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The Federal Supreme Court (F S C) has been convened on 30/11/2022 headed by Judge Jassim Mohammed Abood and membership of Judges, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Appellant of Unconstitutionality: Personal Status Court of Halabcha which belongs to the Presidency of Kurdistan Appeal Court.

The Challenged Text for Unconstitutionality: article 18th of Law No. (15) for 2008 (amendment law of personal status law No. (188) for 1959, as amended in the region of Kurdistan).

The Abstract of the Challenge

The Federal Supreme Court received the letter of the representation of the Kurdistan Regional Government in Baghdad / General Directorate of Relations and Follow-up Affairs No. (20303 on 27/9/2022) and its attachment was the letter of the Judicial Council of the Kurdistan Region / Directorate of Relations and Legal Affairs No. (2251 on 7/8/2022) according to which the list of appeals submitted to this court by the judge of the Personal Status Court in Halabcha affiliated with the Presidency of the Sulaymaniyah Region Court of Appeal No. (571 on 23/8/2021) was sent based on the reading submitted to it by a member of the Public Prosecution in its numbered (27/2021 dated 26/7/2021) Regarding the violation of Article (40th/5) of the Personal Status Law amended by Law No. (15 of 2008) of the Constitution of the Republic of

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Iraq for the year 2005 in Article (2 /1st/ Alif) thereof and being contrary to the provisions of Islamic Sharia, based on the provisions of Article (3) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2005 and Article (4 / First) of the amended Federal Supreme Court Law, and the list of appeals included the following: The National Council of Kurdistan – Iraq (currently the parliament) issued law No. (15 of 2008) and in its eighteenth article, amending paragraph (fifth) of Article (forty) of the Personal Status Law No. (188) of 1959, which stipulates that (paragraph (5) of Article forty of the Law shall be suspended and replaced by the following: 5- If the husband marries a second wife, the first wife has the right to request separation, and this court considers that the aforementioned text has no basis in Islamic law since there is no jurisprudential opinion in Islamic schools of thought, which supports the wife's right to request separation as soon as her husband marries a second wife.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the challenge of unconstitutionality focuses on the provisions of Article (Eighteen) of Law No. (15 of 2008 Law amending the application of Personal Status Law No. (188) of 1959 as amended in the Kurdistan Region of Iraq)), amending paragraph (fifth) of Article (forty) of the Personal Status Law No. (188) of 1959, as amended, where the article in question stipulates ((Paragraph (5) of Article Forty of the Law shall be suspended and replaced by 5- If the husband marries a second wife, the first wife has the right to request separation)), on the basis that it violates the provisions of the Islamic Sharia and that there is no jurisprudential opinion in the Islamic schools of thought that supports

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what is stated therein, which makes the text unconstitutional because it violates the provisions of the Shariah, the Federal Supreme Court finds the following: First: Marriage is a bond between a man and a woman that has a special nature that differs from any other bond that a person undertakes in his life, as this bond entails since its convening a new situation for its parties and that it is as old as the history of humanity, as the Almighty said in his holy book, addressing Adam, peace be upon him (We said, "O Adam, live with your wife in Paradise. And eat freely what you like. But don't approach this tree, lest you be unjust.") - Surat Al-Baqara-verse (35), the Almighty also said: (And you, Adam, live with your wife in Paradise, and eat what you please; but don't come near this tree; otherwise, you'll be sinners.") - Surat Al-A'araf - verse (19), The heavenly laws and Islamic law came in particular for the purpose of lifting the embarrassment of people and paying the damage from them and achieving the interests of the people and to reform their affairs sooner and later, and Islamic law was characterized by a statement of the causes, causes, provisions and objectives behind each legal ruling, whether in worship or in transactions, and whether it is related to individual or collective human behavior, the act if devoid of its purpose and purpose is in vain and God Almighty is impartial from that, the Almighty said (We didn't create the sky, the earth, and everything between them in play). Surat Al-Anbiya'a - verse (16), the Almighty also said: (Did you think that We created you without purpose and that you won't be returned to Us?") Surat Al-Muaminun - verse (115), when a person is sure of the righteousness and integrity of his law, he must exert himself in applying it and acting according to it. Islam has legalized marriage and set a tight system for it based on a set of legal rulings aimed at preserving society, family happiness, the spread of virtue, preserving morals, and the survival of the human species, since the innate need between men and

