

Republic of Iraq
Federal Supreme Court
Ref 29/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/3/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali ,Dyar Mohammed Ali, and Munther Ibrahim Hussain, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Munad Jihad Ashij Marwah

The Defendant: Head of the Council of Representatives / being in this capacity - His two agents, the human rights employees Saman Mohsen Ibrahim and aseel Samir Rahman.

The Claim:

The plaintiff claimed in the petition that the (dissolved) Revolutionary Command Council issued the law on the discipline of state and public sector employees, No. (14) of 1991, and on 29/7/2013, Law No. (17) of 2013 was issued, the fifth amendment to the Council of state Law No. (65) of 1979, and the legislation related to the State Council Law No. (71) of 2017 was issued, and based on Article (93/1st) of the Constitution of the Republic of Iraq, the provisions of Article (4/First) of the Federal Supreme Court Law, and Article (20) of the Court's Rules of Procedure No. (1) of 2022, and since some of the provisions of the aforementioned laws did not achieve the principle of justice and equality Contrary to the provisions of Article (2/1st) of the Constitution, which affirmed that Islam is the official state religion and a basic source of legislation, because these texts caused breach and damage to public order, she appealed to challenge before this court the

Zainab



constitutionality of the following texts:1. Article (10/1st and 2nd) of the Discipline Law of State and Public Sector Employees No. (14) of 1991 - which sets out the method of forming investigative committees and their procedures - because it was enacted without taking into account the provisions of the Code of Civil Procedure, the Code of Criminal Procedure and the Law of Evidence to guarantee the right of the employee and protect him from the arbitrariness of the administration. While the Constitution guarantees everyone the right to be treated fairly in judicial and administrative proceedings, it affirms that the accused is innocent until proven guilty in a fair legal trial, and that the right of defense is sacred and guaranteed at all stages of the investigation and trial. 2- The State Council Law No. 71 of 2017, which considers the State Council to be an independent authority with legal personality, while Article (101) of the Constitution did not stipulate that it is considered an independent authority, and if the legislator wished to do so, he would have explicitly stipulated that it is considered an independent authority, as stipulated in the articles of Chapter 4th that dealt with independent authorities, especially since the legislation of the law was based on the provisions of Articles (61/1st), (73/3rd) and (101) of the Constitution, and did not base its legislation on Article (108), which authorized the establishment of independent authorities, and based on the provisions of Article (90) of the Constitution, the administration of judicial affairs must be Article (101) of the Supreme Judicial Council, and the proposal of draft laws related to the judiciary is one of the tasks of the Supreme Judicial Council based on Article (3/10th) of the Supreme Judicial Council Law No. (45) of 2017, whereas the Law of the Council of State was not enacted with the advice of the Supreme Judicial Council, nor did it indicate that the Personnel Court and the Supreme Administrative Court and their

Zainab

Republic of Iraq
Federal Supreme Court
Ref 29/ federal/2024



Kurdish text

employees are subject to the Judicial Organization Act, and their employees are advisers and not at the rank of judges, and they were not appointed in accordance with the Judicial Organization Act, and the fact that the Council of State is an independent authority is contrary to the provisions of articles (66) and (78) of the Constitution; Its association with the Council of Ministers must be based on the constitutional principle approved by the Federal Supreme Court in its decision (118/Federal/Media/2015), that the administrative judiciary is not part of the judicial authority, but is part of the executive authority in an administrative capacity, and therefore it is under the control of the Council of Representatives. 3- Challenging Law No. (17) of 2013 Fifth Amendment to the Council of state Law No. (65) of 1979 in Articles (1/3rd) which considered the President of the Council, his deputies and the Assistant Counselor as judges when exercising the functions of the administrative judiciary, and (2/4th-Alif) under which the Administrative Court was formed, and (7/1st) - which formed the Administrative Court and the Personnel Justice Court, and (7/8th-Jim) which granted the status of definitive to the court's uncontested decision, the decision of the Supreme Administrative Court, and Article (7/10th) which indicated that the decisions of those courts are made in the name of the people, while the counselors are not at the rank of judges, the counselors are not at the rank of judges, and were not appointed in accordance with the Judicial Organization Law, and because the plaintiff was referred to a number of ministerial and university audit and investigation committees, and arbitrary and illegal decisions were issued against her (according to the prosecution), therefore, she asked this court to approach the State Council / Supreme Administrative Court to provide this court with the priorities producing this lawsuit, which are certified copies of the files of cases numbered

