

Republic of Iraq  
Federal Supreme Court  
Ref. 274 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 16/1/2023 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 Sulayman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Appellant: Avin Mohie Al-Deen Ghareeb/ her agent the barrister Adnan Kareem Abbas.

Who Appealed Against: 1. Sattar Ahmed Hajji.  
2. The decision of the personal status Court in Soran within the Court of Erbil Appeal district in case No. (100/Shin/2021).

The Challenged Law for Unconstitutionality: the law of divorced woman right in housing No. (77) for 1983.

### **The Abstract of the Challenge:**

The appellant claimed through its agent under its draft dated 22/12/2022 for which the legal fee was collected on the same date and registered in No. (274/Federal/2022) that it pleaded before the Personal Status Court in Soran, affiliated to the Court of Appeal of Erbil Governorate in the pleading session dated (18/12/2022) in the lawsuit numbered (100/Shin/2021), the unconstitutionality of the application of (Law No. (77) of 1983 on the right of the divorced wife to housing, and demanded that the case file be sent to the Federal Supreme Court to decide on Payment based on the provisions of Article (18/2<sup>nd</sup>) of the

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Internal Regulations of the Federal Supreme Court No. (1) of 2022, but the court rejected the request and issued its decision under the Law on the Right of the Divorced Wife to Housing No. (77 of 1983), note that the aforementioned legislation was repealed and the law amending the Divorced Wife's Right to Housing Law No. 2 of 1994 was legislated and because the decision of the Personal Status Court in the aforementioned Soran was unfair to her and contrary to the provisions of the law and the constitution, so it took the initiative to appeal it within the legal period based on the provisions of article 18/V of the Rules of Procedure of the Federal Supreme Court No. 1 of 2022 for the following reasons: (First: The Law on the Right of a Divorced Wife to Housing No. 77 of 1983 was repealed and replaced by the amendment of the Law on the Right of a Divorced Wife to Housing No. 2 of 1994. Second: The provision under any repealed law is contrary to the principles of the Constitution. Third: Affected by the application of the Divorced Wife's Right to Housing Law No. (77) of 1983, and therefore requested this court to notify the Personal Status Court in Soran of the use of the lawsuit numbered (100/Shin/2021) until the lawsuit is resolved, and the constitutionality of the Divorced Wife's Right to Housing Law No. 77 of 1983 is decided, with the Personal Status Court in Soran notifying the ruling on the aforementioned lawsuit in accordance with the provisions of the Law Amending the Law on the Right of the Divorced Wife to Housing No. (2) of 1994, Appeal Register Before this court with the number (274/federal/2022), and the legal fee for it was collected based on the provisions of article (18/5<sup>th</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and after scrutiny and deliberation, the court issued the following decision:

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### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the list of appeals included several requests: The first: Is the appeal that focuses on the decision of the Personal Status Court in Soran of the Erbil Region Court of Appeal, taken in the pleading session dated (18/12/2022) in the lawsuit numbered (100/Shin/2021), which includes the inadmissibility of the plea raised before it of the unconstitutionality of the Divorced Wife's Right to Housing Law No. (77) of 1983, as amended by Amendment Law No. (2) of 1994, and not Sending the case file to the Federal Supreme Court to decide on the aforementioned plea, based on the provisions of Article (18/5<sup>th</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, As for the second request: it is to notify the Personal Status Court in Soran of the use of the lawsuit numbered (100/Shin/2021) until the appeal is resolved, and the ruling on it following the provisions of the Law amending the Divorced Wife's Right to Housing Law No. (2) of 1994, and the third request: is to decide on the constitutionality of the Divorced Wife's Right to Housing Law No. (77) of 1983 and the Federal Supreme Court finds that the appeal must be dismissed in form, as the Appellant based the statement of appeal on the provisions of Article (18/V) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 mentioned above, which stipulated that ((The decision of the Court of First Instance to reject the case is subject to Non-decision, to appeal before the Federal Supreme Court, within seven days from the date of its rejection or the expiry of the period specified in item (third) of this article)), and that item (third) of the aforementioned article stipulates that (the Court of First Instance shall decide on the acceptance or rejection of the lawsuit within three days from the date of its

