

Republic of Iraq
Federal Supreme Court
Ref. 154 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 4/12/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalaf Ahmed Rajab, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: Basim Khaza'al Khashan/ member of the ICR- his agent the barrister Ahmed Saeed Mousa.

The Defendant: Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed in his petition - to which he attached a copy of the draft emergency support law for food security voted on in the Council of Representatives - that the defendant enacted the said law and became effective from the date of its issuance, and he took the initiative to challenge its constitutionality before this court for the following reasons: The Federal Supreme Court had previously accepted the appeal against the decision of the Council of Ministers to approve the referral of this law to the Council of Representatives for a vote, and issued its decision in the lawsuit filed by it No. (97/Federal/2022), which ruled to annul the contested decision, and that its legal status has not changed after the issuance of this decision, as well as its interest in challenging this law, which the court blocked the way of legislating by its aforementioned decision and its decision No. (121/Federal/2022), and since the Constitution enshrined in

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Article (47) the principle of separation of powers, and obligated each of them not to infringe on the powers and competencies of the other, and this is what was stated in the decision of the Federal Supreme Court No. (21 and its unified 29/Federal/2015), which confirmed that the Council of Representatives cannot legislate. Laws that impose financial obligations on the government that are not in its plans or in its financial budget without consulting it because this is a violation of the principle of separation of powers, the government intended in this decision is not the government that was stripped by the Constitution of all its powers except for the conduct of daily affairs, and that the law under challenge was not limited to spending (25,000,000,000,000) twenty-five trillion dinars, but allocated (50%) of the revenues of the ports to border cities without specifying the total revenues and this is an unspecified amount, and also allowed the Minister of Finance to borrow from home or abroad to finance the projects that were approved in previous budgets, and did not include the number of these projects and did not specify a ceiling for loans Internal or external funded by, It exempted the contractors with the state from taxes and fees that were calculated in the costs incurred by the state when contracting, and this exemption enriches the contractors with the state at the expense of public money and did not specify the amount of these fees and taxes, which are part of the state revenues that it lost under the law under the challenge, which also added another financial burden when it stipulated the continuation of financing ongoing projects based on the completed work arms or the actual processing of the project after ensuring the availability of cash liquidity. Exception Of the provisions of Article (1) of Law No. (4) of 2020 (First Amendment to the Financial Management Law No. (9) of 2019), Neither the law nor the tables attached to it mention the

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number of these projects or the amount of amounts authorized by the law to be disbursed, and thus the total expenditure included in this law may exceed half of the state's revenues, which are handed over to the caretaker government to carry out work outside its competence, and since the total financial allocations of this law may exceed (50) trillion dinars and exceed half of the budget for the year 2020, its allocation before the formation of the new government will hinder its work, it prevents it from implementing its financial plans and budgets, in addition to the formal aspects of issuing the law, as after the first reading of the proposed law, the Finance Committee in the Council of Representatives amended it and added other allocations by a vote of the members of the Finance Committee in accordance with its competence stipulated in the rules of procedure of the Council of Representatives, and provided the members of the Council with the amended version of it, which was supposed to be voted on after fulfilling the formal conditions, and the heads of the political blocs met in the Office of the Speaker of the Council, They amended the version prepared by the Finance Committee and introduced new allocations and changed some articles of the proposed law, without the approval of the Finance Committee and its members who are supposed to be amended by them, and some of them rejected this violation of the terms of reference of the Committee with this change, and the members of the Council, including members of the Finance Committee, were surprised by the changes that occurred to the proposed law, which is supposed to be amended by the Finance Committee and by a simple majority of its members according to the observations raised in the first reading, and this law also expanded the powers of the government Conduct of daily affairs and governors, Whereas the restriction of the powers of

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the resigned government is a constitutional provision that considers everything contrary to it null and void under Article 13 of the Constitution, while the law released the powers of the resigned government as well as the powers of governors, whose powers were restricted by the Federal Supreme Court to conduct daily affairs by its decision No. (116/Federal/2019), and stipulating the entry into force of the law from the date of voting on it is an offense to the President of the Republic, who was granted by the Constitution the power to ratify it within 15 days from the date of voting on it, and this period Inevitable and considered and its repeal is a violation of the Constitution, so the plaintiff asked this court to rule that the Emergency Support for Food Security and Development Act is unconstitutional. The lawsuit was registered with this court with the number (154/federal/2022), and the legal fee for it was collected in accordance with Article (21/I) of the Court's Rules of Procedure No. (1) of 2022, and the defendant is informed of its petition and documents in accordance with item (second) of the same article, and his agent replied with the reply list dated 18/7/2022, it concludes that the plaintiff is not a representative of the government or an agent of it until he complains that the law will impose financial burdens on the government, as Article (20) of the court's rules of procedure requires that the plaintiff in The subject matter of the lawsuit is a case and direct interest, and relying on the court's decision No. (21 and its unified number 29/federal/2015) is not valid, as the Council of Representatives has obtained the government's approval and non-objection to the financial burdens that the law will entail, once when the government itself submitted the emergency support bill previously, once when the government's representative in the Council of Representatives did not show any objection or objection to

