

Republic of Iraq  
Federal Supreme Court  
Ref. 270 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/2/2023 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, Ayoob Abbas Salih, Abdul Rahman Sulayman, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Appellant: Raid Hameed Muslih/ Head of the expanded criminal cassation authority which belongs to the Presidency of Nineveh appeal court.

The Subject of the Challenge: to adjudge the legitimacy of articles (9, 10, 11) of water well-drilling instructions No. (1) for 2011 issued according to the provisions of paragraph (2<sup>nd</sup>) of the Revolutionary Command Council (dissolved) No. (622) on 5/6/1984 and paragraph (1) of decision No. (826) on 18/7/1984, and the aforementioned decisions.

### **The Abstract of the Challenge**

The Federal Supreme Court received the request of the President of the Criminal Cassation Authority in the Nineveh Court of Appeal in its discriminatory capacity according to the letter issued by the Presidency of the Nineveh Court of Appeal / Nineveh Court of Appeal in its capacity as discriminatory / the Criminal Cassation Authority No. (951/2022) dated 11/12/2022, addressed to the Federal Supreme Court entitled (Request) and its attachment the original request, regarding the defendant (Muhammad Sheat Fadel Elias) in the criminal case

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Republic of Iraq  
Federal Supreme Court  
Ref. 270 / federal /2022



Kurdish text

numbered (395/G.M/2022), containing its summary: ((Request to adjudicate the legality of Articles (9, 10 and 11) of the Instructions for Drilling Water Wells No. (1) of 2011 issued based on the provisions of paragraph (2<sup>nd</sup>) of the dissolved Revolutionary Command Council Resolution No. (622) on 5/6/1984 and paragraph (1) of Resolution No. (826) on 18/7/1984, the two aforementioned resolutions, based on their violation of the provisions of the Constitution of the Republic of Iraq of 2005 under articles (19/2<sup>nd</sup> and 47) thereof, relating to the legality of crimes and penalties and the principle of separation of powers)), for the reasons referred to in the application, the conclusion of which lies in the following: ((On 9/10/2022), the Tal Afar Misdemeanor Court issued a sentence on the convict (Muhammad Fadel Elias) with a fine of two hundred and one thousand dinars based on the provisions of Resolution (622) of 1984, as amended, and following Article (10) of Instructions No. (1) of 2011, and in the event that he does not pay the amount of the fine, he shall be imprisoned in simple detention for one month, whereas the instructions relied upon by the court in the decisions of the conviction and sentence, as well as articles (9 and 12) of the aforementioned instructions, were contrary to paragraph (second) of article (19) of the Constitution of the Republic of Iraq for the year 2005, which stipulated (no crime or punishment except by stipulation) and the principle of separation of powers stipulated in article (47) thereof, since the aforementioned instructions were issued by the Minister of Water Resources, who is subordinate to the executive authority, which has the power to issue special instructions for drilling water wells and specifying It contains the scientific and technical controls and specifications for drilling wells, the conditions for drilling them and the fees resulting therefrom based on Article (2<sup>nd</sup>) of Resolution (622) mentioned above, however, it cannot tighten the penalties mentioned in

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Article (3<sup>rd</sup>) thereof, which stipulates that ((the violator of the instructions issued by the Minister of Irrigation shall be fined an amount of not less than one hundred dinars and not more than (5000) five thousand dinars, and the Minister of Irrigation shall be empowered to determine them under the instructions mentioned in paragraph (2<sup>nd</sup>) of the above article)), based on this text, the Minister has the power to determine the instructions and set controls, but he does not have the right to tighten the fines more than those stipulated in the legislation or to determine crimes because this is one of the tasks of the legislative authority, as it determines crimes and penalties, while we find that Articles (9 and 10) of the instructions stipulated penalties with fines more severe than those stipulated in Resolution (622) paragraph (3<sup>rd</sup>) thereof, in addition to that, the aforementioned instructions vested the authority to fulfill them to the said Ministry, as well as Article (11) of the said instructions. (allocating 60% sixty percent of the number of fines stipulated in these instructions to the informant of the violation if the news is proven to be true) and there is no legal basis that entitles the minister to that power. The authorization provided for in article 1 of Resolution 826 of 1984 does not permit him to do so, and thus the aforementioned instructions have violated the above-mentioned constitutional provisions and the Minister mentioned therein has departed from the authorization granted to him under the aforementioned resolutions.