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submission), and item (2<sup>nd</sup>) of the same article stipulates that (any of the litigants may plead the unconstitutionality of a legal text or regulation related to a lawsuit pending before the Court of First Instance, and in this case shall be assigned to file a lawsuit for that, and the legal fee shall be paid for it and submitted to the Court of First Instance within ten days from the date of the defense of unconstitutionality), and since the application of the provisions of Article 18 with its second, third, fourth, and fifth paragraphs of the internal system of the aforementioned Federal Supreme Court requires the assignment of the Personal Status Court in Soran, which is affiliated to the Presidency of the Court of Appeal of Erbil Governorate, and appellant to file a lawsuit challenging the unconstitutionality of the Divorced Wife's Right to Housing Law No. 77 of 1983, if Appellant raises a plea before it of the unconstitutionality of the said law, and after filing the lawsuit and collecting the legal fee for it within the period specified in Article 18/II of the Rules of Procedure of the aforementioned Federal Court, the Personal Status Court in Soran decides to accept or reject the lawsuit within the period specified in paragraph (third) of the said article, Whereas the Personal Status Court in Soran rejected the plea of unconstitutionality starting without assigning Appellant to file a lawsuit challenging the unconstitutionality according to the minutes of the session dated (18/12/2022) in the lawsuit numbered (100/Shin/2021), which means that the jurisdiction of this court is not held to rule on the validity of the aforementioned court's decision, as its jurisdiction is only to challenge the validity of the decision of the Court of First Instance to reject the unconstitutionality challenge filed before it or not to decide on it, within seven days from the date of rejection or Upon the expiry of a period of three days from the date of submission and the failure to decide on it based on the provisions of Article 18/3<sup>rd</sup> and 5<sup>th</sup> of the Rules

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of Procedure of the aforementioned Federal Supreme Court, noting that this court is not considered a body to distinguish judgments or decisions issued by courts for lack of competence to do so based on its competences referred exclusively to articles 52 and 93 of the Constitution of the Republic of Iraq of 2005 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, which requires Appellant to abide by that and not to use the phrase distinctive and distinguished in its regulations submitted to this court, and thus the appeal is a decision The Personal Status Court in Soran of the Erbil Governorate Court of Appeal, taken in the pleading session dated (18/12/2022) in the case numbered (100/Shin/2021), the objection raised before her to the unconstitutionality of the Law on the Right of a Divorced Wife to Housing No. 77 of 1983 is inadmissible, the duty of restitution shall be in form. As for the Appellant's requests relating to notifying the Personal Status Court in Soran of the use of the suit numbered (100/Shin/2021), and ruling on them in accordance with the provisions of the Law Amending the Law on the Right of a Divorced Wife to Housing No. (2) of 1994, they must be rejected, as these requests fall outside the jurisdiction of this court referred to above, concerning the Appellant's request to decide on the constitutionality of the Divorced Wife's Right to Housing Law No. 77 of 1983, as amended by Law No. 2 of 1994 contained in the list of appeals, it is also obligatory to respond in form, as the request of natural persons to decide on the constitutionality of the laws and regulations in force requires the filing of a constitutional lawsuit to challenge it before this court, provided that the lawsuit meets the conditions stipulated in articles 44, 45, 46, and 47 of the Civil Procedure Law No. 83 of 1969, as amended, and that it be submitted From the plaintiff himself or his representative of lawyers

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with absolute competence, in addition to the other conditions stipulated in article 20/first, second, and third) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, relating to the existence of the plaintiff's current and direct interest affecting his legal, financial, or social status, that the contested provision has actually been applied to him and that he has not benefited from it in whole or in part, based on the foregoing, the Appellant, based on its request contained in the statement of appeal, did not file a claim to challenge the unconstitutionality but requested so in the statement of appeal according to its details referred to above, whereas requests challenging the constitutionality of the laws and regulations in force are submitted to the Federal Supreme Court without a lawsuit by any of the three federal authorities, ministries, independent bodies, the Prime Minister of the Region, entities not associated with a ministry, and governors exclusively in accordance with the conditions stipulated in article 19 of the Rules of Procedure of the Federal Supreme Court No. 1 of 2022, since Appellant is not one of the parties referred to in the aforementioned article, this requires that the application contained in the statement of appeal be dismissed in form. In view of the above, the Federal Supreme Court decided to reject the application in the form and to charge the Appellant the expenses and fees. The decision has been issued unanimously, final, and binding according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. It has been edited in the session dated 23/Jamada Al-Akhir/1444 Hijri coinciding with 16/January/2023 AD.

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