

Republic of Iraq
Federal Supreme Court
Ref. 76 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 28/5/2023 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 Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Requestor of Retrial: Mashaan Rikadh Dhamin Al-Juboori/ former member of the ICR. His agents were the barristers Imad Hamad Nattah and Rafal Jameel Hussein.

Who Requested to Retrial Against: 1. Speaker of the ICR/ being in this capacity – his agents, the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.
2. Qutaiba Ibrahim Turki Al-Juboori – his agent the barriter Jawad Khadhim Hwayyes.

The Claim

The applicant for a retrial mediated by his agent claimed that based on the decision of the Federal Supreme Court No. (67/Federal/2022) on 16/5/2022 contained in paragraph (1) thereof (ruling that the membership of the representative Meshaan Rakad Damen Al-Jubouri is invalid and void) and the reasoning contained therein that his preparatory school certificate in the Syrian Arab Republic is forged. In addition to his job, the Speaker of the Council of Representatives filed a criminal complaint before the third Karkh Investigation Court against him on charges of falsifying the aforementioned academic document, and the court issued its decision on 22/1/2023, including ((closing the

saady

Republic of Iraq
Federal Supreme Court
Ref. 76 / federal /2023



Kurdish text

investigation permanently because of the previous dismissal pursuant to the provisions of Articles 300 and 301 fundamentalism, based on its previous decision dated 19/6/2016, which included rejecting the complaint and closing the investigation permanently based on the provisions of Article (130) fundamentalism, for the absence of the crime of forgery, and the decision was ratified by the Karkh Criminal Court in its discriminatory capacity by its decision (837/Teh/2016) on 3/8/2016)). The Karkh Criminal Court, in its cassation capacity, issued its decision (890/Teh/2023) on 26/3/2023 to dismiss the discriminatory appeal submitted by the legal representative of the House of Representatives, and to ratify the decision of the third Karkh Investigation Court dated 22/1/2023, and the decision acquired the degree of bits. Since the crimes of forgery fall within the jurisdiction of the criminal courts, the issue of falsification of the academic certificate has been settled by the third Karkh Investigation Court, and it has been proven that it is true and not forged. Whereas the decision of the Third Karkh Investigation Court dated 22/1/2023 is new evidence that emerged after the issuance of the Federal Supreme Court's decision No. (67/Federal/2022), and that the right to litigation is guaranteed by the Iraqi Constitution and the law, and since the decision to invalidate his membership in the Council of Representatives has become a violation of his right and the right of his constituents, and the request for a retrial falls on the final decisions and rulings, including the final decisions of the Federal Supreme Court and binding on all authorities under Article (94) of the Constitution, and the provisions of the Court's Rules of Procedure No. (1) for the year 2022, specifically the text of Article (40) thereof ((The court may correct material errors that marred its judgments or decisions automatically or at the request of one of the authorities or parties)). Therefore, it was requested to accept the request for a retrial in the lawsuit settled in No. (67/Federal/2022) on 16/5/2022 following the provisions of Article (196/2) of the Civil Procedure Law and the ruling to amend and cancel the previous judgment. The case was registered with this court in number (76/federal/2023) and the legal fee was collected in accordance with Article (21/1st) of the internal regulations of the Federal Supreme Court No. (1) of 2022, and the first and second defendants are notified of their petition and documents following item (2nd) of the same article, and the first agent replied with the reply regulation dated 30/4/2023

saady

Republic of Iraq
Federal Supreme Court
Ref. 76 / federal /2023



Kurdish text

in its conclusion that the decisions of the Federal Supreme Court are final and binding on all authorities in accordance with Article (94) of the Constitution and are not subject to appeal in any way ordinary or unusual appeals, Article 196/2 of the Code of Civil Procedure does not apply to the merits of this case, and there are no reasons for retrial, and the text of Article 40 of the Court's Rules of Procedure has nothing to do with the request for retrial. The second agent replied with a detailed answering draft dated 17/5/2023 that included a repetition of what was stated in the list of my first agent, he added that he requests the dismissal of the lawsuit because it had already been decided by this court by its decision (158/Federal/2022), according to which the court rejected the request for a retrial in the lawsuit (67/Federal/2022) due to the mandatory decisions and decisions under Article (94) of the Constitution, and also requested that his client be given the right to file a criminal case before the competent courts, as he is the party that suffered damage as a result of enrichment at the expense of public money. Having completed the procedures provided for in the aforementioned Rules of Procedure of the Court, a date was set for the hearing of the case without pleading following Article (21/3rd) thereof, in which the court was formed and reviewed what was stated in the request for retrial and what was stated in the response lists submitted by the agents of the person against whom the retrial is requested, and after the court completed its investigations, the end of the minutes has been made clear, and the court issued the following decision:

The decision:

Upon scrutiny and deliberation, it was noted that the summary of the lawsuit of the retrial applicant Meshaan Rakad is a guarantor that this court had previously issued its decision No. (67/Federal/2022) on 16/5/2022, which included the ruling that the membership of representative Mishaan Rakad Al-Jubouri was invalid, and the reasoning of the ruling stated that his certificate of study for the preparatory stage in the Syrian Arab Republic was forged, and new evidence was new, represented by the decision of the third Karkh Investigation Court on 22/1/2023, which was ratified by discrimination by the Karkh Criminal Court in its discriminatory capacity in number (890/Teh/2023) on 26/3/2023, which confirmed the authenticity of the student's academic document Meshaan Rakad, the evidence

saady

Republic of Iraq
Federal Supreme Court
Ref. 76 / federal /2023



Kurdish text

appeared after the decision of this court (67/Federal/2022), so it was requested to accept the request for a retrial in the lawsuit settled in No. (67/Federal/2022) in accordance with item (2) of Article (196) of the Civil Procedure Law No. (83) of 1969, as amended, and the court considered the case without pleading based on Article (21/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and it was noted that this court had previously issued its decision No. (158/Federal/2022) on 16/8/2022, which rejected the previous request for retrial submitted by the applicant for retrial regarding the same decision - the subject of this lawsuit - and No. (67/Federal/2022), so the subject matter of the request has been previously adjudicated, it is not justified to submit it again to this court, because the court's decisions are final and binding on all authorities based on Article (94) of the Constitution of the Republic of Iraq for the year 2005, therefore, and when the foregoing, the Federal Supreme Court decided to dismiss the lawsuit of the applicant for retrial, Meshaan Rakkad, a guarantor for a previous adjudication according to the judgment decision issued by this court No. (158/Federal/2022) on 16/8/2022) and to charge the applicant for retrial expenses, fees, and attorney fees for the first defendant's attorneys, in addition to his job, legal counselor Haitham Majid Salem, and the official jurist Saman Mohsen Ibrahim, and the second defendant's agent, lawyer Jawad Kazem Huwais, an amount of (one hundred) thousand dinars distributed following the law. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 8/Dhul Qaeda/1444 Hijri coinciding with 28/May/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

saady