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women necessitated a link between them based on affection, mercy, and compassion. Matrimony, which means marriage means joining and conjugation and the meaning of both terms in the terminology is a contract that restricts the man's right to enjoy the woman who falls under his infallibility by the contract and restricts her right to enjoy it alone. Because of the importance of the marriage contract, Islamic law has dealt with its provisions in detail according to what was stated in the Holy Qur'an and the Sunnah of the Prophet as the basis for the formation of the family and society and a verse of God as he said (Among His signs: He created for you spouses of your kind, so that you may find tranquility in them. And He planted among you love and compassion. These are signs for thinkers). Surat Al-Rum - verse (21), his Almighty also said : (God made for you spouses of your kind.) Surat An-Nahl - verse (72), his Almighty also said: (Help the singles among you get married. And also, your righteous servants, male or female. If they're poor, God will make them self-sufficient by His grace. God is Vast and All-Knowing). Verse (32) (Let those who can't afford to marry abstain – until God by His grace makes them self-sufficient) Surat An-Nur, verse (33), the Messenger of Allah (peace be upon him) said as it says in the seas of lights (whoever marries has achieved half of his religion, let him fear Allah in the remaining half), and he said (peace be upon him) (O young people, whoever of you can get married, let him get married, and whoever cannot do it, let him fast, it is for him and he came), and he said (peace be upon him) (Marriage is my year, so whoever desires my year is not from me). The divine laws consider that non-marriage is an unnatural and abnormal situation for men and women, as Jewish jurists have argued that marriage is obligatory and that the fact that a Jew male or a Jew female remains in celibacy is contrary to religion, as is the case with Christianity, as monasticism allows all men and women, but this is not possible for unmarried people and widows if they do not control themselves, because marriage for them is more suitable than drowning

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in what is contrary to religion. Islamic jurists argued that marriage bears the five legal rulings (obligation, scarring, hatred, prohibition, and permissibility), so marriage does not have one steady ruling that applies to all taxpayers, but each person has his provision according to the circumstances surrounding him, whether financial, physical or moral. The principle is that it is desirable and not obligatory for men and women, but it becomes obligatory when a person can marry financially and physically and is not safe for himself from falling into adultery, and a man who does not have money to support the wife or that he knows himself cannot cohabit with her in favor is forbidden to marry, and it is hated for a man who has money to spend and does not fear for himself to fall into sin but is afraid to offend his wife, Islamic jurists have protested against this by his Almighty saying (If you fear you cannot act fairly towards the orphans – then marry the women you like – two, or three, or four. But if you fear you will not be fair, then one, or what you already have. That makes it more likely that you avoid bias). Surat Al-Nisa'a - verse (3), also his Almighty saying (And wed the singles among you, and those who are fit among your servants and maids. If they are poor, God will enrich them from His bounty. God is All-Encompassing, All-Knowing) Surat Annur - verse (32), They also invoked the words of the Prophet Muhammad (peace be upon him) (Marriage is from my Sunnah, so whoever does not work with my Sunnah is not from me, and get married, for I will multiply with you the nations on the Day of Resurrection, and whoever is adult, let him marry, and whoever does not find it, he must fast, then fasting is for him moral perversion). As for the Iraqi Personal Status Law No. 188 of 1959, as amended, marriage is defined under article (3rd/1) thereof, which stipulates that "marriage is a contract between a man and a woman that is legally permissible for the purpose of establishing a bond for common life and offspring." Relying on that of what his Almighty saying (God

