

Republic of Iraq
Federal Supreme Court
Ref. 326 / federal /2023



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The Federal Supreme Court (F S C) has been convened on 26/2/2024 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 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: Bassim Khazaal Khashan – member of the ICR.

The Defendant: the Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim:

The plaintiff claimed in the lawsuit petition that the former Prime Minister issued in 2017 the instructions for the formations and tasks of the departments of the General Secretariat of the Council of Ministers No. (4) of 2017, and under article (9) thereof the Iraqi Women's Empowerment Department was created, which consists of a number of sections, including: The Community Development Section, which consists of two divisions: (Alif) Development Programmes Division; (Beh) Gender Division The Community Development Section undertakes a number of tasks, including: (a) Coordination with gender divisions and units in government institutions and women's offices in the governorates. Beh- Integrating the concept of gender in government plans and policies to achieve the principles of justice and equity in the development process. - Studying the impact of the social development programmes applied, setting the procedures to ensure the realization of

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government action plans and programmes with regard to gender, submitting periodic reports thereon, and following up on their implementation in coordination with the departments of the General Secretariat of the Council of Ministers; The Women's Rights Section, which undertakes a number of tasks, including those relating to women's rights, which the Constitution requires to protect, deviates from the task of defending these rights by stipulating: Follow-up on the implementation of approved national plans and strategies on gender (gender), the paragraphs in which the term (gender) is mentioned in Article (9) of the aforementioned instructions, enshrine the concept that is contrary to the constants of the provisions of Islam, which may not be enacted a law that contradicts them, as the concept of gender is nothing but a cover for deviant ideas intended to spread in Iraqi society, and people's ignorance of the meanings of foreign vocabulary and terms has been exploited to achieve this end, and the General Secretariat of the Council of Ministers has acknowledged the invalidity of the paragraphs - subject to challenge - in its letter No. (56016 on 19/11/2023) that the use of the term gender It does not fit with the values and ideals of Iraqi society, and I asked to adopt the term "gender justice" instead, this term is not a correct translation of the word "gender" and does not serve as an alternative in the texts under challenge, and because the development of social types (genders) does not exist in the fabric of Iraqi society nor in its Arab or Kurdish culture, nor in any of the cultures of all its components, and contradicts the constants of Islam, which is considered null and void every legal text that violates its provisions, and because the establishment of institutions that have nothing to do with the work of the Secretariat of the Council of Ministers (General Secretariat) is an excess of the powers of the Prime Minister, which violates its validity, so the plaintiff asked this court to rule that paragraphs (9/1st/1/Beh),

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(9/2nd/1/Alif, Beh, Dal) and (9/2nd/2/Beh) of the Formations Instructions The departments of the General Secretariat of the Council of Ministers and their tasks and their abolition in accordance with Article 93/3rd of the Constitution. The lawsuit was registered with this court at number (326/Federal/2023) and the legal fee was paid for it, and the defendant is informed of its petition and documents in accordance with the provisions of Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and his agent replied with the reply regulation dated 4/1/2024 Summary: The court does not have jurisdiction to hear the case, and the plaintiff's interest condition is not available from its establishment, and that his client issued Article (9) in compliance with Law No. (66) of 1986 issued on 28/6/1986, which ratified the (Judiciary Convention) on all forms of discrimination against women), which is described as the international legitimacy of women's rights, which explicitly states in its thirty articles discrimination against women and develops national action programs to end this discrimination and aims to influence the treatment of the forces affecting the distribution of roles between the sexes (men and women) and stated in Article (V) thereof (changing the social and cultural patterns of the role of both men and women in order to achieve the elimination of prejudices and customary customs) Arab and Islamic countries have always, including all regional neighboring countries in the circulation of the term (gender) in their national and international reports as a result of the gains made by women in the field of gender equality for justice, and that the General Secretariat of the Council of Ministers sent circular number (34498) on 27/7/2023, to all ministries and entities not associated with the ministry and all governorates to clarify that the use of the term (gender), which refers to socially defined roles between women and men, and that the meaning and significance of this term, which was

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adopted by Iraq and expressed in international forums through Ministry of Foreign Affairs includes both sexes (men and women) and is linked to their role in society, as described in Annex 4th of the Beijing Declaration of 1995, and does not refer to any other meaning contrary to the Constitution, and it is rejected by the religious and moral values of our society, and according to this concept, the term (gender) has been dealt with in Arab and Islamic countries, including Iraq, as the human development reports issued by the Central Bureau of Statistics / Ministry of Planning used the term according to this concept, while confirming the clarity of the significance of the official use of this concept and its absence from any other meanings rejected by religious and moral values and prohibited by laws and punished (such as homosexuality and homosexuality). Use to men and women and put them in parentheses, so that the meaning of the unexplained term is not understood, The General Secretariat of the Council of Ministers also directed the circular number (56016) on 19/11/2023, based on the approval of the Prime Minister issued No. (2303232) on 13/11/2023 to all state institutions to adopt the term (gender justice) instead of the term (gender) wherever it appears in order to maintain the government effort, and proceed with the implementation of approved national policies, strategies and plans concerned with the file of women and their issues, in line with the supreme values of society, and thus the lawsuit has lost its constitutional and legal basis, Article 85 of the Constitution stipulates that (the Council of Ministers shall establish a bylaw to regulate its workflow), as well as the Council of Ministers Law No. 20 of 1991, which is still in force based on Article 130 of the Constitution, which included the powers of the Council of Ministers and the General Secretariat of the Council of Ministers in articles 22, 23, 24, 25, 26, and 27 thereof, and based on the aforementioned constitutional and legal

