

Republic of Iraq
Federal Supreme Court
Ref. 85 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 27/6/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef 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 Plaintiff: Aram Lateef Ali – his agent the barrister Abbas Mahdi Obaid.

The Defendant: the 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 through his agent that the defendant/ being in this capacity had already issued the Law on The Collection of Government Debts No. (56) of 1977, and article (5/1) of it stipulated that (if the debt is not paid at the end of the warning period, the law enforcement official shall issue a decision to seize the debtor's transferred funds, including his assets and deposits with the banks, equivalent to the amount of debt, if it was not enough, its immovable funds will be seized in the equivalent of debt). The same law also stipulates in article (13) of it that (the procrastinating debtor may be imprisoned, in accordance with the provisions of the Law of Implementation by the Chief of Execution at the request of the head of the department authorized to apply this law). Article (2nd) of the same law granted these powers to (ministers, under-secretaries, the mayor of the capital, municipal administrators in provincial and

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conservative centers, etc.), so that articles (5/1) and (13) of the influential Iraqi Government Debt Collection Law violate the Constitution of the Republic of Iraq of 2005 in terms of undermining the principle of separation of powers contained in the article (47) of it and since the judiciary is independent under article (87) of it, therefore giving these powers to ministers, governors, and others From the members of the executive branch in it is contrary to the Constitution, the exercise of these acts and powers is exclusively at the heart of the judge's work and is contrary to the principle of separation of powers and other constitutional articles, as outlined in the legal grounds and grounds as follows:

First - The origin of the jurists of constitutional law is the inviolability of the individual's financial disclosure and the inviolability of it as a manifestation of the right to personal freedom, which the Constitution of the Republic of Iraq of 2005 affirmed its protection in the article (17/1st) of it, which stipulated that (everyone has the right to live, security and freedom, and these rights may only be denied or restricted in accordance with the law, and based on a decision of a competent judicial body). This text indicates that the Iraqi Constitution had promoted the rights which it implemented for personal freedom, including financial rights, so it raised it to the grade of principles and surrounded it with basic rules that should not be violated by the ordinary legislator, or it will conflicts with the constitutional legitimacy, under article (13/2nd) of the Constitution, which stipulates that (no law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void) since the text of the paragraph (1) of the article (5) of the Government Debt Collection Law No. (56) of 1977 authorized the seizure of funds

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without a judicial decision, it violates the Constitution. Second - The articles challenged by their constitutionality violate the text of an article (37/1st) of the Constitution which stipulated (Alif- The liberty and dignity of man shall be protected, Beh- No person may be kept in custody or investigated except according to a judicial decision). Third - The articles challenged by their constitutionality violate the text of article (17) of the Constitution in effect which stipulated (First- Every individual shall have the right to personal privacy so long as it does not contradict the rights of others and public morals. Second - The sanctity of the homes shall be protected. Homes may not be entered, searched, or violated, except by a judicial decision in accordance with the law). If the Constitution has protected housing from inspection, protecting funds from detention, and protecting the debtor from arrest by the administration without a decision or injunction shall be prior to being protected. Fourth - The decision to seize funds is the prerogative of the competent judge, as stated in the Amended Law of Criminal Procedures No. 23 of 1971, the subject of the seizure of the movable and immovable funds of the fugitive accused in the article (121) of which stipulated (Alif- If an arrest warrant is issued for a criminal suspect and cannot be executed, the investigating judge and the Criminal Court may issue a decision to seize his movable and immovable funds) as well as articles 122 and 183 of the same law, as well as the provisions of the Civil Procedures Law No. (83) of 1969 amended the subject of the seizure of movable and immovable funds in article (231/1) of it, which stipulated that (each creditor has an official or ordinary bond with a known debt that is payable and not restricted provided that a court order is issued to sign the reserve for the movable debtor funds and real estate, which it has or a third person sufficiently to meet the debt and its annexes).

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As well as articles (233, 234) and what came after, the decision to reserve funds to the governor, minister, or under-secretary is a clear constitutional violation and touches on the principle of separation of powers and the right of the judiciary may not be confiscated and given to others. Fifth- the two challenged unconstitutional articles also violate the text of article (46) of the Constitution which stipulated (restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom) since giving the right to imprisonment and withholding movable and immovable funds to the governor, for example, violates the essence of a human right to his freedom and property, as long as the decision is not issued by a judicial body and by a competent court, the constitutional breach is clear in restricting the debtor's freedom and conduct in his funds without referring to the judiciary and the competent courts, to prove the debt first, thus, its collection and execution. The articles challenged by their constitutionality violate the essence of the right to property, private life, and freedom, as well as to the presumption of innocence stipulated in article (19/5th) of the in effect Iraqi Constitution, which states that (the accused is innocent until proven guilty in a fair legal trial). Sixth- They violated article (19/12th) of the Constitution, which stated (that seizing is prohibited), and the challenged text allows the categories mentioned in article three – (what meant is article 2nd) of Iraqi government debts collection law which granted the power of imprisoning the procrastinating debtor. From this text, it becomes clear that article 13th of the aforementioned law contradicts the constitutional text. Moreover, granting judicial power to the administration is legally prohibited,

