

Republic of Iraq
Federal Supreme Court
Ref. 36 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13/7/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, Dyer Mohammed Ali, and Khalid Taha Ahmed who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Mayor of Wasit/ being in this capacity - his agents the official jurists the legal counselor Sahib Mutar Khabbat and the legal counselor Shihab Ahmed Abbas.

The defendant: the Speaker of the ICR/ being in this capacity-his Agents the legal advisor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff/ being in this capacity claimed that the defendant/ being in this capacity had already passed the Federal Budget Law No. (23) of 2021, which included the inclusion of article (2) section (first) paragraph (4/Alif) which provides (the governor to prepare the plan for the reconstruction of the province, districts and its sub-districts based on the plans drawn up by the heads of administrative units, to be scrutinized by the Parliamentary Finance Committee in terms of the sectoral distribution of projects, Distribution of allocations to the administrative units of the province based on ratios of the approved population ratios and sent to the Federal Ministry of Planning, for the purpose of studying and approving them, to take into account the areas most affected within the province after excluding strategic projects that benefit more than one

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side or judiciary, but not more than 15 percent (fifteen percent) of the province's allocations, and the federal finance and planning ministers have the power to carry out the transfer by 5 percent (five percent) of the allocation of regional development projects to the allocation of poverty alleviation strategy in the province itself. Paragraph (Dal/1) of the article above article (the Ministry of Planning is committed to not exceeding the cost of all projects in the column of new investment projects in the provinces and the Fund for the Reconstruction of Liberated Areas in the table (Beh amended) about doubling the ceiling of financial allocations mentioned in the same table) as the financial allocation mentioned in favor of the province in the table (Beh amended) is (35,000,000,000) thirty-five billion dinars in the column of investment projects Since the addition of paragraphs (Alif, Dal/1) of the article above involves constitutional irregularities in the formal and objective terms and is contrary to the constitutional judiciary in Iraq for the following reasons:

1. The legal competence of the Council of Representatives in approving the budget is derived from the provisions of the Constitution and the rules of procedure of the Council of Representatives and the Federal Financial Administration Law No. (6) of 2019, where the Council of Representatives is competent to approve the budget and for that purpose, the transfer between the chapters of the budget in accordance with article (62/2nd) of the Iraqi Constitution of 2005 and therefore does not have the power to interfere in the work of the executive power and add a text outside its jurisdiction stipulated in the Constitution, which violates the principle of separation of powers and affects The authority of the governor in accordance with the principle of administrative decentralization that enables him to manage the administrative unit according to its actual needs.

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2. Article (2/item 1st/ Paragraph 4/Alif) of the Federal Budget Law of the Republic of Iraq No. (23) of 2021 is contrary to the text of Article (13/2nd) of the Iraqi Constitution of 2005, which states (no law may be enacted contrary to this Constitution), Any text contained in the constitutions of the regions, or any other legal text that contradicts it, is invalid, and the article in question is contrary to the provisions of articles (122/2nd, 114 and 115) of the aforementioned Constitution, which stipulates the principle of Decentralization has made a priority for the law of the regions and governorates not incorporated into a region.
3. The authority responsible for auditing the provincial reconstruction plan is the ministries of finance and planning following its executive competence, and granting such authority is an interference in the work of the executive power, harms the general public, delays the approval of projects, and puts them under the authority of the parliamentary finance committee.
4. The authority of the Iraqi Parliament is limited to conducting the transfer between the chapters of the general budget and reducing the total expenditures in it, and the fact that the parliamentary finance committee scrutinizes the plan for the reconstruction of the province means circumventing the constitution and the Financial Administration Act No. (6) for 2019.
5. The Law on governorates not incorporated into a region No. (21) of 2008 has granted the governorates not incorporated into a region broad financial and administrative powers to enable them to manage

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their affairs, including preparing the budget of the province in accordance with constitutional standards.

