

Republic of Iraq
Federal Supreme Court
Ref. 52 / Federal / 2021



Kurdish text

The Federal Supreme Court (F.S.C.) convened on 7.9.2021 headed by Judge Sameer Abbas Mohammed and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

The Minister of Commerce / in addition to his position - his two attorneys, the legal officials, Ayser Fouad Nouri and Emad Hussain Muhammad.

The defendants:

1. The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official Saman Muhsen Ebraheem.
2. The head of the Accountants and Auditors Syndicate / in addition to his post - his attorney, Falah Hassan Ismail.

The claim:

The plaintiff claimed that on April 19, 2021, the Iraqi Gazette published its issue No. (4626) the Law No. 10 of 2021 (Law of Third Amendment to the Accountants and Auditors Syndicate Law No. 185 of 1969) and that the above law contained articles that violate the

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principles of the Constitution of the Republic Iraq for the year 2005 as follows:

1. Article (1) of the law stipulated the cancellation of Paragraph (1) of Article (First) of the Accountants and Auditors Syndicate Law No. (185) of 1969, as amended, which stipulated (the following expressions shall have the meanings indicated opposite them: 1- The Minister: the Minister of Economy (Commerce) Currently)), as Article (6) of the law in question stipulates that (paragraph (3) of Article (18) of the law), which stipulated (if the procedures outlined in the second paragraph of this article are not taken until the middle of November the Minister shall send the invitation to secure the holding of the regular meeting of the General Assembly on Friday of the first week of December for that year.) Also, Article (7) of the law subject to the challenge stipulated that (the text of Paragraph (1) of Article (Twenty) of the law), therefore this amendment removed any supervision over the elections of the Accountants and Auditors Syndicate, as the role of the Minister of Commerce, according to the canceled article, is to invite the general assembly to convene to take the necessary measures when the Council of the Syndicate did not take this decision and not to send an invitation from the president and thus the role of the Minister of Commerce is a guarantee that the president and the union council not misused their positions for their interests.

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2. The role of the Minister of Commerce according to the text of the canceled Article (18/3) is consistent and in agreed with what was stated in Article (16) of the Constitution of the Republic of Iraq, which stipulates (equal opportunities is a right guaranteed to all Iraqis, and the state guarantees taking the necessary measures to achieve this) to avoid the abuse of the captain and the Syndicate Council, exploiting their positions, and not granting Syndicate members the freedom to exercise their rights to run for the position of President or membership in the Syndicate Council.
3. The role that was exercised by the Minister of Commerce based on the provision of the repealed Article (18/3) finds similarities in other union laws, as is the case in the text of Article (93/5) of the Law No. 173 of 1965, as amended.
4. Article (8) of the law subject to appeal has canceled Article Twenty-first of Law No. (185) of 1969 as amended, as the new amendment made the election of the president, members of the council, and members of the control and monitoring committees by secret ballot once every four years or whenever the position of the captain and his deputy becomes vacant or the majority of the remaining council members, and the aforementioned period is calculated from the date this law comes into force. This means that the rest of the syndicate members are deprived of the candidacy for the position of the president, his deputy, and the membership of the syndicate's council for (7) years after the

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current president, his deputy, and members of the syndicate council were allowed to stay for another (4) years, and this contrary to the principle contained in Article (16) of the aforementioned Constitution, as well as Article (20) of the Constitution, which stipulates (citizens, men, and women, have the right to participate in public affairs, and to enjoy political rights, including the right to vote, to vote and to be elected). In addition, it is contrary to what was stipulated in all other professional union laws that set the mandate of the captain and the union council by two years. The purpose for which Law No. (48) of 2016 was issued violates the Law to cancel the Revolutionary Command Council Resolution No. 180 of 1977, which stated in its compelling reasons that to provide an opportunity for all cadres and the transfer of power and responsibility in trade unions and professional associations, this law was enacted.

