



The Federal Supreme Court (F.S.C.) convened on 24.11.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider 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:

The Lawyer Ahmed Asei Ibrahim.

The defendants:

- 1 - The President of the Republic / in addition to his position - his representative, the legal employee Salah Lazem Shamkhi.
- 2- The Speaker of the Council of Representatives / in addition to his post - his two attorneys, Legal Counsel Haitham Majed Salem and legal employee Saman Mohsen Ibrahim.
- 3- The Prime Minister / in addition to his position - his deputy, the legal advisor Haider Al-Sufi.
- 4- The Minister of Finance / in addition to his position - his deputy, the legal employee Jamal Ali Hussein.
- 5- The Governor of the Central Bank of Iraq / in addition to his post - his deputy, the legal employee Hisham Hanash Hussein.

The claim:

The plaintiff claimed through his attorney that on December 20, 2020, the fifth defendant the Governor of the Central Bank / in

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addition to his position, issued a decision that was approved on the same date, which stipulates changing the exchange rate of the US dollar to the Iraqi dinar at the rate of (1,450) Iraqi dinars for each US dollar. And after that the minister of Finance submitted the General Budget Law of (2021) to the Prime Minister, who in turn approved it and submitted it to the Speaker of the Iraqi Council of Representatives, who in turn legislated and approved it, especially Article (1/first/b) of it, which stated (based on approving the price of (1450) one thousand four hundred and fifty Iraqi dinars per dollar) and then presented it to the President of the Republic, who in turn ratified it on 4/8/2021 No. (23) for the year 2021 and as evidenced in the Iraqi Gazette, as this decision contained a violation of the provisions of the Constitution of the Republic of Iraq for the year 2005 as follows:

1. Violation of it for the text of Article (22/First/B), which states (Work is a right for all Iraqis to guarantee them a dignified life), since, after the entry into force of this decision, the unemployment rate in Iraqi society increased, according to the Ministry of Planning reports, due to the low exchange rate of the Iraqi dinar against the rest of the foreign currencies and not only against the dollar.

2. Violation of the text of Article (25), which states (the state guarantees the reform of the Iraqi economy according to modern economic foundations, in a manner that guarantees the full investment of its resources, diversification of its sources, and encouragement and development of the private sector), since the date of entry into force of the aforementioned decision, the Iraqi economy has deteriorated in all fields and is paralyzed the movement of its markets due to the decline in the value of the Iraqi dinar.

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3. Violation of the text of Article (30/First) and its content of state guarantees for the necessities of living a decent life.

4. Violating the provisions of Article (33/first) of the Constitution, which stipulates that (everyone has the right to live in fine environmental conditions), since the decision came into force above, the matter has negatively affected the difficult living conditions of citizens or middle-class individuals, bearing in mind that the decision to raise the exchange rate The US dollar against the local currency has no equal in the countries of the world at all. The plaintiff requested the Federal Supreme Court to invite the defendants in addition to their positions to plead and rule to cancel the above article and restore the exchange rate of the US dollar against the Iraqi dinar to its previous era and before the fifth defendant issued his decision, and then included it in the above-mentioned budget law by the fourth, third and second defendants, up to its approval by the first defendant, with the number and date above, and charging them with all fees and expenses. The case was registered with this court in No. (102 / Federal / 2021), the legal fee was collected for it by the provisions of Article (1 / third) of the bylaw of the Federal Supreme Court No. (1) of 2005, and the defendants / in addition to their posts were notified of its petition and documents under the provisions of the provisions Article (2/first) of the same rules of procedure. The first defendant's attorney the President of the Republic/in addition to his position answered with the answer list dated 08/22/2021, which included the following:

First: The text of Article (6) of the Federal Supreme Court's bylaw No. (1) of 2005 is explicit that the plaintiff in the subject matter of the case has a current, direct and influential interest in his

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legal, financial and social position, and that the plaintiff submits evidence that real harm has been caused to him by As a result of the legislation that is required to be repealed and that the text required to be repealed has been applied to it or is intended to be applied to it, and it has not been clear to his client the type of damage that has befallen the plaintiff as a result of the change in the exchange rate of the dollar, nor has he had an interest in repealing the text, or that there is direct or indirect damage to him from the ratification by the President of the Republic of the Federal General Budget Law for the year 2021.

Second: Based on the provisions of Article (16) of the amended Central Bank of Iraq Law No. (56) of 2004, which defines the council's powers and functions, including the formulation of monetary policies, including the exchange rate policy, and the restrictions imposed on operations carried out by the Central Bank of Iraq. The Central Bank undertakes these procedures based on the authority granted to it, taking into account the economic and monetary situation in the local market.

