

Republic of Iraq  
Federal Supreme Court  
Ref. 6 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 1/2/2023 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 Suleiman, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Managing Director of Al-Dur Company for Mediation of Foreign Currencies Exchange Ltd/ being in this capacity – his agent the Barrister Sadiq Jaafar Afar Jaber.

The Defendant: the Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiff, through his agent, pleaded before the Financial Services Court of the Presidency of the Baghdad Court of Appeal / Rusafa during its consideration of the lawsuit numbered (6/ Financial Services / 2022) in its session dated 8/12/2022 the unconstitutionality of paragraph (1) of Article (69) of the Central Bank of Iraq Law in force No. (56) of 2004, and based on the provisions of Article (18/Second, Third, and Fourth) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the said court assigned him to file a lawsuit on the subject of the appeal and pay the legal fee for it, and the court accepted it. mentioned and sent with a true copy of the case file to this court attached to the letter of the presidency of the Baghdad Court of Appeal / Rusafa - Financial Services Court No. (17) dated 19/12/2022, according to which the

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plaintiff claimed that paragraph (1) of the article (69) of the Central Bank of Iraq Law in force No. (56) of 2004, which states (1. The aggrieved party or parties affected by a decision, order, or procedure issued or carried out by the Central Bank of Iraq shall submit a written request to the court seeking a review of such decision, order, or procedure issued or carried out by the Central Bank of Iraq or the action taken by the custodian or the guardian. This request must be submitted within thirty days from the date of issuance of the decision, order, or action, or within a shorter period, as stated in the law, and the court clerk upon receipt of the application sends a copy of it to the Central Bank of Iraq and the concerned parties and also notifies the concerned parties to attend each session of the department considering the request), is unconstitutional because it contradicts the Constitution of the Republic of Iraq of 2005 in articles (16, 19 / 6<sup>th</sup> and 46) thereof, which affirm the principle of equal opportunities and the right to fair treatment, and that it is not permissible to restrict rights and freedoms except by law, as the text of the paragraph in question violates the general rules related to notifications contained in the Civil Procedure Law No. (83) of 1969, as amended, which is the General Procedures Law, it also violates the general rules that outlined the procedures for appealing the administrative decision stipulated in article 7/7<sup>th</sup>/Alif) of the amended Law of the State Council No. 65 of 1979, which stipulates that before submitting the appeal to the Administrative Court, it is required that it be appealed to the competent administrative authority within (30) thirty days from the date of informing it of the contested administrative order or decision or considering it an amount, and this body must decide on the grievance within (30) days from the date of registration. In addition, the challenged text is contrary to logic and justice, so how can a person who aims to challenge the decision of the Central Bank before the

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competent court when he is not aware of this decision and is not informed of it? Or even if he is notified, the remaining period is not enough to appoint a lawyer to follow up on the case and carry out the appeal procedures, this is what happened with the plaintiff, as his rights were lost because he was supposed to know the decision of the Central Bank in accordance with the article challenged by its constitutionality without being duly informed in accordance with the provisions of the Civil Procedure Law, therefore, the plaintiff requested the Federal Supreme Court to rule to annul the contested text for unconstitutionality, and to consider the rules and provisions of notifications in the Civil Procedure Law in force No. 83 of 1969, as amended, as the rules that should be relied upon by the competent court when considering cases arising from the application of the provisions and rules of the Central Bank of Iraq Law in force No. 56 of 2004, and charging the defendant fees, expenses, and advocacy fees. The lawsuit was registered with this court with the number (6 / federal / 2023) in accordance with Article (21 / 1<sup>st</sup>) of the Court's Rules of Procedure No. (1) of 2022 and informs the defendant of its petition and documents in accordance with item (second) of the same article, and his agent replied with the reply list dated 22/1/2023, it concludes that the contested text came as a legislative option that does not contradict any of the constitutional provisions mentioned by the plaintiff, by a decision, procedure or order issued by the Central Bank against banks or persons in accordance with the laws, instructions and regulations concerned are all of an administrative nature, and the party concerned is considered an informant of these procedures by virtue of them because they fall directly on him and are supposed to be aware of them because they affect him and with immediate effect, and the plaintiff's request with regard to reliance on the rules and provisions of the Civil Procedure Law

