

Republic of Iraq
Federal Supreme Court
Ref. 258 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 7/12/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalaf Ahmed Rajab, 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 Applicant: Habeeb Ibrahim Hamada/ criminal committee member on
Babylon Court of Appeal with its cassation capacity

The Subject of the Request: to clarify the approval or not about the proposal of challenging the article (15/2nd) of jewelry marking law No. (83) for 1976.

First: the abstract of the Request

Through scrutiny, it became clear that the judge (Habib Ibrahim Hamada/member of the Criminal Committee of the Babylon Court of Appeal in its cassation capacity affiliated to the Babylon Court of Appeal), requested the President of the Babylon Court of Appeal according to his regulations dated 13/11/2022, sent to this court according to the letter of the Presidency of the Babylon Court of Appeal / Office of the President of Appeal No. (1204 / Office / 2022) on 13/11/2022, to approach the Federal Supreme Court to indicate its approval or not of the proposal to appeal Article (15 / II) of the Jewellery Marking Law No. (83) of 1976, Which stipulated that (the jeweler has the right to object to the Minister of Internal Trade, against the decision of the Marking Department issued against him, According to item (jim) of the first paragraph of this article within a period of fifteen days from the date of notification of the decision,

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and the Minister's decision in this regard is considered final), for violating the provisions of Article (100) of the Constitution of the Republic of Iraq for the year 2005, which stipulates (It is prohibited to stipulate in the laws to immunize any act or administrative decision from appeal) for the reasons referred to in detail in the regulation whose conclusion lies: ((The Jewellery Marking Law No. 83 of 1976, published in the Iraqi Gazette No. 2542 on 2/8/1976, contained a legal text contrary to the provisions of the Constitution of the Republic of Iraq of 2005, as Article 15/I thereof allowed the Marking Department to decide to impose disciplinary penalties on every jeweler when he violates the provisions of the law, which lie in the following: (a. drawing attention, b. warning, c. prohibition from practicing the profession, d. withdrawal of leave), according to the details contained therein, and whereas paragraph (second) of the The aforementioned article stipulates that (the jeweler has the right to object to the Minister of Internal Trade against the decision of the Marking Department issued against him, in accordance with item (c) of the first paragraph of this article within a period of fifteen days from the date of being notified of the decision, and the Minister's decision in this regard is considered final)), and because paragraph (second) of the aforementioned article, has been limited to the right of the jeweler to object (grievance) to the penalty of prohibition from practicing the profession only without being inclusive of all other penalties on the one hand, and on the other hand, it explicitly referred to the decision of the administrative authority (the minister) in this regard final, and because that paragraph was contrary to the provisions of Article (100) of the Iraqi Constitution of 2005 with its text (it is prohibited to stipulate in the laws to immunize any work or administrative decision from appeal), and whereas Paragraph (ii) of

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Article (15) mentioned above is still in force and has not been repealed by subsequent legislation or a final court ruling, so we have the desire to challenge its unconstitutionality before the Federal Supreme Court)), on the basis of which the request was submitted.

Second: The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that Judge (Habib Ibrahim Hamadeh / a member of the Criminal Committee of the Babylon Court of Appeal in its cassation capacity affiliated to the Babylon Court of Appeal), requested the President of the Babylon Court of Appeal according to his regulation dated 13/11/2022, sent to this court according to the letter of the Presidency of the Babylon Court of Appeal / Office of the President of Appeal No. (1204/Office/2022) on 13/11/2022, to approach the Federal Supreme Court to indicate its approval or not of the proposal to appeal Article (15/II) of the Wasm Law. Jewellery No. (83) of 1976, which stipulates that (the jeweler has the right to object to the Minister of Internal Trade against the decision of the Marking Department issued against him in accordance with item (c) of the first paragraph of this article within a period of fifteen days from the date on which it informs him of the decision, and the Minister's decision in this regard is considered final), because it was limited to the right of the jeweler to object (grievance) to the penalty of prohibition from practicing the profession only without being inclusive of all other penalties on the one hand, and on the other hand, it explicitly referred to the decision of the administrative authority (the minister) in this regard as final, and thus violated the provisions of Article (100) of the Constitution of the Republic of Iraq

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for the year 2005, which stipulated that (it is prohibited to stipulate in the laws to immunize any work or administrative decision from appeal) for the reasons referred to in detail in the regulation, and the Federal Court finds The above-mentioned request does not rise to the level of the list of challenging the constitutionality of a legal text, this is because it is addressed to the President of the Babylon Court of Appeal and not to this court, as it included the phrase (a desire to challenge unconstitutionality) and not a challenge to unconstitutionality, and the list was entitled (a proposal for an appeal before the Federal Supreme Court), and the request did not include the name of the appellant and the text challenged with its constitutionality in its preamble, and did not indicate in it, whether it was submitted to this court on the occasion of the consideration of a specific lawsuit or not, especially since Article (18) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 published in Iraqi Gazette No. (4679) on 13/6/2022 determined the procedures for challenging the unconstitutionality of the laws and regulations in force, it stipulates that (the Federal Supreme Court shall hear cases filed to challenge the constitutionality of the laws and regulations in force in accordance with the following procedures: First: Any court of its own motion may request during the hearing of the case to decide on the constitutionality of a provision in a law or regulation relating to that case, and a member of the Public Prosecution before that court may request this, and the court shall reserve the original lawsuit, and the request shall be sent to the Federal Supreme Court by a letter signed by the President of the Court of Appeal to which that court belongs, or from The Legal Counsel Department in the Ministries of Defense or Interior in respect of cases pending before military courts and courts of the Internal Security Forces, within ten

saady

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days from the date of issuance of the decision of postponement), In addition to the above, the Federal Supreme Court is not a body to inquire and give legal advice about the possibility of challenging before it the unconstitutionality of a legal text or a system in force, or not, especially since its competencies and powers are defined under Articles (52 and 93) of the Constitution and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021 and other special laws, following the procedures stipulated in the Internal Regulations of the Federal Supreme Court No. (1) of 2022, and did not include these competencies and powers indicate the possibility of inquiring from the Federal Supreme Court about a proposal to challenge the constitutionality of a law or regulation in force, to indicate its approval of the proposal or not, and since the submitted request did not take into account the provisions of Article (18/First) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 mentioned above, Which requires its rejection, and when the above the Federal Supreme Court decided to reject the request. The decision has been made unanimously, final, and binding for all powers according to provisions of articles (93/1st and 94) of the Republic of Iraq Constitution 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 edited in the session dated 12/Jamada Al-Oula/1444 Hijri which coincided 7/December/2022 A.D.

Signature of
The president
Jasem Mohammad Abbood

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