

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/8/2023 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, Ayooob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Sameer Mohammed Hussein.

2. Raya Abdul Ameer Mahdi.

3. Hasaneen Hameed Majeed.

4. Ahmed Mahdi Salih - Deputy Director of Ahmed Mahdi Saleh & Partners Company for Monitoring and Auditing/ being in this capacity.

5. Firas Ismaeel Qurban Ali - Deputy Director of Firas Ismaeel Qurban Ali & Partner Company for Monitoring and Auditing/ being in this capacity.

6. Mohaned Fadhil Jassim - Deputy Director of Mohaned Fadhil Al-Assaf & Partners Company for Monitoring and Auditing/ being in this capacity.

7. Mustafa Fouad Abbas - Deputy Director of Mustafa Fouad Abbas & Partners Company for Monitoring and Auditing/ being in this capacity.

8. Adil Mohammed Abdul Hussein - Deputy Director of Adil Al-Hassoun, Legal Auditors and Consultants & Partners Company/ being in this capacity.

9. Wissam Abdul Razzaq Mohammed Ali.

Their agents, the barrister
Falaha Hasan Ismaeel

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

saady

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal /2023



Kurdish text

The Claim

The plaintiffs, through the mediation of their agent, claimed that the defendant issued its decision No. (23301) of 2023 adopted at the twenty-first session of the Council of Ministers held on 23/5/2023, which includes the approval of the issuance of Regulation No. (2) of 2023, the Third Amendment System for the Law of Practicing the Profession of Auditing and Auditing No. (3) of 1999 (as amended) and published in the Iraqi Gazette No. (4723 on 5/6/2023) and effective from the date of its issuance, which included the addition of paragraph (2nd) to the text of Article (21) of the system in force, which stipulates: (The Prime Minister, in coordination with the Federal Financial Supervision Bureau, may exempt sober foreign audit firms from the provisions of this system), the aforementioned decision was issued in violation of the rights of its clients and violates several constitutional and legal texts, as follows: 1- This amendment was prepared and issued directly by the Council of Ministers without reference to the competent sectoral authorities members of the Council under the system, which violates the procedures followed in issuing regulations and instructions. 2- The decision of the Federal Supreme Court No. (31/Federal/2023 on 10/4/2023) indicated that (the Council of the Auditing and Auditing Profession is an organizational committee for supervision and control, which is a governmental committee by nature), and that the decision of the Council of Ministers loses this Council of its basic character and the purpose for which it was formed, which is supervision and control. 3- The amendment is flawed by the defect of legislative deviation, as it harms the supreme national interest represented in protecting the rights of practitioners of the profession of auditing and auditing, as Article 3/Beh of the Law on Practicing the Profession of Monitoring and Auditing referred to the importance of directing the profession in a manner that respects and protects the national economy and the financial rights of the parties to society in

saady

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal /2023



Kurdish text

coordination with the competent departments in the state. 4- Violating Article (8) of the Constitution, which stressed that Iraq should observe the principle of reciprocity and respect its international obligations, as most of the laws of the countries regulating this profession do not allow foreign companies to work in their country at all except through the practice of the national profession, 5- The issuance of this amendment violates what is stated in the government program approved by the Council of Representatives in Article (1) thereof to address the phenomenon of unemployment and create job opportunities for young people, as it will deprive a large category of practitioners of the profession of available national job opportunities and will refer them to foreign companies that are not officially licensed to work in Iraq, which leads to wasting the reasons for its issuance because it granted foreign companies positive discrimination at the expense of national practitioners, based on Article 133 of the Companies Law No. 21 of 1997 (as amended), Article 19 of the Non-Governmental Organizations Law No. 12 of 2010, Article 39 of the Political Parties Law No. 36 of 2015, Article 14 of the Investment Law No. 13 of 2006 (as amended), and Article 7 of the Commercial Bookkeeping System for Income Tax Purposes No. 2 of 1985, which are the laws regulating the work of economic units operating in Iraq and which are audited by his clients in their capacity as auditors, did not stipulate on the possibility of auditing the accounts of these units by foreign audit firms, allowing foreign audit firms to audit any of the economic units mentioned in the aforementioned laws would be a clear violation of the laws that serve the work of these units. 7- The issuance of this amendment and the exception contained therein includes security precautions that may result in the leakage of information affecting the national economy and constitutes an opportunity to encourage tax evasion and money laundering because the excluded companies are not registered or licensed by any national sectoral authority inside Iraq. 8- There is no standard followed in determining what is meant by sober companies, nor is there a specific guide for them. 9- Article (5) of the Foreign Companies Branches Law No. (2) of 2017 obliges the

