

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref. 38/federal / 2021



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 11. 7 .2021 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Representative Uday Awad Kazem - his representative,  
lawyer Fawzi Kazem Hassan Al-Mayahi.

The Defendant: Speaker of Council of Representation/being in his capacity  
his two deputies are the Director-General of the Legal Department,  
Dr. Sabah Juma Al-Bawi and legal advisor Haitham Majed Salem.

The Claim:

The plaintiff claimed that the defendant/being in his capacity approved the Federal General Budget Law of the Republic of Iraq No. (23) of 2021 published in the Iraqi Gazette No. (4625) on April 12, 2021, including the amendment of the articles submitted by the government, which involved constitutional violations From the formal and objective standpoints, and in violation of what the constitutional judiciary in Iraq has settled, which are summarized as follows:

First:- Although Article (62/2<sup>nd</sup>) of the Constitution of the Republic of Iraq for the year 2005 authorized the Council of Representatives to carry out transfers between the chapters and chapters of the general budget and to reduce the total amounts thereof, and it may, when necessary, suggest an increase in the total amounts of expenditures. However, this does not mean in any way that the role of the executive authority, specifically the Council of Ministers, is exceeded, as it is responsible for planning and implementing the general policy of the state based on the provisions of Article (80/1<sup>st</sup>) of the Constitution, which states “The Council of Ministers shall exercise the following powers: First/ To plan and execute the general policy and general plans of the State and oversee the work of the ministries and departments not associated with a ministry.” especially if it comes to fundamental amendments to the government project, which would fundamentally change the goals that it envisaged from developing this text, and this is what the constitutional judiciary has settled on in many of its provisions, including the decision (25/federal/2012) dated 10/22/20 2012 included: (The Council of Representatives is not entitled to make fundamental amendments to the draft budget submitted by the government) as well as the resolution (21/federal/2015 and its unified) containing (The law to replace members of the Council of Representatives is not inconsistent with the laws that affect the principle of separation of powers because it did not arrange financial implications over the executive authority and does not constitute a conflict with the general policy of the state and does not affect the functions of the judicial authority or its independence. Its legislation came in the exercise of its original jurisdiction stipulated in Article (61) of the Constitution and according to the provision of Article (49/5<sup>th</sup>) thereof. Second: The constitutional violation is represented in the following articles: **1-** Article (50/alif) of the law in question, which prevented the addition of financial allocations to fill the shortfall in employees’ compensation from salaries and daily wages in the event that the total amount exceeds (500) billion dinars, provided that Audited by the Federal Office of Financial

Supervision, and this is the essential amendment to the text of Article (55) of the draft law on the Federal General Budget of the Republic of Iraq for the fiscal year 2021 sent by the government, as this amendment is not studied because it leads to deficit, especially since there are differences that stopped in 2021 and were not disbursed from what It contradicts the general policy of the state, which must pay the salaries and wages of its workers, and thus deprive more than (30) thousand contractors in Basra governorate who have been working without salary since 2019, as well as more than (30) thousand contractors (whose contracts terminated from the Popular Mobilization Authority and the Ministry of Defense) They gave the most precious for the sake of preserving the state and those who cannot be returned because of this amendment. 2. Article (12) of the law (subject to appeal) has deleted several paragraphs of it, namely: (4<sup>th</sup>/1/alif, beh, teh, 2 and 3) from the government project sent by the government, which confused the state's policy that raised the exchange rate of the dollar, To compensate the affected segments by including them in the Social Welfare Department and to expedite the procedures, the Ministry of Labor and Social Affairs proposed contracting with (1,000) social researchers, where the necessary amounts were allocated to them, and many profitable government companies do not receive any aid from the state treasury and need services that are part of the armies of the unemployed holders of higher degrees, bachelor's degrees and diplomas cannot employ them, which will lead to the use of foreign cadres that have caused great financial burdens. For the reasons presented above, the plaintiff, through his representative, requested the FSC to rule the unconstitutionality of Articles (50/alif) and (12) of Law No. (23) of 2021((The Federal General Budget of the Republic of Iraq for the fiscal year 2021)) canceling it and charging the defendant with all the costs of the lawsuit and attorneys' fees. And based on the provisions of Article (1/3<sup>rd</sup>) of the FSC's bylaw No. (1) of 2005, the case was registered with this court in No. (38/federal/2021) after collecting the legal fee for it and based on the provisions of Article (2/First) of the aforementioned internal

