

# IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq  
Federal Supreme Court  
Ref. 6/federal/media/2015



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 8.2.2015 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Ade Hateef Jabbar and Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

## **The Request:**

Al-Resafa first instant court requested the F.S.C. by its letter No.(1458/beh/2014) on (21/1/2015) the following:

The plaintiffs (mim.ain.ain) and (kha.alif.dal.) filed the lawsuit No.(1458/beh/2014) on (4/12/2014) against the defendants (the Minister of Oil/ being in this post, and the general manager of petroleum products distribution company/ being in this post) requested in it to repeal the ministerial order No.(28987) dated on (30/9/2014) issued by the first defendant who judge to fining the plaintiffs whom are employees for the second defendant amount of

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Federal Supreme Court - Iraq - Baghdad  
Tel – 009647706770419  
E-mail: [federalcourt\\_iraq@yahoo.com](mailto:federalcourt_iraq@yahoo.com)  
Mailbox- 55566

*Atchraa*

(23,439,000) twenty-three million four hundred and thirty-nine thousand dinars (doubled for the fact that the act is intentional) jointly and severally between them, and that for the value of shortage (15626) liters of the gasoline product in Hay Al-Amel Station under the decision of the investigation committee formed in the petroleum products distribution company, as the defendant in the decision of doubling the fining has based on the regulation No.(3) for 2007 the instructions of facilitating the implement of the fining law No.(12) for 2006 that are published in the Iraqi Gazette issue No.(4028) on (3/11/2006) specifically what mentioned in the text of article (4/1<sup>st</sup>/Jim) of it as it stipulated (recommending to fining the person who causes the damage the amount of it compensation according to the prevailing prices at the time of the damage if the mistake is unintentional and to doubles the stated amount if the mistake is intentional), as the fining law didn't included provision to doubles the compensation amount, but article (1) of it pointed that (the employee, the person who is assigned on public service, the public or private company or the contractor shall be responsible for compensation the damages of the public funds due to his negligence, default or violation of laws, regulations and instructions), accordingly the mentioned instructions has stipulated new provision which wasn't stated in the law, whereas the damages is redress by it like and not by it double, therefore the court found that the text of article (4/1<sup>st</sup>/Jim) of the mentioned instructions contradict with the provisions of article (19/6<sup>th</sup>) of the Iraqi republic constitution for 2005 where every person shall have the right to be treated with justice in judicial and administrative proceedings, and also contradict with the provisions of article (22/2<sup>nd</sup>) of the

constitution as it regulate the relationship between employees and employers on economic bases and while observing the rules of social justice. As among the F.S.C. jurisdictions which are stipulated in article (93/3<sup>rd</sup>) of the constitution (settling matters that arise from the application of the federal laws, decisions, regulations, instructions...etc.) therefore the court opinion is that the provision of article (4/1<sup>st</sup>/Jim) of the instruction No.(3) for 2007 the instructions of facilitating the implement of the fining law No.(12) for 2006 contradicts with article (19/6<sup>th</sup>) and (22/2<sup>nd</sup>) of the Iraqi republic constitution for 2005, as the challenged instructions for being illegitimate has organized administrative procedure breached by justice and that contradict with the text of article (19/6<sup>th</sup>) of the constitution \, therefore this court has decided on (20/1/2015) by itself in the mentioned lawsuit and under the provision of article (3) of the F.S.C. Bylaw No.(1) for 2005 to request your honorable court to decide the legitimacy the text of article (4/1<sup>st</sup>/Jim) of the instructions No.(3) for 2007 the instructions of facilitating the implement of the fining law No.(12) for 2006, and to suspend the argument and delay the lawsuit until deciding the request. Accept our thanks and respect.

The F.S.C. placed the request under scrutiny and deliberation and reached the following decision:

### **The decision:**

During scrutiny and deliberation by the F.S.C. the court found that Al-Resafa first instant court has challenged the constitutionality of article (4/1<sup>st</sup>/Jim) of the instructions No.(3) for 2007 (the instructions of facilitating the implement the fining law No.(12) for

2006) under the claim of contradicting the provisions of article (19/6<sup>th</sup>) and article (22/2<sup>nd</sup>) of the constitution which stated that ((recommending to fining the person who causes the damage the amount of it compensation according to the prevailing prices at the time of the damage if the mistake is unintentional and to doubles the stated amount if the mistake is intentional)) as the fining law didn't included provision to doubles the compensation amount, but article (1) of it pointed that (the employee, the person who is assigned on public service, the public or private company or the contractor shall be responsible for compensation the damages of the public funds due to his negligence, default or violation of laws, regulations and instructions), therefore Al-Resafa first instant court requested this court to decide the legitimacy the text of article (4/1st/Jim) of the mentioned instructions, during scrutinizing the court found that article (2) of the law No.(12) for 2006 (the fining law) stipulated that ((the competent minister or the head of the entity not incorporated in a Ministry shall form an investigative committee of at least three members with experience and competence, one of its members shall be a legal officer to determine the amount of fining, and the one responsible for causing damage as stipulated in article (1) of this law, and the enormity of the committed mistake and whether it is intentional or not, the committee should seek the help of an official competent authority)), by reviewing these text the F.S.C. found that the formed investigative committee according to article (4/1<sup>st</sup>) of the instructions No.(3) for 2007 the instructions of facilitating the implement the fining law No.(12) for 2006 and according to paragraph (Jim) of it, it is authorized to recommend fining the person who causes the damage the amount of

compensation according to the prevailing prices at the time of the damage if the mistake is unintentional and to doubles the stated amount if the mistake is intentional, therefore article (4/1<sup>st</sup>/Jim) of the instructions No.(3) for 2007 has distinguished the fining and determining the damage between who committed the damage unintentional (accidentally) and decided to fining him amount is equal to the damage affected the public funds as result to the unintentional mistake, and between the damage that affected the public funds intentionally by committing the mistake on purpose, therefore the legislator in the second case has imposed a penalty equal to the enormity of the damaging act that affected the public funds intentionally and that is a choice of the legislator who didn't equalizing between the damage that was caused intentionally and the damage caused unintentionally, as the rule of justice impose the inequality when fining who caused the damage with the amount of the compensation in the mentioned cases above with the same amount because protecting the public funds is assignment on each citizen according to article (27/1<sup>st</sup>) of the constitution, therefore there is no contradict between the text of paragraph (4/1<sup>st</sup>/Jim) of the instructions No.(3) for 2007 with the provisions of articles (19/6<sup>th</sup> and 22/2<sup>nd</sup>) of the constitution. for the mentioned reasons the F.S.C. decided to reject the challenge for lacking the constitutional and legal substantiation, the decision was issued final and unanimously on 8/2/2015.