

Republic of Iraq
Federal Supreme Court
Ref. 228 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 16/11/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Hayder Ali Noori, Hayder Jaber Abid, Khalaf Ahmed Rajab, 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 Plaintiffs: 1- Basim Khaza'al Khashan
2- Mustafa Jabbar Sanad } members of the ICR- their agents the barristers Ahmed Saeed Mousa and Hayder Saeed Mousa

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

The Claim

The plaintiffs claimed through their agent that the Council of Ministers issued Resolution No. (226) of 2022 in its thirtieth ordinary session held on 16/8/2022 and they took the initiative to challenge it before this court for the following reasons: The Emergency Support Law for Food Security in paragraph (19) of the attached table allocated an amount of (400) billion dinars to the security and military agencies, which include (the Joint Forces Command, the Ministry of Defense, the Ministry of Interior, the Counter-Terrorism Service, the Iraqi National Security Service, the Iraqi National Intelligence Service, and the Popular Mobilization Commission). These funds support its work in confronting terrorism and security challenges, However, the defendant allocated (70) billion dinars to

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renovate his office and purchase unnecessary furniture, supplies and machinery, and since this office is not one of the security or military agencies covered by the aforementioned allocation, so the disbursement of this amount is contrary to the aforementioned law and for the purpose for which it was allocated, knowing that the said amount is equal to (17.5%) of the funds allocated to the security and military services, and is equal to the total amounts allocated to the Counter-Terrorism Service, the National Security Service and the National Intelligence Service combined, so the plaintiffs requested this court Cancellation of the contested decision for violating the Emergency Support Law for Food Security, and for issuing it in violation of Article (80/3rd) of the Constitution, which obliges the Council of Ministers to issue its decisions with the aim of implementing the laws and not violating them, and requesting that the Council of Ministers be obliged to distribute the amount to the security and military agencies in accordance with paragraph (19) of the table attached to the law, The lawsuit was registered with this court with the number (228/federal/2022) and the legal fee for it was collected in accordance with Article (21/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and it informs the defendant of its petition and documents in accordance with item (second) of the same article, and for the lapse of the period stipulated in the aforementioned item without receiving the defendant's answer, the court set a date for the pleading in accordance with Article (21/3rd) thereof and notified the parties of it, and on the appointed day, the court was formed, and both the first plaintiff and the plaintiffs' agent attended The plaintiff and the plaintiffs' attorney repeated the contents of the petition and requested a ruling accordingly, the defendant's agent replied that the Council of

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Ministers Resolution No. (291) was issued on 8/11/2022, which included the cancellation of the financial funding allocated to the Prime Minister's Office under the decision (subject to the challenge) and finances the said amount to the Ministry of Interior, and added that no amount of the amount allocated to the Prime Minister's Office was disbursed and highlighted to the court the relevant decisions and accompaniments and linked within the case papers and the request to dismiss the case, and the agent of each party repeated his previous statements and requests, and where there was nothing left to say, I understand the conclusion of the pleadings and issued The court decided the following ruling:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs filed a lawsuit before this court against the defendant Prime Minister in addition to his position, to challenge the validity of the Council of Ministers Resolution No. (226) of 2022, adopted in its thirtieth ordinary session held on 16/8/2022 based on its violation of the Emergency Support Law for Food Security and Development No. (2) of 2022, and for its issuance in violation of Article (80/3rd) of the Constitution of the Republic of Iraq of 2005, which stipulated (The Council of Ministers shall exercise the following powers: (3rd) Issuing regulations, instructions, and decisions, to implement the laws), and requesting the cancellation of the aforementioned decision and obliging the defendant, in addition to his job, to distribute the amount referred to in the aforementioned decision to the security and military agencies, and the Federal Supreme Court finds that it decided on 17/10/2022 to stop disbursing

