

Republic of Iraq
Federal Supreme Court
Ref 1/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 25/2/2024 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: Basim Nimr Hasan - His agent the barrister -
Ahmed Mazin Abdul-Wahd.

The Defendant: Head of the Basra Court of Appeal in its appeal capacity/ being in this capacity.

The Claim:

The plaintiff claimed through his agent that the defendant / being in this capacity had previously issued a decision No. (176/Teh/Execution/2023) in the executive file numbered (604/2019) in the Basra Execution Directorate, which includes the ratification of the decision of the judge of the Court of First Instance in Basra, which ordered the release of the debtor (Ahmed Zaki Abboud) for the end of the stipulated period of executive detention article(43) of the amended implementation law No.(45) of 1980, Whereas the defendant's decision did not take into account the provisions of Article (32/3rd) of Sixth Amendment No. (13) of 2019 to the Execution Law, which confirmed the permissibility of imprisoning the debtor until a guarantor is presented, which makes the aforementioned decision incorrect and resulted in a case arising from the application of the Execution Law, as the purpose of enacting laws is to strive hard to ensure rights, and these laws include the implementation law which referred in the reasons for

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it to the purpose for which it was legislated, which is: the good delivery of rights to their owners, which is the purpose of the judicial rulings themselves and the balance between the interests of the creditor and the debtor so that one of them does not prevail on the other, and neither is sacrificed in favor of the other. However, the decision – the subject of the challenge – and through what it contained did not achieve balance because releasing the debtor while refraining from paying what he owed means sacrificing the interests of the creditor, and also makes the decisions of the courts consist in expressing the pronouncement of the right and putting it in its legal quorum without delivering it to its owner, Consequently the inability to maintain private property required by the Constitution in Article (23/1st) thereof, and that what is stated in Article (32/2nd and 3rd) of the Execution Law came with the same purpose as Article (42) thereof, which affirmed that the debtor may be imprisoned if he is able to pay and does not make an appropriate settlement or if he ceases to fulfill the settlement offered to him by the executor of justice, Consequently, the debtor may be imprisoned under Articles (32 and 42), but the debtor's imprisonment under Article 42 is limited to four months in accordance with Article 43 of the Execution Law, while his imprisonment in accordance with Article 32 shall continue until a guarantor is presented. The purpose of the legislator in enacting this provision is to compel the procrastinating debtor despite his financial ability to implement and not to allow him to prolong the payment period or to smuggle his money. The court confirmed by its decision (41/Federal/2021) what is stated in Article (32/3rd) is an expansion of the phenomenon of financial guarantee against the creditor's debt, which indicates that its text does not conflict with the rights and freedoms enshrined in the Constitution and guaranteed to all, the Constitution's guarantee of these rights and freedoms does not

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mean that they may not be restricted or limited if their practices are incorrect, In addition to his position, the defendant had to abide by the court's point of view, because its decisions are final and binding on all authorities, The defendant's interpretation of the phrase (until the presentation of a guarantor guarantor) and its description of the timing of the debtor's release when he brings a guarantor during the period of imprisonment which must not exceed four months and not a time to end his detention has no basis in law, it contradicts the constitutional principle approved by the court and affects the essence of the right affirmed by the Constitution in Article (46), so the plaintiff asked this court to rule that the decision No. (176/Teh/Execution/2023) is invalid and to oblige the defendant to abide by the application of the law and court decisions and to charge him fees, expenses and attorneyship fees, After registering the case with this court No. (1/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 internal regulations of the Federal Supreme Court No. (1) of 2022, the answer of the legal representative of the Chairman of the Supreme Judiciary / being in this capacity in the answering draft dated 11/1/2024 sent according to the letter of the Supreme Judicial Council / Public Relations and Legal Affairs Department / Legal Affairs Department No. (501 /Ain. Qaf. Lawsuits. Beh/ Rusafa/2024) on 11/1/2024 Summary: The Court's lack of jurisdiction to hear the case in accordance with Article (93) of the Constitution of the Republic of Iraq for the year 2005, and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, The President of the Basra Court of Appeal, in its appeal capacity, does not have legal personality and is not entitled to be a litigant in the case in accordance with the provisions of Article 13 of the Judicial Organization Law No.

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160 of 1979, as amended, which did not include granting the courts of appeal in their discriminatory capacity legal personality, article (1) of the Supreme Judicial Council Law No. (45) of 2017 indicated that the Supreme Judicial Council enjoys legal personality and financial and administrative independence. He is represented by his boss or his authorized representative, and the legal personality has not been granted. therefore, the court of appeal has been reject for lack of specific jurisdiction pursuant to the provisions of Article (77) of the Civil Procedure Law No. (83) of 1969, as amended, and the non-direction of litigation based on Article (80) of the same aforementioned law and charge the plaintiff fees, expenses and advocacy fees. After completing the procedures required by the Court's Rules of Procedure, a date was set for the consideration of the case without pleading in accordance with Article (21/3rd) thereof, in which the Court was formed and the case was considered. The court scrutinized the plaintiff's requests and basis and the defenses of the legal representative of the President of the Supreme Judicial Council / being in this capacity, it noted that the prosecutor's agent had submitted a request requesting the inclusion of the President of the Supreme Judicial Council / being in this capacity as a third person. In the lawsuit as a continuation of the litigation, the court decided to reject the request for lack of justification, and since the court completed its scrutinies, the enf of the minutes has been made clear and the court issued the following judgment:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, It was noted that the Summary of the plaintiff's claim (Basim Nimr Hassan) that he requested a ruling on the invalidity of the decision No.

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(176/Teh/Execution/2023), which includes the ratification of the decision of the judge of the Court of First Instance in Basra, which ordered the release of the debtor (Ahmed Zaki Aboud) due to the end of the period of executive detention stipulated in Article (43) of the Execution Law No. (45) of 1980, as amended, And a request to oblige the defendant to abide by the application of the law and the decisions of the Federal Supreme Court, and the plaintiff's attorney also submitted a request to issue a state order to suspend the application of the decision - the subject of the challenge - and the court's decision to hear the case without pleading in accordance with Article (21/3rd) of the internal regulations of this court No.(1) of 2022, And for the court to review the list of the legal representative of the President of the Supreme Judicial Council in addition to his position dated 11/1/2024, who requested the reject the case for the reasons stated therein in detail, and the decision of this court numbered (1/Federal/ State Order/2024) on 17/1/2024 which includes rejecting the request to issue a state order according to what was submitted Plaintiff's agent, for all of the foregoing, and since the competences of this Court are determined by Articles (52 and 93) of the The Constitution of the Republic of Iraq, and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by law No.(25) of 2021, none of these competencies is the plaintiff's requests in the petition. Therefore, the lawsuit shall be reject for lack of jurisdiction, and for the foregoing, the Federal Supreme Court decided to rule as follows:

First: Reject the plaintiff's lawsuit (Basim Nimr Hassan) for lack of jurisdiction.

Second: The plaintiff charged the fees and expenses. The decision has been issued unanimously, final and binding according to the Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005,

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and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021. The decision has been edited in the session dated 14/Shaaban/1445 A.H. corresponding to 25/2/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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