

Republic of Iraq
Federal Supreme Court
Ref. 200 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 31/10/2023 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: Ronia Fakhir Hussein – her agents, the barristers Rasheed Hameed Fayadh and Ridha Falah Hasan.

The Defendants: 1- Preident of the Republic/ being in this capacity – his agents, the Head of legal experts Ghazi Ibrahim Al-Janabi and the legal counselor Salah Lazim Shamkhi.
2- Speaker of the ICR/ being in this capacity – his agent the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff, through her agents, claimed that the dissolved Revolutionary Command Council issued its decision No. (951, dated 6/15/1980), which included the final closure of the two investigative cases No. (5/79) and (9/79) deposited with the Harir Police Station against those accused therein of the crime of assassination. Her late father (Fakher Hussein) is in the lawsuit numbered (5/79), and since the aforementioned decision violates the Constitution of the Republic of Iraq for the year 2005, and the party issuing it violated the legal procedures stipulated in the Penal Code and the Code of Criminal Procedure regarding amnesty or suspension of legal proceedings under the law, and since Its continued validity and enforcement harms her rights, as the Erbil Criminal Court decided to abstain from examining the case against the defendants in the case of her father's assassination by its decision No. (65/Jim/1980) dated 7/19/1980 due to the issuance of the decision of the dissolved Revolutionary Command Council that is the subject of the case, therefore, the plaintiff asked this court to rule it unconstitutional and to cancel the (dissolved) Revolutionary Command Council's decision No. (951 dated 6/15/1980) and to charge the defendants with the expenses and advocacy fees. The case was registered with this court in the number

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(200/Federal/2023), the legal fee was collected and the defendants were notified of its petition and documents in accordance with Article (21/First and Second) of the Bylaw of the Federal Supreme Court No. (1) of 2022. The agent for the first defendant responded with the answering draft dated August 30, 2023, he requested that the lawsuit be dismissed because his client is not a suitable litigant in it, in addition to not stating the constitutional text that the decision is alleged to have violated and that the two decisions - the subject of the appeal - are among the legislative decisions in force following Article (130) of the Constitution, therefore, closing the two cases and stopping legal proceedings against the defendants is a valid legal measure that came in implementation of the provisions of Article (300) of the Code of Criminal Procedure No. (23) of 1971. The representative of the second defendant responded in the answer statement dated 8/24/2023, with its conclusion: that the decision is superseded. The appeal has been implemented, and its provisions are no longer valid, it is considered an ineffective decision, considering it is outside the court's jurisdiction under Article (93/First) of the Constitution, and likewise concerning the claim that it violated other laws, it is also outside the court's jurisdiction, Therefore, he requested that the lawsuit be dismissed and that the plaintiff shall burden the expenses and fees. After completing the procedures required by the court's bylaws, a date for pleading was set in accordance with Article (21/Third) thereof and the parties were notified of it. The court was formed and the plaintiff's two agents attended and the first defendant's agent, the legal counselor (Salah Lazem Shamkhi) attended, the agent for the second defendant was present, and the public in-person pleading was initiated. The plaintiff's two agents repeated what was stated in the lawsuit petition and requested a ruling accordingly. The defendants' agents responded and each of them requested that the lawsuit be dismissed for the reasons stated in the answering statements attached to the lawsuit papers. Each party repeated its previous statements and requests, and nothing remained to be said. The end of the argument has been made clear and the court issued the following ruling:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was noted that the summary of plaintiff Ronia Fakher Hussein's lawsuit is that she requests a ruling to cancel the dissolved Revolutionary Command Council's decision No. (951) of 6/15/1980, according to which the two investigative cases No. (5/79) and (9) were closed. /79) deposited with the Harir Police Station against the defendants in a final manner for the crime of assassinating the plaintiff's late father (Fakher Hussein) and for the reasons that the plaintiff stated in detail in the lawsuit petition and referred to above in the introduction to the decision. The court also reviewed the answer of the first defendant's representative, the President of the Republic, in addition. For his job in his regulations dated August 30, 2023, the summary of which is: his client is not a suitable opponent in this case, and the plaintiff did not specify the constitutional text that the decision violated, and the decisions of the former regime are legislative in force based on the provisions of Article (130) of the Constitution of the Republic of Iraq for the year 2005, he requested the lawsuit be dismissed, the court also reviewed the draft of the agent of the second defendant, the Speaker of the Council of Representatives, being in this capacity, according to which he requested that the lawsuit be dismissed because - the subject of the decision - had been implemented and its provisions are no longer in effect, and the court is competent to monitor the constitutionality of the laws and regulations in force. The court also reviewed the answer of the plaintiff's agent, in his draft dated 10/8/2023, and concluded: The appealed decision violated the text of Article (19/First, Third, and Six) of the Constitution, and that is because the judiciary is independent and has no authority over it except the law, the decision was a direct interference in the affairs of the judiciary, and the right to litigation is protected and guaranteed to all, while the decision deprived the plaintiff of continuing the complaint and prosecuting the perpetrators, and that every individual has the right to be treated fairly in judicial and administrative procedures, and that the judiciary is assumed by courts of all types and degrees based on According to Article (87) of the Constitution, and Article (132/First) of the Constitution requires that the state ensure the care of those harmed by the oppressive practices of the former regime, and it is not permissible to enact a law that conflicts with the principles of Islam, as it conflicts with the right established