Third: According to the provisions of Article (80) of the Iraqi constitution, the Council of Ministers exercises the powers of planning and implementing the state's general policies and general plans, supervising ministries and proposing draft laws, as well as preparing the federal general budget draft, which was voted on by the Council of Representatives. Thus, the government, the Central Bank of Iraq and the Ministry of Finance, and the Ministry of Planning is the concerned authorities in the advancement of the Iraqi economy and taking appropriate measures in preserving the value of the Iraqi dinar, and determining the exchange rate according to the real value

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of the Iraqi dinar in the market. The equivalent of the dollar and to reduce the smuggling of the dollar outside the country. Article (110) of the constitution stipulates the powers of the federal authorities with exclusive competencies, in drawing up financial policies, setting the state's general budget, drawing up monetary policy, establishing and managing the central bank, and drawing up a draft general and investment budget.

Fourth: The ratification of the Federal General Budget Law for the year 2021 and its issuance by the number (23) for the year 2021 came as a result of implementing the provisions of the constitution and based on the provisions of item (third) of Article (73) of the Iraqi constitution, as his client is responsible for ratifying the laws enacted by the Council of Representatives. In which all the procedures drawn up by the constitution and laws have been completed, and therefore the texts contained in it are not discussed because this task is one of the duties of the government, the Central Bank of Iraq, the Federal Ministry of Finance, the Ministry of Planning and the concerned parties. Then the legislation is completed by voting on it by the Iraqi parliament as the authority representing the people and responsible for Lawmaking. And given the foregoing reasons for requesting the dismissal of the plaintiff's lawsuit and charging him with all fees, expenses, and attorney's fees. The attorneys of the second defendant, the Speaker of the Council of Representatives / in addition to his position in the answer list dated 17/8/2021, replied that they are requesting that the plaintiff's case be dismissed and that he be charged with judicial fees and expenses because changing the exchange rate of the dollar against the Iraqi dinar and stipulating this within the general budget law for 2021 falls within the competences

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of the federal authorities which were stipulated in Article (110/third) of the Constitution, which includes drawing up fiscal and customs policy, issuing currency, regulating trade policy across the borders of regions and governorates in Iraq, setting the state's general budget, drawing monetary policy, and establishing and managing the Central Bank. Also, changing the exchange rate was included in the draft budget law sent by the Council of Ministers, which was approved by the Council of Representatives in the budget law, and as stated in the draft budget law. Upon reviewing the aforementioned texts, it becomes clear that the contested text has nothing to do with what the plaintiff stated, and these constitutional texts are not related to the violation of the subject matter of the case. The third defendant's attorney (the Prime Minister / in addition to his position) responded with the regulation dated 9/20/2021, which included the following:

First: From a formal point of view: the plaintiff's request does not meet the condition of interest, because the application of the article under appeal does not prejudice his constitutional rights as prescribed direct harm to him, and he did not provide evidence that actual harm had been caused to him as a result of the article required to be repealed, and therefore he lost one of the conditions for filing a case based on the text of Article (6/Second and Third) of the internal system of the Federal Supreme Court, as well as the text of Article (4) of the Court Law. Also, his client is not suitable as a litigant in this case because he does not have the right to legislate. Rather, the Council of Ministers exercises its powers under Article (80) of the Constitution by preparing the federal general budget draft, as legislating laws is within the competence of the Council of Representatives, so the litigation is not achieved in confronting it.

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Based on the text of Article (4) of the Pleadings Law No. (83) of 1969.

Second: Objectively speaking: 1. The article (subject to challenge) came as a legislative option for the Council of Representatives that does not violate the provisions of the constitution and the laws in force, describing that the option to reduce the exchange rate of the Iraqi dinar came to cover the deficit, as well as its role in addressing the imbalance of the federal public budget caused by the high allocations of salaries and wages to the total public expenditures And the government's inability to sustain these allocations, which negatively affects the sustainability of public debt, and therefore the low exchange rate leads to enhancing the competitiveness of the local product, which reduces unemployment through the return of projects due to the improvement of their competitiveness. 2. The exchange rate of the dinar against the US dollar is one of the monetary policy tools, and its reduction came by a vision and strategy through studying the market, the standard of living, and economic conditions, where it was found that the current value of the exchange rate is (1,450) dinars per dollar that achieves the desired results of monetary policy. In a way that contributes to avoiding problems and crises and achieving economic stability. Also, raising the selling price of the dollar aims to compensate for the decline in oil revenues resulting from the deterioration of oil and to address the financial crisis that Iraq was exposed to due to the Corona pandemic, which led to a large deficit in the public budget, and to bridge the inflation gap in the 2021 budget after the collapse of global oil prices. 3. By overriding the foregoing, the decision to raise the exchange rate of the dollar was approved by the Central

