

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 31 Unified 32/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 13.7.2021 headed by Judge Jasem Mohammad Abood and the membership of the judges Sameer Abbas Mohammed, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad, and Khaled Taha Ahmed Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiffs: 1- General Manager of the National Center for Engineering Consultation/ being in his capacity – his jurist Zahra Hassoun Yaseen.
2- Director-General of the National Center for Construction Laboratories/ being in his capacity – his jurist Amal Jamil Ibrahim.

The Defendants: 1- Prime Minister / being in his capacity – his jurist Haider Ali Jaber Al Sufi.

2- Speaker of Council of Representation/ being in his capacity his deputy, legal advisor, Haitham Majed Salem and jurist Saman Mohsen Ibrahim.

3- President of the Republic/ being in his capacity– his jurist Ghazi Ibrahim Al Janabi.

The Claim:

The first plaintiff/ being in his capacity claimed that the first defendant/ being in his capacity prepared the draft Federal General Budget Law No. (23) of 2021, and its law was legislated for the second defendant and the third defendant ratified it, and because the aforementioned law is unfair to him, he hastened to challenge it before this court for the following reasons: 1- The Budget Law No. (23) of 2021 violated the Constitution because it neglected to include in the Budget Law a legal text that came as an exception from the Financial Management and Public Debt Law No. (95) of 2004, which is the text of Article (16) of the Ministry of Construction, Housing and Public Municipalities Law No. (33) of 2012, which states that (50% of the imports of the National Center for Engineering Consultation and the National Center for Construction Laboratories will go to the two centers and he may dispose of them in accordance with specific instructions and regulations issued by the Minister or whoever he authorizes to develop the two centers and support their technical and administrative cadres). 2- The previous federal general budget laws from 2013 to 2019 have taken into consideration the text of Article (16) of the Ministry of Construction, Housing and Public Municipalities Law No. (33) of 2012 and included it within the budget articles, Article (17) of the Budget Law for the year (2013 and 2015), and Article (16) of the General Budget Law for 2016, and Article (15) of the General Budget Law for the year 2017, and Article (19) of the Budget Law for the year 2018, the last of which is the text of Article (20) of the Budget Law for the year 2019. 3- Depriving his department of 50% of its imports was in violation of the provisions of Article (27) of the constitution, as it will lead to harming public funds and will cause direct harm to his department, as it will be unable to carry out its work by providing advisory services properly and completely, as it is unable to develop its technical and administrative cadres, and therefore its inability to meet the

requirements of beneficiaries, which are often government sectors of public interest. Note that the work of the center is of purely technical specificity, so there is an imperative need to develop its work from modern accounts and high-tech programs in line with the civilized development of the country. Therefore, the defendants' case was requested to plead and then judge their obligation to include the text of Article (16) of the Law of the Ministry of Construction, Housing and Public Municipalities No. (33) of 2012 in the Federal Budget Law for the year 2021 as an exception to Paragraph (1) Section (4) of the Financial Management Law No. (95) of 2004 or any other law that replaces it and charging the defendants with expenses and attorney fees. The case was registered with this court in No. (31)/federal/2021) and the legal fee was paid for it in accordance with Paragraph (3) of Article (1) of the FSC's Bylaw No. (1) of 2005. The defendants/ being in their capacity are informed of the lawsuit petition based on the provisions of Article (2/1st) of the Bylaw. The attorney for the first defendant/ being in his capacity legal advisor Haider Ali Jaber, responded with his list on 25/5/2021 to the plaintiff's lawsuit petition/ being in his capacity with the following:

- 1- Article 80 of the Constitution defines the powers and competencies of his client's department, and none of these competencies and tasks are to legislate laws, as Article (60) of the Constitution confirms this by preparing a draft law on the state's general budget, preparing draft laws and referring them to the Council of Representatives for legislation.
- 2- The litigation of his client in the case is not directed based on the provisions of Article (4) of the Civil Procedure Code, because it is not within his constitutional powers to legislate laws, and for the reasons mentioned, a request to reject the claim of the plaintiff on behalf of his client because the litigation was not directed, the second defendant's attorneys/ being in his capacity in their list on 25/5/2021, requested the rejection of the plaintiff's lawsuit in addition to the fact that his request is outside the jurisdiction of the court, while in the list of the third

defendant's attorney/ being in his capacity he requests the rejection of the plaintiff's lawsuit / being in his capacity for the following reasons:

1- The ratification of the Federal General Budget Law for the year 2021 and its promulgation No. (23) for the year 2021 came as a result of implementing the provisions of the constitution, as his client ratifies the laws enacted by the Council of Representatives, in which the procedures outlined by the laws and the constitution were taken, and that his client does not discuss the texts contained in them related to state departments and customize. 2- The text of Article (16) of the Law of the Ministry of Construction and Housing No. (33) of 2012 expresses devolve to (50%) of the imports of the National Center for Engineering Consultation and the National Center for Construction Laboratories to the two centers and he may dispose of it following the instructions and regulations issued by the Minister. 3- The presence of a text similar to this text in the budget laws of the past years does not cancel the text of Article (16) of the Law of the Ministry of Construction and Housing. 4- Article (55) of the Federal Financial Management Law No. (6) of 2019 canceled the text of Annex (alif) of the Financial Management Law according to the dissolved Coalition Provisional Authority Order No. (95) of 2004. Thus, the exception to Paragraph (1) of Section (4) of the mentioned law has become ineffective and the Ministry can, according to instructions and regulations issued by the development of appropriate texts to facilitate the implementation of the provisions of Article (16) of the law in accordance with what it deems to achieve the interest of the Center and in accordance with the provisions of the legislation. 5- The failure to include a text related to the disbursement of 50% of the center's revenues by the Council of Representatives in the federal general budget law is a legislative option for the authority of the Council of Representatives, and therefore there is no constitutional text that forces the Council of Representatives to include a legal text that the Council previously did not approve of a degree in the budget law, and this is not

a violation of the constitution. After completing the procedures in accordance with paragraph (1st) of Article (2) of the FSC's Bylaw No. (1) of 2005, 6/7/2021 was set as the date for the pleading, and the parties to the case were informed of the mentioned date. As for the second defendant/ being in his capacity he claimed that the first defendant prepared the draft general budget for the year 2021 without mentioning the entitlements of his department stipulated in the previous budget, the last of which was what was stated in the text of Article (20) of the General Budget Law No. (1) of 2019 and submitted it to the second defendant for the purpose of approval and its legislation, which legislated the Federal General Budget Law No. (23) of 2021 and was ratified by the third defendant / being in his capacity and for violating the general budget law referred to above to the text of Article (16) of the Ministry of Construction and Housing Law No. (23) of 2012, which includes (50% of the imports of the National Center for Engineering Consultation and the National Center for Construction Laboratories will go to the two centers and he may dispose of them in accordance with specific instructions and regulations issued by the Minister or whoever he authorizes to develop the two centers and support their technical and administrative cadres) as withholding this percentage from his department will affect its work, he asked to invite the defendants/ being in their capacity to plead, and then order them to add the text of Article (20) of the 2019 budget to the texts of the 2021 budget, taking into consideration the provisions of Article 16 of the Law of the Ministry of Construction and Housing No. (23) of 2012 and charging the defendants with expenses and attorney fees. The case was registered with this court in No. (32/federal/2021) and the legal fee was paid for it in accordance with Article (1/3rd) of the FSC's Bylaws No. (1) of 2005, and the defendants were notified of the lawsuit petition based on the provisions of Article (2/1st) of the aforementioned bylaw. The first defendant's attorney/ being in his capacity replied in his draft date 26/5/2021 that his client's department prepares draft laws, including the state's general

