

Republic of Iraq  
Federal Supreme Court  
Ref. 212 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 25/10/2023 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: Deputy Director of Sedros Company for General Trading and the Commercial Brand, Ltd/ being in this capacity, his agent the barrister Hayder Hasan Sadiq.

The Defendants: 1- Speaker of the ICR/ being in this capacity – his agent the official jurist Saman Muhsin Ibrahim.

2- Minister of Planning/ being in this capacity – his agent the legal counselor Maha Sabeeh Sadiq.

3-President of the Central Office of Standardization and Quality Control/ being in this capacity.

### **The Claim**

The plaintiff's agent claimed that his client's company had previously submitted applications to register industrial models to (the third defendant, affiliated with the second defendant), but it was rejected according to the rejection letters numbered ((4/5/13254 regarding the rejection of the application for industrial model 67/2021) and (4/ 5/13267 regarding the rejection of the application for the industrial model 69/2021) and (4/5/13269 regarding the rejection of the application for the industrial model 70/2021) and (4/5/13270 regarding the rejection of the application for the industrial model 71/2021) and (4/5/ 13271 regarding the rejection of the application for industrial model 72/2021) and (4/5/13272 regarding the rejection of the application for industrial model 73/2021), based on the text of Article (37/2) of the Law on Patents, Industrial Designs, Undisclosed Information, Integrated Circuits, and Plant Varieties. No. (65) of 1970, which states: (1- Every application that does not meet the conditions outlined in the system will be rejected. 2- The applicant may object to the Registrar's decision within thirty days from the date of his notification of it to the Minister, and his decision in this regard shall be final),

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 212 / federal /2023



Kurdish text

and since this text contradicts the Constitution, specifically Article 100 thereof, which stipulates that: (It is prohibited to stipulate in the laws that any action or administrative decision is immunized from appeal) because it includes immunization of the decisions issued by the Minister of Planning (the second defendant) from the methods of appeal established by the law, and since the Iraqi legislator has given the courts jurisdiction over all decisions, therefore, a request to rule that Article (37/2) of the Law on Patents, Industrial Designs, Undisclosed Information, Integrated Circuits, and Plant Varieties No. (65) of 1970 is unconstitutional, and to charge the defendants with fees, expenses, and advocacy fees. The case was registered with this court under the number (212/Federal/2023), and the legal fee was collected and notified to the defendants based on Article (21/First and Second) of the internal regulations of the Federal Supreme Court No. (1) of 2022. The attorney for the first defendant responded with the answer statement dated 9/17/2023 Conclusion: The law - the subject of the appeal is one of the laws in force based on Article (130) of the Constitution, and the text - the subject of the appeal - is considered a legislative choice that does not violate any of the constitutional texts, since the subject of the appeal relates to a purely technical issue, and the defendants (the second and third) have discretionary authority to evaluate whether the plaintiff's subject matter represents a new invention or not and to request dismissal of the lawsuit. The agent of the second defendant answered in the answering draft dated 19/9/2023, its conclusion: that the challenged text is intended to be applied by the Central Office for Standardization and Quality Control, which has a legal personality and financial and administrative independence based on Article (1/Third) of the Central Office for Standardization and Quality Control Law No. (54) of 1979, and that the rejection of applications for registration of industrial models submitted by the plaintiff was accompanied by the Minister's approval of the rejection for violating the conditions stipulated in the aforementioned law, the lawsuit does not fall within the jurisdiction of the court, given that the contested text is not considered to violate the Constitution. Rather, it only indicated the finality of the minister's decision regarding the outcome of the objection submitted by the objector. This means that there is no other administrative body to which the objector can resort to consider the objection and since many of the legal texts that It was enacted after 2005 included a final

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 212 / federal /2023



Kurdish text

statement regarding the decision issued by the administration, and the rejection decision is an administrative decision issued by the competent authority of the administration, which meant that the plaintiff should have resorted to other methods of appeal prescribed by law in such cases, therefore, she requested that the lawsuit be dismissed and that the plaintiff be charged the costs, fees, and attorney's fees. After completing the procedures required by the court's internal regulations, a date for pleading was set and the parties were notified of it. The court was formed and the plaintiff's agent attended, the first defendant's agent attended, and the fourth-degree employee (Zakaria Halim Ali) appeared on behalf of the second defendant, and the court decided not to accept it for not fulfilling the condition stipulated in Article (41/ Second) from the court's Bylaw, which stipulates: "Claims and requests are submitted by official departments and are pleaded...by their legal representative, provided that his job title is no less than an advisor, assistant advisor, or director."), the agent for the third defendant did not attend, despite notification following the law, and the public in-person pleading was initiated. The plaintiff's agent repeated what was stated in the lawsuit petition and requested a ruling according to what was stated therein. The first defendant's agent responded and asked to dismiss the case for the reasons stated in his answering draft, and each of the agents of the plaintiff and the first defendant's repeated their previous statements and requests since there was nothing left to say, the end of the argument 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, the deputy director of Sedros General Trading and Commercial Agencies Ltd., being in this capacity, claimed through his agent that his client's company had previously submitted several applications for registration of industrial models - related to cigarette packs - to the third defendant, head of the Central Organization for Standardization. And qualitative control/an addition to his position under the second defendant, the Minister of Planning/an addition to his position, and after registering the applications in the numbers referred to in the lawsuit petition, the Registrar of Patents and Industrial Designs rejected them all