6. Restricting the governor's authority within paragraph (4/Dal/1) of the article under appeal to set a financial ceiling is an infringement of the role of the executive branch and limits the governor's authority as responsible for implementing public policy in accordance with the law of the governorates not incorporated into a region and article (122/3rd) of the Iraqi Constitution.
7. Maintaining article (2) item 1 paragraph (4/Dal/1) would deprive the province of the amounts of money it needs and also conflict with the real population ratio and cause the return of financial dues to the state treasury at the end of the fiscal year because all amounts cannot be disbursed, which is contrary to the provisions of articles (16 and 106) of the Constitution of the Republic of Iraq for 2005.
8. The application of the contested article violates the Constitution and the law and leads to realistic harm by interfering with the provincial reconstruction plan and for the reasons mentioned and for other reasons the plaintiff's agents requested the unconstitutionality of the article (2/item 1st, paragraph 4/Alif, Dal/1) of the Federal Budget Law No. (23) For the year 2021, they were canceled and the defendant/ being in this capacity was burdened the fees, expenses and the advocacy fees, the case was registered with this court in the number (36/federal/2021) after the legal fee was collected based on the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) for the year 2005 and the defendant/ being in this capacity shall be informed of the petition based on article (2/1st) of the

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aforementioned Bylaw and on 13 June 2021, the agent of the defendant/ being in this capacity provided an answering draft requesting the dismissal of the plaintiff/ being in this capacity because the additions made by the Iraqi Parliament to the Federal Budget Law No. (23) of 2021 were within its legislative jurisdictions and control provided for in the Constitution of the Republic of Iraq for 2005 and in line with the government curriculum approved by the Council of Representatives and has no influence on the governor's powers to implement the government's policy in accordance with the principle of administrative decentralization, and the role of the parliamentary finance committee is limited to scrutinizing the plan for the reconstruction of provinces, districts and sub-districts in terms of the sectoral distribution of projects and the distribution of allocations based on population ratios based on the jurisdictions of the Council of Representatives stipulated in article (61/2nd) of the aforementioned Constitution and its legal competence provided in Article (3) of Law No. (27) of 2019, the Second Amendment Law of the governorates and regions elections Law No. (12) of 2018, which states (members of the Council of Representatives and as much as the region is concerned) Represented by the practice of supervising and controlling the work of the governor and his deputies in each province and making the necessary recommendations for them to the House of Representatives) to ensure fair distribution of allocations to administrative units in the provinces and reduce the extreme disparity in development and urbanization plans among them, especially since the mandate of the governorates councils to control the work of the governors has ended and they are currently practicing their work without supervision except through the control of members of the Council of Representatives and through the Parliamentary Finance

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Committee of the Council, the plaintiff's statement in his petition concerning a conflict between article 2/item 1st/ paragraph 4/Alif/Dal/1 of the Federal Budget Law No. (23) of 2021 and the articles (13/2nd, 61/1st, 2nd, 62/2nd, 144, 115 and 122/2nd) of the Iraqi Constitution of 2005 and the two paragraphs challenged in article above of the Law The budget is not unconstitutional, and based on the above the request of the agent of the defendant/ being in this capacity to dismiss the plaintiff/ being in this capacity case, and after completing the procedures stipulated in article (2/2nd) of the Bylaw of the Federal Supreme Court No. (1) for the year 2005, the date of the case has been set and the parties have been notified, and on the appointed day, the court was formed and attended by the plaintiff/ being in this capacity as legal counsel Sahib Mutar Khabbat as an agent. The defendant/ being in this capacity agent the legal advisor Haytham Majid Salim has attended as well besides the official jurist Saman Muhsin Ibrahim. The public in presence of both parties argument proceeded, the agent of the plaintiff/ being in this capacity repeated the petition and requested to reject the case according to the shown draft dated 11/7/2021 in which he repeated his previous requests in the summons, adding that the reason for the appeal is the words (to be scrutinized by the Parliamentary Finance Committee) in the article (2/item 1st/ Paragraph 4/Alif) of the Federal Budget Law No. (23) of 2021 because it violates the principle of separation of powers, considering that the draft budget is prepared by the Council of Ministers and not the Council of Representatives, but the reason for challenging the phrase (the Ministry of Planning is obliged not to exceed the cost of all projects in a column of new investment projects in the provinces and the Fund for the Reconstruction of Liberated Areas in table (Beh/Amended) about the weakness of the ceiling of