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falls outside the jurisdiction of the court in accordance with Article (93/1<sup>st</sup>) of the Constitution, and the court has already decided on the subject of the case by its decision. Issue (53/Federal/2018) on 15/5/2018, so the defendant's agent requested to dismiss the lawsuit and charge the plaintiff the expenses and advocacy fees. After completing the procedures required by the court's rules of procedure, a date was set for the pleading based on Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff's agent attended and the defendant or his agent did not attend despite the notification in accordance with the law, and the public adversarial pleading was initiated, the plaintiff's attorney repeated what was stated in the lawsuit petition and requested a ruling according to it, the court reviewed the list of the defendant's agents dated 22/1/2023 in which they requested the dismissal of the lawsuit, after the plaintiff's agent repeated his previous statements and requests, and nothing remained to be said, 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 lawsuit included a request for a judgment to cancel the text of paragraph (1) of Article (69) of the Central Bank of Iraq Law No. (56) of (2004) and to consider the provisions of notifications in the Civil Procedure Law No. (83) of (1969) as amended as the ones that should be relied upon by the competent court when considering the lawsuit arising from the application of the provisions of the Central Bank of Iraq Law in force, due to the violation of the challenged text of the provisions of Articles (16, 19 / 6<sup>th</sup> and 46) of the

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Constitution The Republic of Iraq for the year (2005) and Article (7) of the State Council Law No. (65) for the year (1979) as amended and the general rules relating to notifications contained in Civil Procedure Law No. (83) for the year (1969) as amended, and then charging fees, expenses, and advocacy fees. It has been proven to the court from the investigations it conducted that it had previously considered the two lawsuits numbered (147/federal/2017) and (53/federal/2018), which included the appeal with the same article challenged in this lawsuit, and that it also considered the lawsuit numbered (110/federal/2021), which included the challenge to several articles of the Central Bank of Iraq Law No. (56) of (2004), including the article, challenged in this lawsuit, and the court issued its rulings in the aforementioned lawsuits and ruled to dismiss the appeal regarding the challenged article (69/1) of the law of the Central Bank of Iraq in force for the absence of a constitutional violation, the judgment issued in the constitutional case, whether on the constitutionality of the contested text or its unconstitutionality, is an obstacle to the court's consideration of challenging the constitutionality of the text again because the judgment issued by the court is absolutely authoritative and applies against all, whether individuals or state authorities based on the provisions of Article (94) of the Constitution of the Republic of Iraq of 2005, its impact is not limited to the litigants of the lawsuit, but also extends to all those addressed by this text, which entails their benefit from the legal status which was created by the constitutional ruling, whether it arranged advantages or carried rights, and therefore there is no interest for those who re-appeal the same text again, because the outcome of the judgment will be non-acceptance, the judgment of this court has settled on these meanings in many of its rulings and decisions, as constitutional lawsuits by their nature are lawsuits in kind in which the litigation is directed to the contested texts

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with a constitutional defect, and the decisions issued in their regard have absolute authority so that their impact is not limited to the litigants in the lawsuit in which they were issued, but this effect goes to everyone and is committed by all parties, whether these provisions have concluded that the challenged legislative text is unconstitutional or to its constitutionality and the rejection of the lawsuit. On this basis, and in general the text of Article (94) of the Constitution of the Republic of Iraq and Article (5) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021. Therefore, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit, the authorized manager of Al-Durr Company to mediate the sale and purchase of foreign currencies Ltd., being in this capacity, and to charge him all judicial fees and expenses, including attorney's fees. The defendant's agent, the Speaker of the Council of Representatives/ being in this capacity, each of the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim, amount to one hundred thousand dinars, to be divided according to the law. The decision has been issued unanimously, final, according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 9/Rajab/1444 Hijri coinciding 1/February/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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