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The Federal Supreme Court (F S C) has been convened on 4/5/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghalib Amir Shunayen, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Adobo Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyer Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Deputy Director of Asiacell Company for telecommunication/ private equity/ being in this capacity – his agent the Barrister Zaid Luay Ahmed Al-Jidda.

The defendant: 1- The Speaker of the ICR/ being in this capacity-his agent the legal advisor Haytham Majid Salim.  
2- Minister of Housing and Reconstructions and Public Municipalities/ being in this capacity – his agent the Jurist official Luay Ali Nasr.

### The Claim

The agent of the plaintiff claimed that the first defendant/ being in this capacity had already issued the general budget Law No. (1) for 2019, article (19<sup>th</sup>/1<sup>st</sup>) of it had stipulated (the Ministries and offices not associated with a Ministry and Governorates shall remain possesses the power of levying fees and charges for the services levied during the years 2016, 2017, and 2018 or imposing fees and new services charges, as well as amending the current fees and services charges, except the sovereign fees approved by the federal laws in effect. This matter shall be based on regulations issued by the specialized Minister, or the Head of the office not

associated with a Ministry or the Mayor), and the second defendant the Minister of Housing and Reconstruction and public Municipalities in a different Governorates of Iraq to demand the company of his client by the fees of telecommunication towers cleaning by instructions issued in this concern. These fees were levied on his client's company and for the illegality and legitimacy of these fees from the base and value because of the legislative text listed in the budget law as well, the instructions were violating the text article (28/1st) of the Constitution stipulated (o taxes or fees shall be levied, amended, collected, or exempted, except by law). Granting the powers for the Ministries and Governorates in levying the fees and wages and amending it will aggrieve the public interest of the People by exploiting these powers. Moreover, the instructions issued by the second defendant/ being in this capacity were violating the law of municipalities' revenues No. (130) of 1963 which was amended by the law (107) for 1997 and the revolutionary leadership council (dissolved) decision No. (133) for 1996 paragraph (4) of it. This paragraph did not mention the telecommunication towers, besides, these towers do not produce any scrapings, and levying these fees on his client's company will weigh heavily on it and be regarded as enrichment on the expenses of others. Whereas the legislative text and the instructions mentioned above were violating the Constitution and the Laws in effect. Therefore, he called upon the defendants for argument and to judge by the following: (1. to judge by unconstitutionality by the article (19<sup>th</sup>/1<sup>st</sup>) of the federal budget law No. (1) For 2019 and all other similar articles in the previous federal budget law. 2. To judge by unconstitutionality of the instructions issued by the second defendant/ being in this capacity as much as related by the telecommunication towers which belongs to his client's company). After registering this case and notifying both parties/ being in their capacities, the court requested from them to answer it in writing according to the provisions of article (2/1<sup>st</sup>) of the FSC's Bylaw No. (1) For 2005. The agent of the first defendant/ being in this capacity answered by his draft dated 5/January/2020 which included: the agent of the plaintiff/ being in this capacity is requesting to judge by unconstitutionality of the article (19/1<sup>st</sup>) of the federal budget law for 2019, whereas the general budget law

had been issued for a specific year which ended by the end to the calendar year. Therefore, the claim of the plaintiff became ineffective, for this reason, he requested to reject the case of the plaintiff and to burden him all the expenses. The agent of the second defendant the Minister of Housing and Reconstructions and Municipalities/ being in this capacity in requested in his draft dated 14/January/2020 which included that the cleaning fees levied on the telecommunication towers are new fees were levied by his client according to the revolutionary leadership council (dissolved) decision No. (133) for 1996 in the article (4) of it, and executing for the text of the article (19/1<sup>st</sup>) of the general federal budget law for 2019 and article (5) of the municipalities revenues law No. (130) for 1993 which authorized him for this right, and he attached to his draft some laws and decisions in relevant. He requested to reject the case of the plaintiff/ being in this capacity and to burden him with the advocacy fees. The agent of the plaintiff/ being in this capacity answered the draft of the first defendant that his client had initiated this case on 11/December/2019 which mean during the validity of the budget law for 2019, and the second defendant is continuing in levying these fees despite the end of that year. As well, he answered the draft of the second defendant's agent/ being in this capacity that this draft had included defenses and contradicting laws and what this draft indicated is related to wages levying not fees, and there is a difference between them because the wages are token for services and the municipalities offices didn't present any services for his client's towers. Therefore, he requested to judge according to what was listed in the petition of his client's case. After completing the required procedures according to paragraph (2<sup>nd</sup>) of the article (2) of the FSC's Bylaw No. (1) For 2005, the day 27/April/2021 has been scheduled as a date for argument and trying the case. On that day, the agent of the plaintiff/ being in this capacity attended, as well the agent of the first defendant/ being in this capacity, but the second defendant/ being in this capacity didn't attend also his agent despite they were notified and he didn't present any legitimate excuse. The Court proceeded to try the case publicly. The agent of the plaintiff repeated the claim of his client and requested to judge according to what was listed in it, and repeated what was listed in his previous

