

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/11/2023 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: Raid Jahid Fahmi – his agents, the barristers Zuhair Dhia Eddeen Yaqoub and Salam Zuhair Dhia Eddeen.

The Defendants: 1. Speaker of the ICR/ being in this capacity – his agent the official jurist Saman Muhsin Ibrahim.

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

The Third Person Beside the Defendants: Minister of Finance/ being in this capacity – his agent the official jurist Amir Abbas Qadir.

The Claim

The plaintiff, through his agents, claimed that the state's final accounts reflect the processes of applying the general budget following the legal regulations, regulations, and financial instructions issued to show the state's financial position, including its rights that must be collected and its obligations that must be paid. The final account shows the increase and decrease in the state's assets through its preparation. Based on the provisions of Article (34) of the effective Federal Financial Management Law No. (6) of 2019, and since the state has not been able to approve the final accounts since 2013, and therefore not present them before the legislative authority, which is considered the first supervisory authority in the state, and no budget law has been enacted. General Assembly for the years (2014 and 2020), which constituted a legislative deficiency and a major imbalance in control over government spending. Thus, the defendants violated the Constitution by ignoring the constitutional texts, whereas Article (27/1st) stipulates that: (Public funds are inviolable, and protecting them is the duty of every citizen), and Article (62/First) of it stipulates that: (The Council of Ministers shall submit the draft

saady

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

general budget and final accounts to the Council of Representatives for approval), Article (28) of the effective Federal Financial Management Law No. (6) of 2019 stipulates: ((First: The Minister of Finance announces the date of closing the final accounts for the ending fiscal year, provided that it does not exceed (1/31) of the following year. Second: Units are provided. Expenditure and self-financed departments submit their final accounts to the Federal Office of Financial Supervision no later than the end of March of the following year. Third: The Federal Office of Financial Supervision shall issue its report on the final accounts stipulated in Clause (2nd) of this Article no later than the end of June of the next year)), based on the legal texts contained within the Federal Financial Management Law in force No. (6) of 2019 in Articles (28 and 34) thereof, it clearly shows that the ministries and concerned authorities within the state are obligated to complete the annual final accounts regularly and within the timings specified in the law above and to meet the conditions required in Article (20) From the internal regulations of the Federal Supreme Court No. (1) of 2022 that the plaintiff has an interest in filing the lawsuit, so the plaintiff requested this court to rule obliging the Council of Ministers to complete the final accounts within the timings specified in the Federal Financial Management Law No. (6) of 2019, including For previous years that have not been completed yet; Completing the final accounts for each year that precede the submission and approval of the federal budget law for the following year, so that they are prepared based on real, not fictitious data, according to the provisions of Article (62/First) of the Constitution, these budgets must be submitted within the timings specified following the Constitution and the Federal Financial Management Law. He also requested that the Council of Representatives be obligated not to legislate the Federal Budget Law unless the state's final accounts for the previous year are submitted. The case was registered with this court under the number (190/Federal/2023), and the legal fee was paid for it, and the defendants were notified of its petition and documents following Article (21/First and Second) of the court's internal regulations No. (1) of 2022. The attorney for the first defendant responded with the answer statement dated 8/13/2023 Conclusion: The plaintiff did not explain the immediate, direct, and effective interest he has in filing the lawsuit, and his request to oblige the Council of Representatives not to legislate the budget law has no basis in the law or the

saady

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

Constitution, this is because the powers of the Council of Representatives in Article (61) of the Constitution are to legislate federal laws, and the effective laws that are legislated by the Council of Representatives are subject to oversight under the provisions of Article (93/First) of the Constitution by challenging their constitutionality before the Federal Supreme Court, upon which a request shall be made. The plaintiff is outside the jurisdiction of the court and requests dismissal of the case. The agent of the second defendant answered in the answer statement dated 9/11/2023, its conclusion: that the plaintiff has no interest in filing the lawsuit, that the request falls outside the jurisdiction of the court under Article (93) of the Constitution, and that there is no truth to what the plaintiff stated that his client violated the Constitution, as previously mentioned that the Council of Ministers may submit the final accounts for the Republic of Iraq for the past years up to 2014, according to what was stated in the letter of the General Secretariat of the Council of Ministers, No. (Qaf/2/2/21/13972) dated 6/3/2021, addressed to the General Secretariat of the Council of Representatives, and following the decisions of the Council of Ministers No. (190) of 2019, which approved the final accounts for the years (2012 and 2013), Cabinet Resolution No. (36) of 2020, which approved the final accounts for the fiscal year 2014, and Cabinet Resolution No. (23323) of 2023, which approved the final accounts for the fiscal year 2015. And send it to the Council of Representatives to take appropriate measures, as for the final accounts for the years from (2016 to 2019) are under completion and will be sent to the Council of Representatives once they are completed. Thus, the Council of Ministers is committed to submitting the final accounts to the Council of Representatives following the constitution, especially since the government's ministerial program stipulates completing the final accounts for the previous years, which are in progress, in conclusion, the agent of the second defendant requested that (the Minister of Finance/being in this capacity) be included as a third adversarial person in the case alongside his client to protect his rights based on the provisions of Article (69/2) of the Civil Procedure Law No. (83) of 1969 as amended, considering that the Ministry of Finance is competent to prepare the accounts. The conclusion is based on the provisions of Articles (28 and 30) of the Financial Management Law No. (6) of 2019 in force, as well as Articles (6 and 7) of Section (11) of the Financial Management and Public Debt Law No. (95) of