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has given you mates from among yourselves; and has produced for you, from your mates, children, and grandchildren; and has provided you with good things. Will they then believe in falsehood, and refuse God's favors?) Surat Annahil - verse (72). second: Polygamy is an important and sensitive subject, and this system was prevalent before the advent of Islam in many civilized and uncivilized peoples. Islam did not establish this system and did not oblige it on Muslims, but rather maintained polygamy and laid foundations for it to regulate it, and did not make this system a necessary imposition on Muslim men. Islamic law did not require women and their families to accept marriage to a man who has one or more wives. Rather, it gave the woman and her family the choice to accept if they found that it was beneficial. and interest or rejection if it is the contrary. Islam legislated marriage in a way that guarantees the interest of the spouses, the interest of the children who give birth to it, and the interest of society, and decided for the woman her humanity and entity, took into account her feelings, recognized her right to accept or reject her hand, proved her right to inheritance, and determined its amount according to her situation from the degree of kinship from the deceased, and between her rights over her husband and her husband's rights over her, And obligated her dowry, thus abolishing the marriage of the quarrel and determining the responsibilities of the parents towards their children and enacting the system of separation in a way that ensures the interest of the spouses and determining the degrees of kinship between relatives and how to solidarity between them, and with regard to the permissibility of polygamy or not in the heavenly laws, the Jewish religion was polygamy in which it is permissible for the Jews and there is no text that prohibits it and a Jew may marry women what he liked unconditionally, but in the Middle Ages and because of what the Jewish communities in Europe encounter from Persecution

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due to polygamy forbade it among Jews, but for Christianity, polygamy was practiced at the beginning of Christianity according to the polygamy that existed in Judaism and in later times marriage was limited to one only. As for Islamic law, the legality of polygamy is based on the Qur'anic texts and on what was stated in the honorable Sunnah of the Prophet, as for the Quranic texts, his Almighty saying (If you fear you cannot act fairly towards the orphans – then marry the women you like – two, or three, or four. But if you fear you will not be fair, then one, or what you already have. That makes it more likely that you avoid bias). Surat Al-Nisa'a – verse (3). According to this, most jurists agreed on the permissibility of marriage for two, three, or four women, and The aforementioned verse in meaning is similar to his Almighty saying (Maker of the angels messengers with wings – double, triple, and quadruple. He adds to creation as He wills. God can do all things) Surat Fatir – verse (1), According to the opinion of the jurists, (and) without (or) in the verse because the choice of (or) feels that it is permissible only one of the mentioned numbers and not the other. Based on the provisions of verse (3) of Surat An-Nisaa, it is not permissible to have under the infallibility of a Muslim man more than four wives, and if he marries them fifth, the contract is corrupt, but if he divorces one of his wives irrevocably and waits until her waiting period ends, he may marry another and thus take the Hanafis and Hanbalis, while the Malikis, Shafi'is and Imami Shiites allow him to marry another immediately after the divorce if it is invalid. According to the opinion of the Muslim public, the permissibility of polygamy up to four is conditional on justice between wives, and whoever is not sure of his ability to achieve justice between his wives, is not permissible for him to marry more than one woman, and if he marries while he is confident of his inability to do justice, then marriage is valid and he is sinful, the conditional justice under the aforementioned

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verse is material justice in housing, food, drink, clothing and overnight stay, not moral justice, and Muslim jurists protested against this by his Almighty saying, " (You will not be able to treat women with equal fairness, no matter how much you desire it. But do not be so biased as to leave another suspended. If you make amends and act righteously –God is Forgiving and Merciful), As the justice intended by this verse is justice in love and the inclination of the heart between women, it is not possible, but the husband must not completely turn away from one of his wives and leave her just like the ignored person, neither she has a husband nor is she divorced, and according to the opinion of the audience of jurists that God does not blame the husband for some inclination unless he is excessive in estrangement and money all the inclination and that the saying that polygamy is conditional on achieving justice between them and this cannot be achieved according to the Almighty (You will not be able to treat women with equal fairness, no matter how much you desire it), the aforementioned text is rejected according to the opinion of the jurisprudents, It is unreasonable that Allah Almighty permits polygamy and attaches it to a condition that is impossible to achieve, and if Allah wanted to prevent polygamy, he would prevent it directly with one word, because Allah is able to do so, and He is the one who knows the conditions of His servants, as is the case with the prohibition of combining the two sisters, his Almighty said (Forbidden for you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, your brother's daughters, your sister's daughters, your foster-mothers who nursed you, your sisters through nursing, your wives' mothers, and your stepdaughters in your guardianship – born of wives you have gone into – but if you have not gone into them, there is no blame on you. And the wives of your genetic sons, and marrying two sisters simultaneously. Except what is past. God is Oft-Forgiving, Most Merciful) Surat Annisa'a - verse (23), As the verses of the Holy Qur'an interpret each other and their provisions

