

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref. 141/federal/2021



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 21. 12 .2021 headed by Judge Jasem Mohammad Abod 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: Head of the Social Protection Authority /being in her capacity - her two attorneys are Ghazwan Faisal Jassem and Imad Hamad Natah.

The Defendant: Speaker of the Iraqi Council of Representatives /being in his capacity his agents are legal advisor Haitham Majed Salem and jurist Saman Mohsen Ibrahim.

The Claim:

The plaintiff claimed through her attorney that the defendant issued the Social Protection Law No. (11) of 2014 and Article (4) of it stipulated ((First: A body called (the Social Protection Authority) shall be established, enjoying legal personality and financial and administrative independence, represented by the head of the authority or his authorized representative and linked to a Ministry Labor and Social Affairs)) and that this article is in violation of the provisions of Article (46) of the Constitution, where it restricted the essence of the rights stipulated in

Articles (30 and 31) of it, when it stipulated the association of the Commission with the Ministry of Labor and Social Affairs, which led to the disruption of the powers granted to the Chairman of the Commission in carrying out the tasks stipulated by law, and disrupting the mentioned law, and since the legal personality and financial and administrative independence are stipulated in Article (4) mentioned above, and since Article (48) of the Iraqi Civil Law No. (40) of 1951 stipulates (1- Every legal person shall have a representative of his will, 2- The person shall enjoy The moral has all rights, except for what is inherent in the capacity of a natural person within the limits determined by law, 3- He has an independent financial liability, 4- He has the capacity to perform, within the limits indicated by his establishment contract and which are imposed by law, 5- He has the right to litigation) whereas, the authority to assign an Assistant Director-General and below was withdrawn, according to the minister's margin dated 14/6/2021, which is proven on the administrative order No. (2034) on 9/6/2021, which contradicts the independence stipulated in the mentioned article. As for the connection, the authority is linked to the Ministry of Labor, and its connection does not mean complete and absolute submission, but within the limits set by the authority's law, according to the text of Article (4/1<sup>st</sup>) of the Social Protection Law No. (11) of 2014, while the link is organizational Only by withdrawing the financial authority based on the minister's margin dated 06/17/2021 on the original book No. (3294) on 06/15/2021, which includes the (plaintiff)'s request to grant her the authority to disburse subsidies and financial powers stipulated in the Social Protection Law No. (11) of 2014. The tasks of the authority stipulated by law are applied directly by the head of the authority, even if it is not among the independent bodies that are linked to the three presidencies, nor is an entity not linked to a ministry. Therefore, the minister cannot control all the details in a way that hinders the implementation of the provisions of the authority's law above. The approach of the legal, administrative and financial directorate, which does not have a legal personality, other than

its administrative subordination to the head of the authority creates confusion in the organization of administrative work, as well as unjustified interference in the work of the authority, which contradicts the text of financial and administrative independence through comprehensive guidance. The Social Protection Authority enjoys a legal personality and legal capacity within the limits set by law, enabling it to acquire rights and assume obligations. However, this capacity is a narrower scope than the capacity of a natural person, and the evidence of the full independence of the authority is the text of Article (3/eighteen) of the system of functions of the Authority Social Protection No. (1) of 2016, which provided for (coordination with ministries and entities not affiliated with a ministry to provide social services to beneficiaries covered by the provisions of this law, as follows: A. The Ministry of Labor and Social Affairs undertakes the following: **1.** Determining the training needs of the beneficiary and developing and implementing training plans. **2.** Providing support to those who are willing and able to work. **3.** Providing facilities to beneficiaries to obtain income-generating small loans. The fifth item of Article (4) of the Social Protection Law No. (11) of 2014 stipulates defining the authority's tasks through a system issued by the Council of Ministers. This system was issued No. (1) of 2016 and published in the Iraqi Gazette No. (4402) on 28/3/2016, in which he defined the powers and tasks of the authority and confirmed its financial and administrative independence, and entrusted the authority with the task of coordinating with ministries and agencies not affiliated with a ministry to provide social services to beneficiaries of the provisions of this law and a number of ministries and agencies, including the Ministry of Labor and Social Affairs. This confirms the independence of the authority in exercising its powers and functions from the Ministry of Labour. The Minister of Labor and Social Affairs issued Ministerial Order No. (13014) on 06/24/2021, which defines the financial and administrative powers of the head of the Social Protection Authority, which contradicts the Social Protection Authority Law and Regulation No. (1) of 2016. For all of the above, the plaintiff