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the amount allocated to the Prime Minister's Office under the contested decision amounting to seventy billion dinars until the lawsuit is resolved, according to the decision issued by it No. (31/Federal/State Order/2022), and it also finds that the lawsuit meets the conditions for its establishment stipulated in Civil Procedures Law No. (83) of 1969, as amended by Articles (44, 45, 46, and 47) thereof, and that the interest of the plaintiffs is considered to be achieved in it due to the fulfillment of its conditions stipulated in Article (20/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, which stipulated (that the plaintiff in the subject matter of the lawsuit shall have a case, direct and influential interest in his legal, financial or social status, provided that it is available from the filing of the lawsuit until the issuance of the judgment thereon) and following Article (25) thereof, which stipulates ((Any interested party may directly appeal a lawsuit, which shall be submitted to the Court to adjudicate cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the Federal Authority, following 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 stipulated in Article (47) of the Constitution or one of the bodies stipulated in Chapter IV of Chapter Three of the Constitution (independent bodies). Third: The provisions of Article (21) of this Law shall apply to the procedures for hearing the case submitted in accordance with the provisions of this Article)). The decision in question relates to public money, and its protection is obligatory for every citizen to prevent its unjustified waste and to prevent its disposal in violation of the provisions of the law in an attempt to

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confront cases of financial and administrative corruption in state institutions, limit their spread, curb them, eliminate them, end their existence and address their negative effects, in a way that maximizes the status of public money and its sanctity in the service of the public interest, based on the provisions of Article (27) of the Constitution of the Republic of Iraq, which stipulates (Public funds are inviolable, and their protection is a duty. on every citizen), The resort to the constitutional judiciary must not be arbitrary for everyone who wants it, but there must be an interest in the lawsuit, and the lawsuit is not valid from others, as it is the subject of the constitutional lawsuit and embodies the need for legal protection that is required when attacking or threatening to attack a right or legal status, and is the practical benefit that the plaintiffs wish to obtain from filing a constitutional lawsuit, which should be legal in the sense that the constitution guarantees its protection, because the right What is protected by the constitutional action is a right guaranteed by the Constitution and approved by law, and in application of this, the interest is legal when one of the constitutional rights is violated. Thus, the direct personal interest, which is a condition for accepting the constitutional lawsuit, is not considered a significant legal interest simply by violating the provisions of the Constitution, unless the text in question violates one of the constitutional rights of the plaintiffs guaranteed by the Constitution, and therefore the abstract theoretical interest is not sufficient to accept the direct constitutional lawsuit, as is the case with the interest that aims to determine an abstract constitutional provision on a particular subject for academic purposes or in defense of ideal values to be fixed or a kind of expression of a point of view. Personal or to establish a certain concept in a specific matter that did not result in harm to the appellant, and this is what

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was settled by the judgment of this court in its decision No. (117/Federal/2019) on 2/5/2021, Due to the availability of legal capacity to file the lawsuit and the validity of the plaintiffs' litigation against the defendant in addition to his job, it was decided to accept the lawsuit from a formal point of view and upon consideration of the subject matter of the decision under challenge based on the lawsuit filed to challenge its invalidity, it became clear that the Emergency Support Law for Food Security and Development No. (2) of 2022 published in the Iraqi Gazette No. (4681) on 4/7/2022 based on its positive reasons, it was legislated (in order to achieve food security, alleviate poverty and achieve financial stability in light of Emergency global developments, continuing to provide services to citizens, improving their standard of living after the entry into force of the budget law, creating job opportunities, maximizing the benefit of Iraqis from state resources, advancing development, resuming work on stalled projects due to lack of funding, and proceeding with new projects of importance) as an exception to the general principle, Due to the inability to approve the budget law, because the Council of Ministers at the time was exercising its duties as a caretaker government, which makes it impossible to apply the provisions of Article (62/1st) of the Constitution of the Republic of Iraq for the year 2005, which stipulated (The Council of Ministers submits the draft law on the general budget and the final account to the Council of Representatives for approval), and thus the legislation of the aforementioned law, led to exceeding the general provisions contained in the Federal Financial Management Law No. (6) of 2019 in Articles (11 and 13) And 18) thereof and its non-application, and when auditing the provisions of Article (3/1st) of the aforementioned Emergency Support Law for Food Security and Development, which