budget law, and analyzes it to the Council of Representatives for approval and legislation and that his client is not fit as a litigant in the case based on the provisions of Article (4) of the Civil Procedures Law No. (83) of 1969, as amended, and he requested that the case be rejected for not directing the litigation. As for the attorneys of the second defendant, they requested that the plaintiff's lawsuit be rejected in their drafts on ٢٠/٥/2021 because the plaintiff's request is outside the jurisdiction of the FSC. The third defendant's attorney/ being in his capacity in his draft, requested on 23/5/2021 the rejection of the plaintiff's claim/ being in his capacity for the reasons mentioned in his list referred to above, the court has completed the procedures stipulated in Article (2/1st) of the FSC's bylaw No. (1) of 2005. The court was appointed on ٦/٧/2021 as a date for the pleading, and on the day appointed for the pleading, the court was formed, and the attorney for the first plaintiff attended/ being in his capacity and the attorney for the second plaintiff attended/ being in his capacity and the pleading was initiated in the immanence and public. For the unity of the subject of the cases (31/federal/2021) and (32/federal/2021), the court decided to unify it and consider the (31/federal/2021) case as the original based on the provisions of Article (76/2) of the amended Civil Procedures Law No. (83) of 1969. The two plaintiffs' attorneys repeated their clients' lawsuit and requested a ruling accordingly, and added that the prosecutors' department is affiliated with the Ministry of Construction and Housing and Public Municipalities and submitted two drafts on 28/6/2021 and 6/7/2021, the defendants' attorneys were provided with a copy of it, and the defendants' attorneys requested to reject the two cases, the parties to the case repeated their last statements, and there was nothing left to say the end of pleading has been made clear by the court and issued its decision on 2/ Dhul-Hijjah/1442 coinciding with 13/7/2021.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiffs' lawsuit included a request for a ruling obligating the defendants to include the text of Article (16) of the Ministry of Construction, Housing and Public Municipalities Law No. (23) of 2012 in the Federal Budget Law for 2021 and adding the text of Article (20) of the General Budget Law No. (1) of 2019 to Law No. (23) of 2021. When referring to the provisions of Article (93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of FSC's Law No. (30) of 2005 as amended by Law No. (25) of the year 2021, we find that it established the competencies of this court was built with (First- Oversight of the constitutionality of laws and regulations valid. Second - Interpretation of the texts of the constitution. Third - Settling cases that arise from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law guarantees the right of each of the Council of Ministers, concerned individuals, and others, the right of direct appeal to the court. Fourth - Settling disputes that occur between the federal government and the governments of the regions, governorates, municipalities, and local administrations. Fifth- Settling disputes that occur between regional or provincial governments. Sixth - Deciding on accusations against the President of the Republic, the Prime Minister, and the Ministers, and this shall be regulated by law. Seventh - Approval of the final results of the general elections for membership of the Council of Representatives. Eighth – A- Settling disputes of jurisdiction between the federal judiciary and the judicial bodies of the regions and governorates that are not organized in a region. B- Settling disputes of jurisdiction between the judicial bodies of regions or governorates that are not organized in a region.) and none of them are the requests mentioned in the plaintiffs' lawsuit, as obligating the defendants to include the text of a certain article of law in the Federal General Budget Law deviates from the jurisdiction of this

court established in the aforementioned two articles. According to the foregoing, the plaintiffs' suit would have no basis in the Constitution and were free to respond to it, decided to reject the plaintiffs' suit/ being in their capacity from the jurisdiction, and charged them with judicial expenses and attorney fees for the defendants' attorneys/ being in their capacity amount of one hundred thousand dinars, distributed according to the law a final judgment issued in accordance with the provisions of Article (94) of the Constitution of the Republic of Iraq of 2005 and the article (5/2nd) of the FSC's Law No. (30) of 2005 amended by Law No. (25) of 2021 on 2/ Dhul-Hijjah/1442 coinciding with 13/July/2021.

Signature of
The president
**Jasem Mohammad
Abod**

Signature of
The member
**Sameer Abbas
Mohammed**

Signature of
The member
Haidar Jaber Abed

Signature of
The member
Haider Ali Noory

Signature of
The member
Khalaf Ahmad Rajab

Signature of
The member
Ayoub Abbas Salih

Signature of
The member
**Abdul Rahman
Suleiman Ali**

Signature of
The member
**Diyar Muhammad
Ali**

Signature of
The member
Khaled Taha Ahmed