

Republic of Iraq
Federal Supreme Court
Ref. 39 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 18.4.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Attorney Mohamed Hamid Abdel Qadi and attorney Zina Nabil Aziz.

The defendants:

1. The President of the Republic, Dr. Barham Salih Ahmed / in addition to his position - his deputy, Ghazi Ibrahim Al-Janabi, the head of legal experts.
2. Prime Minister Mustafa Abdul Latif Mushtat Al-Kazemi/ In addition to his post, his agent is legal advisor Haider Ali Jaber.

The claim:

The plaintiffs claimed that the second defendant had issued a recommendation for a special pardon for the convict of the crime of drug trafficking, the convicted criminal (Jawad Louay Jawad) for the remain of his sentence in the ruling issued by the Karkh Criminal Court in the case numbered (283/C/2018) and he does not have this authority the fact that the government of him is a caretaker

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 39 / Federal / 2022



government and does not fall within its duties, specified in Article (42) of the Cabinet's Bylaw No. (2) of 2019, granting approval and recommendation to include a special amnesty, in addition to that drug trafficking crimes are considered cross-border crimes and that Internationally criminalized acts in accordance with the 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Then the first defendant issued a special pardon for the same convicted criminal on the date of 10.1.2022 in the number (2), which is a constitutional violation, as the drug trade is not covered by the special amnesty, and the provisions of Article (73/First) of the Constitution do not apply to him. It contradicts his constitutional powers and therefore has negative effects on society and the security reality of the country, especially since the court is the interpreter of the constitution. The plaintiffs requested the Federal Supreme Court to rule to cancel the special amnesty No. (2) on 10/1/2022 in accordance with the provisions of Article (14) of the constitution, and the defendants shall bear all expenses and fees. The case was registered with this court in No. (39/Federal/2022), and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's Bylaw No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/First) from the same bylaw, the attorney for the first defendant answered with the answer list dated March 13, 2022, the summary of which is that the case must be dismissed because the interest did not verify of its establishment and the damage was not achieved from its subject matter based on the provisions of Article (6) of the court's bylaw. As all legal scholars and judges have unanimously agreed that the

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 39 / Federal / 2022



republican decree is not a legislation, but rather an administrative decision issued by the Supreme President of the state to organize an individual case and that considering the appeal is within the jurisdiction of the administrative judiciary, this court is not competent to consider the case, and since the jurisdiction is from the general order, and the court decides on it on its own, so he requested to dismiss the case from the competent aspect. Also, the special pardon is issued by a republican decree based on the provisions of Clause (First) of Article (73) of the Constitution, which stipulates ((Article (73): The President of the Republic assumes the following powers: First - Issuing a special pardon on the recommendation of the Prime Minister, except for what concerning the private right, those convicted of committing international crimes, terrorism and financial and administrative corruption)), and Article (154) of the Penal Code No. (111) for the year 1969, which stipulates: ((1. The special amnesty is issued by a republican decree and results in the final penal of all, or part of it or replacing it with a penalty lighter than the penalties prescribed by law). Thus, the President of the Republic issued Republican Decree No. (2) on 10/1/2022 in accordance with his constitutional and legal powers. He took the initiative to withdraw it and notify the Ministries of Justice and Interior that the convicts must be returned to prison to complete the period stipulated in the ruling after their arrest. He didn't issue any special amnesty for the crime of drug trafficking and other dangerous crimes during the time he assume his post as the president of the republic, despite the spread of the Corona pandemic, prison overcrowding, the receipt of many requests and the loudness of voices for some organizations to relieve prisoners, he did not issue a

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 39 / Federal / 2022



decree pardoning serious crimes. And that the republican decree issued for the pardon does not take place until after the recommendation of the Prime Minister for the special pardon is received, and after the scrutiny and deliberation of the committees formed to study such requests. The President of the Republic has not and will not be lenient in facing the dangerous challenge of drug promotion and trafficking, and spare no effort in combating this dangerous scourge. In addition, the President of the Republic issued the Republican decree as presented in accordance with his constitutional powers, and that accusing him of perjury and violating the Constitution is not based on facts or a law, as there is no provision in the Constitution and the law prevents the President of the Republic from issuing a special pardon because the powers and tasks exercised by the authorities within the framework of legality are not constitutes a crime punishable by law, in addition to the failure to legislate a law regulating it based on the provisions of Clause (Sixth) of Article (93) of the Constitution, which stipulates ((Article (93): The Federal Supreme Court has jurisdiction over the following: Sixth- Deciding on accusations against the President of the Republic, the Prime Minister and the Ministers, and this shall be regulated by law)). The judiciary of this court has established that the accountability of the President of the Republic requires that the Council of Representatives issue a law regulating the manner of deciding the accusations against the President of the Republic, in order for it to have jurisdiction over this matter, in accordance with Resolution No. (41/Federal/2017) dated 13.6.2017 that law has not yet been issued, which calls for dismissing the case from this aspect. Since the decree of amnesty has been withdrawn and the competent