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Bank. It is not hidden that Article (2) of the Central Bank Law No. 56 of 2004 guaranteed the bank complete independence in its endeavors to achieve its goals and implement its tasks, and no one will Or a party to interfere in the bank's activity, and with reference to Article (4) of the same law, one of the objectives stipulated in Article (2) is the formulation and implementation of monetary policy, including foreign exchange policy, and for all of the foregoing reasons, a ruling was requested to dismiss the appeal in terms of formality, objectivity, and judgment The costs of the lawsuit and attorney's fees. The fourth defendant's agent, the Minister of Finance, in addition to his post, replied to the answer list dated 9/9/2021 and included that the change in the exchange rate of the Iraqi dinar against the US dollar was made under a decision taken by the Central Bank of Iraq on December 20, 2020, and therefore has nothing to do with his client's department. to his post. Based on the provisions of Article (2/2) of the (dissolved) Coalition Provisional Authority Order No. (56) of 2004 (the Central Bank of Iraq Law), the Central Bank of Iraq enjoys independence and does not receive any instructions from any person or entity, including government agencies, and has no right For any person or entity to interfere in his activity, and one of his duties, under the provisions of Article (4/a) of the aforementioned law, is to formulate and implement monetary policy in Iraq, including foreign exchange policy. Therefore, he asked to dismiss the case on behalf of his client in addition to his post and to charge the plaintiff with all fees, expenses, and fees. And the representative of the fifth defendant, the Governor of the Central Bank of Iraq, in addition to his post, responded to the answer list dated 29/8/2021. From a formal point of view, he repeated the same argument made by

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the defendants' agents above regarding the lack of conditions stipulated in Articles (4/Second) and (6)/ First) From the internal system of the court regarding the lack of actual harm and the lack of interest from the appeal and added that the litigation is not directed towards his client's circle because the contested text had been prepared by the Council of Ministers based on Article (80/fourth) of the constitution and was approved by the Council of Representatives According to his constitutional powers under Article (62) of the Constitution, as the Central Bank of Iraq / Department of Financial Operations and Debt Management had previously issued its book No. 6/1/2440 on 12/20/2020, which includes changing the foreign currency exchange rate (US dollar) to (1450)) dinars for each dollar, and the point of view of the appeal is outside the jurisdiction of the Federal Supreme Court and is held for the Administrative Judiciary Court, as shown by the Administrative Judiciary Court's decision No. 1293 BC / 2021 on 7/13/2021. Objectively speaking, he reiterated what the defendants' attorneys had shown above regarding the independence enjoyed by the Central Bank, and added that Article (103) of the Constitution made it clear that the law regulates the work of the Central Bank and referred to the statement of its competencies and ways of doing business to its law, which is the Central Bank of Iraq Law No. 56) for the year 2004 in force, and Article (110 / III) of the Constitution entrusted the formulation of monetary policy at the Central Bank of Iraq. Article (4 tasks 1/b) of the amended Central Bank of Iraq Law No. (56) of 2004 stipulates that one of its tasks is (formulation and implementation of monetary policy in Iraq, including foreign exchange policy as stipulated in Section VI), so the process of managing Changing the exchange rate

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is one of the main tasks of the Central Bank of Iraq, and it alone has the legal and technical authority to take any action related to it and according to the public interest. What monetary policy requires, and this was confirmed by the Federal Court of Cassation's decision No. 1470/ Appellate Body Copied/ 2021 on 2/6/2021. The exchange rate change came after extensive studies of the Iraqi economy and the economic crisis that it was exposed to due to the Coronavirus and the resulting drop in oil prices globally, which directly affected the oil revenues of the Iraqi government, which required the adoption of this procedure to reduce the deficit in the public budget, as well as frequent meetings With specialists from economists, ministries and the International Monetary Fund, and noting the need to re-examine the exchange rate in the white reform paper approved by the Council of Ministers. And that the rise in the prices of imported goods and services is one of the economic axioms and it aims to direct the Iraqi consumer towards local production and stimulate the economy in coordination with other technical and economic measures of the relevant authorities, including activating the customs wall for taxes and collecting taxes correctly and supporting industrialists and farmers to increase production to achieve sufficiency, which is what aims The Central Bank of Iraq, for the above reasons, requested that the plaintiff's lawsuit be dismissed in form and substance and that he be charged with the charges and expenses of the lawsuit and attorneys' fees. After completing the procedures stipulated in the aforementioned internal system of the court, a date was set for the pleading and the parties were informed of it by what was stated in Article (2/Second) of the same system above. On the appointed date, the court was formed. The plaintiff, lawyer Ahmed Asei Ibrahim,

