

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 42/federal/2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 26.10.2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Munther Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Minister of Finance /being in his capacity his deputy assistant Legal Counsel Jassim Muhammad Saeed.

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 plaintiff's agent claimed in the petition that the defendant, the speaker of the Council of Representatives/ being in his capacity legislated Traffic Law No. (8) of 2019 published in the Iraqi Gazette No. (4550) on 5/8/2019, and Article (43) of it stipulates that (Revenues from the amounts of traffic fees and fines stipulated in this law shall devolve at a rate of 50% fifty percent to the state treasury, and (25%) twenty-five percent of the revenues are allocated to the development of traffic and

securing its requirements, and (25%) twenty-five percent to the Directorate of Roads and Bridges affiliated to the governorate. Where the defendant (the Speaker of the Council of Representatives /being in his capacity) amended the text of the government project sent from the Council of Ministers to the Council of Representatives according to Cabinet Resolution No. (38) for the year 2018, and Article (43) of it stipulated that (revenues from the amounts of wages and traffic fines stipulated shall devolve. In this law to the state's public treasury) and that the defendant, the Speaker of the Council of Representatives, in addition to his position, amended the text of the aforementioned article without inquiring or approving the government, although the revenues from the amounts of traffic fees and fines are an integral part of the non-oil revenues that are included in the annual budget. The Council of Ministers is directly responsible for the general policy of the state based on Article (78) of the Constitution and that the Council of Ministers is responsible for planning and implementing the general policy of the state based on Article (80/1st) of it, and that the defendant /being in his capacity to amend the text of the above article contradicts the text of Article (130) of the Council of Representatives' internal system, which necessitates taking the opinion of the Council of Ministers on every proposal an amendment that he proposes to draft laws sent by the Council of Ministers if that amendment creates large financial burdens that cannot be remedied and contradicts the government's policy in reducing expenditures. In addition, FSC Decision No. (21) of (2015) obligated the Council of Representatives to send proposals for laws that Financial obligations are made to the government to study it and express an opinion regarding what is stated in it, and since the amendment of Article (43), the subject matter of the case is considered a constitutional violation of the provisions of Article (62) of the Constitution. For the above reasons, the prosecutor's deputy (the Minister of Finance /being in his capacity) requested the FSC to rule the unconstitutionality of Article (43) of Traffic Law No. (8) of 2019 for violating the provisions of the

Constitution and what the constitutional judiciary has settled as it costs the state treasury unsustainable financial burdens. The case was registered with this court in the number (42/federal/2020) and the legal fee was paid for it in accordance with Paragraph (3rd) of Article (1) of the bylaw of the FSC No. (1) of 2005. Paragraph (1st) of Article (2) of the same system and the defendant's attorney/being in his capacity submitted a reply statement dated 11/21/2020 requesting that the case be dismissed because the text under appeal came as a legislative option in accordance with the competence of the Council of Representatives to legislate federal laws under clause (1st) from Article (61) of the Constitution, the allocation of the percentages mentioned in the article is for the purpose of encouraging the traffic, roads and bridges sectors and does not constitute any financial burden on the state, and based on the provisions of Article (2/2nd) of the bylaw of this court, a date was set for the pleading and the two parties were informed of it, and on the appointed day the court was formed, so the plaintiff /being in his capacity attended his attorney, Legal Counsel Jassim Muhammad Saeed, attended on behalf of the defendant /being in his capacity and his two agents, Legal Counsel Haitham Majed Salem, and legal employee Saman Mohsen Ibrahim The public pleading was initiated, and the plaintiff's representative/being in his capacity, repeated what was stated in the lawsuit petition and requested the ruling according to what was stated in it, and he highlighted to the court the letter issued by the General Secretariat of the Council of Ministers No. If your ministry is not satisfied with the provisions of Article (43) of the Traffic Law No. (8) of 2019 to appeal the provisions of the aforementioned article), the defendant's attorney /being in his capacity responded we request that the case be dismissed for the reasons mentioned in our answer list submitted by us to the court on 11/11/2020 and in addition In the pleading session on 9/8/2021, that the law in question was submitted as a draft by the government, and that the contested text of its unconstitutionality was added by the Security and Defense Committee in the Council of Representatives, and they

requested that the case be dismissed because there was no litigation. It is said that the court understood the conclusion of the pleading and issued the following decision:

The Decision:

