

Republic of Iraq
Federal Supreme Court
Ref. 48 / federal / 2021



Kurdish text

The Federal Supreme Court (F.S.C.) was convened on 6.6.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Monther Ebraheem Husain who are authorized to judge in the name of the people, they made the following decision:

The applicant of inquiry:

Rebwar Hadi Abdul Rahman/ Chairman of the Legal Committee in the Iraqi Council of Representatives (I.C.R.).

First- The brief of the inquiry:

The inquiry presented to the F.S.C. by the Chairman of the Legal Committee in the I.C.R. (Rebwar Hadi Abdul Rahman) by the letter issued from the I.C.R. / legal committee, including the following: (given the great jurisprudence regarding the authority concerned with interpreting federal laws, and the fact that the legal department in the General Secretariat of the Council of Ministers and the legal departments of the ministries issued circulars interpreting the federal laws, which led to their application in a way that contradicts the reasons for their legislation. For the above, please kindly state the authority concerned with interpreting laws based on the constitution and the laws in force in the service of the public interest).

Athraa



Second: The decision:

During scrutiny and deliberation by the F.S.C., it found that the Chairman of the Legal Committee in the I.C.R. by the letter issued from the I.C.R. / legal committee No. (156) on 24.5.2021 directed to the Federal Supreme Court, under the title (interpretation of federal law) requesting in it (state the authority concerned with interpreting laws based on the constitution and the laws in force), for the reasons mentioned in the letter. The Federal Supreme Court finds that the jurisdictions and competencies of this court were specified under article (93) of the constitution of 2005, also stipulated in article (4) of the F.S.C. amended Law No. (30) for 2005. When scrutinizing article (93) of the Constitution which stated the exclusive and original competencies of the F.S.C. as it stated (the Federal Supreme Court shall have jurisdiction over the following: First: Overseeing the constitutionality of laws and regulations in effect. Second: Interpreting the provisions of the Constitution), in addition to other jurisdictions listed after that paragraph in the same article, since the hierarchy of legal rules requires that the constitution be in a higher rank than the laws and legislation issued by the legislative authority, and the legislative authority must abide by the rule of the constitution in its legislation, otherwise it is considered a violation of its provisions, and the decision on the constitutionality of a law in force requires understanding the intent of the legislator and its goals when legislating it to find out the truth of its compelling reasons and to indicate the extent to which they are compatible with the higher

Athraa



interests of the state and protect them in a way that secures the protection of the interests of society and individuals together in light of the provisions of the Constitution in order to prevent the violation of its provisions or exceeding it, and that this sometimes requires the interpretation of the provisions of the law in the occasion of an incident or a dispute presented to this court for decision, and since whoever owns the whole owns the part, and that the interpretation of the provisions of the constitution is within the jurisdiction of this court, which means that its jurisdiction is held in interpretation of the provisions of the law, as this competence is considered subordinate to its competence in interpreting the provisions of the Constitution, based on the aforementioned rule and implementing to the principle of judicial interpretation of the texts of the law, provided that this is done in accordance with certain controls that are embodied in the need for laws to be in force and that its interpretation was on the occasion of an existing litigation considered before this court to decide on the constitutionality of the law subject of the interpretation or on the occasion of an inquiry referred to it exclusively issued by one of the federal authorities in the state (the legislative authority represented by the Council of Representatives and the Federation Council, the executive authority represented by the President of the Republic and the Council of Ministers, the judicial authority is represented by the Supreme Judicial Council) or by the Prime Minister in the Kurdistan Regional Government, provided that the inquiry is not on the occasion of applying the law to an existing

Athraa



litigation before this court or a case before the regular or administrative judiciary for which a reference has been specified for appeal. Provided that the inquiry letter is signed by the head of the authority or the prime minister in the region exclusively, and thus other official bodies associated with a ministry or not, independent bodies and individuals do not have that authority, because the jurisdiction of this court to interpret laws came as an exception according to the viewpoint of the court based on its original and exclusive jurisdiction to interpret the texts of the constitution and the right derived from it embodied in its competence to interpret the texts of the law, that is because whoever owns the whole owns the part, and on the basis of that, what is established on the basis of the exception may not be expanded upon, especially since this doesn't contradict the powers of the State Council based on the provisions of the State Council Law No.(65) of 1979 amended with the law No.(71) of 2017, as article (4) of it states that (the Council is responsible for the functions of the administrative judiciary, fatwas, drafting, preparing, studying and auditing draft laws, and expressing opinion on legal matters for state departments and the public sector). Article (6) of it stated the competencies of the State Council in the field of opinion and legal advice, and the opinion of the Council is binding on the ministry or the party requesting the opinion based on the provisions of paragraph (4th) of the mentioned article, and those competencies were limited to the field of expressing an opinion according to the paragraphs of the aforementioned article, with the

Athraa



exception of what was stated in the paragraph (5th) of it which state that (the clarification of legal provisions upon clarification by one of the ministries or agencies not associated with a Ministry), the paragraphs of the aforementioned article did not expressly include the power of the State Council or its competencies to interpret the provisions of the law in force, and that the powers of the Council in giving fatwas, expressing opinions and clarifying legal provisions do not take away the authority and powers of the judiciary in interpreting provisions of law, also, it does not prevent the Federal Supreme Court and its competence in interpretation, whether it is in regard of the provisions of the Constitution or the laws in force in accordance with the details referred to above. Based on the foregoing, the court decided to answer the legal department in the Council of Representatives that the Federal Supreme Court has the jurisdiction to interpret the texts of laws in light of the competencies specified in the Constitution and the F.S.C. Law No. (30) of 2005 amended with the law No. (25) of 2021 following the controls referred to, embodied in the following:

1. The laws must be in force.
2. That it be interpreted on the occasion of existing litigation before this court to decide on the constitutionality of the law that is the subject of the interpretation.
3. Or the interpretation should be on the occasion of an inquiry referred to it exclusively by the federal authorities in the state (the legislative authority represented by the Council of

Athraa



Representatives and the Federation Council, the executive authority represented by the President of the Republic and the Council of Ministers, the judicial authority is represented by the Supreme Judicial Council) or by (the Prime Minister in the Kurdistan Regional Government) provided that the following are required:

- a) provided that the inquiry is not on the occasion of applying the law to existing litigation or a case before the regular or administrative judiciary for which a reference has been specified for appeal.
 - b) Provided that the inquiry letter is signed by the head of the authority exclusively.
4. other official bodies associated with a ministry or not, independent bodies and individuals do not have the authority to request interpretation of the legal provision.

This decision has been issued unanimously, final and binding on all authorities according to the provisions of articles(93/2nd) and (94) of the Constitution of 2005, and article (5/2nd) of the Federal Supreme Court law No. (30) for 2005 amended with the law No. (25) of 2021, issued publicly on (24. Shawal .1442) AH., (6.6.2021) A.D.

Athraa

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Signature of

The president
***Jasem Mohammad
Abbood***

Signature of

The member
***Ghaleb Amer
Shnain***

Signature of

The member
Haidar Jaber Abed

Signature of

The member
Haider Ali Noory

Signature of

The member
Khalaf Ahmad Rajab

Signature of

The member
Ayoub Abbas Salih

Signature of

The member
***Abdul Rahman
Suleiman Ali***

Signature of

The member
***Diyar Muhammad
Ali***

Signature of

The member
***Monther Ebraheem
Husain***

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