

Republic of Iraq
Federal Supreme Court
Ref. 39 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 6/7/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Vice President of the Federation of Iraqi Industries/being in this capacity – his agent the barrister Zumarad Ali Hussein.
The defendant: the Speaker of the Iraqi Council of Representatives/ being in this capacity – his agents the legal counsellor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The agent of the plaintiff/ being in this capacity claimed in the petition that the House of Representatives passed the Federal Budget Act of the Republic of Iraq for fiscal year 2021 and published in the Iraqi fact sheet (4625) on April 12, 2021 and was considered effective From the date (1 January 2021) and came in paragraph (IV) of article (14) of which indicates that the House of Representatives discussed resolution (790) for 2018 issued by the Council of Ministers, and it was wrongly referred to and the correct resolution (790) for 2017 and its content is the cabinet's confirmation of its previous resolution numbered (272) for 2015, which included the prohibition of printing textbooks outside Iraq through subcontracting... Etc., since what was approved by the House of Representatives was unfair and detrimental to the rights of a large sector of the Iraqi Federation of Industries and caused serious harm to him, his client appealed the aforementioned paragraph before this court for the following reasons:

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1. The 2018 resolution (790) referred to in the article in question does not even exist. 2. If resolution (790) of 2017 is intended, the subject of discussion of this decision falls exclusively within the purview of the Council of Ministers as stipulated in article (80/first) of the Constitution, as it is the one who plans and implements the general policy of the state, develops public plans and oversees the work of ministries. 3. Decision 790 of 2018 is an affirmation of the content of an earlier decision, as to what the legal value of its annulment is, with the original decision remaining, given that the power to annul this decision is outside the defendant's jurisdiction. 4. This issue was not present in the draft budget sent by the Government and the Council should have informed the Government of the proposal for this text. For all the above reasons, the Prosecutor requested the Federal Supreme Court to invite the defendant to plead and issue a fair judgment of the unconstitutionality of article (IV) of article (14) of the Federal Budget Act of the Republic of Iraq for fiscal year 2021 and to return to abide by Cabinet Resolution No. (272) of 2015 after making a material correction of the errors contained in relation to the year of the decision. After the defendant was notified of the petition on the basis of article (2/first) of the Rules of Procedure of the Supreme Federal Court No. (1) of 2005, his agents responded to the answering regulation dated 31 May 2021 and its summary:
- 1- The agent of the plaintiff did not indicate the violation of the paragraph in question of the provisions of the Constitution.
 - 2- The plaintiff himself was concerned about the jurisdiction and the relationship with the subject matter of the case, and the first was in the relevant party to challenge the text in question.

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- 3- The plaintiff's request to oblige the House of Representatives to abide by Cabinet Resolution No. (272) of 2015 is outside the jurisdiction of the distinguished court provided for in article (93) of the Constitution.
- 4- The text in question was a legislative option in accordance with the jurisdictions of the House of Representatives to legislate federal laws in accordance with the provisions of section (I) of Article (61) of the Constitution.

As a reason for the defendant's agent request, the plaintiff's claim was dismissed/being in this capacity and charged with expenses, judicial fees and advocacy fees. After completing the required procedures in accordance with article (2/II) of the Bylaw No. (1) Of 2005, on 29 June 2021, a date was set for the case and the parties were informed and the plaintiff's agent reiterated the petition and requested the verdict, and the defendant's agent answered, "We ask for the case to be dismissed for the reasons in the answering draft dated 31 May 2021, and the plaintiff's agent added that the case was filed by the Vice President of the Federation of Iraqi Industries/in addition to his job, where at the time there was no president of the Federation." And the Federation did not meet to elect a president and her client replaces the President of the Federation in the absence of a president under the rules of procedure of the Federation and after the agents of both parties repeated his statements and requests and the court completed its audits I understand the conclusion of the case and appointed on 6 July 2021 the date of the issuance of the decision and issued the following decision and has been made publicly.

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff, in addition to his job, challenged the constitutionality of article (14/IV) of the General Budget Act of the Republic of Iraq 2021, which stipulated that (for the Ministry of Education to invite the public and private sectors within Iraq to carry out the printing of textbooks to meet their needs in accordance with the technical specifications and standards specified by the Ministry and assigning its specialized formations or the public sector to equip them with educational furniture and supplies and contracting in the form of a documented accreditation strengthened in accordance with the technical specifications prepared by it with it with Annulment of the decision (790 for 2018) and that the appeal was based on the unconstitutionality of the last part of it including (repeal of Resolution 790 for 2018), noting that the said decision was issued in 2017 and not in 2018 and that it included confirmation of the implementation of Cabinet Resolution No. (272) for 2015, the plaintiff in addition to his post outlined the reasons for his claim:

1. The discussion of resolution (790) for 2018 was a discussion of a decision that does not even exist because there is no resolution on this figure and the year.
2. If the intention is resolution (790) for 2017, the discussion of its abolition falls within the powers of the Council of Ministers in accordance with the provisions of Article (80/First) of the Constitution as it is responsible for planning and implementing the state policy.

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3. There is no point in overturning the said resolution while retaining Resolution 272 of 2015 as it was confirmed.
4. The House of Representatives should have informed the government of the addition of this text in article 14 of the budget and discussed it with it before voting on it.
5. The cancellation of Cabinet Resolution No. (272) for 2015 due to the cancellation of resolution 790 for 2017, as explained by the executives, is seriously damaging to Iraqi industrialists, especially printing press owners, because it re-allows subcontracting printing presses outside Iraq.

