

Republic of Iraq  
Federal Supreme Court  
Ref. 179 / federal /2022



Kurdish text

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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, Hayder Ali Noori, Hyder Jabir Abid, Khalaf Ahmed Rajab, Ayoob Abbas Salah, 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 Muhsin.

The Defendant: Governor of the Central Bank of Iraq/ being in this Capacity – his agent the official jurist Ahmed Mushrif Wuhayeb.

### **The Claim**

The plaintiff claimed in his petition that the Central Bank imposes fees on banking companies and brokerage companies by selling and buying foreign currencies such as fees for practicing a profession, supervision and follow-up fees and others despite the absence of an explicit provision in the Central Bank of Iraq Law No. 56 of 2004 amending it to impose those fees, which is the law on the basis of which the instructions for the establishment of banking companies and brokerage companies for the sale and purchase of foreign currencies were issued, namely the instructions (for the year 2007 and instructions No. (8) of 2015. Instructions No. (1) of 2021 and Instructions No. (1) of 2022) which included granting the Central Bank the power to impose fees and fees on the aforementioned companies and that these instructions issued under a law are the ones that granted the power to impose such fees while the law itself did not provide for that power and that this violates the Constitution,

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which states in Article (28/I) thereof that "Taxes and fees shall not be imposed, nor shall they be amended, nor collected, nor shall they be exempted except by law.", The Central Bank also imposes fines and penalties on companies for non-payment of fees when violating the instructions of the Central Bank through a committee composed of employees affiliated with it who are not members of the federal judiciary (competent judges), in contravention of articles (47) and (87) of the Constitution, which affirmed the principles of separation of powers and the independence of the judiciary assumed by courts of all types and degrees, which have the power to impose fines and penalties, and this is what the Supreme Judicial Council pointed out in its response. The letter of the Council of Representatives No. (Mim/482) dated 29/7/2019, which included the decision of the Revolutionary Command Council (dissolved) No. (110) of 1998 gave the Director General of the Companies Registration Department at the Ministry of Commerce the power of a misdemeanor judge to hear cases arising from the violation of the provisions of Articles (217,216,214,213) of the Companies Law No. (21) of 1997 and requires a review by submitting the draft repeal of the said decision, and this is confirmed by the Federal Supreme Court in its decision No. (14/Federal/2013) on 12/3/2013, For all of the foregoing, the plaintiff requested the Federal Supreme Court to issue an urgent state order prohibiting the Central Bank from imposing fees and fines and not requiring companies to pay them until the case is resolved, and ruling on the unconstitutionality of paragraph (3) of Article (10) and paragraph (1<sup>st</sup>) of Article (12) of the Instructions for Regulating the Work of Banking Companies and Brokerage Companies by Selling and Buying Foreign Currencies No. (1) of 2022 as amended, and obliging the defendant / in addition to his job to return all amounts he

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has collected from companies in contravention of the provisions of the Constitution and the ruling not to The constitutionality of Article (62) of the Central Bank Law No. (56) of 2004 and the charging of the defendant's expenses and advocacy fees. The case was registered with this court in the number (179/federal/2022) and the legal fee for it was met in accordance with Article (21/3<sup>rd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2022 and informs the defendant of its petition and documents in accordance with Article (21/2<sup>nd</sup>) of the same Bylaw above. His agent replied to the answering draft dated 22/8/2022 concluding that the litigation is not directed towards his client as required by Article (4) of the Code of Civil Procedure in force, in addition to the fact that the plaintiff is not a stakeholder in bringing the case before the Federal Supreme Court and that the legal basis for the issuance of regulations by the Central Bank regulating the work of exchange companies are the provisions contained in the Central Bank Law in force, Article (4) of it, which allowed him to take the measures he deems necessary to carry out the establishment of rules governing the work of lending companies. Microcredit companies and any non-bank financial institutions that are not regulated under Iraqi law and supervised, It also has the power to issue regulations for the implementation of this Law as well as to issue binding orders addressed to specific individuals or entities, and the Bank has nothing to do with the imposition of fines based on the Companies Law in force, the imposition, and collection of which shall be the competence of the Registrar of Companies. It also has the power to issue regulations for the implementation of this Law as well as to issue binding orders addressed to specific individuals or entities, and the Bank has nothing to do with the imposition of fines based on the Companies Law in force, the imposition and collection