saady

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal /2023



Kurdish text

branch of a foreign company to submit to the Registrar of Companies several documents, including a license to practice the activity from the sectoral authority competent in the activities that require it, and whereas this board, in its capacity as the one concerned with granting a license to practice the profession of auditing and auditing in Iraq, has not granted any international auditing firm a license or license to work in Iraq, especially article 4 thereof, which stipulated that the license to register the branch Issued by the Companies Registration Department is not considered a license to practice the activity without obtaining the approval of the competent sectoral authority. 10- The individual practitioners of the auditing and auditing profession, as well as Iraqi audit companies, are subject to the provisions of the Law of Practicing the Auditing and Auditing Profession No. (3) of 1999, as well as the rules of professional conduct regulating the method of practicing the profession and its assets, each of them is subject to accountability and is subject to disciplinary and penal penalties when violating the duties and principles of the profession, while there are no guarantees, control, or any penalties on foreign companies, which violates article 16 of the constitution, which affirmed the principle of equal opportunities. Repeal Article 21 of the Law of Practicing the Profession of Auditing and Auditing No. 3 of 1999, as amended by Third Amendment No. 2 of 2023, and burden the defendant with expenses and fees. The lawsuit was registered with this court at the number (155/federal/2023), the legal fee was collected for it, and the defendant was informed of its petition and documents, in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the defendant's agent replied with the reply regulation dated 27/7/2023 and requested to dismiss the lawsuit due to the court's lack of jurisdiction to consider it and the lack of interest condition for the plaintiffs to establish it, and that his client (the Council of Ministers) issued the decision - the subject of the lawsuit - to amend the aforementioned system based on the provisions of Article (80/3rd) of the Constitution Article (220/1st) of the Companies Law

saady

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal /2023



Kurdish text

No. (21) of 1997, which is concerned with issuing regulations, and there is no basis from the Constitution and the law to refer to the bodies outlined in the draft of plaintiffs, the exception of foreign audit firms has nothing to do with the functions of the board to monitor and audit accounts and does not affect the exercise of its duties set forth in article 3 of the said system, and there is no provision in the constitution and the law that obliges his client to indicate the public interest desired from the issuance of the aforementioned amendment, and that the aforementioned exception achieves the interest of the country by encouraging sober foreign companies to invest in the country and the need of state institutions for such companies in auditing accounts of great importance, and the Council of Ministers is competent in accordance with Article 80/1st of The Constitution formulates and implements the general policy of the state, which requires in this regard to attract sober foreign companies to achieve the supreme interest of the country as an exception to the controls and principles, Article 8/Heh of the Law on Practicing the Profession of Auditing and Auditing included, as an exception to the provisions of article 7 of the Law above, granting a license to practice a profession to an Iraqi limited audit company in which one of the shareholders was a non-Iraqi limited audit company in article 222 of the Companies Law No. 21 of 1997 stipulates that: "Priority in government contracts of all kinds shall be given to Iraqi companies, including participation with foreign companies." This means that foreign companies may work in Iraq to participate in an Iraqi limited company, as stipulated in Article (1) of the White List Controls No. (11) for the year 2019 (the Ministry of Planning shall prepare a list called the White List) and Article (2/Beh) of the aforementioned controls stipulate that the provisions of these controls apply to the contractor (natural and legal person), consultant, and Iraqi and foreign provider. Article (3/1st) of the Foreign Companies Branches Law No. (2) of 2017 included the issuance by the Registrar of Companies of the decision to approve or reject the foreign company's request to grant it a branch registration license (Iraq), and Article (9) of the Law stipulated (that

saady

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal /2023



Kurdish text

the Registrar may request any information or documents he deems necessary to facilitate the implementation of the provisions of the Law) and that the Board does not grant any international audit firm a work permit in Iraq does not mean that it is not possible to grant work permits to sober foreign companies in the future or when The need for it is achieved, as well as following the aforementioned controls and system through which branches of foreign companies can be held accountable or the registration license can be canceled. Therefore, he requested to reject the case and that the plaintiffs be charged with expenses, fees, and advocacy fees. After completing the procedures required by the court's rules of procedure and based on Article (21/3rd) thereof, a date was set for the consideration of the case without pleading, in which the court was formed and the case began to be heard, the court checked the plaintiffs' requests, their bases, and the defendant's defenses, and after completing its audits, the end of the minutes has been made clear and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the plaintiffs' lawsuit focuses on challenging the constitutionality of Article (21/2nd) of the Law of Practicing the Profession of Auditing and Auditing No. (3) of 1999, as amended by Third Amendment No. (2) of 2023 published in the Iraqi Gazette No. (4723) dated 5/6/2023, which stipulated that (the Prime Minister, in coordination with the Federal Financial Supervision Office, may exempt sober foreign audit companies from the provisions of this system), and they requested a ruling to cancel it based on its violation. The provisions of the Constitution of the Republic of Iraq of 2005 in articles (8) thereof, stipulate: "Iraq shall uphold the principle of good neighborliness, shall commit itself to non-interference in the internal affairs of other States, shall seek to resolve disputes by peaceful means, shall establish its relations based on common interests and reciprocity, and shall

