

Republic of Iraq
Federal Supreme Court
Ref. 144 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 1/8/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Basim Khaza'al Khashan (Member of the Council of Representatives) – his agents the barristers Ahmed Saeed Mousa and Hayder Saeed Mousa.

The Defendants: the Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiff claimed through his agent that the defendant issued decision No. (130) of 2021 in the fourteenth ordinary session on 6/4/2021 which included setting the monthly wage for lecturers at (250,000) dinars, and that the wages of administrators and workers do not exceed this amount, noting that their working hours exceed (200) hours per month, with a wage not exceeding (1,250) dinars per hour of work, which is a small wage and does not achieve a decent free living, especially after raising the exchange rate of the dollar against the Iraqi dinar. The inflation it has caused, and this violates the principle of equality between teachers and contract teachers (lecturers) and their peers registered with the owners of the Ministry of Education and receive their salaries in accordance with the Civil Service Law, which includes matrimonial and child allowances, certificate, and

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transportation, although they perform the same functions and tasks, the Council of Ministers issued its decision No. (413) of 2017 in its forty-eighth ordinary session held on 12/12/2017, and this decision included increasing the minimum wage for workers from (250,000) dinars to (350,000) dinars, and the Government may not pay unskilled workers who work for its institutions lower wage than the wage that employers are obliged to pay to their employees, and that due justice obliges the Government not only to pay a salary equal to the minimum wage, but also to pay matrimonial and child allowances and transportation to workers, contractors, and employees installed on the owners of its institutions without discrimination between them, otherwise it is a violation of Article 22 of the Constitution, of which clause (1st) stipulates that work is a right of all Iraqis to ensure that they have a decent life, and clause (2nd) stipulates that the law shall regulate the relationship between workers and employers on economic grounds, taking into account social justice, and the Government was the first to achieve this when it was the employer and the citizen was its worker, and it was incumbent upon it to equalize the wages of its employees, who were equal in terms of qualifications, duties and working hours, who performed the same functions and tasks, whether they were permanent on the personnel of its enterprises or contracted with it, and the Government shall not exploit the need of the people and force them into contracts of acquiescence that undermine their rights and dignity, as well as the contract contained in the challenged decision, which set lecturers and administrators a monthly wage lower than the minimum wage for unskilled workers by (40%), since the impugned decision violated articles (14, 16, 22 and 30) of the Constitution, and since the worker, lecturer and administrator covered by this decision receive the wage to which he is entitled is a daily need that cannot be postponed,

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therefore, the plaintiff requested from the Federal Supreme Court to amend it to ensure that contractors and employees performing equal functions are equal in financial rights and determined in accordance with the Civil Service Law, and to ensure that a wage for the daily procedure is paid not less than (350,000) dinars per month if he completes the working hours specified by the Labor Law, in addition to the allowances for marriage, children and transportation similar to the workers who permanent on the personnel of its institutions. The case was registered with this court in the number (144 Federal/2022) and the legal fee for it was met based on the provisions of Article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and informs the defendant of its petition and documents in accordance with Article (2/1st) of the same Bylaw, mentioned above, his agent replied in the answering draft dated 24/7/2022 concluding that the plaintiff does not have the right to initiate the case before this court because there is no current, direct and influential interest in his legal, financial or social status and did not provide evidence that real harm was caused to him as a result of the legislation to be repealed and was not applied to him or intended to be applied to him based on Article (20/1st) of the Bylaw of the Federal Court No. (1) of 2022 as well as the text of Article (4) of the Law of the Court No. (30) of the year 2005. Moreover, it is not within the jurisdiction of the Court to consider what the plaintiff has requested in his lawsuit as its jurisdiction is to consider the constitutionality of the laws and regulations in force and to adjudicate cases arising from the application of laws and not to amend executive administrative decisions in accordance with Article 93 of the Constitution and Article 4 of the Federal Supreme Court Law No. 30 of 2005 as amended, and that the Ministry of Education and the General Directorates of Education in the governorates that are not organized in a region have contracted

