

Republic of Iraq  
Federal Supreme Court  
Ref. 292 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 27/12/2023 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 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: Ali Abbas Hussein/ barrister.

The Defendants: 1. President of the Republic/ being in this capacity – his agent the Head of the Legal Experts Ghazi Ibrahim Al-Janabi.  
2. The Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.  
3. Speaker of the ICR/ being in this capacity – his agents, the official jurists Saman Muhsin Ibrahim and Aseel Sameer Rahman.  
4. Minister of Justice/ being in this capacity.

### **The Claim**

The plaintiff claimed in the lawsuit petition that the fourth defendant issued the controls for collecting service wages in the Enforcement Department under Ministerial Order No. (Alif.Mim.Ain-21) on 19/9/2023, based on Article (21/1<sup>st</sup>) of Law No. (13) of 2023 of the Federal General Budget of the Republic of Iraq for the fiscal years (2023-2024-2025), which stipulates that ((Ministries and entities not associated with the Ministry and all governorates shall continue with their powers to impose fees or fees for services imposed during the years (2016, 2017, 2018, 2019, 2021) or impose fees or the fees for new services and the amendment of fees and fees for existing services, with the exception of sovereign fees (approved by the federal laws in force) in accordance with controls issued by the competent minister or the head of an entity not associated with a ministry or the governor, provided that (80%) (eighty percent) of them is transferred to the

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relevant authorities and (20%) (twenty percent) of them as final income to the account of the General Treasury of the State)). Whereas the aforementioned text does not contain a constitutional violation, but rather an error in interpretation by the defendants because the text excluded the sovereign fees prescribed under the federal laws in force, especially since the Federal Supreme Court had previously ruled to dismiss the first defendant's appeal against the third defendant under its decision No. (57/Federal/2018), and that what is meant by sovereign fees are those fees imposed by law, such as the Judicial Fees Law No. (114) of 1981, as amended, especially if Its provisions apply to the Execution Department according to Article (4) thereof, where the law indicated that all fees and services are collected, and that adding any fee is a constitutional violation that carries the citizen's financial burden, and is a type of financial corruption, so and based on the provisions of Article (93/3<sup>rd</sup>) of the Constitution of the Republic of Iraq for the year 2005, the plaintiff requested this court to rule on the invalidity of the ministerial order No. (Alif.Mim.Ain-21) dated 19/9/2023 related to the controls for collecting service fees in the Enforcement Department, interpreting the aforementioned text, and charging the defendants fees and expenses. The lawsuit was registered with this court in the number (292/Federal/2023) and the legal fee was collected for it, and the defendants were informed of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the agents of the first, second and third defendants replied with the response regulations attached to the lawsuit file and each of them requested to dismiss the lawsuit for the reasons detailed therein. After completing the procedures required by the Rules of Procedure of the Federal Supreme Court, a date was set to consider the case without pleading based on Article (21/3<sup>rd</sup>) thereof, in which the court was formed and the case began to be heard, the court scrutinized the plaintiff's requests and his grounds and the defenses of the first, second and third defendants' agents, and after completing its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

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**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit focused on a request to rule on the invalidity of the ministerial order issued by the Fourth Defendant Department (Minister of Justice / being in this capacity) No. (Alif.Mim.Ain.-21 on 19/9/2023) related to the controls for collecting service wages in the Execution Department, which was based on the text of Article (21/I) of Law No. (13) of 2023 of the Federal Budget of the Republic of Iraq for the fiscal years 2023-2024-2025, which includes the continuation of all entities to impose fees or service fees except for sovereign fees, and a request for an interpretation of the text and charging the defendants fees and expenses. Upon careful consideration by this court, it was found that they are should be rejected, due to the lack of jurisdiction of this court to consider them in application of the provisions of Article (93/3<sup>rd</sup>) of the Constitution of the Republic of Iraq for the year 2005, Article (4/3<sup>rd</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended, and Article (25) of the Court's Rules of Procedure No. (1) of 2022, which stipulates that (every interested party has a direct appeal with a lawsuit, submitted to the court to adjudicate cases arising from the application of federal laws and decisions. and regulations, instructions and procedures issued by the Federal Authority...) Whereas the contested ministerial order was issued by the department of the fourth defendant, the Minister of Justice, in addition to his position, and that the said defendant is not considered one of the federal authorities referred to in the aforementioned articles, as the federal authorities are defined by Article (47) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that: (The federal authorities consist of the legislative, executive and judicial authorities, It exercises its powers and functions on the basis of the principle of separation of powers) and that Article (48) thereof indicates that the federal legislative authority consists of the Council of Representatives and the Federation Council, while the federal executive authority is defined by Article (66) of the Constitution by the President of the Republic and the Council of Ministers, while Article (89) thereof defines the components of the federal judicial authority, and based on the foregoing, the Ministry of Justice is not considered a federal authority, and therefore the ministerial orders issued by it are not subject to appeal to this court as stipulated in Article (93/3<sup>rd</sup>) of the Constitution, in addition to the

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foregoing, this court is not competent to interpret the provisions of laws except on the occasion of challenging their unconstitutionality. Accordingly, the plaintiff's lawsuit is free to respond for lack of jurisdiction, so the Federal Supreme Court decided to dismiss the plaintiff's lawsuit Ali Abbas Hussein and to charge him all judicial expenses, including the advocacy fees of the defendants' agents, an amount of one hundred thousand dinars distributed to them in accordance with the law. The decision has been issued unanimously according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5/2<sup>nd</sup>) 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 13/Jamada Al-Akhira/1445 Hijri coinciding with 27/December/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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