



The Federal Supreme Court (F.S.C.) convened on 24.11.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad 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:

Tarif Fadel Rahm / his attorney, Asaad Fadel Al-Waeli

The defendants:

- 1- The President of the Republic / in addition to his position - his deputy, the chief legal expert, Ghazi Al-Janabi.
- 2- The Speaker of the Council of Representatives / in addition to his position - his two agents are the legal advisor Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim.
- 3- The Minister of Finance / in addition to his position - his deputy, the legal employee Alaa Alwan Hamedy.

The claim:

The plaintiff claimed, through his attorney, that the General Tax Authority of the Ministry of Finance collected income tax from him for his practice of the medical profession illegally and constitutionally for the following reasons:

First: The reasons for appealing in Article (First/1) of the Ministry of Finance Resolution No. (1) of 1997:

1. Income tax has been collected from it, based on Article (First) of the Minister of Finance's decision / addition to his position No. (1)



of 1997, which stipulates (re-collection of the income tax imposed under the Income Tax Law (113) for the year 1982 from the income generated to: a. Physicians and dentists from practicing the medical profession) while the dissolved Revolutionary Command Council's decision (445) of 1991 exempted them from it, and the category of doctors was not exempted by a decision of the Minister of Finance in order to be within his authority to re-fulfill, and because the Income Tax Law No. (113) for the year 1982 included some powers of the Minister of Finance and the Council of Ministers with tax exemption (and not the authority to impose a specific tax) and because the legal basis on which the decision of the Ministry of Finance was based No. (1) for the year 1997 is the decision of the dissolved Revolutionary Command Council No. (11) for the year 1995, which does not exceed that the reversal of the exemption decisions referred to above to the original, which is the collection according to the Income Tax Law No. (113) for the year 1982, and it is not intended to collect income tax from those who were exempted from it according to the decision of the dissolved Revolutionary Command Council No. (445) for the year 1991, as the article (Seventh/10) of the aforementioned Income Tax Law stipulates the inclusion of tax exemption (i.e. income exempted from tax by a special law or international agreement), which is supported by Article (6/2) of the same aforementioned law, which imposes tax on every other source that is not exempt by law .

2. The decision of the Ministry of Finance No. (1) of 1997 Article (First/1) of it contradicts Article (47) of the current constitution and contravenes Article (52) of the Constitution of the Republic of Iraq for the year 1970 (repealed), which mandated the



National Council to consider draft laws before being submitted for approval and issuance.

3. The failure of the Ministry of Finance to implement Article (First/1) of its Resolution No. (1) for the year 1997, which stipulates (re-collection of income tax from doctors), which understands the appeal of reimbursement from those who were previously exempted from it, while the Ministry of Finance collects income tax from doctors All because the decision did not mention the word (category of doctors) so that all doctors according to this reading are subject to the fulfillment, whether they were exempted from it or not previously pardoned from it, and that (i.e. the plaintiff) was not re-fulfilled from it because it was fulfilled from the beginning.

4. Resolution No. (1) of 1997 did not refer to the approval of the Presidency of the Republic, which is considered an integral part of the dissolved Revolutionary Command Council Resolution No. (11) of 1995, but came in the form (based on what was stated in the presidential office letter q/5884 on 3/18/ 1997) without referring to what the letter contained (approval or authorization, for example). Note that according to the order of the President of the Republic / in addition to his job and according to the letter of the Presidential Office (qaf/579) on 20/3/1995 and according to the decision of the Ministry of Finance (13) for the year 1995, he had ordered the suspension of work to collect the tax from doctors after the decision of the Ministry of Finance No. (11) for the year 1995, which included re-completion. In addition to that, and the issue had already been decided upon by the President of the Republic/in addition to his position, Resolution No. (1) of 1997 was also flawed by not



obtaining the approval of the President of the Republic/adding to his position before the issuance of the decision.

5. Resolution No. (1) of 1997, Article (First/1) thereof, is unconstitutional as it contradicts the Income Tax Law in terms of imposing a tax on income, while the profits of professions are covered by the tax according to the aforementioned Income Tax Law, not income. On the one hand and the other hand, it is contrary to the decision of the dissolved Revolutionary Command Council No. (11) of 1995 that the authorization came to re-fulfill the legally approved taxes, and the incomes of professions are not legally approved as they are covered by a tax on profits and not from the incomes.