The Federal Supreme Court finds that the case is admissible in terms of jurisdiction and liability, as it falls within the jurisdiction of this court in accordance with the text of article (93/first) of the Constitution of the Republic of Iraq of 2005, and both the plaintiff and the defendant in addition to their functions are legal opponents that meet the requirements of litigation and have the legal capacity to sue , the plaintiff/ being in this capacity has the moral personality and eligibility to litigate under article (1/1) of the Iraqi Federation of Industries Act No. (34) of 2002, which stipulated that he (establishes a union called the Iraqi Federation of Industries based in Baghdad with personality) Morality and financial and administrative independence represented by the Chairman of the Board of Directors of the Federation or its authorized persons) and article (10) of the rules of procedure of the Federation of Iraqi Industries issued on 18 December 2016, which includes (that the Vice-President of the Federation exercises the powers

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of the President of the Federation in His absence including the representation of the Union before the judiciary), in examining the requirement of interest to be met in the plaintiff's case in addition to his function, the Federal Supreme Court has an implicit jurisdiction to interpret the laws, as it has jurisdiction to interpret the legislative texts on the occasion of the case before it, because the adjudication of the constitutionality of any legislative text requires that the intention and purpose of the legislator and the reasons for legislating that text be determined and that it conforms to the higher interests of the State in order to ensure the protection of both society and individuals under the provisions of the Constitution and it is a branch of the federal court's inherent jurisdiction in interpreting the Constitution. By scrutinizing the text of article (14/IV) of the Federal Budget Act of the Republic of Iraq 2021, which is in force as of (January 1, 2021), the Court finds that the legislator has provided for the repeal of Resolution No. (790) of Year 2. 017, which was erroneously mentioned in the version published in the Iraqi Gazette, mentioning 2018 instead of 2017, and when referring to the said decision it was found that it was not issued by the Council of Ministers but by the Economic Affairs Committee of the Council of Ministers and in a book addressed to the Ministry of Education guarantees the confirmation of the decision of the Council of Ministers No. (272) for 2015, and when referring to the said resolution it was found that it stipulates (ministries and entities not associated with the Ministry of all other government institutions are obliged to print and implement their publications in government

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printing presses or private printing presses inside Iraq, provided that printing presses outside Iraq are not subcontracted). Based on its powers to interpret the text under appeal, the Federal Supreme Court finds that the annulment of the 2017 decision of the Economic Commission does not in any way mean the annulment of Cabinet Resolution No. 272 of 2015, but rather remains valid and effective because it has not repealed any legislative text, and the agreed legal rule confirms that legislative texts of any degree (laws, regulations, instructions and resolutions) remain in force unless repealed or amended, and that this interpretation based on the effectiveness of Cabinet Resolution No. 272 of 2015 was consistent with the constitutional texts contained in the Economic, Social and Cultural Rights Section of the Constitution of the Republic of Iraq 2005, as the constitutional legislator obliged the state to ensure the reform of the Iraqi economy on modern economic grounds. By following multiple methods, including investing the full economic resources available in the country and diversifying the sources that promote the national economy, as well as through an important aspect that has caused the growth of the economies of many countries of the world, namely, the promotion and development of the private sector, as article (25) of the above-mentioned Constitution stipulates that (the State ensures the reform of the Iraqi economy on modern economic grounds and ensures the investment of its full resources, diversification of its sources and promotion and development of the private sector) and the provision of article (14/IV) of the Federal Budget Act 2021 with The

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implementation of Cabinet Resolution No. (272) of 2015 is in line with the right of Iraqis to work guaranteed by the aforementioned Constitution in Article (22/First), which stipulates that it is (the right of Iraqis to work to ensure a decent life), the role of the private sector in reforming the national economy comes through the assistance of private capital in the transfer of technology and expertise and the creation of jobs to absorb the phenomenon of unemployment, which helps in the process of economic growth and balance between the economic sectors, the Court therefore finds that Resolution No. (272) of 2015, along with section (IV) of Article (14) of the Budget Act 2021, is one of the means by which the State ensures the reform of the Iraqi economy by providing for the obligation of ministries and entities not associated with the Ministry and all government institutions to print and implement textbooks and other publications in government printing presses and private sector printing presses and prevent their participation by printing presses outside Iraq by preventing subcontracting with private sector printing presses. These printing presses, which encourages the development of the government industrial sector as well as the development of the private sector and the employment of the national workforce. Thus, to improve the Iraqi economy and achieve what the constitutional legislator had hoped for from the aforementioned texts, and through the above, the Federal Supreme Court finds that the repeal of Resolution No. 790 of 2017 issued by the Economic Committee of the Council of Ministers does not mean the repeal of Cabinet Resolution No. (272) of 2015 and that

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the recent decision to remove it is effective, since the plaintiff/addition to his job has no interest in the case, and since the interest is a prerequisite for accepting the case on the basis of the provisions of the article (6) Civil Arguments Act No. (83) of 1983 amended and section (6) of the Federal Supreme Court Act No. (30) of 2005 amended, and that its lack of availability is a positive reason for dismissing the case. For all of the above and in request, the Federal Supreme Court decided to rule:

First: The plaintiff dismissed the vice-president of the Iraqi Federation of Industries/ being in this capacity.

Second: The plaintiff shall burden the fees, expenses and the advocacy fees for the agents of the defendant/ being in this capacity the speaker of the House of Representatives, both of the legal counsel Haitham Majid Salem and official jurist Saman Mohsen amounted to 100,000 thousand dinars distributed in accordance with the law. The decision to rule by agreement was issued out of agreement to all authorities on the basis of the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq of 2005 and (4 and 6) of the Federal Supreme Court Act No. (30) Of 2005 amended by Law No. (25) Of 2021. The decision has been made clear on 25/Dhul Qeada/1442 Hijri and 6/7/2021 AD.

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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