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complement each other in a way that leads to achieving the best interests of the people, so the provision contained in verse (24) of Surat An-Nisa is complementary to the judgment contained in the aforementioned verse. His Almighty said (And all married women, except those you rightfully possess. This is God's decree, binding upon you. Permitted for you are those that lie outside these limits, provided you seek them in legal marriage, with gifts from your property, seeking wedlock, not prostitution. If you wish to enjoy them, then give them their dowry – a legal obligation. You commit no error by agreeing to any change to the dowry. God is All-Knowing, Most Wise). As for the honorable Sunnah of the Prophet, it was stated in the interpretation of Al-Manar (Ghilan bin Salmah Al-Thaqafi that when he became Muslim, there were ten women under his infallibility, so the Messenger of Allah (peace and blessings of Allaah be upon him) ordered him to choose four of them and leave the rest of them), and it was stated in Sunan al-Tirmidhi within the chapter on the settlement between the wives that the Messenger of Allah (peace be upon him) said (if a man has two women and there is no justice between them, he will come on the Day of Resurrection and his part will fall and in another word and his slit is italicized), and it came in the fourth part of the interpretation of the Meezan of the scholar Sayyid Muhammad Hussein Tabatabai (Islam put the structure of human society on the basis of rational life without the sensory life, so what is followed by it is mental righteousness in social norms without what the sensations like and emotions are attracted to It is not in that the fatality of emotions and tender sensations and the invalidation of the rule of divine gifts and natural instincts, it is recognized in the psychological faith that the spiritual qualities and emotions and feelings of the inner vary quantitatively and qualitatively according to education and habit as many of the arts and sciences praised when the Easterners, for example,

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reprehensible to the Westerners and vice versa and every nation differs with others in each other, and religious education in Islam evaluates the Islamic woman in a place that does not suffer with the likes of her emotions). Muslim jurists of different sects have developed detailed provisions regarding polygamy in all its details, including that this issue can not be considered worldly matters, but it is at the heart of the religious legislative provisions derived from the Qur'an and Sunnah, in the Hanafi school we find in Al-Mabsoot Al-Sarkhsi the book of marriage and he showed it (it is not permissible for a man to combine more than four women in marriage), while the Maliki jurisprudence we find at the beginning of the mujtahid Ibn Rushd a review of all opinions on the issue of polygamy where Ibn Rushd said: Muslims agreed on the permissibility of marriage with four women, and for the Shafi'i jurisprudence addressed Imam Shafi'i in his book Mother what is forbidden to combine it and what is permissible to combine it in support of the fact that the issue is dealt with by legal rulings and not for personal or worldly whims, while Hanbali jurisprudence has dealt with Ibn Qudamah in his book Al-Mughni issues of polygamy, and for the Imami Shiites has inferred the rule of polygamy is Sheikh Tusi in the fifth century AH, where the jurists before him were satisfied with issuing fatwas with his permissibility without Inference, The scholar Al-Hilli added after Sheikh Tusi, in addition to the consensus and the Sunnah, another evidence, which is the inference of the third verse of Surat Al-Nisa (So marry what is good for you from the women two, three and four) and it follows from all that that Islamic law allowed polygamy, but placed restrictions on that permissibility, the first restriction is the obligation of justice between wives and the assessment of whether or not this is achieved is up to the husband because the speech in the Almighty's saying (You will not be able to treat women with equal fairness)

