

Republic of Iraq
Federal Supreme Court
Ref. 161 / Federal / 2021



The Federal Supreme Court (F.S.C.) convened on 21.2.2022 headed by Judge Jasem Mohammad Abbood 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:

Asaad Finjan Nashi - his attorney, Ayed Khalif Mansour.

The defendant:

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official Saman Muhsen Ebraheem.

The claim:

The plaintiff, claimed through his attorney, that he had appealed before the Staff Judiciary Court regarding the cancellation of the scholarship contract. His appeal was rejected by decision No. (370/m/2016) on 10/6/2018, which was ratified in cassation by virtue of the decision of the Supreme Administrative Court No. (863/2021 dossier No.1501/Employee Judiciary - Discrimination/2018) dated 23/3/2021. Then it turned out later that the Staff Judiciary Court and the Supreme Administrative Court are not qualitatively competent to consider the dispute related to the scholarship contract, and according to what was stated in the decision of the Federal Court of Cassation (the authority to assign the reference) No. (1/ Appointment of

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reference /2020, Teh/1) on 14.1.2020 issued by agreement that the competencies of the Employees Judiciary Court (don't include the settlement of disputes arising from the implementation of the contract or breach of its implementation or any dispute related to a contractual relationship between two parties, one of which is the state represented by ministries or bodies or the like), and appointed the Ramadi Court of First Instance to be the competent functionally to consider the case and decided to send the case to it for the purpose of resolving it in accordance with the law and notifying the Administrative Court of that, noting that the decision to appoint the reference was issued before the date of the issuance of the ratification decision by the Supreme Administrative Court. since the decision of the authority to appoint the reference is final and binding under the provision of Article (7/12th) of the amended State Council Law No. (65) of 1979. Through the foregoing, the decision of the Employees Judiciary Court And the decision to the ratifying is null because they were issued contrary to the rules of specific jurisdiction, which is part of the public order, and the decision of the nullified judgment is a material act that has no legal value. Then the plaintiff filed the lawsuit numbered (2437/mim/2021) before the Employees Judiciary Court (original nullity lawsuit) in which he requests a ruling to invalidate the judgment decision of the lawsuit numbered (370/m/2016) on 10/6/2018 and refer the lawsuit to the Court of First Instance according to the jurisdiction pursuant to the decision of the authority (appointing the reference) above and based on the provisions of Article (160/3) of the amended Civil Procedure Law No. (83) for the year 1969, which states (the judgment issued by the court remains valid and considered unless it is invalidated or

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amended by the court itself or annulment or revoked by a court higher than it according to the legal methods), the legal methods of appeal are specified in Article (168) of the said law, and with regard to his case, it does not include the permissibility of ruling the invalidity of the decision of the nulled judgment, which is inconsistent with justice, as it is not valid to adopt a judgment decision issued by a court which is not competent and the specific jurisdiction of the public order is not legally valid to agree otherwise, and the Federal Court of Cassation has decisions that consider the decision issued by a court that is not qualitatively competent to be null and do not produce legal effect. Civil Procedure No. (83) for the year 1969, amended with regard to nulled judgments, which is the pleadings and procedures Law under Article (1) thereof, and this violates the provisions of Article (19/6th) of the Constitution, which stipulates (every individual has the right to be treated fairly in judicial and administrative procedures) and that the Constitution is the supreme law in all parts of Iraq. Any law that contradicts its provisions shall be void in accordance with the provisions of Article (13) of it, and that his claim is one of the implementations of the constitutional text in Article (19/Third- litigation is a safeguarded right guaranteed to all), the defendant/in addition to his post is competent under Article (61/First) of the Constitution to legislate federal laws in accordance with the provisions and spirit of the Constitution, especially Article (5) thereof. And comparative laws, including Egyptian law, dealt with this issue, while the Iraqi law was devoid of a text to address invalidity. Therefore, the plaintiff requested the Federal Supreme Court to direct the defendant to issue the appropriate legislation to fill the legislative shortcomings in the

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Civil Procedure Law No. (83) of 1969, as amended, in a manner that deals with the invalid judgment decisions issued by a court that is not competent, as in his case, in accordance with the provisions of the Constitution, and to charge him with fees, expenses, and attorneys' fees. The case was registered with this court in No. (161/Federal/2021), the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's Bylaw No. (1) of 2005, the defendant was informed of its petition and documents in accordance with the provisions of Article (2/First) of the same bylaw, his two attorneys responded with the answer draft dated 30.11.2021 and requested that the plaintiff's lawsuit be dismissed because its consideration is outside the jurisdiction of the Federal Supreme Court based on the provisions of Article (93) of the Constitution, and to charge him with all judicial fees, expenses, and attorney's fees. After completing the 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/Second) thereof, the two parties were informed of it. On that date, the court convened and the agents of the plaintiff and defendant all attended and 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 accordingly. He added that the decision of the reference appointing authority was issued in a lawsuit whose subject matter is similar to the subject of his client's lawsuit and presented to the court an answer sheet. The defendant's agents responded requesting to dismiss the lawsuit for the reasons listed in the answering draft dated November 30, 2021. each party's attorney repeated his statements and requests, since there is nothing