Zainab

Republic of Iraq
Federal Supreme Court
Ref 29/ federal/2024



Kurdish text

(176/Jim/2021), (35/Jim/2022), (711/Mim/2022) and (135/Jim/2023), and to rule on the unconstitutionality of the State Council Law No. (71) of 2017, Article (10/1st and 2nd) of the State Employees Discipline Law No. (14) of 1991, and Articles (1/3rd, 2/4th, 7/1st, 8th/Jim and 10th) from Law No. (17) of 2013 Fifth Amendment to the Council of the state Law No. (65) of 1979. After registering the lawsuit with this court in number (29/federal/2024) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with Article (21 / first and second) of the internal regulations of the Federal Supreme Court No. (1) of 2022, his agents responded with the response regulation dated 8/2/2024, according to which they requested to reject the lawsuit as the State Council Law No. (71) of 2017, came as a legislative option in accordance with the competencies of the Council of Representatives based on the provisions of Article (61/1st) article 101 of the Constitution of the Republic of Iraq of 2005, and the plaintiff may not replace the person who has the right to appeal, in the articles of the Law of the State Council, which is (the Supreme Judicial Council) being legally being legally inexpensive and without harm to it in this regard. The State Employees Discipline Act No. 14 of 1991 is one of the legislation in force, and in accordance with the provisions of Article 130 of the Constitution of the Republic of Iraq for the year 2005, which provides that (the legislation in force shall remain in force, unless repealed or amended, in accordance with the provisions of the Constitution) and that this law guaranteed the employee ways to appeal and appeal the decisions of the investigative committees before higher competent authorities to ensure the employee's right, and that the plaintiff's feeling that the decisions issued against her by a court or a certain investigative committee did not do her justice, the law under which the court or the relevant investigative committee was formed

Zainab

Republic of Iraq
Federal Supreme Court
Ref 29/ federal/2024



Kurdish text

does not make unconstitutional, as the plaintiff has no direct and influential interest in her legal, financial or social status, based on the text of Article (20 / first and second) of the court's internal regulations and its decision No. (293 / Federal / 2023) on 17/1/2024, After completing the procedures required by the rules of procedure of the court, set a date for the pleading in accordance with Article (21/3rd) thereof, and inform the parties, in which the court was formed, so the plaintiff attended in particular and attended the defendant's agent and began to conduct the public presence pleading The plaintiff repeated what was stated in the lawsuit petition and requested judgment according to what was stated therein, the defendant's agent answered and asked to reject the lawsuit for the reasons contained in the list linked to the lawsuit papers, whereas the Court has completed its scrutinies, the end of the argument has been made clear and issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit included a request to rule on the unconstitutionality of the State Council Law No. (71) of 2017, and Article (10/1st and 2nd) of the State and Public Sector Employees Discipline Law No. (14). of 1991, and Articles (1/3rd, 2/4th, 7/1st, 8th/Jim and 10th) of Law No. (17) of 2013, the Fifth Amendment Law to the Council of state Law No. (65) of 1979, whereas one of the conditions for accepting the constitutional lawsuit, like other lawsuits, is the availability of the conditions of interest for the plaintiff in filing it in accordance with the provisions of Article (6) of the Civil Procedures Law No. (83) of 1969, as amended, Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, as the plaintiff

Zainab

Republic of Iraq
Federal Supreme Court
Ref 29/ federal/2024



Kurdish text

must have a current, direct and influential interest in his legal, financial or social status, whereas the judgments issued by this court in accordance with the provisions of item (first) of Article (37) of the aforementioned Rules of Procedure shall apply from the date of its issuance, therefore, the plaintiff's interest is not realized in the lawsuit according to the foregoing, so the Federal Supreme Court decided to reject the plaintiff's lawsuit (Munad Jihad Ashaj Marwah) and to charge her all judicial expenses, including attorneyship fees of the defendant's gents, the human rights employees, Saman Mohsen Ibrahim and Aseel Samir Rahman, an amount of one hundred thousand dinars distributed to them in accordance with the law. The decision has been issued unanimously was issued by agreement based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and (4 and 5 / 2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021. The decision has been made clear on 29/Shaabab/1445 A.H. corresponding to 11/3/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

Zainab