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the list of appeals focused on challenging the legality of Articles (9, 10, and 11) of the Instructions for Drilling Water Wells No. (1) of 2011 issued based on the provisions of paragraph (2<sup>nd</sup>) of the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 270 / federal /2022



Kurdish text

dissolved Revolutionary Command Council Resolution No. (622) on 5/6/1984 and paragraph (1) of Resolution No. (826) of 18/7/1984, and the two aforementioned decisions, on the basis of their violation of the provisions of the Constitution of the Republic of Iraq of 2005, Article (19/2<sup>nd</sup>) thereof, which stipulated that (no crime or Punishment except by stipulation, and no penalty except for the act considered by law at the time of committing a crime, and it is not permissible to apply a heavier penalty than the penalty in force at the time of the commission of the crime) and Article (47) thereof, which stipulates that (the federal authorities shall consist of the legislative, executive and judicial authorities, exercising their powers and functions on the basis of the principle of separation of powers), for the reasons referred to in the request in detail, and the Federal Supreme Court finds that the appeal must be dismissed in form of lack of jurisdiction, as the competences and powers of this court are limited based on the provisions of Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and other special laws, and these articles did not include the jurisdiction of the Federal Supreme Court under which the constitutionality of the instructions is decided, Apart from deciding on the constitutionality of the laws and regulations in force, deciding on the constitutionality of the laws and regulations in force is an inherent competence of the Federal Supreme Court under the provisions of Article (93/1st) of the Constitution and Article (4/1<sup>st</sup>) of the aforementioned amended Federal Court Law, and since the appeal was focused on the request to decide on the legality of Articles (9, 10 and 11) of the Instructions for Drilling Water Wells No. (1) of 2011 issued based on the provisions of paragraph (2<sup>nd</sup>) of the dissolved Revolutionary Command Council Resolution No. (622) on 5/6/1984

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Republic of Iraq  
Federal Supreme Court  
Ref. 270 / federal /2022



Kurdish text

Paragraph (1) of Resolution No. (826) of 18/7/1984, contrary to the jurisdiction of the Federal Supreme Court to hear challenges to the constitutionality of laws and regulations in force only, such jurisdiction does not extend to determining the constitutionality of instructions or deciding on their legality, which requires the dismissal of the appeal for lack of jurisdiction, which requires the dismissal of the appeal for lack of jurisdiction, with regard to the decisions of the dissolved Revolutionary Command Council (622 issued on 5/6/1984 and 826 on 18/7/1984) referred to in the list of appeal with the phrase (and the two decisions mentioned), that phrase is not enough that the aforementioned decisions are subject to appeal because the list of appeal does not address them to indicate aspects of the violation of constitutionality in each of them if there is a violation, and their constitutionality can be challenged independently if necessary after indicating the aspects of the constitutional violation and the constitutional text that has been violated. In view of the above, the Federal Supreme Court decided to dismiss the appeal submitted by Judge Raid Hameedd Musleh, Chairman of the Criminal Cassation Authority affiliated to the Presidency of the Nineveh Court of Appeal, challenging the legality of Articles (9, 10 and 11) of the Instructions for Drilling Water Wells No. (1) of 2011 issued based on the provisions of paragraph (second) of the dissolved Revolutionary Command Council Resolution No. (622) on 5/6/1984 and paragraph (1) of Resolution No. (826) on 18/7/1984, for lack of jurisdiction. The decision has been issued unanimously, final, and binding according to the provisions of articles (93/1<sup>st</sup> and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/1<sup>st</sup> and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. It has been edited in the session dated 16/Rajab/1444 Hijri coinciding with 8/February/2023 AD.

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Republic of Iraq  
Federal Supreme Court  
Ref. 270 / federal /2022



Kurdish text

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