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was directed to the husbands, The second restriction is the illegality of marriage with more than four women, and the Islamic law has permitted polygamy in accordance with the aforementioned restrictions to keep pace with the changing life conditions of illness or infertility of women, childlessness, inclination, passion, fear of falling into haram and increasing the number of women over men for various reasons. Because of the foregoing, what is stated in Article (18) of Law No. (15) of 2008 issued by the Parliament of the Kurdistan Region, which stipulates ((Paragraph (5) of Article Forty of the Law shall be suspended and replaced by the following: If the husband marries a second wife, the first wife has the right to request separation)) Under this provision, the wife has the right to request separation as soon as her husband marries another wife, whether with or without permission, and whether that marriage has harmed her. Whether or not such marriage is proven, the judge is obliged to rule on separation, meaning that the aforementioned text made marriage to another wife a sufficient reason to oblige the judge to separate the spouses at the request of the wife, whereas this represents a prohibition of legitimate permissibility by God Almighty for the servants, which makes the aforementioned text contrary to the provisions of Islamic Sharia, and since Article (2/a) of the Constitution of the Republic of Iraq of 2005 stipulates (it is not permissible to enact a law that contradicts the constants of the provisions of Islam), so the text of Article (18) mentioned above contradicts the provisions of the above constitutional text, which requires a ruling of its unconstitutionality. Third: The judgment of this court, whether related to formal defects or substantive appeals, but has absolute authority in the face of all and for the state with all its powers and throughout its various organizations, which is an authority that prevents itself from being disputed or sought to be overturned by re-submitting it to this court for review, because the

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litigation in the constitutional lawsuit, which is by its nature one of the lawsuits in kind, is based on matching the contested legislative texts with the provisions of the constitution in order to show their conformity with them in order to uphold the constitutional law and Then the judgment of the fulfillment of the contested legislative text of its formal conditions or deviation from it or its agreement with the substantive provisions of the Constitution or its promoter thereof shall not be considered to be directed to those who were a party to the constitutional litigation alone, but withdrawn to him and to all third parties and infringing on the state that the Constitution obligated in Article (94) thereof and made the supremacy of the Constitution and the convening of sovereignty of its provisions a base for its legal system and a focus for building the basis of judgment in it on what is stipulated in Article (13) of the Constitution in its two paragraphs, The first, according to which the Constitution is considered the supreme and supreme law in Iraq and is binding in all parts of Iraq without exception, and the second, which requires that no law be enacted that contradicts the Constitution and considers null and void any provision contained in the constitutions of the regions or any other legal text that contradicts it. Whereas this court derives its powers directly from the Constitution in the field of constitutional oversight and its reference to its provisions, which is the supreme law, and its word regarding the significance of the texts contained in the Constitution between its two books is the final say, its controls in qualification, and its methods of interpretation are its entrance to disciplined standards that achieve the provisions of the Constitution and its organic unity and ensure alignment with the values of the Community at various stages of its development. Its commitment to enforcing the full dimensions of constitutional legitimacy is nothing but the establishment of the rule of law in its supreme runways in

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fulfillment of the trust entrusted to it by the Constitution and holding the text with its consequences, and it was inevitable that the restriction of its provisions should be absolute and applicable to the State and all people on a foot of full equality, as proved by Article (5/2nd) of the Federal Supreme Court Law. Whereas the Constitution empowers the Federal Supreme Court to interpret legal texts when considering the constitutionality of that legal text in a revealing interpretation of the will of the legislator in the light of which he drafted these texts, forming their content, far from modifying this will, delusion or affiliation, requiring the reality of its dimensions and purposes, these texts are not interpreted in a way that undermines the right content of them or detracts them from their objectives, but rather carries on that will to ensure that they are expressive and crystallized, even if their application has separated them from What the legislator envisaged from them. Whereas the Federal Supreme Court's exercise of this authority requires it, in the light of the foregoing, not to isolate itself from the will of the legislator or to set it aside, but to show it in its standing, in compliance with it, and not to go beyond its investigation beyond its scope. Guided by the historical development of the legal texts that interpret them and the preparatory work that paved the way for them, whether these acts preceded or contemporaneously preceded them, considering that all of this helps them to deduce the purposes of the legislator, that is, that the purpose of interpretation is to reverse their truth, because the origin of legislative texts is not to interpret their phrases in a way that distorts them or extracts them from their context, or separates them from their subject, or distorts them, or returns them to other than their purposes to twist their objectives, on the assessment that the meanings indicated by the texts and which may not be distorted are those that reveal the truth of their content, as the purpose of the constitutional interpretation in such a case

