

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/3/2023 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, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Representative Dr. Raid Hamdan Al-Maliki/ member of the parliamentary legal department – his agent the barrister Raad Abdul Jabbar Al-Kinani.

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 claimed through his agent that the defendant, the Speaker of the ICR/ being in this capacity had issued the law of selling and leasing the state's funds No. (21) for 2013, and he amended the aforementioned law according to first amendment law No. (21) for 2016 whereas he added an article (25) bis, which stipulated ((The Minister of Finance may sell or rent agricultural lands that fall outside the boundaries of the road taboos from which the water share is cut off without public auction, and the Minister of Agriculture shall lift the hand of agrarian reform from those lands and register the sale and rent allowances as final revenue to the state treasury, provided that easements are taken into account)). The Federal Supreme Court, in its decision No. (213/Federal/2021), had previously annulled the text of Article (25/3rd) of the aforementioned law. Because of the exploitation

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2023



Kurdish text

of this text to acquire state-owned real estate without right and to preserve the people's funds, in accordance with the provisions of articles 14, 16, and 27/1st) of the Constitution of the Republic of Iraq, and since the same arguments and justifications on which the court relied in its decision above are available to the same extent in the text of article 25 bis because this text allows the sale of agricultural land without public auction, which leads to its exploitation to seize state funds and buy them cheaply, in addition to violating the principle of equality and equal opportunities approved by the constitution. For the foregoing, and based on the provisions of article 6/2nd of the Law of the Council of Representatives and its Formations No. 13 of 2018, which states ((The deputy is a representative of the public interest in all its aspects, and as a representative of one hundred thousand people, he has the right to litigate before all judicial bodies)), the plaintiff requested this court, being a representative of the people, to rule on the unconstitutionality of article 25 bis of the Sale and Lease of State Funds Law No. 21 of 2013, as amended, and to repeal it based on the provisions of articles 14, 16, and 27 (1st) of the Constitution of the Republic of Iraq, and to charge the defendant fees, expenses, and advocacy fees. The lawsuit was registered with this court with the number (17/federal/2023) and the legal fee for it was collected in accordance with Article (21/1st) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, and the defendant was informed of its petition and documents following item (second) of the same article, and his agent replied with the reply list dated 12/2/2023, concluding that the text of the article (6/2nd) of the Law of the Council of Representatives and its formations was ruled unconstitutional by the decision of the Federal Supreme Court No. (140 and its unified 141/federal/2018) on 23/12/2018, so the plaintiff's claim is not relevant, the text (subject to challenge) came as a legislative

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2023



Kurdish text

option following the competencies of the Council of Representatives based on the provisions of Article 61 of the Constitution and does not violate any of the constitutional provisions on which the plaintiff relied, so they requested the dismissal of the plaintiff's lawsuit and charging him fees, expenses, and advocacy fees. After completing the procedures stipulated in the Court's bylaws mentioned above, a date was set for the pleadings in accordance with Article (2/2nd) thereof, and the parties were informed of it, and on the appointed day, the Court was formed, and the agents of the parties attended and the public adversarial pleading was initiated, the plaintiff's attorney repeated what was stated in the lawsuit petition and requested judgment according to what was stated in it, the defendant's attorney responded and requested the dismissal of the lawsuit for the reasons stated in the reply list linked to the case papers, and each party repeated its previous statements and requests, and where there was nothing left to say, the end of the argument has been made clear, and the court issued the following judgment decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff requested, through his attorney from this court, to rule on the unconstitutionality and repeal of Article 25 bis of the Law on the Sale and Rent of State Funds No. 21 of 2013, as amended by Law No. 21 of 2016, which stipulates ((The Minister of Finance may sell or rent agricultural lands that fall outside the boundaries of the road prohibitions from which the water share is cut off without public auction, and the Minister of Agriculture shall lift the hand of agrarian reform from those lands and register allowances. Sale and lease as final revenue to the State Treasury, provided that easement rights are

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2023



Kurdish text

considered)), this is based on the provisions of articles (14, 16, and 27/1st) of the Constitution, especially since the Federal Supreme Court had previously ruled unconstitutional and repealed article (25/3rd) of the original of the aforementioned law, by virtue of its decision No. (213 / Federal / 2021) issued on 9/2/2022, and by reviewing the court's review of the defenses of the defendant's agents (Speaker of the Council of Representatives/ being in this capacity) submitted to this court under the answering draft dated 12/2/2023 and during the pleadings, those who requested the dismissal of the lawsuit because the text (subject to the challenge) was a legislative option in accordance with the competences of the House of Representatives based on the provisions of Article 61 of the Constitution and does not contradict any of the constitutional provisions on which the plaintiff relied, the Federal Supreme Court finds the following:

First: The preservation of public funds is based on the basis of supervisory responsibility and the basis for determining this control is the Almighty's saying (*And say, "Do [as you will], for Allāh will see your deeds, and [so will] His Messenger and the believers*) – *Surat Al-Tawba, verse (105)* - Accordingly, the responsibility for controlling and preserving public funds is determined by three elements: the first element is self-censorship stemming from the individual's belief in observing God Almighty in all his actions, the second element is executive control, represented by state control and the laws it enacts, stemming from its responsibility to preserve public money as belonging to the people, and the third element is popular control, represented by civil society institutions and members of society itself, the preservation of public money is the source of the soul and conscience next to the executive authority and popular control, so the prevalence of the idea of individual and collective responsibility in maintaining public money returns to the

saady



state with progress and progress, and the story of our master Joseph, peace be upon him, is the best example of this when he said to the Pharaoh of Egypt (*Appoint me over the storehouses of the land. Indeed, I will be a knowing guardian*) –*Surat Yousef - verse (55)*. Also, his Almighty says (*O my father, hire him. Indeed, the best one you can hire is strong and trustworthy*) – *Surat Al-Qasas - verse (26)*, Since public funds have a sanctity decided by Islamic law and shown by the beginning of the limits related to their preservation to the sanctity of lack of mastery of work, and because public money is subject to attack more than private money, Islamic law has criminalized all forms of assault on it, whether by theft, embezzlement, extortion, exploitation, unlawful use, destruction, or even low quality, the origin is that it is not permissible to dispose of public property except in the public interest, and a lot of evidence has been received, the legitimacy of the Noble Qur'an on the need to preserve it as the Almighty said (*And do not give the weak-minded your property,[163] which Allāh has made a means of sustenance for you*) *Surat Al-Nisa'a - verse (5)*, The prohibition in this verse came from empowering fools who do not manage well and preserve money because this will lead to its loss, and the Almighty said (*And do not consume one another's wealth unjustly*) –*Surat Al-Baqara - verse (188)*, this is evidence of the sanctity of public money and the inadmissibility of infringing on it, as it is public money legislated by God Almighty so that its effect is transgressive to all people, his Almighty said (*[As for] the thief, the male and the female, amputate their hands*) –*Surat Al-Maida - verse (38)*, The limit of theft here is to cut off the hand and this is a clear statement on the atrocity of the act that led to the infliction of this provision, and this provision is applied here to the theft of public money and private money or what is legally known as embezzlement, and perhaps one of the ways to protect public money is to issue laws that criminalize the violation of this public and

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2023



Kurdish text

put appropriate penalties against everyone who begs him to dispose of public money for his personal benefit, so laws are enacted that deter negligent people in a way that preserves public money and does not make it a loot for every messer even imprisonment, according to the nature of this violation or the disposal of public funds, and these ways also include activating the institutions of oversight and combating administrative corruption and granting them appropriate media immunity without prosecution, harassment or disruption of their work. The protection of public money has great effects that are reflected on the individual and society, for the individual, this makes him feel integrity, and when he knows that public money in his country is protected and protected, he has a culture of belonging to his country and his homeland, which pushes him to more loyalty to his homeland, As for society, the protection of public money is a force for it and raise its status, as all its members are proud of their public institutions and the funds they contain, so the community has a culture of belonging to the homeland, so it becomes a cohesive, interdependent and strong society, and everyone's eyes become monitored and open to every attack or violation of public money, as for the homeland or the state, transparency prevails in all its governing institutions and officials are alert to any violation, especially with regard to public money, as the broad base of citizens, society and institutions all civilization has been fused into the culture of preserving public money and taking care of it. The idea of protecting public funds and its message is a national idea, which everyone participates in formulating and translating on the ground, starting with the average citizen and passing through society and its various institutions and ending with the state, the countries, and peoples that carry great human and moral values and principles are the ones in which this culture is strengthened in a tangible practical reality.