requested the FSC ruled that Article (4) of the Social Protection Law No. 11 of 2014 was unconstitutional as far as the last part of its text was concerned, which included the authority's association with the Ministry of Labor and Social Affairs, and requested its disengagement with the Ministry of Labor and Social Affairs to carry out its tasks entrusted to it under the law This is based on the provisions of Article (93) of the Constitution of the Republic of Iraq for the year 2005. The case was registered with this court in No. (141/federal/2021), and the legal fee for it was collected in accordance with the provisions of Article (1/3<sup>rd</sup>) of the FSC's bylaw No. (1) of 2005, and the defendant is informed of its petition and documents in accordance with the provisions of Article (2/1<sup>st</sup>) of the same bylaw, and his two attorneys responded with the answer draft dated 26/10/2021, which included the following: The text of Article (46) of the constitution is not related to the violation alleged by the plaintiff, as it concerns the restriction of freedoms and not the issue of this association of independent bodies on the one hand and the other hand. The text in question represents a legislative option to make the authority's connection to the Ministry of Labor and Social Affairs, and this does not violate any of the constitutional texts. For these reasons, the defendant's attorney requested that the plaintiff's lawsuit be rejected and that it be charged with all court fees, expenses, and attorney's fees. After completing the required procedures in accordance with the provisions of the aforementioned bylaw, a date was set for the pleading in accordance with the provisions of Article (2/2<sup>nd</sup>) of it, and the two parties were informed of it. On the appointed day, the court was formed. The attorneys for the plaintiff /being in her capacity, Ghazwan Faisal Jassim and Imad Hamad Natah, attended as well as for the defendant /being in his capacity, and his attorneys, Legal Counsel Haitham Majed Salem, and the legal employee Saman Mohsen Ibrahim and started conducting the public pleading. The plaintiff's attorneys/being in her capacity repeated what was stated in the lawsuit they asked for the judgment in accordance with what was stated in it. The defendant's attorney /being in his capacity responded and requested that

the case be rejected for the reasons mentioned in their regulations dated 26/10/2021. Each party's attorney repeated his previous statements and requests, and since there is nothing left to say, the end of pleading has been made clear and the court issued the judgment

### The Decision:

After scrutiny and deliberation by the FSC it was found that the plaintiff the head of the Social Protection Authority/being in her capacity, requested to invite the defendant, the Speaker of the Council of Representatives /being in his capacity to plead and judge the unconstitutionality of Article (4) of the Social Protection Law No. (11) of 2014 as far as the last part of the text of the aforementioned article is concerned, which includes the authority's association In the Ministry of Labor and Social Affairs, and by examining the plaintiff's lawsuit and the defenses of the defendant's attorneys, the court reached the following conclusions: **First:** Article (4/1<sup>st</sup>) of the Social Protection Law No. (11) of 2014 stipulates that ((a body called (the Social Protection Authority)) shall be established, enjoying legal personality and financial and administrative independence, and represented by the head of the authority or his authorized representative and linked to the Ministry of Labor and Social Affairs. The aforementioned body is included among the independent bodies mentioned in the Constitution of the Republic of Iraq for the year 2005 within articles (102, 103, 104, 107, 106, 105) of it, and that granting it financial and administrative independence does not mean that it cannot be linked to the Ministry of Labor and Social Affairs. **Second:** According to the provisions of Article (80) of the Constitution of the Republic of Iraq for the year 2005, the Council of Ministers exercises the planning and implementation of the state's general policy and general plans and supervising the work of ministries and entities not associated with a Ministry Social Protection Authority No. (1) of 2016 to determine the tasks of the aforementioned authority, as Article (4/5<sup>th</sup>) of Social Protection Law No. (11) of 2014 stipulates (the tasks of the authority are

determined by a system issued by the Council of Ministers). **Third:** The association of the Social Protection Authority with the Ministry of Labor and Social Affairs does not deprive it of the financial and administrative independence described in Article (4/1<sup>st</sup>) of the Social Protection Law No. (11) of 2014. As for the issuance of administrative orders by the Minister of Labor and Social Affairs that affect the work of the Authority, the consideration of Appealing these orders is not within the jurisdiction of this court stipulated in Article (93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of the FSC Law No. (30) of 2005 as amended by Law No. (25) of 2021. **Fourth:** The allegation that the phrase (and is linked to the Ministry of Labor and Social Affairs) contained in Clause (First) of Article (4) of the Social Protection Law No. (11) of 2014 violates the provisions of Article (46) of the Constitution, which stipulates that (there is no restriction on the practice of Any of the rights and freedoms contained in this Constitution or their limitation except by law or based on it, provided that such limitation and restriction does not affect the essence of the right or freedom) This claim has no constitutional basis as the statement whose constitutionality is challenged did not restrict the exercise of any right granted to the Social Protection Authority According to the Constitution, and in the absence of a constitutional violation and all of the above, the FSC decided the following: **First:** Rejecting the plaintiff's lawsuit, the head of the Social Protection Authority /being in her capacity. **Second:** To charge the plaintiff /being in her capacity, the fees, expenses, attorney fees, and attorney fees for the defendant/being in his capacity, an amount of one hundred thousand dinars, distributed according to the law, and the judgment was issued in agreement conclusive and binding on all authorities based on the provisions of Articles (94 and 93) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/2<sup>nd</sup>) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and the decision had made clear public On 16/Jumada Al-Ula/1443 coinciding with 21/December/2021