saady

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal /2023



Kurdish text

respect its international obligations." and (16) of it, which stipulated that (equal opportunities are a right guaranteed to all Iraqis, and the state guarantees to take the necessary measures to achieve this), especially that the Council of Ministers, when issuing the aforementioned amendment, did not take the opinion of the competent sectoral authority, and that it violated the decision of the Federal Supreme Court No. (31/Federal/2023) issued on 10/4/2023, which indicated that (the Council of the Profession of Control and Auditing is an organizational committee for supervision and control, which is a governmental committee by nature), the Federal Supreme Court finds that the plaintiffs' claim is admissible in form, as the challenged text of the unconstitutionality required to be repealed is embodied in Article (21/2nd) of the Law of Practicing the Profession of Auditing and Auditing No. (3) of 1999, as amended by the Third Amendment No. (2) of 2023, thus, it is subject to a challenge of unconstitutionality in the application of the provisions of Article (93/1st) of the Constitution and Article (4/1st) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, in addition to the availability of the conditions for filing a lawsuit stipulated in Articles (44, 45, 46, and 47) of the Civil Procedure Law No. (83) of 1969, as amended, in addition to the interest condition stipulated in Article (6) thereof, and the conditions stipulated in Article (20) of the Internal Regulations of the Federal Supreme Court No. (1) for the year 2022, which lies in the interest of the plaintiffs when filing the lawsuit, and it is a case that affects their legal, financial, and social status, in addition to the text - the subject of the challenge - has already been applied to the plaintiffs, they did not benefit from it in whole or in part, and upon consideration of its subject matter, it was found that it was necessary to respond to it because the article challenged by unconstitutionality was issued based on the competencies and powers of the Council of Ministers stipulated in Article (80) of the Constitution to implement laws in application of paragraph (third) thereof, and for its role in planning and implementing the general policy of the State in application of the provisions of paragraph (1st) thereof. Article 78

saady

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal /2023



Kurdish text

of the Constitution, in order to give effect to the above-mentioned principles, the categories covered by their provisions must be in equal legal status, and thus there is no place to apply any of the principles on those who were in different legal positions, especially that foreign audit firms are in a different legal position from the legal status of local and national auditing firms because each of them is subject to different legal provisions, as for the conflict of the article under challenge with the provisions of other laws, this is not considered a justification for ruling it unconstitutional as long as that article is mentioned as an exception, to prevent a conflict with the legal provisions contained in it in other laws, this requires the dismissal of the plaintiffs' claim for non-violation of the provisions of the Constitution by the article under challenge, because of the above, the Federal Supreme Court decided as follows:

First: to reject the case of the plaintiffs, each of: (1- Sameer Mohammed Hussein. 2- Raya Abdul Ameer Mahdi. 3- Hasaneen Hameed Majeed. 4- Ahmed Mahdi Salih - Deputy Director of Ahmed Mahdi Saleh & Partners Company for Monitoring and Auditing/ being in this capacity 5- Firas Ismaeel Qurban Ali - Deputy Director of Firas Ismaeel Qurban Ali & Partner Company for Monitoring and Auditing/ being in this capacity. 6- Mohaned Fadhil Jassim - Deputy Director of Mohaned Fadhil Al-Assaf & Partners Company for Monitoring and Auditing/ being in this capacity. 7- Mustafa Fouad Abbas - Deputy Director of Mustafa Fouad Abbas & Partners Company for Monitoring and Auditing/ being in this capacity. 8- Adil Mohammed Abdul Hussein - Deputy Director of Adil Al-Hassoun, Legal Auditors and Consultants & Partners Company/ being in this capacity. 9- Wissam Abdul Razzaq Mohammed Ali) for challenging the constitutionality of the article (21/2nd) of the law of Practicing the Profession of Auditing and Auditing No. (3) of 1999 as amended by the Third Amendment No. (2) of 2023 for the absence of a constitutional violation.

Second: to burden the plaintiffs with the expenses, fees, and advocacy fees of the defendant's agent / being in this capacity, the legal adviser Haider Ali

saady

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal /2023



Kurdish text

Jaber an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 13/Sufur/1445 Hijri coinciding 30/August/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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