

Republic of Iraq  
Federal Supreme Court  
Ref. 177 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/9/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Barrister Mohammed Nasir Salim.

The Defendant: Director-General of companies registration in the Ministry of Trade/ being in this capacity – his agent the official jurist Salam Adnan Hayes.

### **The Claim**

The plaintiff claimed in the petition that the Companies Registration Department at the Ministry of Commerce imposes fines on Iraqi and non-Iraqi companies registered in Iraq under the provisions of the Companies Law No. 21 of 1997, as amended, article 217 of which stipulates that "Every day of delay shall be met for an amount of not less than (50,000) fifty thousand dinars and not more than (250,000) two hundred and fifty thousand dinars from each company that is late in submitting the data and information to be submitted to an official authority competent in the times. Determined under the provisions of this Law, provided that the total fine shall not exceed (5,000,000) five million dinars, based on the dissolved Revolutionary Command Council Resolution No. (110) of 1998, which authorizes the Director General of the Companies Registration Department at the Ministry of Commerce to have the power of a misdemeanor judge to hear cases

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arising from the violation of the provisions of articles (213, 214, 216, and 217) of the Companies Law No. 21 of 1997, and since the exercise of the power of a misdemeanor judge is the exclusive prerogative of members of the judiciary and judges, and the exercise of that power by the Director of the Companies Registration Department was contrary to the 2005 Constitution, which affirmed in articles 47 and 87 of the Constitution the principle of separation of powers and the independence of the judiciary assumed by courts of all kinds and degrees, and the fines imposed under articles (213, 214, 216 and 217) of the Companies Law above are considered penal penalties and that their imposition by the Director General of the Companies Registration Department contradicts the provisions of the 2005 Constitution in articles (37, 47 and 87) thereof, so the plaintiff asked the Federal Supreme Court to issue an urgent order to the Registrar of Companies Department to stop the imposition of fines on companies, and to rule on the unconstitutionality of the authority of the Director of the Companies Registration Department to impose fines for violating the provisions of the Iraqi Constitution in force, and to indicate the legal position regarding the amounts collected under those powers, with the defendant charged expenses, suit fees and advocacy fees, The case was registered with this court in the number (177/federal/2022) and the legal fee for it was met in accordance with Article (21/1<sup>st</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and the defendant is informed of its petition and documents in accordance with Article (21/2<sup>nd</sup>) of the same Bylaw, and after completing the procedures required by the provisions of the Bylaw of the Court, mentioned above, a date has been set for the pleading in accordance with the provisions of Article (21/3<sup>rd</sup>) thereof, and the parties are informed of it, and on the

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specified day the court was formed and attended, the plaintiff in particular, who was present on behalf of the defendant by the human rights officer (Salam Adnan Hayes) and initiated the public argument in public, the plaintiff in particular repeated what was stated in the petition and requested a verdict thereunder, the defendant's agent replied that he had appeared as an agent for (the Minister of Commerce / being in this capacity) because the director of company registration does not have the legal personality and is subordinate to the Ministry of Commerce and requested the dismissal of the case because the litigation was not directed, the plaintiff and the defendant's agent repeated their previous statements and requests, and where there is nothing left to be said, the end of the argument has been made clear, and the court issued the following judgment decision:

**The decision:**

After scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff had filed his case against (the Director General of the Companies Registration Department in the Ministry of Commerce / being in this capacity) and since the Director General of the department referred to does not have legal personality and therefore it is not legally permissible to sue him and his litigation is not valid in this capacity and that the opponent in such a case is the Minister of Commerce in addition to his job and since Article (4) of the Civil Procedure Law No. (83) of 1969, as amended, requires that the plaintiff shall have a deduction whose approval shall result in a judgment appreciating the issuance of a declaration from him and that he shall be sentenced or bound by something at the discretion of

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the proof of the case, and that, in accordance with Article (80/1) of the same Law, the court may, even on its own motion, order the dismissal of the case without entering into its basis, and the opponent may also make this payment at any stage of the lawsuit and for all of the foregoing, and the non-direction of the defendant's litigation, the court decided to rule on the dismissal of the case and to charge the plaintiff fees, expenses, and attorneys' fees to the defendant's agent in addition to his job an amount of one hundred thousand dinars. The decision has been issued unanimously, final and binding according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 14/Sufur/1444 Hijri coinciding 11/September/2022 AD.

**Signature of**  
**The president**  
**Jasem Mohammad Abbood**

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