Based on the foregoing, the plaintiff's request, in addition to his position from the Federal Supreme Court, must invite the two defendants to plead and rule to cancel Articles (1/6/7/8) of Law No. (10) for the year 2021 based on the provision of Article (93), with the costs, fees and attorney's fees charged to them. And based on the provisions of Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005, the case was registered with this court in No. (52/Federal/2021), and the defendants, in addition to their positions, are notified of the lawsuit petition based on the provisions of Article

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(2/First) of the bylaw above, where the first defendant responded with the list of his attorneys dated on 06/23/2021 in which the following was stated:

1. The plaintiff, the Minister of Commerce, in addition to his position, does not have a current, direct, and influencing legal interest in his legal, financial or social position in the suit to challenge the unconstitutionality of the contested articles from (Law No. (10) of 2021 of the Third Amendment to the Accountants and Auditors Syndicate Law No. 185 of 1969), according to what required in the article (4) of the Federal Supreme Court Law No. (30) of 2005 (amended), and Article (6) of the bylaw Court No. (1) of 2005, as the interest in the constitutional lawsuit, should be a legal interest, meaning that the constitution guarantees its protection, by making the right protected by the constitutional lawsuit a right guaranteed by the constitution and sanctioned by law. Therefore, there should be a violation of one of the constitutional rights, and that the texts to be applied to the plaintiff have violated one of the constitutionally guaranteed rights, and that the theoretical interest, if it exists, is not sufficient to accept the direct constitutional lawsuit, and the interest must be present and available when the lawsuit is established, and the plaintiff's attorney has not submitted clear evidence that actual harm has been caused to his client as a result of the legislation in question, and that the alleged harm is direct and independent, not future or

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unknown, or that the texts to be repealed have been applied to him or are intended to be applied to him, and where there is no lawsuit where there is no interest, and it is not valid the claim from others, which is its focus, and since the plaintiff has no legal interest in the aforementioned description in filing this suit, the plaintiff's suit in this case becomes unacceptable and must be rejected by this authority.

2. In response to what was stated by the plaintiff's attorney/in addition to his job in paragraph (1) of his regulations regarding the cancellation of paragraph (1) of Article One of the Accountants and Auditors Syndicate Law No. (185) of 1969 as amended, the term contained in this law is of general order and cannot be violated or bypassing it in any way. As for the minister's role, it is not as stated in the lawsuit petition, but his duties are stated exclusively in Article (18/3). As for the authority to supervise the Syndicate Council and the President and to ensure their implementation of the law, it is stated in Article (20) of the Syndicate Law, which stipulates, the general assembly is the highest authority in the union, which exercises broad powers in supervising and making decisions that outline the general policy of the union and ensure the fulfillment of the reasons for its law.
3. In response to what was stated by the plaintiff's attorney/in addition to his position in paragraph (2) of his regulations, the General Authority of the Accountants and Auditors Syndicate,

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which is composed of all members of the Syndicate, is the guarantor hand that the president or his deputy will not exploit their positions for their interests, and that the general authority under the Accountants and Auditors Syndicate Law is the highest in the Syndicate, and it has, according to Paragraphs (1 and 2) of Article (20) of the law, to elect the president, his deputy, members of the council, and members of the control and monitoring committees.

4. In response to what was stated by the plaintiff's attorney/in addition to his job in paragraph (3) of his regulations and citing the fact that the nullified text of Article (Eighteen/3) finds similarities in other union laws, this is rejected because these laws in a previous period differ from what was approved by the Constitution of the Republic Iraq for the year 2005 to guarantee the right to establish federations and unions, as stated in Article (22/3) (The state guarantees the right to establish or join trade unions and professional federations, and this is regulated by law), and Iraq has joined the Freedom of Association Agreement and the Right to Association No. (87) of 1948 under Law No. 87 of 2017, which prevented any interference from the state authorities in the work of Unions and professional federations, as well as the conflict between the Law of the Accountants and Auditors Syndicate and the laws of other unions, so consideration of it is outside the jurisdiction of the Federal

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Supreme Court stipulated in Article (93/First) of the Constitution.