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attended as well as the parties' agents except for the two defendants. The first and the fifth did not attend although the first defendant was notified according to the handbook and the fifth defendant was notified according to the notification paper dated 9/9/2021 and the public fundamentalist pleading was initiated. His client for the reasons stated in each of them, and each party repeated his previous statements and requests, and where there was nothing left to be said, the court decided the conclusion of the pleading and issued the following ruling in public.

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff requested to invite the defendants, the President of the Republic, the Speaker of the Council of Representatives, the Prime Minister, the Minister of Finance, and the Governor of the Central Bank of Iraq, in addition to their functions to plead and judge the unconstitutionality of the phrase ((based on the exchange rate (1450) one thousand four hundred and fifty dinars. per dollar)) of Article (1/First/B) of Law No. (23) of 2021 (the federal general budget of the Republic of Iraq for the fiscal year 2021) for violating the provisions of Articles (30/First) and (33/First) of the Constitution of the Republic of Iraq For the year 2005, and by examining the plaintiff's lawsuit and what was stated in the defenses of the defendants' attorneys under the regulations submitted by them to this court, it reached the following conclusions:

1. The system of government in Iraq is republican, representative, parliamentary, and democratically based on the principle of separation of powers, according to what was stated in

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Article (47) of the Constitution to ensure that each authority adheres to the limits of its constitutional competences and does not exceed them.

2. Article (60/first) of the constitution requires that draft laws be submitted by the President of the Republic and the Council of Ministers. As for the proposals of laws and based on Paragraph (Second) of the same article, they are submitted by ten members of the Council of Representatives or one of its specialized committees. Thus, the Constitution of the Republic of Iraq For the year 2005, it limited exclusively to the authorities that have the authority to present draft laws, as well as the authorities that have the authority to submit proposals for laws. And that formality must be taken into account when considering the constitutionality of laws.

3. The Council of Ministers is responsible for preparing the draft general budget, final account, and development plans based on the provisions of Article (80/Fourth) of the Constitution, and this means that the draft general budget law must be prepared and submitted by the Council of Ministers and that the Council of Ministers is allocated to this as it is the one in charge of planning and implementing public policy. The state, general plans, and supervision of the ministries' work by the provisions of Article (80/first) of the constitution, and this provides him with the possibility to prepare the aforementioned draft law, given that the ministries that make up the Cabinet possess the expertise necessary to prepare such a project.

4. The Council of Representatives, based on the provisions of Article (61/First) of the Constitution, is competent to legislate federal laws, and that jurisdiction also came exclusively. Therefore, the defendants are the President of the Republic, the Prime Minister, the

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Minister of Finance, and the Governor of the Central Bank of Iraq, in addition to their positions, they cannot be litigated regarding the appeal. The constitutionality of the contested text is because they are not related to the legislation of the aforementioned text.

5. The President of the Republic shall, based on the provisions of Article (73/Third) of the Constitution, ratify and issue laws enacted by the Council of Representatives and are considered ratified after fifteen days from the date of their receipt, and that this authority does not mean that the President of the Republic is part of the legislative process of laws, but rather According to the provisions of Article 66 of the Constitution, it is part of the components of the federal executive authority, which consists of the President of the Republic and the Council of Ministers.

6. The contested text was a legislative option and there is no violation of the provisions of Articles (30/First) and (33/First) of the Constitution of the Republic of Iraq for the year 2005, as the Council of Representatives when legislating the contested text, taking into consideration the economic conditions it is going through. The country, and for all of the above, the Federal Supreme Court decided the following:

First: Rejecting the plaintiff's lawsuit about the defendants, the President of the Republic, the Prime Minister, the Minister of Finance, and the Governor of the Central Bank of Iraq, in addition to their posts because the litigation was not directed.

Second: Refusal of the plaintiff's lawsuit with regard to the defendant, the Speaker of the Council of Representatives, in addition to his position, due to the absence of a constitutional violation.

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Third: To charge the plaintiff with fees, expenses, and attorney's fees for the defendants' attorneys, in addition to their posts, an amount of one hundred thousand dinars, distributed according to the law. The decision was issued by agreement, conclusively and binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and publicly understood in 18/ Rabi` al-Akhir/ 1443 AH corresponding to 24/11/2021 AD.

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