6. Article (First) of the Ministry of Finance Resolution No. (2) of 2006, which stipulates (stopping Paragraph (2) of the Minister of Finance Resolution No. (1) of 1997), and that Article (Second) of the Minister of Finance's decision is an addition to his job. No. (1) for the year 1997 stipulates (this decision shall be implemented as of the estimated the year 1997) and for the lack of correction, which calls for stopping the work of implementing the decision of the Ministry of Finance No. (1) for the year 1997.

Second: Objection to the letter of the Presidential Office (qaf/ 5884) on 18 /3/1997 as it violates the Presidency Office letter (qaf/579) dated 20/3/1995, which includes the President's order/in addition to his job to stop work to collect tax from doctors, and because the Presidency Office letter (qaf/5884) dated 3/18/1997 is the same It is clear from the texts that it did not include the approval of the President of the Republic / in addition to his job and in violation of Article (58) of the repealed Constitution of the Republic of Iraq for the year 1970, which states (The President of the Republic exercises



directly) b. In addition, the presidential office letter (qaf/5884) dated March 18, 1997, contradicts Article (73). Paragraph (third) of the current constitution also stipulates the powers of the President of the Republic/in addition to his job, Paragraph (Third) thereof and its text (Approves and issues laws enacted by the Council of Representatives.).

Third: Objection to the dissolved Revolutionary Command Council Resolution No. (11) for the year 1995: The dissolved Revolutionary Command Council Resolution No. (11) for the year 1995 stipulated the approval of the Presidential Office to return the tax refund instead of referring to the legislative authority, which contravenes Article 35 of the repealed constitution and Article 28/ First of the applicable constitution regarding imposing, collecting, amending taxes and exempting them by law, and that the decisions subject to appeal are in violation of Article (47) of the constitution in force, which stipulates the principle of separation of powers, and since the tax exemption authority has become among the powers of the Council of Representatives according to the current constitution, it is the authority The executive authority is repealed, including the authority of the Minister of Finance to re-fulfill it. And the dissolved Revolutionary Command Council Resolution No. (11) of 1995 was based on Article (42) of the repealed 1970 Constitution, which did not provide for the authority to authorize, but rather that Article 43 of it clarifies the powers of the Revolutionary Command Council, including (g. The Constitution. Except for the legislative ones) as well as Article 44/3 of the same canceled constitution, which stipulates that (The Chairman of the Revolutionary Command Council shall undertake the task of signing the decisions of the



Council that have the force of law and has the authority to authorize whomever he sees this authority), and that the Ministry of Finance ignored the decision of the Council of Ministers. The dissolved Revolution Leadership No. (445) for the year 1991 (in effect), Article (1) of which states that (doctors and dentists are exempted from the income tax imposed under the Income Tax Law No. (113) for the year 1982 on their income resulting from their practice of the medical profession until notice Another) which is what the plaintiff relies on in his case. When the plaintiff submitted a request to rule the unconstitutionality of the Ministry of Finance's procedures for collecting the tax from him due to the incorrect application of federal laws and constitutional rules and the unconstitutionality of its Resolution No. (1) of 1997 Article (I/1) thereof, as well as the unconstitutionality of each of the dissolved Revolutionary Command Council Resolution No. (11) for the year 1995 and the presidential office letter (qaf/5884) on 3/18/1997. It also requested that the Ministry of Finance be obligated to work in accordance with the dissolved Revolutionary Command Council Resolution No. (445) for the year 1991 and to charge the defendants/in addition to their job's fees, expenses, and attorney fees. The case was registered with this court in No. (111/Federal/2021), and the legal fee was collected for it, in accordance with what was stated in Article (1/Third) of the internal system of the Federal Supreme Court No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/first) of the same system as above. The first defendant's attorney answered the President of the Republic/in addition to his job, with his regulations dated 9/8/2021, which included the following:



1. His client is not suitable as a litigant in this case because the legal system of the President of the Republic at present is not a successor to the previous system.
2. The Federal Supreme Court It is not competent to consider this case because no provision in the Constitution of the Republic of Iraq has been violated, because the decision of the Minister of Finance to reimburse the income tax from doctors and dentists for their practice of medicine was based on the text of the decision of the (dissolved) Revolutionary Command Council, and this decision is a binding law According to the (repealed) interim constitution.
3. The dissolved Revolutionary Command Council Resolution No. (445) issued on 1/1/1992 exempted doctors and dentists from the income tax imposed under Income Tax Law No. (113) for the year 1982 on their incomes resulting from their practice of medicine until further notice, and for the reason to end Which was specified to him through the phrase (until further notice) which means that the exemption is temporary and for a limited period, as the legislator, after more than three years, found that the public interest requires the re-collection of taxes, and therefore authorized the Minister of Finance to re-collect them from the authority that obtained the exemption by virtue of a decision Revolutionary Command Council No. (11) for the year 1995 on 3/31/1997 and obtaining the approval of the Office of the Presidency of the Republic according to its letter No. (QAF/5884) on 3/18/1997, and the effective date of this decision was adopted as of the year 1998 according to the decision of the Minister of Finance No. (2)) for the year 1997, which was published in the Official Gazette on 1/1/1997.



4. The authorization of the Minister of Finance to exemption is an authorization from the legislator to the executive authority competent to collect the tax, which is in accordance with the provisions of the law and the constitution.

5. The Revolutionary Command Council Resolutions No. (445) for the year 1992 and (1) for the year 1997 are an amendment to the provisions of the Income Tax Law No. (113) for the year 1982.

6. The decision to cancel exemption No. (1) of 1997 was based on the approval of the Office of the Presidency of the Republic in its letter No. (QAF/5884) on 3/18/1997.

7. The Federal Supreme Court is competent to consider laws and decisions that contradict the Constitution of the Republic of Iraq for the year 2005 and have nothing to do with the laws and decisions issued based on the interim constitution of 1970 unless those laws conflict with the provisions of the constitution in force, and from this, the exemption from tax and its re-collection took place in accordance with the law and the constitution, Therefore, all of what the plaintiff mentioned in the petition has no basis in the law and the constitution. For the aforementioned reasons, he requested that the plaintiff's lawsuit be dismissed and he is charged with fees, expenses, and attorney's fees. The attorneys of the second defendant, the Speaker of the Council of Representatives/in addition to his job, responded with their regulations dated 9/14/2021, which included the following: 1. The Ministry of Finance's procedures for collecting tax from the plaintiff and its Resolution No. (1) of 1997 are among the administrative decisions that fall outside the jurisdiction of the Federal Supreme Court In accordance with the provisions of Article (93) of the Constitution, as well as the letter of the Presidential Office

Republic of Iraq
Federal Supreme Court
Ref. 111 / Federal / 2021



Kurdish text

No. (QAF/5884). 2. With regard to the dissolved Revolutionary Command Council Resolution No. (11) of 1995, it is one of the legislations in force in force unless it is repealed or amended in accordance with the provisions of Article (130) of the Constitution. It is also a legislative option that does not violate the provisions of the Constitution, so they requested that the plaintiff's claim be dismissed and charged All court fees, expenses, and attorney's fees. The third defendant's deputy, the Minister of Finance, in addition to his position, responded to the answer list dated 10/27/2021, which included the following:

First: From a formal point of view:

1. His client has nothing to do with the dissolved Revolutionary Command Council Resolution No. (11) of 1995, as it is not a legislative body, but rather authority. In addition, the imposition of taxes on the plaintiff and doctors who practice the medical profession is based on the amended Income Tax Law No. 113 of 1982, as amended, and the instructions and controls issued under it and not based on the decision of the aforementioned dissolved Revolutionary Command Council. The fact that the authorization granted to the Minister of Finance by virtue of the aforementioned Revolutionary Command Council decision is the authority to re-fulfill the legally prescribed taxes from any of the categories from which it was previously decided to be exempted, and not including doctors who practice the medical profession, as they were originally subject to tax and had never been exempted from it, so This case is obligatory to respond to the lack of litigation based on the provisions of Article (80) of the amended Civil Procedure Law No. 83 of 1969.