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stipulates ((An amount of (25,000,000,000,000) dinars (twenty-five trillion dinars) shall be allocated by the Ministry of Finance and distributed according to tables (a) and (b) attached to the law)), Upon checking Table (B), paragraph (19) thereof, it became clear that an amount of (400,000,000,000) dinars (four hundred billion dinars) has been allocated out of the aforementioned amount (to the security and military services and distributed by a decision of the Council of Ministers), and after reviewing the Council of Ministers Resolution No. (226) of 2022 issued on 17/8/2022, which stipulated ((The Council of Ministers decided in its thirtieth ordinary session held on 16/8/2022 the following: The Ministry of Finance shall allocate the amounts to the entities specified in paragraph (2) of the letter of the Prime Minister's Office numbered (3026/2212740) dated 8/8/2022, based on the provisions of paragraph (19) of Table (B) attached to the Emergency Support Law for Food Security and Development, After reviewing the letter of the Prime Minister's Office numbered (3026/2212740) dated 8/8/2022, it became clear that paragraph (2) thereof referred to the allocation of an amount of (70) billion dinars under paragraph (1) of the table fixed therein to the Prime Minister's Office based on the letter requesting the allocation issued by the aforementioned office in number (2212739) on 8/8/2022, and it became clear that the financial allocation referred to in paragraph (19) of Table (B) attached to the aforementioned Emergency Support for Food Security and Development Law, out of the amount referred to Article (3/1st) thereof concerns the security and military agencies exclusively, and since the Prime Minister's Office is not considered one of the security and military agencies covered by the financial allocation referred to in paragraph (19) of Schedule (B) attached to the Emergency Support Law for Food Security and Development

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mentioned above. Therefore, the allocation of the amount mentioned under the contested decision, based on the letter of the Prime Minister's Office referred to therein, amounting to (70) billion dinars to the Prime Minister's Office, is contrary to the provisions of Article (3/I) of the aforementioned Emergency Support for Food Security and Development Law and following paragraph (19) of Table (B) attached thereto, and more than the powers of the Council of Ministers referred to under Article (80/3rd) of the Constitution of the Republic of Iraq of 2005, which is based on the issuance of regulations, instructions and decisions to implement Laws and not violating them, Which requires ruling the invalidity of the decision under appeal as far as the allocation of (70) billion dinars to the Prime Minister's Office is concerned and canceling all its effects as of the date of its issuance. In view of the foregoing, the Federal Supreme Court decided as follows:

1. The invalidity of Cabinet Resolution No. (226) of 2022 as of the date of its issuance on 17/8/2022 containing ((The Ministry of Finance shall allocate the amounts to the entities specified in paragraph (2) of the Prime Minister's Office letter No. (3026/2212740) dated 8/8/2022, based on the provisions of paragraph (19) of Schedule (B) attached to the Emergency Support Law for Food Security and Development)) and specifically what was stated in paragraph (1) of the table contained in the aforementioned Prime Minister's Office letter, based on paragraph (2) thereof, which She pointed to the allocation of an amount of (70) billion dinars to the Prime Minister's Office and the cancellation of all its effects.

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2. In addition to his job, the defendant shall bear the expenses, fees, attorney's fees, and attorney's fees, an amount of one hundred thousand dinars, to be distributed equally between them.

The decision has been made unanimously, final and binding for all powers according to provisions of articles (93/3rd and 94) of the Republic of Iraq Constitution for 2005, and articles (4/3rd 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 21/Rabee Al-Akhir/1444 Hijri which coincided with 16/November/2022 A.D.

**Signature of
The president**

Jasem Mohammad Abboud

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