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administrative lecturers and free workers in the education sector in accordance with the decision of the Council of Ministers. No. (169) of 2021, and according to the rule of (the contract is the enactment of the contractors) it is not permissible to amend the contract except with the consent of the parties and respect their will, and therefore it is not permissible to amend the monthly wage agreed upon in the contracts above, and that the issuance of administrative orders and previous initiation from those who began to provide their free services on 1/5/2021 and the contracts were organized and the procedures for contracting were completed and fixed with the monthly wage, it was decided to count the free lecturers as contractors with the General Directorates of Education of the Governorates to perform their job tasks in accordance with the terms of the contract concluded between the parties signed in accordance with the principle of (the contract is the enactment of contractors) and in accordance with Cabinet Resolution No. (315) of 2019 and Resolution No. (603) of 1987 to complete the procedures for contracting, and the Ministry of Finance in its letter No. (613) dated 21/4/2021 indicated that Schedule (Beh) amended / chapter / 5 made the operational expenses in the General Budget Law for 2021 that the addition of (875) One billion dinars is not enough to cover all free lecturers and administrators of the Ministry of Education after calculating their cost by (250) thousand dinars, especially since their number (250) thousand between lecturer and administrative working for free, and the cost will be (750) for a full year and the remaining (125) billion dinars and therefore not enough to cover the rest of the contracts and daily wages, and a text has been included in the draft general budget law for 2022 according to the letter of the General Secretariat of the Council of Ministers numbered (39676) dated 30/12/2021 to provide the necessary financial allocations in line with the importance of this

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segment but the draft budget law has not been approved by the Council of Representatives, and the difference between the two wages specified in Cabinet Resolutions No. (130) of 2021 and (413) of 2017 did not contravene the text of Article (22/1st) of the Constitution, as the government under the two aforementioned resolutions provided employment opportunities for both segments without discrimination. The contract with lecturers is not considered a contract of acquiescence, as the lecturer can refuse to work according to this contract with this wage and resort to another job or another job and is not forced to conclude the contract with the said wage and does not have to contract with this wage as long as employment opportunities are available in other fields or work in the private sector. Moreover, the decision in question did not contain any discrimination, and the Government guaranteed the working procedures for the lecturers under the above-mentioned decision and the plaintiff's acknowledgment of his claim, which he had based on the allegation of low wages without being deprived of employment opportunities, and also secured employment and appropriate income according to the nature of the work and the number of financial allocations available in the operational expenses section of the State budget and there is no violation of the constitutional articles contained in the petition, so the ruling requested the dismissal of the appeal from the formal and objective points of view and the plaintiff was charged the expenses, fees, and advocacy fees. After completing the procedures stipulated in the Bylaw of the Court No. (1) for 2022, a date for the argument was scheduled according to the article (21/3rd) of which, both parties were notified with it, and on the appointed day the Court convened. The agent of each party attended and the public in presence argument proceeded, the agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to

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it, and the agent of the defendant answered by requesting to reject the case for the reasons listed in the answering draft attached to the case's papers. The agents of both parties repeated their previous sayings and requests, whereas nothing was left to be said, the end of the argument has been made clear and the Court issued the following decision:

The decision:

Upon scrutiny and deliberation from the Federal Supreme Court, it was found that the plaintiff filed a lawsuit against the defendant Prime Minister /being in this capacity before this court to demand the amendment of the decision issued by the Council of Ministers No. (130) of 2021 at the fourteenth ordinary session on 6/4/2021, which included the determination of the monthly wage for lecturers at (250,000) dinars, and that the remuneration of administrators and employees does not exceed this amount, ensuring the equality of contractors and employees performing equal functions in financial rights and determining them in accordance with the Service Law. Civil, and obliging the defendant / being in this capacity to pay a wage for the daily workers not less than (350,000) dinars per month if he completes the working hours specified by the Labor Law, in addition to the allowances of marriage, children and transportation, similar to the employees installed on the owners of its institutions, on the basis of the violation of the aforementioned resolution of the provisions of the Constitution of the Republic of Iraq of 2005 in articles (14) thereof, which stipulate that (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status) and 16 of which stipulated (equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken) and (22) of which stipulated (first-