2. Since the taxpayer (the plaintiff) is subject to the amended Income Tax Law No. 113 of 1982, the law has drawn up for the taxpayer the legal methods of appeal for objection to the assessment, appeal, and cassation. The aforementioned, and since the aforementioned law specified the methods of objection to the decisions of the financial authority and the deadlines for submitting objections, as well as the methods of appeal before the appellate committees formed for this purpose, in accordance with the provisions of the aforementioned articles, so this case falls outside the jurisdiction of the Federal Supreme Court and no new methods of appeal may be created as long as It was determined by a special law, and that the private restricts the public, and since the plaintiff did not use those legal methods of the objection, his claim is without legal basis and must be answered due to the lack of functional jurisdiction of the court. Second: From the objective point of view: the plaintiff (Tarif Fadel Rahm) whose profession is a pediatrician, challenged, according to his claim, the constitutionality of the aforementioned dissolved Revolutionary Command Council decision issued in 1995 and requested to cancel the decisions and instructions issued based on him, while the date of permitting him to open a private clinic in Baghdad / New Baghdad / Above Al-Akhawain Pharmacy as of February 14, 2017, according to the letter of the Iraqi Medical Association, Baghdad Branch, No. 134, on February 14, 2017, which is attached to the lawsuit petition. It was registered with the General Tax Authority / New Baghdad Branch in 2017 with the file number (682)

As a result of conducting a field survey of his aforementioned clinic by the field survey committee of the General Tax Authority,



where it was noted that he was not subject to the assessment year 2017, according to the letter of the Medical Syndicate, Baghdad branch above, and he paid the tax due for the two years (2018 and 2016) and the taxpayer did not review for the purpose of conducting tax accounting for two years (2020). and 2021) estimated, and this indicates that the taxpayer, previously, had not been exempted from tax, especially since the date of granting him a license to open the clinic was on February 14, 2017, so the imposition of the taxes due to him was carried out based on Article (II/1) of the Tax Law Income No. 113 of 1982 as amended, as it specified the sources on which taxes are imposed, including professions, and is not covered by the tax exemption stipulated in Article 7 of the said law, as it specified the incomes that are exempt from tax and did not refer to exempting physicians who practice medicine, as they were originally subject to tax For the aforementioned reasons, he requested that the plaintiff's lawsuit be dismissed from the formal and substantive point of view and that he be charged with fees, expenses, and fees. After completing the required procedures in accordance with the provisions of the aforementioned bylaw, a date was set for the pleading and the parties were informed of it in accordance with the provisions of Article (2/Second) of the same bylaw above. At the appointed date, the court was formed. The attorney general of the plaintiff, Asaad Fadel Rahm, attended, and the attorney of the first defendant attended, in addition to his position as chief Legal experts Ghazi Ibrahim al-Janabi, and on behalf of the second defendant and his attorneys, legal counsel Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim attended. The Minister of Finance also attended on behalf of the third defendant, in addition to his job



as his attorney, the legal employee Alaa Alwan Hamidi. against them and each of them asked to dismiss the case on behalf of his client for the reasons mentioned in the list of each of them, and each party repeated his previous statements and requests, and where there was nothing left to say, the Court decided to end the pleading and has issued the following decision publicly.

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff's lawsuit focused on the request to rule the unconstitutionality of the dissolved Revolutionary Command Council Resolution No. (11) of 1995 and Resolution of the Ministry of Finance No. (1) of 1997 and the Presidential Office letter No. (QAF/5884) on 18 /3/1997 referred to in the Ministry of Finance Resolution No. (12) for the year 1995 and asked to obligate the Ministry of Finance to work in accordance with the dissolved Revolutionary Command Council Resolution No. (445) for the year 1991, arguing against the President of the Republic, the Speaker of Parliament and the Minister of Finance in addition to their jobs, even if his request was ruled unconstitutional What was mentioned above and according to what was stated in the plaintiff's lawsuit for violating the provisions of Articles (47) and (73) of the Constitution of the Republic of Iraq for the year 2005 and Articles (42) and (44/3) and (58) of the Constitution of the Republic of Iraq for the year 1970 and through scrutiny The plaintiff's lawsuit and the defenses of the defendants' attorneys, according to the regulations submitted by them, the court reached the following conclusions:

1. Paragraph (1) of the dissolved Revolutionary Command Council Resolution No. (445) for the year 1991 stipulated that



(doctors and dentists are exempted from the income tax imposed under Income Tax Law No. (113) for the year 1982 on their incomes resulting from The medical profession will concern until further notice), as stipulated in paragraph (1) of the dissolved Revolutionary Command Council Resolution No. (11) of 1995 that (the Minister of Finance, with the approval of the Presidential Office, is authorized to re-pay the legally prescribed taxes from any of the categories previously decided to exempt Including) Paragraph (1) of Item (First) of the Ministry of Finance Resolution No. (1) of 1997 stipulates (re-collection of the income tax imposed under the Income Tax Law No. (113) for the year 1982 from the income generated to doctors and dentists as a result of practicing a profession Medicine).

2. The plaintiff bases his claim on ruling the unconstitutionality of the contested texts for violating the provisions of articles (42), (44/3), and (58) of the 1970 constitution, and since the jurisdiction of this court is established by examining the extent to which the contested texts agree with the provisions of the stipulated constitutional articles in the constitution in force, the plaintiff's lawsuit is obligatory to respond from this aspect. As for his claim that it violates the provisions of Articles (47) and (73) of the Constitution of the Republic of Iraq for the year 2005, this court finds that the plaintiff's lawsuit is also obligatory to respond from this aspect because the nature of the system of government the problem under the 1970 constitution differs from the type of government that was formed under the current constitution, which is based on the principle of separation of powers and the inadmissibility of exceeding the limits of their constitutional competencies. Therefore, these texts cannot be ruled unconstitutional because they



contradict the competencies of the federal authorities formed under the 2005 constitution.

3. The federal executive authority consists of the President of the Republic and the Council of Ministers in accordance with the provisions of Article (66) of the constitution of the Republic of Iraq for the year 2005 and that the President of the Republic, according to Article (67) of the Constitution, is the head of the state and the symbol of the nation's unity and represents the sovereignty of the country and is committed to working to preserve Iraq's independence, sovereignty, unity, and territorial integrity. Paragraph (Third) of the aforementioned article, which states (He ratifies and issues laws enacted by the Council of Representatives and is considered ratified after fifteen days from the date of their receipt) and therefore his litigation regarding the challenge to the constitutionality of the contested texts is not valid. As for the third defendant, the Minister of Finance, in addition to his job, he is one of the subordinates of the Council of Ministers, the second component of the executive authority, and he cannot be contested in challenging the constitutionality of a legal text. Regarding the appeal against the decision issued by the Ministry of Finance No. (1) of 1997, the consideration of it is outside the jurisdiction of this court specified under Article (93) of the Constitution and Article (4) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) for the year 2021.

4. The plaintiff's request to oblige the Ministry of Finance to act in accordance with the dissolved Revolutionary Command Council Resolution No. (445) for the year 1997 is outside the jurisdiction of



this court. Accordingly, and for all of the foregoing, the Federal Supreme Court decided the following:

First: The ruling dismissing the plaintiff's lawsuit regarding the appeal against the decision of the Ministry of Finance No. (1) of 1997 and the appeal in the letter of the Office of the Presidency of the Republic No. QAF/5884 dated 3/18/1997, as well as his request to obligate the Ministry of Finance to work in accordance with the dissolved Revolutionary Command Council Decision No. 445 of 1997 for lack of jurisdiction of this court.

Second: The ruling dismissing the plaintiff's lawsuit with regard to the defendants, the President of the Republic and the Minister of Finance, in addition to their duties, because the litigation did not go to appeal against the decision of the dissolved Revolutionary Command Council No. (11) of 1995.

Third: The ruling dismissing the plaintiff's lawsuit in relation to the second defendant, the Speaker of Parliament, in addition to his position, due to the absence of a constitutional violation regarding the challenge to the constitutionality of the dissolved Revolutionary Command Council Resolution No. (11) of 1995.

Fourth: charge the plaintiff with fees, expenses, and attorney fees for the defendants' attorneys, an amount of one hundred thousand dinars, distributed according to the law. Supreme Court No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and publicly understood on Rabi' Al-Thani 18/1443 AH corresponding to 11/24/2021 AD.