

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 33/federal/2021



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 13.7.2021 headed by Judge Jasem Mohammad Abbod 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 Plaintiff: Head of the Political Prisoners Foundation / being in his capacity - his two agents - Director-General of the Legal Department Ali Ahmad Jassim and Assistant Director-General of the Legal Department Farhan Salman Shamkhi.

The Defendant: Speaker of Council of Representation/ being in his capacity his deputy, legal advisor, Haitham Majed Salem, and jurist Saman Mohsen Ibrahim

The Claim:

The first plaintiff/ being in his capacity claimed through his attorneys before this court that the defendant/ being in his capacity legislated the General Budget Law for the year 2021, and this law included legislation (paragraph/1<sup>st</sup>) of Article (20) which stipulated the following (all legal texts that allow collection shall be repealed), between two or more salaries for those holding the position of Director-

General, upwards) and since this provision is contrary to the constitution and violates the rights of the segment sponsored by the institution and in which it transgresses the texts of the Law of the Institution of Political Prisoners No. (4) of 2006 as amended, and Paragraph (1<sup>st</sup>) of Article (20) of The Federal General Budget Law for 2021 came in violation of Article (14) of the Constitution, which stipulates (Iraqis are equal before the law without discrimination based on gender, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status) and that this paragraph has deprived political prisoners and political detainees who hold the position of general manager and above their right to compensation for the damage they sustained as a result of imprisonment or arrest and to distinguish them from their peers who were with them in prison without justification or a basis from the law and contrary to the principle of equality before the law that stipulated Article (14) of the Constitution, and the text of the above paragraph did not include those of similar or higher degree of general managers, such as retired general managers, agents, ministers, advisors, prime ministers, the Republic, and heads of independent bodies. In addition, the pension (compensation) that the general managers and above are denied is not a pension salary for a job, but rather a salary for harm incurred by them, and therefore it is an entitlement dictated by the rules of tort responsibility or their color, race, religion, social status, job title, and this principle is established even in Islamic law, also, Article (21/1) of the Political Prisoners Institution Law No. (4) of 2006, as amended, stated: Other provisions of the law) and therefore the enjoyment by the Director-General and above of the compensation salary for the damage he sustained does not prevent him from obtaining his salary, which is an entitlement resulting from his work and his duty and does not represent a combination of two salaries. Guaranteed by the text of Article (132/first) of the constitution, which states (The State shall guarantee care for the families of the martyrs, political prisoners, and victims of the oppressive practices of the defunct dictatorial regime) this text was absolute without discrimination between

political prisoners in financial or employment status, and Law No. (4) of 2006, amended, came to decide this right and implement the content of this constitutional text. According to this article, just as this deprivation contradicts the nature of the legal rule and its characteristics in being general and abstract, and therefore depriving general managers and above is a violation of the generality of this rule. Therefore, he requested to invite the defendant/ being in his capacity to judge by unconstitutionality of Article (20/1<sup>st</sup>) of the Federal General Budget Law for the year 2021 and to charge the defendant/ being in his capacity fees and expenses. The case was registered with this court in No. (33/federal/2021) and the legal fee was paid for it in accordance with Paragraph (3<sup>rd</sup>) of Article (1) of the FSC's bylaw No. (1) of 2005. The defendant/ being in his capacity is informed of the lawsuit petition based on the provisions according to paragraph (3<sup>rd</sup>) of Article (1) of the FSC's bylaw No. (1) of 2005 and informs the defendant/ being in his capacity of the lawsuit petition based on the provisions of Paragraph (1<sup>st</sup>) of Article (2) of the internal regulations of this court. The defendant's attorney/ being in his capacity, an answer draft dated 24/5/2021 included the following: Paragraph (1<sup>st</sup>) of Article (20) of the Federal General Budget Law of the Republic of Iraq for the fiscal year 2021 does not include any violation of the Constitution of the Republic of Iraq and that the paragraph (subject to appeal) was a legislative option and that it was issued in accordance with the competence of the Iraqi Council of Representatives based on the provisions of Item (1<sup>st</sup>) of Article (61) of the constitution, therefore, a request to dismiss the case and charge the plaintiff/ being in his capacity fees and expenses. And based on the provisions of Article (2/2<sup>nd</sup>) of the internal system of this court, a date was set for the pleading and the two parties were informed of it. Repeating the answer draft and requesting the dismissal of the case for the reasons stated therein. The court examined the petition of the case and the attorneys of the two parties repeated their statements and requests, and where there was nothing left to be said, the end of pleading

has been made clear, and the court issued the following judgment decision had made clear public.

### The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff/being in his capacity instituted this case and requests the ruling unconstitutional of Paragraph (First) of Article (20) of Law No. (23) of 2021 (the Federal General Budget Law of the Republic of Iraq for the fiscal year 2021), which states (all legal texts that allow the combination of two or more salaries shall be nullified. For those holding the position of General Manager upwards), when we contemplate the text of the above article, we find that the legislator allowed the combination of two salaries with regard to political prisoners for those who occupy a position less than a general manager, taking into account their circumstances and their economic situation, as many Iraqis were subjected to imprisonment, imprisonment, arrest and violation of human rights, because of their mere opposition to the previous regime by opinion or on the other hand, the Political Prisoners Institution Law aims to address the general situation of political prisoners and detainees and compensate them materially and morally in proportion to the size of the sacrifices they made and the suffering they made. They met her as a result of their imprisonment and arrest, and therefore this requires taking into account the general situation of political prisoners and detainees, their spouses and children, and this consideration must be equal for all those covered by the provisions of the Political Prisoners Institution Law No. (4) of 2006 amended in accordance with what was stated in Article (5/1<sup>st</sup>) of it. However, not all those covered by the same law mentioned above can be general managers or more than that. Therefore, the salary that a person holding the position of general manager or above receives is not equal to that of a person holding a job rank lower than that. This achieves the purpose of legislating the constitutional text contained in

Article (14) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that “Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.” Economic or social) and therefore equality must be within the category to which the Law of the Institution of Political Prisoners No. (4) of 2006 applies, as amended, according to what was stated in Article (5) of the aforementioned law.

And since the Council of Representatives has exercised its constitutional powers in accordance with Article (61/1<sup>st</sup>) of the aforementioned constitution, the plaintiff’s lawsuit/ being in his capacity will lose its constitutional basis. For all of the above, the FSC decided to rule dismissing the claim of the head of the Political Prisoners Institution’s claim / being in his capacity and charging him the fees, expenses, and attorney’s fees for the defendant’s representative, the Speaker of the Council of Representatives/ being in his capacity, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim, an amount of (100,000) one hundred thousand dinars It is distributed between them in accordance with the law, and the decision was issued by agreement as a final and obligating ruling for all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005 and Articles (4 and 5) of the FSC’s Law No. (30) for the year 2005 as amended by Law No. (25) of 2021 and the decision had made clear public on 3/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**