5. In response to what was stated by the plaintiff's attorney/ in addition to his position in Paragraph (4) of his petition, which challenges the text of Article (8) of the law in question, the plaintiff's claim that the electoral cycle of the union is two years is not true, because the period has been modified by a decision of The dissolved Revolution command Council No. (268) for the year 2001, which stipulates that the duration of the electoral cycle shall be three years for several unions and federations, including the Accountants and Auditors Syndicate. After the entry into force of this law subject to appeal, this period has been modified to become four years instead of three, meaning that the claim of the plaintiff that the president and the council of the union will remain for 7 years is not true, because this cycle when 4 years are completed, elections are held to choose the new president and board of directors, this is what the legislator intended when he legislated Article (8) of the law in which he stated (the aforementioned period is calculated from the date this law comes into force), whereby the law came into force due to its publication in the Iraqi Gazette on 4/19/2021, the duration of this electoral cycle has shifted to the president and the council of the Syndicate from 3 years to 4 years, not 7 years, as stated in the plaintiff's claim, and this is a legislative option that is due to

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the legislative will in accordance with the provisions of Article (61/First) of the Constitution.

For these reasons and for reasons that the court deems appropriate, the attorney for the first defendant requested that the plaintiff's lawsuit be dismissed and that he be charged with all judicial fees, expenses, and attorney's fees. The second defendant, the head of the Accountants and Auditors Syndicate, in addition to his post, responded with an answer draft that was submitted to this court, accompanied by the letter of the Accountants and Auditors Syndicate, No. (697, dated 06/21/2021), requesting that the plaintiff's lawsuit be dismissed in form and substance as follows:

First: the defense in terms of formality:

1. The request to dismiss the case of the plaintiff, for the lack of litigation, because the law is issued by the Council of Representatives, which is the competent authority to legislate, and therefore the Accountants Syndicate cannot be sued by this authority, according to the previous decisions of the Federal Supreme Court, which confirm this principle. 2. The plaintiff did not indicate in the case a direct, immediate, and influential interest in his legal and financial position did not provide evidence of the damage incurred by him as a result of the contested law, and did not provide evidence that real, direct, or independent harm had been inflicted on his interest as a result of the contested legislation. To be able to remove it if a ruling was issued unconstitutional of the texts of the law

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required to be repealed and it was actually applied to it or is intended to be applied to it based on the text of Article (6 / First - Second - Third - Fourth - Sixth) of the bylaw of the Federal Supreme Court. Second: The objectivity of the defense: 1. With regard to what was stated in paragraph (1) of the lawsuit petition related to the cancellation of paragraph (1) of Article One of the Accountants and Auditors Syndicate Law No. 185 of 1969 as amended, the period mentioned in this law is considered a public order and is not It can be violated or bypassed in any way. As for the minister's role, it is not as stated in the pleading, but his duties are mentioned exclusively in Article (18/3) in sending the invitation to hold the regular meeting of the general assembly on Friday of the first week of December for that year. As for the authority to supervise the union council and the president and to ensure their application of the law, it is stated in Article (20) of the union law, which states (that the general body is the highest authority in the union, which exercises broad powers in supervising and making decisions that draw up the general policy of the union and ensure the fulfillment of the reasons for its law).

2. Regarding what was stated in paragraph (3) of the petition and citing the fact that the repealed text of the repealed Article (18/3) finds similarities in other trade union laws, this is rejected because these laws in a previous period differ from

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what was approved by the Constitution of the Republic of Iraq for the year 2005 of the right to establish federations and unions, as stated in Article (22/Third) (The state guarantees the right to establish or join unions and professional associations, and this is regulated by law). Also, Iraq has joined the Freedom of Association Agreement and the Right to Organize No. (87) for the year 1948 under Law No. 87 for the year 2017, which prevented any interference from the state authorities in the work of unions and unions

3. With regard to what was stated in paragraph (4) of the lawsuit petition, which challenges the text of Article (8) of the law in question, the plaintiff's claim that the term of the union's electoral cycle is two years is incorrect because the period has been modified according to the dissolved Revolutionary Command Council Resolution No. (268) For the year 2001, which stipulated that the duration of the electoral cycle would be three years for several federations and syndicates, including the Accountants and Auditors Syndicate. After the entry into force of this law subject to appeal, this period has been modified to become 4 years instead of three, meaning that the claim of the plaintiff that the president and the council of the union will remain for 7 years is not true, because this cycle when 4 years are completed, elections are held to choose the new captain and board of directors. This is what the legislator intended when he legislated Article (8) of the

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law, which stipulates (the aforementioned period is calculated from the date this law comes into force), whereby the law came into force due to its publication in the Iraqi Gazette on 04/19/2021, the duration of this electoral cycle has shifted to the president and the council of the Syndicate From 3 years to 4 years, not 7 years, as stated in the plaintiff's claim. And this is a legislative option for the Council of Representatives and does not violate the provisions of the Constitution. There are several laws in the Council of Representatives, for which the electoral cycle has been modified to 4 years to unify the duration of the electoral cycles for unions and federations to reduce the expenditure of money on the process of conducting elections, as well as to allow the achievement of administrative and professional stability for these trade unions and federations.