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 39 / Federal / 2022



authorities have been notified of the arrest of the convicts and their imprisonment to complete the period for which they are sentenced, the plaintiffs' suit is irrelevant, and its establishment has become null because the decision to withdraw is a cancellation of all procedures prior to its issuance, and considering it as if it were not, for the reasons above and for what you see he requested that the plaintiffs' lawsuit be dismissed and that they be charged with fees, expenses and attorney's fees. The second defendant's attorney, responded in the answer list dated 23/3/2022, which included the same plea that the first defendant's attorney made regarding the fulfillment of the condition of interest in filing the case, and the damage was achieved from its subject matter and the court's lack of jurisdiction to consider it. He added that his client is not suitable as litigant in this case, as the republican decree in question was issued by the Presidency of the Republic, so the litigation is not achieved, based on the text of Article (4) of the Civil Procedures Law No. (83) of 1969 (amended), also the republican decree under appeal came in accordance with the provisions of Article (73) of the Constitution because the crime in question is not one of the crimes exempted under the Constitution and is not one of the international crimes that are within the jurisdiction of the International Criminal Court, which are the following crimes (genocide, crimes against humanity, war crimes and crimes of aggression), and drug trafficking crime does not fall into it according to the provisions of Article (5) of the Rome Statute of the International Criminal Court of 1998, and it is not considered a crime against humanity because crimes against humanity are in accordance with the provisions of Article (7/1) of the Rome Statute are: (any of the acts described in the aforementioned Article when committed as

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 39 / Federal / 2022



part of a widespread or systematic attack directed against any civilian population with knowledge of the attack), conditioning that the acts being repeated within the scope of the humanitarian action in question mentioned in Article (7/1) above against a group of the civilian population, pursuant to the policy of the State or a region that requires the perpetration of this attack, or in furtherance of this policy, based on the provisions of Paragraph (2) of Article (7) of the Rome Statute. In addition to the fact that the withdrawal of the republican decree (the subject of the appeal) and the cancellation of all the legal consequences of it under the republican decree No. (6) of 28.2.2022 leads to the termination of its material and legal existence, and therefore there is no place for appeal that the court can consider, so he requests for the dismissal of the case, both formally and objectively, and charging the plaintiffs with expenses, fees and attorneys' fees. After completing the procedures stipulated in the court's bylaw, a date was set for the pleading in accordance with Article (2/Second) of it, and the parties were informed of it. On the appointed day, the court was formed, so the two plaintiffs, lawyers Muhammad Hamid Abdel-Qadi and Zina Nabil Aziz, attended, and for the first defendant, the President of the Republic in addition for his post, attended his representative, the chief legal expert, Ghazi Ibrahim Al-Janabi, and for the second defendant, the Prime Minister/ in addition to his post, attended the legal adviser, Haider Ali Jaber, and began the public pleading. The plaintiffs repeated the case petition requesting to rule according to it, the agents of first and the second defendants each of them asked to dismiss the case on behalf of his client for the reasons mentioned in the list of each of them attached to the case file, and the plaintiffs repeated their previous

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 39 / Federal / 2022



statements and requests, as the defendants' attorneys repeated their previous statements and requests, and where there was nothing left to be said, the court decided the conclusion of the pleading, and issued the following ruling:

The decision:

After scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs' suit focused on the request for a ruling to cancel the Republican Decree No. (2) on 10/1/2022, which included the issuance of a special amnesty for the convict (Jawad Louay Jawad), who was sentenced by the Karkh Criminal Court after incriminating him for the crime of drug trafficking for the reasons stated in their pleading. This court finds that the constitution and the law have guaranteed everyone the right to sue and plead before the courts as a general principle and rule. That the person who intends to file the case has an interest, that is, that there is a legitimate practical benefit that the plaintiff can obtain by filing the case before the court so no case without interest, and that is what was stated in article (6) of the civil procedures law No. (83) of 1969 as amended which required the case that the plaintiff should have a known, relevant, possible, and verified interest, with the possibility of the potential interest being satisfied according to certain conditions. Despite the specificity of the constitutional case, it is not devoid of the condition of interest. For the other to the judicial protection of the constitutional rights stipulated in the constitution or laws in certain cases. The initiation of a constitutional lawsuit is restricted and conditional on the condition of interest, taking into account the specificity of this lawsuit, and this was confirmed by Article (6) of

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 39 / Federal / 2022



the bylaw of the Federal Supreme Court No. (1) of 2005, which required that the plaintiff in the subject matter of the case has a direct and influential case interest in his legal, financial or social status. With regard to the claim of the plaintiffs (Mohamed Hamid Abdel-Qadi and Zina Nabil Aziz), they did not submit to this court evidence that the republican decree in question had affected their legal, financial or social status. In doing so, by causing actual harm to them, and in this case, their claim lacks the condition of interest and must be dismissed from this aspect, for all of the foregoing and in the absence of the condition of interest, the court decided to dismiss the plaintiffs' suit and charge them fees, expenses and attorney fees for the two defendants' attorneys in addition to their posts, an amount of one hundred thousand dinars distributed between them in accordance with the law, the decision was issued by agreement final and binding on all authorities based on the provisions of Articles (93) and (94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4) and (5) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and publicly understood on 16/Ramadan/1443 AH corresponding to 18.4.2022 AD.

Signature of
The president

Jasem Mohammad Abbood

Athraa