

Republic of Iraq
Federal Supreme Court
Ref 178/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/7/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the representative Saud Saadoun Al-Saadi - His agent Mahdi Abdul Redha Jassim.

The Defendant: President of the Federal Supreme Court / being in this capacity - His agent the official jurist Samera Abdul Rahman Kazim.

The Claim:

The plaintiff, through his agent, claimed that the Bylaw of the Federal Supreme Court No. (1) of 2022, published in the Iraqi Gazette No. (4679) on 13/6/2022, included in Articles (22 and 19) thereof, a limitation for the period of appeal against the Federal Budget Law of (30) thirty days, and to suspend the right of the member to appeal in violation of the provisions of the Constitution in Articles (13, 47 and 49/1st) thereof, which affirmed the supremacy of the provisions of the Constitution and the inadmissibility of enacting a law that contradicts it, and the exercise of the federal authorities their powers and tasks on the basis of the principle of Separation of powers and the member is the representative of the people the competences of the Federal Supreme Court specified in Article (93) of the Constitution, not including specifying a period of thirty (30) days to challenge the constitutionality of the Federal Budget Law or exclude the member from submitting an appeal against the aforementioned law, whereas the inclusion of this text

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in the Court's internal regulations includes substitutions of the will of the Council of Representatives, which is exclusively competent to legislate and amend laws in accordance with the provisions of Article (61/1st) of the Constitution, and whose will has not been expressly or implicitly disbursed in all laws. issued by it, including the first amendment law to the Court Law No. (25) of 2021, the Financial Management Law No. (6) of 2019 and the Budget Law No. (13) of 2023 to delegate the authority of the court to restrict the right to challenge the Federal Budget Law or determine its duration in particular, Article (93/3rd) of the Constitution specified the authorities that have the right to appeal directly to the court, namely (both the Council of Ministers and the concerned individuals and others), and therefore determining the authorities that have the right to challenge the aforementioned law is an amendment to the articles of the Constitution, and that restricting the right of the member to appeal is a disruption of his duties in monitoring the performance of the executive authority and a disruption of his supervisory role stipulated in Article (15) of the Law of the Council of Representatives and its formations No. (13) of 2018, as well as the confiscation of the right to litigation stipulated in Article (19/3rd) of the Constitution, the plaintiff requested this court to rule that Articles (19 and 22) of the Rules of Procedure of the Federal Supreme Court are unconstitutional and charging the defendant the fees and expenses. After registering the case with this court No. (178/Federal/2024), collecting the legal fee for it, and informing the defendant 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, his agent replied with the reply regulation dated 8/7/2024 according to which it indicated that the lawsuit is subject to reject because it has already been decided by virtue of the judgment decision issued by this court by

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number (155 and its consolidation 163/federal/2022) on 13/9/2022, according to which it ruled to reject the appeal against the contested articles of the court's rules of procedure, including Article (22) thereof, and the absence of a constitutional violation according to the reasons it contains, as the court stated all rights protected and guaranteed under the Iraqi Constitution, as is the case in most countries, are not absolute, and that the Constitution of the Republic of Iraq of 2005 in Article 46 thereof, the statute of the Court No. (1) of 2022 was issued based on the text of Article (9) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, so the defendant's agent requested to reject the lawsuit and charging the plaintiff attorneyship fees. After completing the procedures required by the Court's Rules of Procedure, a date was set for the consideration of the case without pleading in accordance with Article (21/3rd) thereof. In it, the court was formed and the case began to be heard, the court scrutinized the plaintiff's requests, his grounds and the defenses of the defendant's agent. After completing its scrutinies, 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 was found that the plaintiff's lawsuit is focused on demanding a ruling on the unconstitutionality of Article (19) of the Rules of Procedure of the Federal Supreme Court, which stipulates: (For any of the three federal authorities, ministries, independent authorities the Prime Minister of the region, entities not associated with the ministry and governors, request the court to rule on the constitutionality of a legal text or a regulation, provided that the application is sent to the court by a letter signed by the head of the concerned authority, the competent minister, the head of the

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independent commission, the prime minister of the region, the head of the entity not associated with a ministry or the governor, provided that the contested text relates to the functions of the plaintiff also requested a ruling on the unconstitutionality of Article (22) of the same aforementioned system, which states that: ((The challenge to the constitutionality of the Federal Budget Law or any provision therein shall be submitted by the authorities and authorities stipulated in Article (19) of this Law within a period not exceeding (30) thirty days from the date of its publication in the Official Gazette, and the procedures stipulated in Article (21) of this Law shall be applied to it, and the court shall decide on the appeal within a period not exceeding thirty days from the date of its registration, unless otherwise necessary)), for violating the provisions of Articles (13/1st) and 47, 49/3rd and 93) of the Constitution of the Republic of Iraq of 2005, and the Court finds that with regard to challenging the unconstitutionality of Article 19 of the Rules of Procedure of this Court, Article 9 of the Federal Supreme Court Law No. 30 of 2005, as amended, stipulates that: (The Federal Supreme Court shall issue an internal regulation specifying the procedures that regulate the functioning of the court, the method of accepting applications, the pleading procedures, and what facilitates the implementation of the provisions of this law, and this system shall be published in the Official Gazette) on the other hand, the determination of the powers and authorities that may challenge the constitutionality of the laws and regulations in force, the manner of submitting this appeal, the scope and procedures for submitting this appeal does not conflict with any constitutional provision and does not contain a restriction that affects the right to litigation contrary to the principle of the supremacy of the Constitution stipulated in Article (13/1st) thereof, it does not include a violation of the principle of separation of powers, nor is it

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considered an amendment to the text of Article (93) of the Constitution according to what the plaintiff stated in his petition, as for the challenge to the unconstitutionality of Article (22) of the internal system in question, this court had previously decided on its subject matter by its decision No. (155 and its unified 163/federal/2022) on 13/9/2022, which included that this court rejected the appeal under Article (22) of the internal rules of the court - the subject of the challenge - regarding the procedures of Challenging the Budget Law as it does not contain any conflict with the provisions of the Constitution and does not contain a restriction that affects the essence of the constitutionally guaranteed right to litigation, and that what is stipulated in the contested text of the need to submit the appeal within a period not exceeding (30) thirty days from the date of publication of the law in the Official Gazette, is compatible with the nature of the budget law as it is limited to a period of one year, keeping the appeal period open under the provisions of the budget law would confuse the work of the government and its institutions, and that the said period it is sufficient to review and evaluate the articles of the Federal Budget Law and to challenge the constitutionality of any provision therein, if required by the Constitution and the law, and from all the above reasons, the plaintiff's claim should be rejected, to which the Federal Supreme Court has decided the following:

First: Rejecting the plaintiff's lawsuit (Saud Saadoun Ali Al-Saadi), regarding the challenge to the constitutionality of Article (19) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, due to the absence of a constitutional violation.

Second: Rejecting the plaintiff's lawsuit (Saud Saadoun Ali Al-Saadi), regarding the challenge to the constitutionality of Article (22) of the

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Internal Regulations of the Federal Supreme Court No. (1) of 2022, due to the previous adjudication of its subject matter according to the judgment decision issued of this court with the number (155 and its unified 163/federal/2022) on 13/9/2022.

Third: Charging the plaintiff the expenses, fees and advocacy fees of the defendant's agent President of the Federal Supreme Court, being in this capacity, the official jurist (Samera Abdul Rahman Kazim), an amount of one hundred and fifty thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding on all authorities in accordance with the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005, and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021 and it has been edited in the session dated 23 / Muharram / 1446 A.H. corresponding to 30/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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