the plaintiff when filing it article (6) of the Civil Procedures Law No. (83) of 1969, as amended, and Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, stipulate that the plaintiff in the subject matter of the lawsuit has a case-effective, direct and influential interest in his legal, financial or social status, even if this interest is available at the outset at the time of filing the lawsuit and until the issuance of the final judgment therein, and it is also required that the challenged text has actually been applied to the plaintiff, and that he has not benefited from the contested text in whole or in part, and since the interest condition according to the foregoing it is not realized in the plaintiff's lawsuit, so his claim must be rejected from

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this side, and based on the foregoing ,The Federal Supreme Court has decided the following:

First: Rejecting the plaintiff's lawsuit (Muhammad Majeed Rasen), due to the lack of the necessary interest condition for its establishment.

Second: Charging the plaintiff with all judicial fees and expenses, including the attorneyship fees of the defendant's agent / being in this capacity, the official jurist Saman Mohsen Ibrahim, 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 edited in the session dated 13/Safar/1446 Hijri corresponding to 18/8/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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