

Republic of Iraq  
Federal Supreme Court  
Ref. 151 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24/7/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayooob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Ahmed Abdul Wahid Ameen. } Their agents, the barristers  
2. Kamiran Taib Mohammed Ali. } Mohammed Adil Qaddouri and  
Muayed Khamees Hussein

The Defendant: 1. The Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.  
2. Governor of Kirkuk/ being in this capacity.  
3. President of Kirkuk Investment Commission/ being in this capacity.

### **The Claim**

The plaintiffs, through the mediation of their agents, claimed that the third defendant (in addition to his job) granted them on 19/1/2017 the investment license in the number (0142) to develop and operate the project of controlling the axial weights of trucks at the entrances to the city of Kirkuk from the side (Baghdad, Sulaymaniyah, Erbil), and based on the aforementioned investment license, they concluded with the second defendant (the governor of Kirkuk / being in this capacity) the investment contract number: (2272) dated 16/3/2017 for the establishment and implementation of the project (subject of the investment license), according to which the weighing fees are (20,000) twenty thousand dinars per vehicle and for one time for one load, based on the text of Article (10/Beh) of the Public Roads Law No. (35) of 2002 as amended by Law No. (5) of 2013, and after they established the project and spent large sums of money and operated it, the first defendant (the Prime Minister / being in this capacity) issued Resolution No. (302 of

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2019 on 27/8/2019) under paragraph (1) thereof reduced the number of fines from an amount of (5000) five thousand One dinar to the amount of (500) five hundred dinars per one kilogram, under paragraph (2) thereof, the prices of weight fees were reduced from an amount of (20,000 twenty thousand dinars) for each vehicle per load to an amount of (5000) five thousand dinars, and under paragraph (3) thereof, the Ministry of Construction, Housing, Municipalities, and Public Works was authorized to amend contracts signed with investors, which were not a party to the contract, since the amendment of fees and fines, which are considered taxes, is only done by a law (any legislation) issued by the legislative authority under Article (28/1<sup>st</sup>) of the Constitution, which was violated by the aforementioned decision issued by the executive authority, which does not amount to the rank of law, and it was harmful to public money and the public interest, as a percentage of the weight fees and the full amounts of fines are transferred to the second defendant, and part of it to the sectoral authority concerned with the repair of public roads (the Ministry of Housing and Construction and the Directorate of Roads and Bridges), therefore, the plaintiffs request this court: to rule on the constitutionality of the Council of Ministers Resolution No. 302 of 2019 issued on 27/8/2019 and cancel it and issue a state order to stop the defendants' administrative procedures and decisions related to [reducing the weighing fees and fines they collect from the weighing stations project (the subject of the contract), stopping the administrative procedures for withdrawing the investment license, canceling the investment contract, and everything that leads to the suspension of the project] and until this lawsuit is resolved and the defendants are notified in addition to their jobs based on the provisions of articles 151 and (152) of the Civil Procedure Law, and charging them with judicial expenses and advocacy fees. The lawsuit was registered with this court in the number (151/Federal/2023), and the legal fee was collected for it, and the defendants were informed of its petition and documents based on the provisions of Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1 of 2022), and for the lapse of

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the period stipulated in item (3<sup>rd</sup>) of the above article, the court set a date for considering the case without pleading, and on the specified day, the court was formed and began to consider the case, the court reviewed the lawsuit petition and checked the grounds and requests contained therein, as well as Noted that it decided on 23/7/2023 to reject the issuance of the aforementioned state order under its decision No. (151/Federal/State Order/2023), the court also noted that the first defendant's agent submitted a draft dated 24/7/2023 requesting the dismissal of the lawsuit for the reasons stated therein, and after completing its scrutinies, the end of the minutes has been made clear, and the court issued the following decision:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs Ahmed Abdul Wahid Amin and Kamiran Tayeb Muhammad Ali filed the lawsuit through the mediation of their attorneys Muhammad Adel Qaddouri and Muayad Khamis Hussein against the defendants, the Prime Minister, the Governor of Kirkuk and the Chairman of the Kirkuk Investment Commission in addition to their jobs, requesting a ruling on the unconstitutionality of Cabinet Resolution No. (302) of 2019, and since the competencies of this court are specified under Articles (52 and 93) of the Constitution, as well as in Article (4) of the Federal Court Law. Supreme Court No. (30) of 2005 as amended by Law No. (25) of 2021, among these competencies, is not what the plaintiffs requested, as the control of this court under paragraph (1<sup>st</sup>) of Article (93) extends to the laws and regulations in force only, and does not include decisions, and thus the plaintiffs' lawsuit, as it was filed, is dismissable for lack of jurisdiction, so the Federal Supreme Court decided to dismiss the lawsuit of the plaintiffs Ahmed Abdel Wahed Amin and Kamiran Tayeb Muhammad Ali and charge them fees, expenses and advocacy fees for the first defendant's agent, the Prime Minister, being in this capacity, the legal adviser Haider Ali Jaber

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Amount (one hundred thousand dinars). The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 5/Muharram Al-Haram/1445 Hijri coinciding 24/July/2023 AD.

**Judge**  
**Jassim Mohammed Abbood**  
**President of the Federal Supreme Court**

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