After scrutiny and deliberation by the FSC found that the lawsuit of the plaintiff, the Minister of Finance /being in his capacity, focuses on the request to rule the unconstitutionality of Article (43) of Traffic Law No. (8) of 2019 for violating the provisions of the constitution and what the constitutional judiciary has settled on as it costs the public treasury unsustainable financial burdens, and the defendant is charged with the Speaker of the Council of Representatives /being in his capacity the expenses of the lawsuit and attorney's fees. The FSC has placed the plaintiff's lawsuit /being in his capacity and what was based on it, and the lists and defenses submitted by the defendant's attorney /being in his capacity, during the pleading are subject to scrutiny and deliberation, and it reached the following: 1. The plaintiff, the Minister of Finance /being in his capacity, is fit to be a litigant in this case, and if the defendant's attorney /being in his capacity, pays a request to dismiss the case because the litigation is not directed, it will be rejected, because the amendment contained in Article (43) of Traffic Law No. (8) of 2019 imposes financial burdens on the treasury The state is represented by the Ministry of Finance, and the Council of Ministers has authorized the Ministry of Finance under the letter of the General Secretariat of the Council of Ministers No. (qaf/2/3968) on 8/2/2020 to appeal the provisions of the aforementioned article if it is not convinced of the content of that article, as it is the party affected by its legislation contrary to the text of the government project As the aforementioned ministry is an integral part of the Council of Ministers. 2. Article (130) of the Iraqi Council of Representatives' bylaw stipulates (The Finance Committee must take the opinion of the Council of Ministers on every proposal for an amendment proposed by the

Committee in the appropriations included in the draft budget, and the Committee must include in its report the government's opinion in this regard and its justifications, and this provision applies to Every proposal for an amendment submitted by any of the council's committees, or one of the members if it entails financial burdens. And through the foregoing text that is binding on the Council of Representatives, especially the last part of it, any proposal for an amendment submitted by any committee to any article of the draft laws submitted by the government to the Council of Representatives must take the opinion of the Council of Ministers in it if that proposal imposes financial burdens on the state treasury, because The Council of Ministers is responsible for planning the general policy of the state based on the provisions of Article (80/1st) of the Constitution of the Republic of Iraq for the year 2005, this on the one hand, and on the other hand, the Security and Defense Committee that proposed the contested text, which is Article (43) of the traffic law in force, does not have its authority Presenting such a proposal based on the provisions of Article (89) of the internal system of the Council of Representatives, which is exclusively concerned with following up the affairs of foreign state security, internal security affairs, combating terrorism and crime, the affairs of the armed forces and the intelligence service, and proposing legislation related to police officers, armed forces and their personnel, and Iraqi intelligence services, and not including the proposal of lineage. Outlined in Article (43) to encourage the traffic, roads, and bridges sectors, according to what was stated in the defenses of the defendant's attorney /being in his capacity. 3. The defendant's attorney affirmed that the law in question was submitted as a draft by the government and that the contested text of its unconstitutionality was added by the Council of Representatives/ Security and Defense Committee. The government is obligated to every proposal submitted by any committee if it imposes financial burdens on the public treasury, and it is established by this court that the contested text imposes financial burdens on the public treasury and came in contradiction to the text

contained in the draft sent to the Council of Representatives under Cabinet Resolution No. (38) For the year 2018, Article (43) of which states that (revenues from the amounts of traffic fees and fines stipulated in this law shall be transferred to the public treasury of the state), which makes Article (43) of Traffic Law No. (8) of 2019 in violation of the constitution. Therefore, the FSC decided The top is as follows: First: The ruling on the unconstitutionality of Article (43) of Traffic Law No. (8) of 2019 and its cancellation. Second: The defendant, the Speaker of the Council of Representatives/being in his capacity shall charge all fees, expenses and attorney's fees, the attorney general's deputy, the Minister of Finance /being in his capacity, Legal Counsel Jassem Muhammad Saeed, an amount of one hundred thousand dinars. A final and binding ruling for all authorities based on the provisions of Articles (61 and 93/1st and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/1st and 5) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and the decision was issued By agreement on 19/Rabi' al-Awwal/1443 coinciding with 26/October/2021.

Signature of
The president
**Jasem Mohammad
Abod**

Signature of
The member
**Sameer Abbas
Mohammed**

Signature of
The member
Ghaleb Amer Shnain

Signature of
The member
Haidar Jaber Abed

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
**Munther Ibrahim
Hussein**