

Republic of Iraq  
Federal Supreme Court  
Ref 188/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/8/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayooob Abbas Salih, Dyar Mohammed Ali ,Munther Ibrahim Husain, and jassim Jazaa Jafer who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: Atheer Hashem Huwain and Alaa Essam Jassim.

The Defendant: Speaker of the Council of Representatives / being in this capacity – His two agents the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.

**The Claim:**

The plaintiffs claimed that the Ministry of Finance refrained from fixing them on the permanent staff, as they are employees of contracts (General Authority of Customs) despite meeting the necessary conditions and the existence of financial and functional allocation, and this abstention came on the pretext that the Federal Budget Law No. (13) of 2023, and in Article (14/1<sup>st</sup>) thereof, prohibits contracting and appointment, so they took the initiative to challenge the constitutionality of this article due to its violation of the Iraqi Constitution in Articles (14, 16 and 46) thereof, which affirmed equality among Iraqis and equal opportunities among them provided that the state ensures that the necessary measures are taken to achieve this, and these rights and freedoms contained in the constitution may not be restricted except by law or based on it, provided that such restriction or limitation does not affect the essence of the right or freedom, so the plaintiffs requested this court to rule to cancel Article (14 / 1<sup>st</sup>, 2<sup>nd</sup> / Alif and 4<sup>th</sup> /Alif) of the Federal Budget Law No. (13) of 2023, which included preventing

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appointment and contracting in all state departments. After registering the case with this court with the number (188/Federal/2024), collecting the legal fee for it, and informing the defendant 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, his two agents replied with the reply regulation dated 21/7/2024, its conclusion: The plaintiffs' claim must be rejected in form, based on the provisions of Article (22) of the Court's Rules of Procedure, which specified the parties that can challenge the Federal Budget Law, not including the plaintiffs, and this court has previously rejected Similar lawsuits to this lawsuit, including its decision No. (154/Federal/2023), and that the article - the subject of the challenge - was issued in accordance with the competence of the Council of Representatives to legislate federal laws stipulated in Article (61/1<sup>st</sup>) of the Constitution, in addition to that the lawsuit is outside the jurisdiction of the court stipulated in Article (93/1<sup>st</sup>) of the Constitution, so they asked to reject the lawsuit and charging the plaintiffs fees and expenses. 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 (21/3<sup>rd</sup>) thereof, in which the court was formed and scrutinized the plaintiffs' requests and their evidence and the defenses of the defendant's agents, and 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 plaintiffs' lawsuit focused on the request to cancel Article (14/1<sup>st</sup>, 2<sup>nd</sup>/Alif and 4<sup>th</sup>/Alif) of Law No. (13) of 2023 of the Federal

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Budget of the Republic of Iraq for the fiscal years (2023, 2024, 2025), due to its violation of the provisions of Articles (14, 16 and 46) of the Constitution of the Republic of Iraq for the year 2005, and for the reasons simplified in their petition, and then charging the defendant in addition to his job all judicial expenses, and by scrutinizing the lawsuit file and its documents, the court finds that the plaintiffs' claim must be rejected, as the jurisdiction of this court is limited by Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005, and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by law decree No. (25) of 2021, among these competencies is the control of the constitutionality of the laws and regulations in force as stipulated in Article (93/1<sup>st</sup>) of the Constitution, and Article (4/1<sup>st</sup>) of the Court Law, where the control of this court extends to all laws the purpose of this control is to protect rights and freedoms and to ensure that the legislative and executive authorities do not exceed the limits set for each of them in accordance with the provisions of the Constitution, and that this control over the constitutionality of the laws and regulations in force must not exceed their limits in accordance with the principle of separation of powers provided for in Article (47) of the Constitution, as this court exercises its authority in accordance with the provisions of item (1<sup>st</sup>) of Article (93) of the Constitution by examining the contested text to determine whether it is contrary to the provisions of the Constitution or not, and then issues its judgment after that either its constitutionality or unconstitutionality and its judgment does not exceed otherwise, as it does not have the authority to cancel or amend the contested text, as the enactment of legislation and its amendment or repeal is the prerogative of the legislative authority represented by the Council of Representatives, and therefore the repeal of the contested text is outside the jurisdiction of this court, and in accordance with the foregoing the

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plaintiffs' claim must be rejected for lack of jurisdiction, accordingly, the Federal Supreme Court has decided the following:

First: Rejecting the plaintiffs' lawsuit (Atheer Hashem Huwain and Alaa Essam Jassim), for lack of jurisdiction according to the formula filed therein.

Second: Charging the plaintiffs with all judicial fees and expenses, including attorneyship fees for the defendant's agents in addition to his job, the human rights employees Saman Mohsen Ibrahim and Aseel Samir Rahman, an amount of one hundred and fifty thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005, and Articles (4 and 5/2<sup>nd</sup>) 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 6/Safar/1446 AH corresponding to 11/8/2024 AD.

**Judge**  
**Jassim Mohammed Abood**  
**President of the Federal Supreme Court**

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