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left to say, the court decided the conclusion of the pleading, and issued the following ruling:

The decision:

Upon examination, it was noted that the plaintiff had previously filed the case before the Employees Judiciary Court on March 8, 2016, requesting the cancellation of the ministerial order issued by the Minister of Higher Education and Scientific Research, in addition to his post, which included canceling his scholarship. That court issued its decision No. (1513/2018 in 10.6.2018) to dismiss the case, which was approved by the Supreme Administrative Court under its decision No. (863/ 2021 on 3/3/2021), despite the existence of a previous decision by the authority appointing the reference in the Federal Court of Cassation in the number (1/ Appointment of reference /2020 on 14/1/2020) is not related to the plaintiff's lawsuit, but it has ensured that the lawsuit arising from contracts is within the jurisdiction of the ordinary judiciary and not within the jurisdiction of the administrative judiciary. Despite that, the supreme administrative court issued its decision to approve the decision of the employees' judicial court of dismissing his lawsuit filed before the Employees Judiciary Court to invalidate the decision issued by it, as it was issued in violation of the specific jurisdiction, but that court issued a decision to dismiss that case, which prompted him to file this case before this court, claiming the existence of a legislative void or shortcoming in the civil procedures Law Civil Courts, requesting guidance to issue appropriate legislation to deal with cases of nullification of invalid decisions issued by non-competent courts. Through scrutiny and deliberation, it was found that the plaintiff's

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lawsuit is related to the issue of omission or legislative deficiency and that the legislative omission is directly related to the legislative authority, because the violation of the constitution by the legislative authority can occur through the legislation of laws violating the provisions of the constitution or through the legislator's abstention from exercising this jurisdiction, this defect (abstention) might be deliberate on the part of the legislator for specific purposes and motives, or it is due to the unpredictability of the future, so the text falls short of meeting the developments of life. This court sees that the legislative omission that is subject to the oversight of the federal supreme court is what leads to affecting right or guarantee stipulated by the constitution like the individual right in life, security, freedom, the right to litigation, ensuring equality and equal opportunities, and other rights and freedoms stipulated and guaranteed by the constitution. The constitutional judiciary is responsible for obligating the authorities to respect the provisions, this can be done either by referring to the areas of omission or deficiencies in the legislation subject to challenge and notifying the legislative authority of that to address it as having the original jurisdiction in the legislation or to direct a binding recommendation to the legislator to avoid that omission. But some may think that there is a legislative omission in a certain aspect due to the ambiguity in the legal text, either for a drafting disorder or for the scattering of texts that deal with a specific topic, so the constitutional judiciary is resorted to requesting the legislative authority to address what is believed to be an omission or a legislative deficiency. In this case, the judiciary's Constitutional use of means of interpretation of the text or texts governing the subject without resorting to judicial means to address omissions or

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legislative deficiencies. When examining the plaintiff's lawsuit, it was found that he was claiming that a decision was issued by the administrative judiciary in violation of the rules of qualitative jurisdiction, which means the absence of that decision, and that he relied in his case before this court on the decision issued by the Employees Judiciary Court to dismiss the lawsuit he instituted to invalidate that decision, claiming that there is a legislative vacuum in the law Civil pleadings to address cases of nullification of such decisions. This court considers that what the plaintiff alleges about the absence of the decision issued by the Administrative Judiciary Court for its issuance in contravention of the rules of qualitative jurisdiction to impose the validity of what he claims in relation to his decision does not need to file a case because the invalid judgment is the one who is missing one of the important elements of its composition and does not need to be announced Judicial to invalidate it because he does not need someone to execute him, and anyone with an interest can claim the absence of the judgment if it was issued by a court that is not competent That is, the road was not blocked for him to use his right to litigation guaranteed to him by the constitution, but he was the one who gave up using his right to take the path set by the law for him, as he had admitted in the pleading session on 5.1.2021 not to initiate the case before the ordinary judiciary. Thus, the court finds that there is no void or legislative deficiency in dealing with the case claimed by the plaintiff. for all the foregoing and the request, the Federal Supreme Court decided the following:

- 1- The ruling to dismiss the claim of the plaintiff, Asaad Finjan Nashi.

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2- Charge the plaintiff with fees, expenses, and attorney's fees for the defendant's agents, the Speaker of the Iraqi Council of Representatives, in addition to his post, Legal Counsel Haitham Majed Salem and legal employee Saman Mohsen Ibrahim, an amount of one hundred thousand dinars distributed according to the law. The decision was issued in agreement based on the provisions of Articles (93/First and 94) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/First) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 final and binding on all authorities and publicly understood On Rajab 19, 1443 AH, corresponding to February 21, 2022 AD.

Signature of
The president

Jasem Mohammad Abbood

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