For these reasons, and for reasons deemed by the justice of the court, a request to dismiss the plaintiff's lawsuit and to charge him with all expenses, fees, and fees. After completing the required procedures in accordance with Article (2/first) of the aforementioned bylaw, a date of 10/8/2021 was set as the date for the pleading, then it was adjourned until 7/9/2021, during which the court was formed and the parties to the case were called. Since nothing remains to be said, the court understood the conclusion of the pleading and issued the following decision.

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**The decision:**

Upon auditing and deliberation by the Federal Supreme Court and after reviewing what was stated in the claim of the plaintiff, the Minister of Commerce / in addition to his position submitted to this court by his attorney, the legal official Amir Fouad Nouri against the defendants, the Speaker of the Council of Representatives / in addition to his job and the Syndicate of Accountants and Auditors / in addition to his job, it was found that the plaintiff appealed the Law No. (10) of 2021 (the Third Amendment Law of the Accountants and Auditors Syndicate No. 185 of 1969) issued by the Council of Representatives and published in the Iraqi Gazette No. (4626) dated 4/19/2021, thus the litigation is directed against the first defendant The Speaker of the Council of Representatives / in addition to his position, who issued the contested law and is not directed against the second defendant, the head of the Accountants and Auditors Syndicate, in addition to his position because he did not issue or legislate the aforementioned law. The suit is dismissed for the plaintiff, the Minister of Commerce, in addition to his job with regard to the second defendant, the head of the Accountants and Auditors Syndicate, in addition to his job, because the litigation was not directed against him, on the other hand , the facts and evidence of the case, we find that the plaintiff, in addition to his job, challenged Articles 1, 6, 7 and 8 of Law No. 10 of 2021 (the Third Amendment

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Law of the Accountants and Auditors Syndicate Law No. 185 of 1969) and that Articles (1 and 6) are canceling articles as it canceled the previous of Article (1) the subject of the appeal, paragraph (1) of Article (first) of the Accountants and Auditors Syndicate Law No.(185) of 1969 amended, also article (6) subject of appeal has canceled paragraph (3) of article (18) of the law, as for Article (7), the subject of the appeal it canceled paragraph (1) of Article (twenty) of the law and replaced it by a new text, as well as Article (8), the subject of the appeal it canceled the text of article (21) of the law and replaced it with new text regard electing the president, his deputy, members of the control and monitoring committees, and delineates the mechanism and date of the election, and that these articles do not represent any violation of the constitution, and there is nothing in them that contradicts its provisions or contrary it, its issuance doesn't represent constitutional violation as it related to regulating matters and doesn't represent a constitutional violation, so the court decided to reject the plaintiff's case, the Minister of Commerce, in addition to his job with regard to the first defendant, due to the absence of a constitutional violation, and charged him with fees, expenses and attorney fees for the defendants' attorneys, legal advisor Haitham Majed Salem and lawyer Falah Hassan Ismail, an amount of one hundred thousand dinars distributed between them according to the law and the decision was issued in agreement based on Articles (93 / first) and (94).) of the Constitution of the Republic of Iraq for the year 2005 and articles (4 and 5) of the Federal Supreme Court Law

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No. (30) of 2005 as amended by Law No. (25) of 2021 and Article (4) of the Civil Procedures Law No. (83) of 1969 amended as final and binding on all authorities And understand it publicly on the 29th of Muharram 1443 AH corresponding to 7/9/2021 AD

Signature of
The president

**Sameer Abbas
Mohammed**

Signature of
The member

Ghaleb Amer Shnain

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

**Monther Ebrahim
Husain**

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