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and the FSC in Iraq has many decisions on this concern, including decision No. (60/federal/2017) and decision No. (122/federal/2019). Seventh- it violated paragraph (1st) of Article 19, which stipulated (that the judiciary is independent and no power is above the judiciary except the law). The two challenged articles (challenge subject) contradict the principle of separation of powers, since the power to arrest, imprison and detain is the prerogative of the judge and must be issued by the judicial decision as indicated by article (15) of the Iraqi Constitution, and finally, the requirement of interest to be available, provided for in article (6) of the Civil Procedures Law No. (83) of 1969, is available because of the existence of a case concerning a company (Jelco/ his agent/ being in this capacity) which tried by the Dhi Qar appeal court in its cassation capacity. Therefore, and according to the provisions of the article (4/1st) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021 that stipulated on the court jurisdictions, including (overseeing the constitutionality of laws and regulations in effect) also what listed in the article (93/3rd) of the Constitution that the Federal Supreme Court shall have jurisdiction over the following: (settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others). Therefore, the plaintiff requested the Federal Supreme Court to judge by unconstitutionality of the articles (5th/1st) and (13th) of Government Debts Collection Law No. (56) for 1977. The case was registered with this court in the number (85/Federal/2022) and the legal fee for it was collected in accordance with the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and informs

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the defendant of its petition and documents in accordance with article (2/1st) of the same Bylaw mentioned above, his agents replied in the answering draft dated 10 April 2022 that the state departments and the public sector, in order to preserve public funds, are obliged to follow all legal means necessary to collect government debts that result from the natural or moral liability of persons for any reason and through the execution directorates to require the debtor to perform what he or she has done in accordance with the provisions of the Implementation Act No. (45) of 1980, the decision to seize the debtor's movable or immovable funds issued by the law enforcement authority is a precautionary procedural decision, such as administrative decisions such as those taken by the executor of justice and subject to the control of the competent courts for appeal, as well as article (13th) of the law in question, where the debtor may be imprisoned in accordance with the provisions of the Law of Execution at the request of the creditor, and the order shall be submitted to the executor of justice if he is a judge or judge of the court of the first instance. It is also a discriminatory decision before the competent court, so the defendant's agent, in addition to his job, requested that the plaintiff's case should be dismissed and charged all judicial fees, expenses, and advocacy fees. After completing the procedures required by the court's Bylaw, a date was set for the case in accordance with the provisions of article (2/2nd) of it, and the parties were informed, and on the appointed day the court was formed and the agent of the plaintiff, Lawyer Abbas Mahdi Obeid, attended, and for the defendant (Speaker of the Council of Representatives/ being in this capacity) and his agents, Legal Counsel Haitham Majid Salem and the official jurist Saman Mohsen Ibrahim. The public in presence argument proceeded, and the agent

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of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it. The agents of the defendant replied and requested to reject the case for the reasons listed in the answering draft dated 10/4/2022, he added that the agent of the plaintiff that his agent is an agent of (Jelco) company, and funds were seizing took place by the governor of Dhi Qar on the company funds, this matter urged him to initiate this case. The agents of both parties repeated their sayings and previous requests. Whereas nothing was left to be said, the end of the argument has been made clear and the Court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that plaintiff Aram Latif Ali filed this case through his agent Abbas Mahdi Obaid against the defendant, Speaker of the Iraqi Parliament being in this capacity and challenging the unconstitutionality of article 5/1 and article (13) of the Government Debt Collection Law No. (56) of 1977, which relates to the seizure of the debtor's funds equivalent to the amount of debt and the possibility of imprisoning the procrastinating debtor. The case and what is in his interest in this, he stated at the hearing dated 31 May 2022 that his client, the plaintiff Aram Latif Ali, is a lawyer and an agent of the Iranian national company Jelko which was previously the Governor of Dhi Qar took a decision to seize the funds of the aforementioned company, this matter urged his client to initiate this case. During scrutiny, the Court found that the plaintiff, in this case, has no interest in initiating it, and this interest is one of the stipulations to accept the constitutional case and it runs with it if this interest was

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exist or is unavailable, as well, the article (6) of the civil procedures law No. (83) for 1969 (amended) had stipulated in the case the necessity of interest availability. This interest should be obvious, current, possible, and accomplished. Also, the interest regarded one of the decided stipulations to accept the constitutional case according to what article (20/1st) of the FSCs Bylaw stipulated No. (1) for 2022, whereas the aforementioned article stipulated that the plaintiff should have an interest and this interest must be current, direct, and effective on his legal, financial, or social status. These stipulations must exist from the date of initiating the case, and until a decision is taken about it. The unavailability of these stipulations in the case of the plaintiff is considered enough reason to reject it. Accordingly, the FSC decided to judge by rejecting the plaintiff's case Aram Latif Ali and to burden him with the fees and expenses and amount of 100 thousand Iraqi dinars as advocacy fees for the agents of the defendant/ being in this capacity, the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim, to be divided between them according to the law. The decision has been issued unanimously, decisive and binding for all powers according to the provisions of the articles (93 and 94) of the Constitution of the Republic of Iraq 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 made clear on 27/Dhul Qaeda/1443 Hijri coinciding 27/June/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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