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of which shall be the competence of the Registrar of Companies and the Central Bank is the sectoral body for banking, exchange and electronic payment companies and one of its tasks is to regulate the work of such companies in accordance with the Central Bank Law, the Banking Law or the Anti-Money Laundering Law in force, The penalties imposed, including financial fines, do not belong to criminal sanctions in any way, but are penalties of an administrative nature, as evidenced by the fact that paragraph (4) of Article (62) in question stated that the imposition of administrative penalties by the Central Bank does not prevent the demand for any civil action or the accountability of the person in violation of the penalty in accordance with the provisions of any other law, and that the amounts collected from exchange companies based on the controls of the work of those companies in force, specifically paragraph (3<sup>rd</sup>) of Article (10) Paragraph (1<sup>st</sup>) of Article (12) in question is not a fee but represents a case of the general price paid as a return for the service obtained by the company and is not required to be imposed and fulfilled by law. Therefore, he requested that the plaintiff's claim be dismissed and that he be charged fees, expenses, and advocacy fees. After completing the procedures required by the rules of procedure of the Court, a date was set for the pleading, in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, and on the appointed day the court was formed, and the plaintiff, in particular, was present, lawyer Mohamed Nasser Salem, and his agent, the human rights officer, Ahmed Musharraf Waheeb and began to plead in public presence, the plaintiff repeated what was stated in the petition and requested the judgment under which the defendant's agent replied and requested the dismissal of the case for the reasons contained in its answer draft linked within the case papers, and each

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party repeated his 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:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's claim is focused on claiming the unconstitutionality of paragraph (3) of Article (10) and paragraph (I) of Article (12) of the Instructions for Regulating the Work of Banking Companies and Brokerage Companies for the Sale and Purchase of Foreign Currencies No. (1) of 2022 as amended, and the claim for the unconstitutionality of Article (62) of the Central Bank of Iraq Law No. (56) of 2004, as well as the request to issue an urgent state order prohibiting the Central Bank from imposing fees and fines and not demanding companies By paying them until the case is settled and the defendant/being in this capacity is charged fees, expenses, and attorneys' fees. This Court finds, through reviewing the case dossier, the requests, and defenses of the parties, and the regulations submitted by them, that the plaintiff's request regarding the ruling of the unconstitutionality of paragraph (3) of Article (10) and paragraph (1<sup>st</sup>) of Article (12) of the aforementioned instructions is outside the competence of this Court provided for in Article (93) of the Constitution of the Republic of Iraq of 2005, since the control of the Federal Supreme Court is limited to the control of the constitutionality of the laws and regulations in force only under Article (93/1<sup>st</sup>) of the Constitution without extending to the instructions, procedures, laws, and regulations that are not in force,

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and thus the plaintiff's claim is subject to dismissal for lack of jurisdiction regarding the ruling of unconstitutionality of the instructions, as for the plaintiff's request to rule on the unconstitutionality of article (62) of the Central Bank of Iraq Law No. (56) of 2004, article (4) of the Civil Procedure Law No. (83) of 1969, as amended, stipulates that "the defendant must be an opponent whose approval entails a judgment appreciating the issuance of a declaration from him and that he is sentenced or bound by something at the discretion of proving the case..." so that the defendant Governor of the Central Bank of Iraq/being in this capacity is not an opponent in this lawsuit because he is not a litigant in this lawsuit because he is not the entity that issued Law No. (56) of 2004 challenged the unconstitutionality of Article (62) thereof, and its approval does not entail a judgment appreciating the issuance of a declaration from it and cannot be sentenced or bound by anything in this case as required by Article (4) of the Code of Civil Procedure in the defendant, Therefore, the plaintiff's claim in this regard shall be rejected because the litigation is not directed, but the plaintiff's request to issue an urgent state order prohibiting the Central Bank of Iraq from imposing fees and fines were decided by the court to reject it because of the lack of urgency and to avoid a sense of opinion, and for all of the foregoing, the Federal Supreme Court decided the following:

- 1- Ruling to dismiss the plaintiff's lawsuit Mohamed Nasser Salem regarding his request to rule the unconstitutionality of paragraph (3) of Article (10) and paragraph (1<sup>st</sup>) of Article (12) of the Instructions for Regulating the Work of Banking Companies and Brokerage Companies by Selling and Buying

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Foreign Currencies No. (1) of 2022 as amended due to lack of jurisdiction.

- 2- Ruling on the dismissal of the plaintiff's case regarding his request to rule on the unconstitutionality of Article (62) of the Central Bank of Iraq Law No. (56) of 2004 due to the lack of direction of the litigation.
- 3- The plaintiff charged the fees, expenses, and advocacy fees of the defendant's deputy governor of the Central Bank of Iraq / being in this capacity the official jurist Ahmed Musharraf Waheeb an amount of one hundred thousand dinars.

The decision has been issued unanimously, final and binding for all authorities 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 14/Sufur/1444 Hijri coinciding with 11/September/2022 AD.

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

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