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 212 / federal /2023



Kurdish text

according to the dates mentioned for each of them, and after objecting to the decisions of the registrar with the second defendant, the Minister of Planning, in addition. For his job, all objections were rejected in accordance with the conditions contained in Article (37) of the Law of Patents, Industrial Designs, Undisclosed Information, Integrated Circuits, and Plant Varieties No. (65) of 1970, as amended based on the provisions of Paragraph (2) of Article (37) of the same law, which stipulates that: (2- The applicant may object to the Registrar's decision within thirty days from the date of his notification to the Minister, and his decision in this regard shall be final) and in violation of the text of Paragraph (2) of Article (37) of the aforementioned law with the provisions of Article (100) of the Constitution of the Republic of Iraq of 2005 which stipulates (It is prohibited to stipulate in the laws that any action or administrative decision is immune from appeal) and because the text of the above article includes immunity for the decisions of the Minister, i.e. the Minister of Planning/being in this capacity, from appeal, therefore, the plaintiff/being in this capacity requested, through his agent, a ruling on the unconstitutionality of Article (37/2) of the Law on Patents, Industrial Designs, Undisclosed Information, Integrated Circuits, and Plant Varieties No. (65) of 1970, as amended, and to charge the defendants/in addition to their jobs the fees and expenses, and the court finds that The plaintiff filed the lawsuit against the second and third defendants (Minister of Planning and Head of the Central Organization for Standardization and Quality Control/in addition to their jobs) despite their lack of relation to the legislation of the challenged text as unconstitutional, whereas the defendant is required to be an adversary whose acknowledgment results in a ruling appreciating the issuance of an acknowledgment from him, and to be convicted or obligated to do something based on the proof of the case in accordance with what is stipulated in Article (4) of the Iraqi Civil Procedure Law No. (83) Of 1969 as amended, and to prove that the claim is not proven. The dispute between the second and third defendants was directed because the conditions stipulated in Article (4) of the Civil Procedure Law were not met in each of them, and since Article (80/1) of the Civil Procedure Law stipulates (1 - If the dispute is not directed, the court shall rule itself, even on its own initiative to dismiss the lawsuit without entering into its basis), thus, the plaintiff's lawsuit against the two aforementioned defendants must be rejected. As

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 212 / federal /2023



Kurdish text

for the first defendant, Speaker of the Council of Representatives, in addition to his position, his dispute is established, and jurisdiction is vested in this court, given its oversight of the constitutionality of the laws and regulations in force based on the provisions of Article (93/First) of the Constitution. The Republic of Iraq for the year 2005, and the plaintiff has a vested interest in filing the lawsuit because the text whose constitutionality is being challenged has been applied to him, and since Article (100) of the Constitution of the Republic of Iraq for the year 2005 included prohibiting the text in laws to immunize administrative decisions from being challenged before the competent authorities, and since the law Patents and Industrial Designs No. (65) of 1970, as amended, includes an explicit text that immunizes the decisions of the second defendant, the Minister of Planning/in addition to his job, from appeal, through the phrase (and his decision in this regard shall be final) contained in Paragraph (2) of Article (37) of the law abovementioned, which results in depriving the concerned parties of defending their rights through the methods established by the law because the aforementioned statement violates the provisions of Article (100) of the Constitution, which requires a ruling to dismiss the plaintiff's claim in this regard and to dismiss the lawsuit with respect to the rest of the content of Paragraph (2) of Article (37) referred to above; Because it does not involve any constitutional violation, and based on the above, the Federal Supreme Court decided the following:

First - ruling that the phrase (and his decision in this regard shall be final) unconstitutional contained in Paragraph (2) of Article (37) of the Law of Patents, Industrial Designs, Undisclosed Information, Integrated Circuits and Plant Varieties No. (65) Of 1970, as amended, and dismissing the claim of the Plaintiff the Deputy Director of Sedros General Trading and Commercial Agencies Limited, being in this capacity with respect to the rest of the text of the above paragraph, as it does not involve any constitutional violation.

Second - Ruling to dismiss the plaintiff's lawsuit, the authorized director of Sedros General Trading and Commercial Agencies Limited Company/being in this capacity, towards the second and third defendants, both (Minister of Planning and Head of the Central Office for Standardization and Quality Control/being in this capacity) because the dispute was not directed.

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 212 / federal /2023



Kurdish text

Third – To burden the plaintiff and the first defendant, the Speaker of the Council of Representatives, in addition to his job, with the relative fees and expenses, and charge the plaintiff for the fees of the first defendant’s agent, the official jurist Saman Mohsen Ibrahim, for twenty-five thousand dinars, disbursed following the law, and charge the first defendant with the fees of the plaintiff’s agent, lawyer Haider Hassan Sadiq, in an amount of twenty-five thousand Dinar.

Fourth - The plaintiff charged the advocacy fees of the defendant’s agent, the Minister of Planning, being in this capacity as the legal advisor, Maha Subeih Sadiq, an amount of fifty thousand dinars, which was disbursed to her following the law.

The decision has been issued with majority, 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 9/Rabea Al-Akhir/1445 Hijri coinciding with 25/October/2023 AD.

**Judge**

**Jassim Mohammed Abbood**  
**President of the Federal Supreme Court**

*saady*