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articles, the Council of Ministers issued the bylaw No. 2 of 2019, specifying the powers of the Prime Minister. Article (32) thereof, provided that (the formations of the Secretariat shall be determined by instructions issued by the President) and accordingly the instructions subject to appeal were issued, the term (gender) is not mentioned in the rules of procedure, and the phrase (gender) means, according to the definition of the United Nations, that (the social role of the individual, regardless of whether he is male or female) and official correspondence in the state has been settled to support this concept, and promote its work, which represents the social role of male and female together in responsibility and building society and the country without excluding a party from it, and not exceeding the nature that God Almighty has singled out for each party, and the subject has been referred to the Scientific Academy Al-Iraqi for the statement of opinion according to the letter of the Prime Minister's Office No. (3026/2330692) on 23/10/2023, and pending the opinion of the Iraqi Academy, he must request the dismissal of the lawsuit and charge the plaintiff its expenses and advocacy fees. After completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, in which the court was formed, and the plaintiff attended and the defendant and his agent appeared, and the public presence pleadings were initiated, and after the court heard the statements of each party and completed its scrutinies, 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 claim focused on a request to rule on the

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invalidity of paragraphs (9/1st/1/Beh), (9/2nd/1/Alif, Beh, Dal) and (9/2nd/2/Beh) of the instructions for the formations and tasks of the departments of the General Secretariat of the Council of Ministers No. (4) of 2017, and by checking the case file and the regulations submitted therein, it was found that the paragraphs required to be judged invalid from Article (9) of the aforementioned instructions are related to gender or the so-called gender and the term gender appeared in the seventies of the last century, an English word descended from Latin origin and means sex in terms of masculinity and femininity and refers to the biological division between male and female and the concept of gender (gender) presented by the social sciences through the study of social, political and economic reality as an attempt to analyze the relationships, roles and obstacles for both men and women, and according to the point of view of gender advocates, it means a person's sense of himself, male or female, but there are cases in which the human feeling is not related to his organic characteristics, and there is no compatibility between organic qualities and his gender identity, as they are not fixed by birth, but rather psychological and social factors affect the formation of their nucleus, as they change and expand under the influence of social factors as a person grows, in other words, what is meant by gender (gender) is to cancel the differences between male and female so that his response to the human species, that is, masculinity and femininity are one species and man is born as a human being, and being male or female in the organic sense It has nothing to do with his choice of any sexual activity he may practice, according to the term gender choice of gender identity, a male man may choose to become a female, and a woman may choose to become a male, based on self-desire and personal choice, the introduction of the concept of gender aims to emphasize that all what men and women do can change over time and depending on the diverse

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social and cultural factors, and represents a crossing of barriers on the way to achieving justice between men and women, gender (gender) deals with the qualities carried by men and women as social compound qualities, and have nothing to do with organic differences, the biological composition of the male or female has nothing to do with the choice of sexual activity practiced by each of them, and gender sees that motherhood is a social function and there is no maternal instinct in women, but it is the culture of society that makes this instinct, and that when a woman exercises her role (gender) equal to the role of men, pregnancy, reproduction and lactation may stand in front of her, so she has the right to abort pregnancy, and this gender vision poses a danger to humanity, as procreation is one of the purposes of marriage that preserves offspring, as God Almighty says in His Holy Book (*God 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 AN-Nahl – verse 72), They go on to say that the family can be classified into several types, including single-sex families, i.e. families of homosexuals and families of women who give birth to incest children, and according to the concept of gender that a woman owns her body and that she has the right to severe grooming, nudity and the practice of vice, and all of this is an encouragement for immorality that God forbade in the arbitrator of his book in verse (151) of Surat Al-An'am (*that you do not come near indecencies, whether outward or inward*) And encouraging adultery forbidden in (Surat Al-Isra – verse32) (*And do not come near adultery. It is immoral, and an evil way*) Whereas these ideas and concepts are contrary to morality, religion and normal customs and constitute a real threat to the fabric of Iraqi society and are incompatible with its higher values, and contrary to the fundamentals of Islam,

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therefore, the Federal Supreme Court decided that paragraphs (first/1/b), (second/1/Alif, Beh, Dal) and (2nd/2/Beh) of article 9 of the instructions for the formations and tasks of the departments of the General Secretariat of the Council of Ministers No. (4) of 2017 are incorrect, and that the defendant is charged / being in this capacity fees and expenses. The decision has been issued unanimously, final and binding according to the article (93 and 94) of Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law for 2005 which amended by the law No. (25) for 2021. The decision has been made clear on 15/Shaaban/1445 Hijri coinciding 26/February/2024 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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