

Republic of Iraq
Federal Supreme Court
Ref. 267 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 17/1/2023 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 Sulayman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mohammed Jassim Mohammed Ali/ member of the ICR – his agent the barrister Dr. Uda Yousef Salman.

The Defendant: The Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiff claimed through his agent that the Council of Ministers issued Resolution No. (297) of 2022 in the ordinary session dated 15/11/2022 and appended to notify it to the relevant authorities and with the signature of the Secretary-General of the Council of Ministers on 16/11/2022, and the decision included in the first paragraph of it granting the governors, the Mayor of Baghdad and the head of the Fund for the Reconstruction of Areas Affected by Terrorist Operations the authority to direct contracting up to (5) billion dinars, as an exception to the provisions of article (3) of the instructions for the implementation of government contracts No. (2) of 2014, The second paragraph included that the authorization includes (non-assigned) works within the investment budget schedules, and the plaintiff took the initiative to

saady

Republic of Iraq
Federal Supreme Court
Ref. 267 / federal /2022



Kurdish text

challenge it before this court for violating the constitution in article 80 / third thereof, which stipulated the authority of the Council of Ministers to issue regulations, instructions, and decisions to implement laws and not decisions that would disrupt the provisions of laws, the decision in question also suspended the instructions for the implementation of government contracts, which are considered to protect public funds from waste, and the Emergency Support Law for Food Security No. (2) of 2022 did not include the authorization of the Council of Ministers to issue such a decision, and the decision in question violated Articles (16, 25, 26, and 27) of the Constitution, which affirmed the principle of equal opportunities among Iraqis and the state's guarantee to encourage the private sector and encourage investment, in addition to violating the challenged decision of the government program, as the Council of Ministers did not audit and verify the number of projects that cost it at five billion in each governorate and their total cost, so the plaintiff asked this court to rule on the unconstitutionality of Cabinet Resolution No. (297) of 2022 and the unconstitutional procedure it contained, due to its violation of the provisions of Articles (16, 25, 26, 27, and 80 / 3rd) of the Constitution. The lawsuit was registered with this court with the number (267/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1st) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, and it informs the defendant of its petition and documents based on item (2nd) of the same article, the defendant's agent replied with the answering draft dated 17/1/2022, which included detailed formal and substantive defenses, the conclusion of which was that there is no interest for the plaintiff to file the lawsuit, as the competence and functions of a member of the Council of Representatives derive from the competence and functions of the Council of Representatives, which is concerned with legislation and

saady

Republic of Iraq
Federal Supreme Court
Ref. 267 / federal /2022



Kurdish text

monitoring government performance under Article (61) of the Constitution and does not include filing an appeal on behalf of the people before the judiciary, as stipulated in the provisions of paragraph (1) of Section (14) of Legislative Order No. (87) of 2004 (The Minister of Planning shall issue administrative instructions). and systems to implement this command), the decision of the Council of Ministers in question was based on the letter from the Ministry of Planning No. (3/1/30217) dated 14/11/2022, which includes authorizing the governors, the Mayor of Baghdad, and the head of the Fund for the Reconstruction of Liberated Cities Affected by Terrorist Operations the authority to direct contracting up to (5) billion dinars for the works and contracts mentioned in the Emergency Support Law, as an exception to the instructions for implementing government contracts, the letter of the General Secretariat of the Council of Ministers No. (44144) dated 6/12/2022 clarified that the exception granted under the aforementioned decision is limited to the contracting methods stipulated in Article (3) of the instructions for the implementation of government contracts, and the exception does not mean exceeding the provisions related to the referral and implementation of government projects and contracts stipulated in the aforementioned instructions and their controls, with the obligation to prepare the estimated costs of contracts from an updated competent technical authority based on the comprehensive study of prices of the prevailing market as required by Article (2/1st and 2nd) of the above instructions, and it is not permissible to divide works and projects with the intention of bringing them within the financial authority specified in the aforementioned resolution, in addition to the obligation to abide by the legal conditions that must be met by the parties to be contracted, and that the decision of the Council of Ministers is not a violation of the principle of equal opportunities guaranteed to all Iraqis, so he requested

saady

Republic of Iraq
Federal Supreme Court
Ref. 267 / federal /2022



Kurdish text

that the appeal be dismissed and that the plaintiff be charged the expenses, fees and attorney's fees. After completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff and his agent attended, and the defendant's agent attended, and the public adversarial pleading was initiated, the plaintiff and his agent repeated what was stated in the petition and requested a judgment according to it, the defendant's attorney responded requesting the dismissal of the lawsuit for the reasons mentioned in the reply list linked to the case papers, and the agent of each party repeated his 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, it was found that the plaintiff (Muhammad Jassim Muhammad Ali), a member of the Iraqi Council of Representatives, had requested in his lawsuit to rule on the unconstitutionality of the Council of Ministers Resolution No. (297) of 2022 adopted in the fourth ordinary session of the Council of Ministers held on 15/11/2022, which includes authorizing the governors, the Mayor of Baghdad, and the head of the Fund for the Reconstruction of Areas Affected by Terrorist Operations the authority to direct contracting up to (5,000,000,000) five billion dinars for the work of contracts proven within the Emergency Support Law for Food Security and Development No. (2) For the year 2022, as an exception to the contracting methods established in Article (3) of the Government Contracts Implementation Instructions No. (2) of 2014, and the

saady

Republic of Iraq
Federal Supreme Court
Ref. 267 / federal /2022



Kurdish text

aforementioned authorization includes the works not referred to within the investment budget schedules and special programs for their completion and distribution of projects. Upon reviewing the Federal Supreme Court the reply list submitted by the defendant's agent in addition to his job, the court finds that the plaintiff's claim is admissible in terms of litigation, because the plaintiff and the defendant, in addition to his job, are legal litigants who meet the conditions of litigation and have the legal capacity to litigate, and upon examining the plaintiff's requests, it was found that he requested a ruling on the unconstitutionality of Cabinet Resolution No. (297) of 2022 and that the plaintiff's request according to its wording contained in the lawsuit petition is outside the jurisdiction of this court because the constitutional oversight prescribed for the Federal Supreme Court extends to the laws and regulations in force only, following what is stated in item (1st) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 and item (1st) of Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended, and does not extend to considering the constitutionality of decisions or procedures issued by any of the authorities, including decisions issued by the Council of Ministers, and this is what the judiciary of this court has settled on in many of its decisions, so the plaintiff's lawsuit is lacking its constitutional and legal basis and must be dismissed for not Jurisdiction. For all of the foregoing, and with the request, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit (Muhammad Jassim Muhammad Ali) and charge him the fees, expenses, and attorney's fees of the defendant's agent, the Prime Minister, in addition to his position as legal adviser Haider Ali Jaber, an amount of one hundred thousand dinars. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the

saady

Republic of Iraq
Federal Supreme Court
Ref. 267 / federal /2022



Kurdish text

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 made clear on dated 24/Jamada Al-Akhir/1444 Hijri coinciding 17/January/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court

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