

Republic of Iraq
Federal Supreme Court
Ref. 43 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 17.4.2022 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:

Fouad Idan Abbas - his attorney, Nezar Ali Jaber.

The defendants:

Head of the Supreme Judicial Council / in addition to his post
- his deputy, the legal employee, Labib Abbas Jaafar.

The claim:

The plaintiff claimed, through his attorney, that the General Amnesty Law No. (27) of 2016 excluded terrorist crimes from its provisions under Article (4/second) of it, and this law was amended by Law No. (80) of 2017, issued by the Presidential Decree No. (37) on 2/11/2017, Article (2) of which it was stipulated to cancel the items (Second and Sixth) of Article (4) of the General Amnesty Law No. (27) of 2016 where the second item was replaced by the following: ((Second: 1- The crimes stipulated in the Anti-Terrorism Law No. (13) of 2005 committed after 10.6.2014, 2- The crimes stipulated in the Anti-Terrorism Law No. (13) of 2005 committed before 10.6.2014 that resulted in death or permanent disability)), which indicates that the last amendment included terrorist crimes

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before 10/6/2014 that did not result in death or permanent disability and the complainants' waiver. this amendment was not implemented and the amendment contained in Article (2) of it was not taken into account, and he was damaged in the criminal case - before the Muthanna Criminal Court No. (60/Jim/2021), where the parties of the case waived and it did not include disability or murder, in 2021 the Federal Court of Cassation approved the aforementioned decision on 30.3.2021 and the Second Central Committee, but he was not released. Therefore, the plaintiff asked the Federal Supreme Court to direct the Supreme Judicial Council to rely on the last amendment to the General Amnesty Law and to implement Article (2/Second) of it, which was not taken into account in the aforementioned case, and to ruling the unconstitutionality of the Federal Court of Cassation's decision No. (5882/Penal Commission/2021 on 30.3.2021), in the criminal case No. (60/Jim/2021), and charging the defendant with fees, expenses and attorney fees. The case was registered with this court in No. (43/ Federal/2022) based on Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005 and informs the defendant of its petition and documents based on Article (2/First) of the same aforementioned bylaw, his attorney responded with the answer list dated 3/15/2022, it summarizes that the Federal Supreme Court is not qualitatively and functionally competent to hear the case since its jurisdiction is specified under Article (93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of its Law No. (30) of 2005 amended by Law No. (25) of 2021, and not among those jurisdictions oversight over judicial rulings and decisions issued by the courts, and this is what was settled by the Federal Supreme Court in the decision issued in Case No.

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(51/Federal/2021) on 25/8/2021. A statement to correct the typo error contained in the First Amendment Law of the General Amnesty Law No. (80) of 2017, published in the Iraqi Gazette No. (4482) on 5/3/2018, had previously been issued, which included the following: ((First: to corrects the typographical error contained in Article (2) of the Law of the First Amendment to the General Amnesty Law No. (80) of 2017, to be reads as follows: Article -2- The text of item (sixth) of Article (4) of the General Amnesty Law No. (27) of 2016 shall be repealed and replaced by the following: Sixth: Crimes of the kidnapping of persons.) Based on the foregoing, the legal effect of the amendment contained in Article (2) of the Law of the First Amendment to the General Amnesty Law No. (80) of 2017 in its paragraphs (1 and 2) has been canceled and considered as if it had not been, and it cannot be relied upon. And acting accordingly, after the issuance of the aforementioned correction statement, which limited the cancellation to the text of item (sixth) of Article (4) of the General Amnesty Law, so the defendant's attorney requested, in addition to his post, the ruling to dismiss the plaintiff's lawsuit and charge him with all fees, expenses, and attorney's fees. After completing the procedures stipulated in the court's bylaw, a date for the pleading was set in accordance with Article (2/Second) of it, and the two parties were informed of it. On the appointed day, the court was formed, so the plaintiff's attorney, Nizar Ali Jaber, attended, and the defendant's attorney attended, in addition to his post, the legal employee, Labib Abbas Jaafar, proceeded to plead in the presence and public. The plaintiff's attorney repeated what was stated in the lawsuit's petition and requested a ruling according to which the defendant's attorney responded, requesting that the lawsuit be

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dismissed for the reasons stated in his answer list dated 15.3.2022. And the two parties' attorneys repeated their previous statements and requests. The following ruling was issued:

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiff, Fouad Idan Abbas, brought the case before this court through his attorney, Nezar Ali Jaber, requesting a ruling on unconstitutionality of the Federal Court of Cassation's decision No.(5882/ Penal Commission /2021 on 30.3.2021) related to the criminal case before the Muthanna Criminal Court No. (60/jim /2021), as well as the request to direct the Supreme Judicial Council to rely on the latest amendment to the General Amnesty Law No. (27) of 2016, this court finds that its jurisdiction is specified under Article (93) of the Constitution of the Republic of Iraq For the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021, and considering what was stated in the plaintiff's request in this case is not among those jurisdictions referred to above, so the plaintiff's lawsuit is binding to be dismissed for lack of jurisdiction, accordingly, the Federal Supreme Court decided to reject the claim of the plaintiff Fouad Idan Abbas for lack of jurisdiction and to charge him the fees and expenses and an amount of one hundred thousand dinars as attorney fees for the defendant's attorney, in addition to his post his legal employee, Labib Abbas Jaafar. The decision was issued in agreement final, 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 5/2nd) of the Federal Supreme Court Law No. (30) of

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2005 amended by Law No. (25) of 2021 and publicly understood on
15 Ramadan 1443 AH corresponding to 17.4.2022 AD.

Signature of
The president

Jasem Mohammad Abboud

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