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financial allocations mentioned in the same table) contained in paragraph (4 Dal/1) of the same challenged article, the text in question represents interference in the policy drawn up by the Council of Ministers in accordance with article (80) of the Constitution and that his client filed the case as affected by the legislation of the above-mentioned texts. The defendant's agents/ being in this capacity answered/ In addition to this capacity said that we ask for the case to be dismissed for the same reasons in their answering draft attached to the case's dossier, and the agents of the parties repeated their requests and statements. The of the argument has been made clear, and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the Governor of Wasit/ being in this capacity filed this case asking for the unconstitutionality of article (2/1st/4/Alif, Dal/1) of Law No. (23) of 2021 The Federal Budget Law of the Republic of Iraq for the fiscal year 2021 and the challenge was based on two paragraphs of the aforementioned article paragraph (1st/4/Alif), which provided (for the governor to prepare the plan of the reconstruction of the province, districts and its sub-districts based on the plans drawn up by the presidents of the administrative units, to be scrutinized by the Parliamentary Finance Committee in terms of the sectoral distribution of projects, and the distribution of allocations to the administrative units of the governorates based on the approved population ratios and sent to the Federal Ministry of Planning, for the purpose of studying and approving them...) As well as challenging the paragraph

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(1st/4/Dal/1) of the same article, which stipulated (the Ministry of Planning is committed not to exceed the cost of all projects in the column of new investment projects in the governorates and the Fund for the Reconstruction of Liberated Areas in the table (Beh amended) on the double ceiling of financial allocations mentioned in the same table). This court finds that the governor in his challenge does not fit to be a legal opponent for the establishment of such a case as it represents an extension of the executive power, considering that the General Budget Law of the Republic of Iraq reflects the general fiscal policy of the State and that the direct executive officer of that policy is the Prime Minister based on the provisions of article (78) of the Constitution of the Republic of Iraq 2005, which stipulates (the Prime Minister is the executive officer) Direct about the general policy of the state, and the commander-in-chief of the armed forces, manages the Council of Ministers, presides over its meetings, and has the right to dismiss ministers, with the approval of the Council of Representatives) and who plans and implements the general policy of the state is the Council of Ministers according to paragraph (1st) of article (80) of the above-mentioned constitution, which stipulates (the Council of Ministers exercises the powers of the following: first: Planning and implementation of the state policy, public plans, supervision of the work of ministries, and entities not associated with the ministry) and that the Council of Ministers and based on the provisions of paragraph (4th) of article (80) mentioned above is the one who prepares the draft general budget, final account and development plans, and on the other hand, the provinces and based on the provisions of article (122/2nd) of the constitution above, which stipulated (grant provinces that did not incorporated into a region in the administrative and financial powers, To enable it to manage its

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affairs in accordance with the principle of administrative decentralization, regulated by law) its affairs are managed in accordance with the principle of administrative decentralization and not in accordance with the principle of political decentralization, considering that the general policy of the country is the same and responsible for planning and implementing it is the Council of Ministers and not the Governor, although the governor is the supreme chief executive of the governorate based on the provisions of paragraph (3rd) of the same article mentioned above, but he is committed to implementing the policy established by the federal government on the basis of the provisions of article (31/3rd) of the Law of governorates not incorporated into a region No. (21) of 2008, which It stipulated (the governor exercises the following powers third: the implementation of the policy established by the federal government within the limits of the governorates) and the article (45/1st) of the aforementioned law obliged to form a high body for coordination between the governorates headed by the Prime Minister, where it stipulated (A high body for coordination between the provinces is formed under the chairmanship of the Prime Minister and the membership of the governors and specializes in considering the affairs of the provinces and their local administration and coordination between them and addressing the problems and obstacles they face and with all matters related to inter-provincial affairs) and that this body represents a council of governors who manage the provinces that are not organized in the provinces and that the speaker of that council is the Prime Minister as representing the Council of Ministers for planning and implementing the general policy of the state. And that the budget allocated to the province is within the general budget and the budget is delivered directly to the governorate by the Ministry of