system The defendant/ being in his capacity was notified of the lawsuit petition and its documents, and it was answered according to the answer list submitted to this court on 5/6/2021, in which the following is stated: 1. The plaintiff's attorney did not indicate his client's interest in filing his case, as he represents himself as a representative of the Council of Ministers, and the grounds for his requests are nothing but evidence of his client's lack of interest in filing this lawsuit and the failure to prove the occurrence of immediate, direct and affecting harm in his interest is improbable and not future until it is right to quarrel with the law (subject of the appeal), and the lack of interest in filing the case and the inability to prove the occurrence of harm from it requires its restitution in accordance with the provisions of the rules of procedure of the FSC. 2. Regarding the additional financial implications for the government, the response to them is as follows: A - The Council of Representatives has exercised its competencies stipulated in Articles (61/1<sup>st</sup>) and (62/2<sup>nd</sup>) of the Constitution when legislating the budget law, and whoever claims to override the government's competencies in this regard must prove the violation accurately and not speak arbitrarily without specifying, With the need for him to be a representative of the government in his appeal under a fundamentalist agency, because the appeal from this angle concerns the government and its competencies and powers. B - The prosecutor did not indicate the fundamental changes made by the Council of Representatives to the draft budget law (the subject of the appeal), in which he departed from his constitutional powers, and what is his criterion for considering a change to be essential or not. C - The prosecutor did not explain the financial effects that the Council of Representatives added to the budget, knowing that the Council of Representatives has reduced the budget amount and the deficit in it from the amount (671,051,046,71) (seventy-one trillion and forty-six billion and fifty-one million six hundred and one). Seventy thousand dinars) to (307,867,672,28) (twenty-eight trillion, six hundred and seventy-two billion, eight hundred and sixty-seven million, three hundred and seven thousand dinars).

3. The plaintiff's attorney has not indicated with any of the provisions of the constitution that the text of Article (50/a) of the Federal General Budget Law for the year 2021 will intersect until the FSC has jurisdiction to consider his complaint about the aforementioned article, bearing in mind that the text under appeal is in line with the Federal Financial Management Law, which prohibits Exceeding the ceiling of allocations allocated in the budget, and the Council of Representatives has restricted the competence of the Ministry of Finance to add financial allocations to compensate employees, if any, with an amount not exceeding (500) billion dinars, a figure studied by the Finance Committee and guarantees to the Minister of Finance a very appropriate ceiling to meet any deficit in the compensation section. employees, and it is known that this issue, as well as the claim that there are thousands of contractors without wages, are matters that are not considered by the FSC as long as the prosecutor's attorney fails to point out its intersection with a constitutional text. 4. The fact that the Council of Representatives deletes articles or paragraphs from the draft general budget law means that those articles or paragraphs did not obtain the approval of the Council, which is consistent with the competence of the Council of Representatives to legislate federal laws according to the text of Article (61 /1<sup>st</sup>) of the constitution and in the legislation of law The budget is in accordance with the text of Article (62/2<sup>nd</sup>) of the Constitution, and the body responsible for drawing up the state's general policy is the executive authority, and it has never complained about what the prosecutor describes as confusing public policy. And for the reasons mentioned above, the defendant's attorney/ being in his capacity requested that the plaintiff's lawsuit be dismissed and that he be charged with all the expenses and after completing the necessary procedures under Article (2/1<sup>st</sup> and 2<sup>nd</sup>) of the bylaw of the FSC No. (1) of 2005. The date of the pleading was set, in which the court was formed, and the plaintiff's attorney, Fawzi Kazem Al-Mayahi, attended, and the defendant/ being in his capacity legal advisor Haitham Majed Salem, attended the procedures of the public pleading. The defendant/

being in his capacity that he requests the dismissal of the case for the reasons mentioned in his answer sheet dated 5/6/2021 then the plaintiff's attorney presented a reply statement dated 11/7/2021 containing a response to the list of the defendant's attorney/ being in his capacity that was linked to the lawsuit file and the two parties repeated their statements and their requests Since nothing remains to be said, the end of pleading has been made clear, and the court issued the following decision:

### The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff challenges the unconstitutionality of Article (50/alif) and Article (12) of the Federal General Budget Law of the Republic of Iraq No. (23) of 2021 published in the Iraqi Gazette No. (4625) on (12/4/2021) for violating the provisions of the constitution and what it has settled The constitutional judiciary in Iraq, where he claimed in his lawsuit that the defendant/ being in his capacity had amended the articles submitted by the government and that these amendments involved constitutional violations. For the year 2005, it was stipulated in Article (6), paragraph (1<sup>st</sup>) of it that (the plaintiff in the subject matter of the lawsuit has a direct, immediate and influential interest in his legal, financial or social position), and since the constitutional lawsuit revolves with the interest, whether or not, and it is a basis for its acceptance and the plaintiff's lack of interest in that The case, therefore, it is obligatory to respond in this respect. Therefore, the FSC decided to reject the claim of the plaintiff (Uday Awad Kazem) and charge him the fees, expenses, and attorney fees for the defendant's agent/ being in his capacity, an amount of (100,000) one hundred thousand dinars distributed among them in accordance with the law and the decision was issued by agreement conclusive and binding on all authorities based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 and Article (5/2<sup>nd</sup>) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and had made clear public in 1/ Dhul-Hijjah/1442 coinciding with 11/July/2021.

Signature of  
The president

**Jasem Mohammad  
Abod**

Signature of  
The member

**Samir Abbas Mohamed**

Signature of  
The member

**Ghaleb Amer Shnain**

Signature of  
The member

**Haider Ali Noory**

Signature of  
The member

**Haidar Jaber Abed**

Signature of  
The member

**Khalf Aihmad Rajab**

Signature of  
The member

**Ayoub Abbas Salih**

Signature of  
The member

**Abdul Rahman Suleiman  
Ali**

Signature of  
The member

**Diyar Muhammad  
Ali**