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is to reach a decision on its constitutionality based on the provisions of Article (93/1st) of the Constitution of the Republic of Iraq for the year 2005. In such a case, the will of the legislator must be clarified by deducing this through the constitutional interpretation carried out by the Federal Supreme Court, and on the basis that legal texts always return to the will of the legislator and carry a burden on them, whether the legislator when drafting them is contrary to the right or fair, to determine their true content, whether it is compatible with the provisions of the Constitution or contrary to them. Therefore, the interpretation by the Federal Supreme Court of the legal text challenged by its constitutionality must include or invoke a decision on its constitutionality to determine its suitability to the Constitution or not, and the Court resorts to this to decide through interpretation, whether in the grounds on which the legal text occupies or the purposes it envisages to decide through all of this its constitutionality or not. Concerning the provisions of Article (93/1st) of the Constitution of the Republic of Iraq and Article (4/1st) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, it is clear from the two aforementioned articles that they authorize the court to rule on the unconstitutionality of a legal text in accordance with Article (18) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, when the challenge to its unconstitutionality relates to a dispute before the judiciary that is still ongoing and the adjudication of which depends on The result of challenging the constitutionality of the text before the Federal Supreme Court. The result of challenging the constitutionality of the legal text must be influential in the final outcome of that judicial litigation, whatever its subject or its parties, as the judicial litigation itself reflects the severity of the contradiction between the interests of its parties and is adjudicated only in the light of its guarantees and through

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the judiciary and as a tool for determining the substantive right subject to judicial protection through the acts that constitute it. The benefit recognized by law and reflected in the judicial satisfaction requested or expected by the plaintiff, and that when interpreting the legal text whose constitutionality is challenged, such interpretation must not be a distortion of the legal texts from their meaning or corruption of their purposes, and it also does not make this interpretation as a preliminary matter required to decide in judicial litigation whose parties are struggling for the determination of rights. Therefore, and since the Constitution of the Republic of Iraq of 2005 placed a fundamental restriction on the competence of the legislative authority when exercising its competence to legislate laws, which is the inadmissibility of enacting a law that contradicts the constants of the provisions of Islam after it decided that Islam is the official state religion and is a basic source of legislation based on the provisions of Article (2/1st) of the Constitution, and based on the above, we find that the Constitution approved three principles, namely considering Islam as the official state religion, considering Islam as a basic source of legislation, and the inadmissibility of enacting A law that contradicts the constants of the provisions of Islam and based on the provisions of (13/2nd) of the Constitution, which stipulates that it is not permissible to enact a law that contradicts the Constitution and considers null and void any text contained in the constitutions of the regions or any other legal text that contradicts it, and that this includes laws, whether they were legislated before or after the entry into force of the Constitution.

Accordingly, and in view of the foregoing, the Federal Supreme Court decided the following:

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Ruling on the unconstitutionality of Article Eighteen of Law No. (15) of 2008 Law amending the application of the Personal Status Law No. (188) of 1959 as amended in the Kurdistan Region of Iraq issued by the National Council of Kurdistan – Iraq (currently Parliament)). As of the date of issuance of this decision based on the provisions of Article (37/I) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, which stipulates (The effect of the judgment issued by the court in non-penal texts shall apply from the date of its issuance unless otherwise provided by the judgment).

The decision has been issued with the majority, 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 (4/1st and 5/2nd) 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 dated 5/Jumada Al-Awla /1444 Hijri coinciding 30/November/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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