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Work is a right for all Iraqis in a way that guarantees a dignified life for them. Second- the law shall regulate the relationship between employees and employers on economic bases and while observing the rules of social justice), also an article (30) stipulated (first- the State shall guarantee to the individual and the family - especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing. Second - the State shall guarantee social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphanhood, or unemployment, shall work to protect them from ignorance, fear, and poverty, and shall provide them housing and special programs of care and rehabilitation, and this shall be regulated by law). This Court finds that the case of the plaintiff has been initiated according to the provisions of the article (93/3rd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021, based on that the decision (challenge subject) issued by the Cabinet which is considered a part of the executive powers and also regarded by the federal authorities according to the provisions of article (47) of the Constitution aforementioned which stipulated (the federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers) within the meaning of the article (66) of which stipulated (the federal executive power shall consist of the President of the Republic and the Council of Ministers and shall exercise its powers in accordance with the Constitution and the law), and upon consideration of the merits of the lawsuit, its bylaws and the plaintiff's requests contained therein, it was found that the plaintiff's claim must be dismissed as a form of the absence of the plaintiff's interest when the case was initiated, as Article (25) of the Bylaw of the Federal Supreme

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Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022 stipulated that (any interested party shall directly appeal a lawsuit, which shall be submitted to the Court for the adjudication of cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authorities in accordance with the following conditions: First, the case must meet the conditions stipulated in Article (20) of this Law. Second: The text or procedure must be issued by one of the federal authorities provided for in Article (47) of the Constitution or one of the bodies provided for in Chapter 4th of Title 3rd of the Constitution (independent commissions). Third: The provisions of Article (21) of this Law shall apply to the procedures for the consideration of the case filed in accordance with the provisions of this Article). Article (20) of the same Bylaw stipulated four conditions to initiate this case, in addition to the conditions stipulated in the Civil Procedures Law No. (83) for 1969 which is amended by the articles (44, 45, 46, 47) of which, and they are (first- the plaintiff in the subject matter of the case must have a current, direct and influential interest in his legal, financial or social status, it must be available from the time the case is initiated until the judgment is rendered. Second – the challenged text must have already been applied to the plaintiff. Third- the plaintiff has not benefited from the challenged text in whole or in part. Fourth - the petition should include the plaintiff's e-mail, the address or e-mail of the defendant, a clear statement of the challenged text, the alleged constitutional text, and the reasons for the constitutional violation, and a copy of the challenged legislative text shall be attached to it). Whereas, the plaintiff's case without interest is current, direct, and affecting his legal, financial or social status, in addition to the fact that the decision in question requested to be amended is not related to the plaintiff and cannot be

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applied to him as he is neither a lecturer nor a worker covered by the decision in question, which means that the plaintiff's case did not meet the conditions for the constitutional proceedings before the Federal Supreme Court provided for in Article (20/1st and 2nd) of the Bylaw of the Federal Court above. Since what is meant (by interest) is the practical benefit that the plaintiff aims to achieve when he institutes the case and when it is decided following his requests, personal interest is one of the conditions for the admission of the case before the Federal Supreme Court, as there is no claim without interest, since the absence of the interest clause strips the plaintiff's claim and the claims contained therein of the legal protection prescribed for it by the Constitution and the laws in force, it cannot be accepted that the constitutional action is a tool through which the crumbling persons express their personal views and opinions without including a worthy interest in accordance with its description in Article (20/1st) of the aforementioned Bylaw, and the absence of the plaintiff's interest in the suit means the absence of his litigation vis-à-vis the defendant / being in this capacity, since the suit Constitutionality is one of the lawsuits in kind in which the litigation is directed to the text of the appeals, the Court may not rule on a constitutional case without litigation, since the case must be initiated against an opponent whose approval entails a judgment, and since the litigation is of public order by the Court on its own motion and its failure and non-verification result in the dismissal of the case in form without entering into its basis in accordance with the provisions of articles (4 and 80/1) of the Code of Civil Procedure No. (83) of 1969 as amended. Therefore, the case of the plaintiff should be rejected formally. Accordingly, the FSC decided to reject the case of the plaintiff Basim Khaza'al Khashan (member of the ICR) formally and to burden him with the expenses, fees, and advocacy fees for the agent of the

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defendant/ being in this capacity the legal counselor Hayder Ali Jaber amount of one-hundred thousand Iraqi dinars and to be divided according to the law. The decision has been issued unanimously, according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 2/Muharram/1444 Hijri coinciding 1/August/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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