

Republic of Iraq
Federal Supreme Court
Ref. 217 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/10/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, 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: Mohammed Nasir Salim Muhsin/ being in this capacity (deputy director of Ard Al-Misk for brokerage of foreign currencies exchange).

The Defendant: the Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

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 grant it that authority, on the basis of which instructions were issued for the establishment of banking companies and brokerage companies for the sale and purchase of foreign currencies, namely ((Instructions for the year 2007), Instructions No. (8) of 2015 and Instructions No. (1) of the year 2021 and Instructions No. (1) of 2022), which included granting the Central Bank the authority to impose fees and fees on the aforementioned companies, This is contrary to the Constitution, which stipulates in Article (28/I) thereof that "Taxes and fees shall not be imposed, shall not be amended, shall not be collected,

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and shall not be exempted from them except by law", and shall also impose fines and penalties on companies for non-payment of fees when violating its instructions 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, Therefore, the plaintiff asked 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 to judge by the unconstitutionality of paragraph (3) of Article (10) and paragraph (I) of Article (12) of the Instructions for the Regulation of the Work of Banking Companies and Brokerage Companies by Selling and Buying Foreign Currencies No. (1) of 2022, obliging the defendant to return all the amounts collected from the companies in contravention of the provisions of the Constitution, and the ruling of the unconstitutionality of Article (62) of the Central Bank Law No. (56) of 2004 and the charging of the defendant's expenses and attorneys' fees. The case was registered with this court in the number (217/federal/2022) and the legal fee for it was met in accordance with Article (21/1st) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and the defendant is informed of its petition and documents following item (2nd) of the same article, and his agents replied to the answer regulation dated 26/9/2022 that included detailed formal and substantive defenses concluding their request to dismiss the plaintiff's claim and charge him fees, expenses, and advocacy fees. After completing the procedures stipulated in the Bylaw of the Court, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day the court was formed and the plaintiff was present in

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particular, and the defendant's agents attended and began to conduct the public pleading in public, the plaintiff repeated what was stated in the petition and requested the judgment thereunder and added that the authorized director of the Misk Land Company is Morteza Khaled Kazim and that he filed this lawsuit as the assistant to the authorized director to familiarize him with information on the subject, the agents of the defendant answered and requested to reject the case for the reasons listed in their answering draft attached to the case's papers. They added that the plaintiff has no capacity to initiate this case, whereas it should be presented by the deputy director of the Company. Both parties repeated their previous sayings and requests, whereas nothing was left to be said, 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's case included a request to rule on the unconstitutionality of paragraph (3rd) of Article (10) and paragraph (1st) of Article (12) of the Instructions for Regulating the Work of Exchange Companies and Brokerage Companies by Selling and Buying Foreign Currencies Amended No. (1) of 2022, which grants the Central Bank the authority to impose fees and wages on the said companies, as well as the ruling on the unconstitutionality of Article (62) of the Central Bank of Iraq Law No. (56) of 2004 for the reasons he stated in his petition. He also requested the issuance of an urgent state order to prevent the Central Bank of Iraq from imposing fees and fines and not to require companies to pay them until the case is resolved. By reviewing the case papers and documents and the defenses of the defendant's agents, the

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court finds that each company has an authorized director appointed from among its members or from third parties with experience and competence in the field of the company's activity and his powers and powers are determined by the board of directors of the company or the general body. Articles (121 and 123) thereof, Whereas the minutes of the establishment of the Misk Land Company for the mediation of the sale and purchase of foreign currencies dated 28/7/2020 gave in paragraph (1st/Zin) of it to the authorized director the right to represent the company before the official and semi-official departments and to manage its business. Morteza Khalid Kazim was appointed as the authorized director of the company, while the plaintiff was appointed following paragraph (2nd) of the said minutes as an assistant to the authorized director, and the lawsuit was filed by the plaintiff in his said capacity and not filed by the authorized director of the company, so the plaintiff's litigation in the lawsuit is not directed and if the litigation is not directed, the court shall rule on its motion to dismiss the case without entering into its basis following article (80/1) of the Code of Civil Procedure No. (83) of 1969 as amended. When the Supreme Federal Court decided to rule: first- to reject the request of the plaintiff to issue an urgent state order to inhibit the central bank from imposing the fees and fines, and not to demand the companies to pay them. Second: to reject the case of the plaintiff Mohammed Nasir Salim and to burden him with all the judicial expenses, including the advocacy fees for the agents of the defendant/ being in this capacity amount of one hundred thousand Iraqi dinars, to be divided between them in accordance with the law. The decision has been issued unanimously and final for all authorities according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for

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2021. The decision has been made clear on 14/Rabee Al-Awal/1444 Hijri coinciding with 11/October/2022 AD.

Signature of
The president
Jasem Mohammad Abbood