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proceeding with the legislation of the proposed law when it was read a first reading in the session of the Council on 19/5/2022, in addition to the government's non-objection to what was included in the law, and that the plaintiff did not show the face of the violation of what was included in the appeal with the constitution, but only indicated what he deems incompatible with the Financial Management Law, and it is known that there is no harm in violating a law subsequent to a previous law, and it is also known that the Federal Supreme Court is concerned with examining The extent of the constitutionality of the texts and not the extent to which they conflict with each other, if the plaintiff proves that there is a conflict in the first place, knowing that allocating a percentage of the revenues of the ports to the border governorates does not require determining the total imports of those ports, as the percentage will remain constant no matter how those imports change up or down, Also, granting the Minister of Finance the authority to borrow is a specific matter in financing projects that were originally approved in previous budgets, and therefore borrowing is specific, financing is specific, and projects are legitimate under previous laws, which denies the claim that the law has stipulated limitless allocations and requires that the lawsuit be dismissed from this angle, and that the Federal Supreme Court is not competent to evaluate the work procedures of the Council of Representatives as long as they do not conflict with the provisions of the Constitution, as the lesson is in the vote of the Council of Representatives MPs on the law, and the members of the Finance Committee were among the voters on it without the committee objecting to the legislative procedures, Since the government is charged with the conduct of daily affairs, the law under challenge came in response to the international emergency conditions facing

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various countries of the world, and that the allocations allocated to the government based on the Financial Management Law are not sufficient to meet the country's needs and face the emergency conditions it faces, and the aforementioned allocations are not sufficient to meet the requirements of running lagging projects due to the lack of sufficient funds for that, which prompted the Council of Representatives, the representative of the people, to address this serious imbalance in the requirements of the discharge of Daily matters by the government based on its legislative competence based on Articles (60/2nd and 61/1st) of the Constitution, Perhaps the law has been devoid of any suspicion of releasing the hand of the government or governors, as all amounts are specified and all disbursement procedures are clearly indicated in the law, and all the financial details provided by the plaintiff are subject to the discretion of the Council of Representatives and the matter of their implementation is up to the competent government to conduct daily matters, so the defendant's agent requested to dismiss the plaintiff's lawsuit and charge him judicial fees, expenses and attorney's fees. After completing the procedures required by the court's internal regulations, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff attended in particular and the defendant's agent attended and began to conduct the public adversarial pleading, the plaintiff repeated what was stated in the lawsuit petition and requested a ruling according to it, the defendant's agent responded and requested the dismissal of the lawsuit for the reasons contained in the reply list linked within the lawsuit papers, and to stand on all aspects of the law subject to the challenge, the court decided The Council of Ministers and the

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Ministry of Finance included third persons in the lawsuit to clarify from them what is necessary to resolve it. The Council of Ministers was attended by the Legal Adviser Haider Ali Jaber and the Ministry of Finance by the human rights employee Jamal Ali Hussein and they presented explanatory lists that the court reviewed and linked within the case papers, and after the court completed its clarification, it was decided to remove the third persons from the lawsuit, and the parties repeated their previous statements and requests, and where there was nothing left to say, I understand the conclusion of the pleading, and the court issued the following judgment decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Bassem Khazal Khashan, a member of the Iraqi Council of Representatives, filed this lawsuit against the Speaker of the Iraqi Council of Representatives being in this capacity, and challenges it against the Emergency Support Law for Food Security and Development No. (2) of 2022, published in the Iraqi Gazette No. (4681) on 4/7/2022, for the reasons stated in the lawsuit petition. Upon examination, it was found that the Council of Representatives issued the Emergency Support Law for Food Security and Development, based on the provisions of item (first) of Article (60) of the Constitution of the Republic of Iraq for the year 2005. The aforementioned law was issued based on urgent necessities in order to achieve food security for the Iraqi people and the continuation of state institutions to provide services to citizens, create job opportunities, benefit from state resources, and complete the work of important and necessary suspended projects for the life

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of the Iraqi citizen, due to the expiration of the annual federal budget law for the year 2021 and the non-issuance of the federal budget law for the year 2022 due to the delay in forming the government after the general parliamentary elections on 10/10/2021 and in order to continue the state to carry out its duty towards citizens and not to The Court finds that the issuance of this law was a necessity resorted to by the legislative authority for the purpose of which is to sustain the work of state institutions in exceptional circumstances that require the issuance of such a law to avoid reaching the stage of cessation of services and the inability of the State to perform its tasks, and therefore this Court finds that the said law was issued within the competences of the Council of Representatives contained in Article (61/I) of the Constitution of the Republic of Iraq for the year 2005. The government also expressed its opinion on the financial burdens of the proposed law, according to letter No. (Q/2/2/42/2333) dated 1/6/2022 issued by the General Secretariat of the Council of Ministers, which includes the availability of the necessary financial allocations to implement the proposed emergency support law for food security and development, and that the representative of the third person entered by the court for clarification (the Minister of Finance / being in this capacity) stated in his regulation dated 30/10/2022 that his client did not sign any loan agreement based on the item (first) of Article (5) of the law, so The court finds that the challenged law was issued in exceptional circumstances that require its promulgation and that it was issued after obtaining the approval of the government regarding the financial burdens and there is nothing in it that violates the provisions of the Constitution or contradicts it, and therefore the plaintiff's claim is subject to dismissal because there is no

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constitutional violation. Therefore, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit in the name of Khazal Khashan because there was no constitutional violation and to charge him the fees, expenses, and the amount of one hundred thousand dinars as attorney's fees for the defendant's agent, being in this capacity, both the legal advisor Haitham Majid Salem and the human rights employee Saman Mohsen Ibrahim were distributed between them according to the law. The decision has been made unanimously, final, and binding for all powers according to provisions of articles (93/1st and 94) of the Republic of Iraq Constitution 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 edited in the session dated 9/Jamada Al-Oula/1444 Hijri which coinciding 4/December/2022 A.D.

**Signature of
The president**

Jasem Mohammad Abbood

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