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Finance after the introduction of strategic expenditures based on the provisions of article (52) of the Law of governorates not incorporated into a region No. (21) of 2008, in addition to the fact that the governorate departments must be subject to the supervision and scrutiny of the Financial Supervisory Office and branches of independent committees formed under the provisions of the Constitution based on the provisions of the article (47) of the above-mentioned law as defined by the Constitution and under article (110) of which the exclusive jurisdictions of the federal authorities, including the third paragraph of the same article, which stipulated (drawing up fiscal and customs policy, issuing currency, regulating trade policy across the borders of the governorates and regions of Iraq, establishing the general budget of the state, drawing up monetary policy and establishing and managing the Central Bank). Therefore, the development of fiscal and customs policy, the organization of trade policy across the borders of the governorates and regions of Iraq and the development of the general budget of the state are exclusive jurisdictions of the federal authorities, which they exercise in accordance with the principle of separation of powers, since the main purpose and the main objective of emphasizing compliance with constitutional rules is to ensure that public rights and freedoms are protected and that they cannot be attacked or exceeded either by federal authorities or by other individuals, to ensure the transcendence of the federal constitution and to ensure the unity of the country through Affirming the transcendence of federal authorities in accordance with their exclusive constitutional jurisdictions, the Constitution is no longer merely a regulatory regulation of the separation of powers, but a legal charter of human rights, since the main purpose of the concept of democracy is to protect the rights and

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freedoms of citizens by adhering to the principle of separation of powers and restricting each authority to its constitutional powers and not exceeding them. On the other hand, the principle of equality before the law and without discrimination for any reason was also considered a fundamental constitutional principle. This principle requires that federal authorities have the right to draw the limits of the freedoms of their areas when it imposes that public interest to ensure the right of federal authorities to administer, guide, and formulate state policy following the country's general interest standard. For all of the above, this court finds that challenging the articles listed in the Federal Budget Law of the Republic of Iraq for the fiscal year 2021, as stated in the plaintiff's petition/being in this capacity, is the prerogative of the Council of Ministers, so that the plaintiff's case/being in this capacity must be rejected from this aspect, and The governor cannot exercise the competences of the Council of Ministers in matters related to the public policy of the state, so the Federal Supreme Court decided to dismiss the case of the plaintiff Governor of Wasit / being in this capacity and to burden him with the fees and expenses and advocacy fees for the lawyers of the defendant/ being in this capacity the legal counsel Haitham Majid Salem and official jurist Saman Muhsin Ibrahim amount of (100,000) dinars to be distributed between them following the law. The decision was issued based on articles (78), (80/1st and 4th), (93), (94) and (122/2nd and 3rd) of the Constitution of the Republic of Iraq in 2005 and articles (4 and 5) of the Federal Supreme Court Law No. (30) of 2005 Amended by Law No. (25) of 2021 and Article (2/2nd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and articles (24), (31/3rd), (45/1st), (47) and (52) of the governorates not incorporated into a region No. (21) of 2008 amended and article (3) of the Second Amendment Law of

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Kurdish text

the governorates and District Elections Act No. (12) of 2018 and has been made clear on 3/ Dhu al-Qa'dah/1442 Hijri, 13 July 2021 AD.

Signature of The president	Signature of The member	Signature of The member
Jasem Mohammad Abbood	Sameer Abbas Mohammed	Haidar Jaber Abed
Signature of The member	Signature of The member	Signature of The member
Haider Ali Noory	Khalaf Ahmad Rajab	Abdul Rahman Suleiman Ali
Signature of The member	Signature of The member	Signature of The member
Diyar Muhammad Ali	Ghalib Amir Shunayen	Ayoob Abbas Salah

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