saady



Second: The legal protection of public funds in the State is one of the most important topics that work to improve and develop the economic entity of the State and highlights the need to protect public funds through the direction of the constitutional legislator in many countries towards tightening the procedures for that protection and emphasizing the need to preserve public money, and in this direction, the Iraqi constitutional legislator took as Article (27) of the Constitution of the Republic of Iraq for the year 2005 (First: Public funds are inviolable, and protecting them is the duty of every citizen. Second: The provisions relating to the preservation and management of state property, the conditions for its disposal, and the limits within which it is not permissible to relinquish any of these funds shall be regulated by law). Thus, the Iraqi Constitution obliges every Iraqi to protect public funds, considering that their ownership belongs to all members of the Iraqi people, and the Iraqi legislator defined under the provisions of Article (71) of the Iraqi Civil Code No. (40) of 1951, as amended, public funds, as it stipulated (1) Real estate and movables belonging to the State or legal persons, which are allocated for public benefit already or by law, shall be considered public funds. Accordingly, one of the most important conditions for such funds to be considered public funds is that they are allocated for the public benefit or under a provision in the law and that the most important aspect of the protection of public funds is their inalienability of them, the Iraqi legislator addressed this under paragraph (2) of Article (71) of the Civil Code, where it stipulated (and these funds may not be disposed of, seized or owned by prescription) and the provision of this principle is to ensure that these funds remain in the possession of the administration and do not leave their liability to individuals or private law persons, according to the text of paragraph (2) of Article (71) of the Civil Code, public funds may not be disposed of,

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2023



Kurdish text

seized, or owned by prescription, and public funds lose their character with the end of their allocation for the public benefit and the allocation ends under the law or by deed or by the end of the purpose for which those funds were allocated for the public benefit following the provisions of Article (72) of the Civil Code, so what is stated in Article (25) bis of the Sale and Lease of State Funds Law No. (21) of 2013, as amended, contradicts the provisions of Article (27) of the Constitution of the Republic of Iraq for the year 2005, which requires a ruling of unconstitutionality. Third: What is stated in Article (25) bis of the Sale and Rent of State Funds Law No. (21) of 2013, as amended, violates the principle of equality following Article (14) of the Constitution of the Republic of Iraq of 2005, as it becomes clear through a quick review of all the declarations of rights that followed the revolutions, up to the universal declarations of human rights, and even the texts of most constitutions of the countries of the world, clearly show us the rank occupied by the principle of equality in those texts, especially in terms of the inadmissibility of Discrimination between people based on ethnic, religious or cultural, as the application of the principle of equality through the jurisprudence of the constitutional judge gives this principle the binding constitutional truth, which requires the need to be strict in the continuity of rooting the constitutional values of the principle of equality, the main obstacle in the issue of achieving the principle of equality is manifested in its problem through the conflict of theoretical reality and the practical reality of law, in the sense that the law in its formal aspect achieves equality when it addresses everyone without exception, but it violates the principle of equality in practice when it treats and in one way different legal centers. Constitutionalism in comparative law, but through a new strategy and the jurisprudence of the constitutional judiciary, it is possible to reach in practice the

saady



application of the principle of equality outside the framework of race, religion, or culture, the principle of equality does not prevent the legislator from adopting distinctive methods in dealing with different legal centers justified by the purpose of developing legislation, but the principle of equality is not limited to the citizens of this or that state but must be viewed from a comprehensive angle for the human being regardless of his homeland, that is, the principle of equality requires raising it from its traditional rank limited to citizens alone to the human rank to include foreigners legally residing on the territory of the state. The principle of equality requires the inclusion of legal persons in it because legal persons are a grouping of natural persons, in summary, the application of the principle of equality is inconsistent with the provisions of Article (25) bis of the Law on the Sale and Lease of State Funds No. (21) of 2013, as amended, granting the Minister of Finance the authority to sell or lease agricultural lands that fall outside the boundaries of the taboos of roads for which the water share is cut off without public auction may lead to the preference of one buyer over another for social reasons or Personal where there is no restriction on that, especially since the aforementioned text is not restricted by certain conditions, which requires ruling it unconstitutional.

In view of the foregoing, the Federal Supreme Court decided the following:

1. Ruling on the unconstitutionality and repeal of Article (25) bis of the Law on the Sale and Rent of State Funds No. (21) of 2013, as amended by Law No. (21) of 2016, which stipulates ((The Minister of Finance may sell or rent agricultural lands that fall outside the boundaries of the road prohibitions from which the water share is cut off without public bidding, and the Minister of Agriculture shall lift the hand of agrarian reform on those lands and register the sale and

saady

Republic of Iraq
Federal Supreme Court
Ref. 17/ federal /2023



Kurdish text

rent allowances as final revenue for the state treasury, provided that easements are observed)).

2. To burden the defendant/ being in this capacity with the fees, expenses, and advocacy fees for the agent of the plaintiff.

The decision has been issued with majority, final, and binding for all authorities according to the provisions of articles (93/1st and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/1st and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear in the session dated 15/Shaaban/1444 Hijri coinciding with 8/March/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

saady