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by Islamic law for the guardian of blood to take retaliation or exempt The killer until the last thing mentioned in the list, and this court finds, after the previous requests and defenses, that the decision of the dissolved Revolutionary Command Council, No. (951) on 6/15/1980, published in the Iraqi newspaper Al-Waqa'i on 7/14/1980, decided to close the two investigative cases, No. (5). /79) and (9/79) at the Harir Police Station in Erbil Governorate, and the legal repercussions taken against the accused are stopped permanently, and the Ministers of Interior and Justice are responsible for implementing this decision, and this decision has been implemented, as indicated in the attachments to the lawsuit, and since the jurisdiction of this court is to monitor The constitutionality of laws and regulations applies to those in force without what has been implemented, and this implementation has ended its effectiveness, as is the case with the above decision, the implementation of which was completed by closing the above two lawsuits, and therefore it has no continued validity after that, this is on the one hand, and on the other hand, the current constitution issued in 2005 regulated transitional justice procedures under the title of transitional provisions, as Article (134) of it stipulated that the Iraqi Criminal Court should continue its work as an independent judicial body to look into the crimes of the defunct dictatorial regime and its symbols, and the Council of Representatives may abolish it by law after completing its work, and the Coalition Authority Order No. (10) of 2005 had been issued, which dealt with the crimes committed from 7/17/1968 until 5/1/2003. This is on the one hand, and on the other hand, the court finds that the plaintiff's lawsuit against the President of the Republic has no merit; this is because the President of the Republic is not competent to legislate laws. For all of the above, the Federal Supreme Court decided the following:

- 1- To judge by dismissing plaintiff Ronia Fakher Hussein's lawsuit in which she requested a ruling on the unconstitutionality of the dissolved Revolutionary Command Council's decision No. (951) dated 6/15/1980 against the first defendant, in addition to his job, because there was no litigation based on Article (80/1) of the Law. Civil Procedures No. (83) of 1969, amended.
- 2- To judge by dismissing the above plaintiff's lawsuit against the second defendant in addition to his job; This is because the resolution of the dissolved Revolutionary Command Council No. (951) dated 6/15/1980 is not currently

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enforceable. This is because the court, based on Article (93/First), is responsible for monitoring the constitutionality of the laws and regulations in force.

- 3- To judge by dismissing the above plaintiff's lawsuit against the second defendant being in this capacity; This is because the resolution of the dissolved Revolutionary Command Council No. (951) dated 6/15/1980 is not currently enforceable. This is because the court, based on Article (93/First), is responsible for monitoring the constitutionality of the laws and regulations in force. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93/1st) 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 edited in the session dated 15/Rabea Al-Akhir/1445 Hijri coinciding with 31/October/2023 AD.

Judge

Jassim Mohammed Abboud
President of the Federal Supreme Court

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