



Republic of Iraq
Federal Supreme Court
Ref. 17/federal/2024

Kurdish text

The Federal Supreme Court (F S C) has been convened on 26/2/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, 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: Fares Rashid Khorshid – His agent the barrister Saif Ammar Wahib.

The Defendant: Speaker of the Council of Representatives / being in this capacity - his two agents, the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiff claimed through his agent that the Council of Representatives had previously issued the General Amnesty Law No. (27) of 2016 amended by Law No. (80) of 2017 (the first amendment to the General Amnesty Law No. 27 of 2016), which was published in the Iraqi Gazette No. (4469 on 13/11/2017), and for Article (5) of which violated the Constitution in several articles, therefore, he took the initiative to challenge it before this court for the following reasons: 1- Article (5) of the General Amnesty Law No. (27) of 2016 as amended, which stipulated that (includes the provisions of the General Amnesty Law those included in the General Amnesty Law 19 for the year 2008 for crimes whose punishment does not exceed two years) contrary to article 19/tenth of the Constitution, which stipulates (Tenth: The Penal Code shall not apply retroactively unless it is more suitable for the

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accused) whereas the General Amnesty Law is a purely penal law, and Article (5) thereof, has extended its effect to before the date of entry into force of the law without that effect being more suitable for the accused, as it deprived him of the coverage of its provisions by applying them retroactively to a date prior to the entry into force of the law, and it is the duty of the defendant / being in this capacity when enacting laws affecting the freedoms of persons to observe the constitutional provisions with regard to rights and freedoms and the principle of equal opportunities among Iraqis stipulated in Article 16 of the Constitution, the article in question also contradicted the reasons for the law, which stated: (In order to allow Iraqi delinquents to reintegrate into public life and to spread the spirit of tolerance and reform in society, this law was enacted.) the plaintiff was deprived of his right to the opportunity to be covered by the provisions of the aforementioned law, because he was covered by the provisions of the General Amnesty Law No. (19) of 2008, where the law did not require submitting an application to include him in the provisions of the amnesty, and that he did not request his inclusion previously, and despite that, the Committee for the Implementation of the Provisions of the General Amnesty for the year 2008, in Al-Karkh decided to include him in the provisions of the law without his request and without his knowledge of the existence of an investigative case against him in the first place, and that decision did not change his status, and he fell victim to different judicial trends, and that all that he was accused of before 2005 was covered by the provisions of the General Amnesty Law No. (19) for the year 2008, and indeed included in the provisions of the law a criminal case in accordance with the provisions of Article (340) of the Penal code shortly

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after, when he was asked to be included in the same article in other lawsuits, the court rejected his request it reasoned that it was excluded from its provisions despite the issuance of many decisions interpreted (Article 2) which stipulated provided that (the following shall be excluded from the provision of Article 1 of this Law: Crimes of embezzlement or deliberate sabotage of state funds) these decisions confirmed that the crimes mentioned in Article (340) of the Penal Code are not crimes of embezzlement or sabotage, therefore, this appeal is the last hope for his redress, and since the article - the subject of the challenge - directly and affects his rights, and the availability of the condition of interest and the application of the article to him without benefiting from it in whole or in part, the plaintiff requested this court, based on the provisions of Article (93) of the Constitution, to rule on the unconstitutionality of Article (5) of the General Amnesty Law No. (27). for the amended year 2016, and charging the defendant judicial fees and expenses. After registering the case with this court No. (17/Federal/2024) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, his two agents replied with the reply regulation dated 23/1/2024 that the text - the subject of the challenge - was a legislative option in accordance with the competencies of the Council of Representatives based on the provisions of Article (61/1st) of the Constitution of the Republic of Iraq for the year 2005, and does not violate any of the constitutional provisions referred to by the plaintiff's agent, and that the plaintiff's lawsuit expresses his conviction and view of the provisions of the law and that what they aspire to requires

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legislative intervention if its reasons and conditions are available, so the defendant's agent requested to reject the plaintiff's lawsuit and charge him judicial fees, expenses and attorneyship fees. After completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, in which the court was formed, and the agents of the parties attended and began to conduct the public presence pleading, and after the court heard their statements and requests and completed its scrutinies, the end of the rgument 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 claim is focused on demanding a ruling on the unconstitutionality of Article (5) of Law No. (27) of 2016 as amended by the First Amendment Law No. (80) of 2017, which states that ((The General Amnesty Law includes those who are included in the provisions of the General Amnesty Law No. (19) of 2018 for crimes punishable by no more than two years), for violating the provisions of articles (16 and 19 /10th) of the Constitution of the Republic of Iraq of 2005, which affirm the principle of equal opportunities among Iraqis and the non-retroactive application of the Penal Code unless it is more suitable for the accused, through the Court's examination of the petition and its attaches, the Court finds that they are admissible in form because they fall within the jurisdiction of this Court stipulated in Article (93/1st) of the Constitution of the Republic of Iraq of 2005, and the plaintiff also has an interest in establishing it as a convict, and it was not covered by

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the provisions of the Amnesty Law No. (27) of 2016, but the lawsuit must be rejected on the merits, as the challenged text does not contradict or contradict any provision of the provisions of the Constitution of the Republic of Iraq for the year 2005 and that it came as a legislative choice in accordance with the competencies of the Council of Representatives stipulated in Article (61) of the Constitution, paragraph (first) thereof, which stipulates that (the Council of Representatives shall have the following competencies:

First: the enactment of federal laws), and the General Amnesty Law and its amendments are federal laws, accordingly, and in view of the above, the Federal Supreme Court decided to rule as follows: First: Reject the lawsuit of the plaintiff Fares Rashid Khorshid for lack of constitutional violation. Second: Charging the plaintiff the fees, expenses and attorneyship fees of the defendant's agents, the Speaker of the Council of Representatives, being in this capacity, the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman, an amount of one hundred thousand dinars distributed in accordance with the law. The decision has been issued unanimously, final and binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 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 it has been made clear on 15 /Shaaban/ 1445 A.H. which corresponding to 26/2/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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