draft, he added that the second defendant is continuing levying these fees according to the text of the article (19/1<sup>st</sup>) of the public budget law for 2019. Additionally, the agent of the first defendant repeated what was listed in his draft and he requested to judge by rejecting the case. He added that the litigation is not directed to the second defendant/ being in this capacity because the fees were levied by the law which the ICR enacted. For scrutiny, the argument was postponed until 11/May/2021. On that day, the agents of the plaintiff and the first defendant/ being in their capacities have attended and the public in presence of both parties argument proceeded. Both parties repeated their previous sayings and defenses, whereas nothing left to be said the court has made the end of the argument clear and the decision as well.

### The Decision

During scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's agent/ being in this capacity has mentioned in the petition of the case that the article (19/1<sup>st</sup>) of the Federal Budget Law No. (1) for 2019 had allowed the Ministries and offices not associated with a Ministry to levy a fees and services wages according to the regulations issued by the Minister or the Head of the office not associated with a Ministry or the Mayor, and the second defendant/ being in this capacity had issued the instructions of collecting the cleaning fees which included the towers belongs to his client's Company, both of the legislative text listed in the Budget Law and the regulations mentioned were violating the text of the article (28/1<sup>st</sup>) of the Constitution which stipulated No taxes or fees shall be levied, amended, collected, or exempted, except by law. The FSC finds that the case of the plaintiff/ being in this capacity had included two challenges: the first is challenging the constitutionality of paragraph (1<sup>st</sup>) of the article (19) of law No. (1) The Federal Budget Law for the fiscal year 2019, and the second is challenging the constitutionality of the instructions issued by the second defendant to determine and regulating these fees which included the towers that belong to his client's Company. This Court sees that paragraph (1<sup>st</sup>) of the article (19) of the law No. (1) The Federal Budget Law of Iraq for the fiscal year 2019 is not valid anymore, whereas the Budget Law is

issued for a specific calendar year and executed within it, and it ends by the end of that year. Whereas the article (93/1<sup>st</sup>) of the Constitution stipulated that the Federal Supreme Court shall have the jurisdiction of overseeing the constitutionality of laws and regulations in effect. Therefore, challenging this article has become out of the FSC jurisdiction even if the agent of the plaintiff/ being in this capacity had presented the challenge during that year because this matter does not justify the Court its violation of the constitutional text above-mentioned. As for the instructions issued by the second defendant/ being in this capacity to collect the fees which regarded administrative decisions and the law had set a method to challenge it, and it's out of the FSC jurisdiction which the Constitution determined its law and jurisdictions, not among these jurisdictions is challenging the administrative decisions. Accordingly, the Court decided the following: 1. to judge by rejecting the case of the plaintiff, the Deputy Director of Asiacell Company for telecommunication/ being in this capacity for lack of competence. 2. To burden the plaintiff/ being in this capacity the fees, expenses, and the advocacy fees for the agent of the first defendant the legal advisor Haytham Majid Salim amount of one-hundred thousand Iraqi Dinars shall be divided according to the legal proportions. The decision has been issued unanimously, final and binding according to the provisions of articles (93/1<sup>st</sup>) and (94) of the Republic of Iraq Constitution for 2005 (amended) and the article (17) of the FSC's Bylaw No. (1) For 2005. The decision has been made clear and issued on 11/May/ 2021 coinciding with 27/Ramadan/1442 Hegira.