saady

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

2004 that was repealed and the request to dismiss the lawsuit and charge the plaintiff the expenses, fees, and advocacy fees. After completing the procedures required by the court's bylaws, a date was set to hear the case without pleading following Article (21/3rd) thereof, and the court was formed and examined the plaintiff's requests and supports and the defenses of the defendants' agents and decided to accept the request of the second defendant's agent to include the Minister of Finance in addition to his position as a third person in the court. The case is on behalf of his client and instructed him to pay the fee for that. To complete its audits, the court decided to consider the case in person and notify the parties. The plaintiff and his agent, Salam Zuhair Zia, attended, the agents of the first and second defendants attended, and the third person's agent, the legal employee Amer Abbas Qadir, attended, and the public in-person argument proceeded, the court heard the statements of the parties' agents and their requests, and the third person's agent presented a response statement dated 10/8/2023, which the court reviewed and linked to the case papers. After the court heard the statements of the parties and reviewed the statements exchanged between them, the end of the argument has been made clear and the court issued the following ruling:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff (Raed Jahid Fahmy) filed this lawsuit against the defendants, the Speaker of the Council of Representatives and the Prime Minister, in addition to their jobs, claiming that they had violated the provisions of the Constitution and the law by ignoring the text of Article (27/First) of the Constitution of the Republic. Iraq of 2005, which stipulates that (public funds are inviolable, and protecting them is the duty of every citizen), and the text of Article (62/First) of the Constitution, which stipulates that (the Council of Ministers shall submit the draft general budget and final accounts to the Council of Representatives for approval), as well as Article (28/ 1st, 2nd, and 3rd) of the Federal Financial Management Law No. (6) of 2019, as amended, by not committing to prepare and approve the state's final accounts, therefore, he requested to call upon them to plead and oblige the second defendant, the Prime Minister, being in this capacity, to complete the final accounts within the time specified in the Federal Financial

saady

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

Management Law, and to oblige the Council of Representatives not to legislate the Federal Budget Law unless the final accounts are submitted to the state for the previous year and they are charged the fees, expenses, and advocacy fees. The court reviewed the response list of the first defendant, the Speaker of the Council of Representatives, in addition to his position, dated 8/13/2023, in which he requests that the lawsuit be dismissed because the plaintiff's interest was not achieved by filing it, and there is no legal basis to oblige the Council of Representatives not to legislate the budget law following what was stated in the plaintiff's lawsuit and the fact that the lawsuit falls outside the jurisdiction of the Federal Supreme Court, the court also reviewed the answer of the second defendant, the Prime Minister, in addition to his job, according to the response list of his agent dated 9/11/2023, in which he requested that the lawsuit be dismissed because the plaintiff had no interest in filing it, and his request is dismissed. About the court's jurisdiction stipulated in Article (93) of the Constitution, in addition to the fact that his client had submitted the final accounts for the past years up to 2014 following what was stated in the letter of the General Secretariat of the Council of Ministers, No. (Qaf/2/2/21/13972 on 6/3/ 2021) and Cabinet Resolution No. (190) of 2019, which approved the final accounts for the years 2012 and 2013, and Cabinet Resolution No. (36) of 2020, which approved the final accounts for the year 2014, and Cabinet Resolution No. (23323) of 2023, which approved the final accounts for the year 2015 and sent them to the Council of Representatives for approval, the final accounts for the years from (2016 to 2019) are under completion, and thus the Council of Ministers has committed to submitting the final accounts in accordance with what is stated in the Constitution, and the court decided to include the Minister of Finance, in addition to his position, as a third person in the case alongside the defendant based on the defendant's request. The second is the Prime Minister, in addition to his job and based on the provisions of Article (69/2) of the Civil Procedure Law No. (83) of 1969 as amended, considering that the Ministry of Finance is competent and responsible for preparing the final accounts and submitting them to the Council of Ministers, which in turn submits them to the Council of Representatives for approval, The third person's agent responded to the Minister of Finance / being in this capacity following his response regulations on 10/8/2023, which included that the plaintiff's

saady

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

lawsuit does not meet the interest condition since failure to submit the final accounts to the state does not prejudice his constitutional rights in a way that would cause him direct harm, his client's department, being in this capacity, had previously submitted to the Council of Ministers the final accounts of the state until 2018, and is continuing to coordinate with the relevant authorities to complete the final accounts, so he requested that the plaintiff's lawsuit be dismissed from his client's department, being in this capacity. The court also heard the mutual defenses between the two parties, and Through all of the above, the Federal Supreme Court concluded that the plaintiff's lawsuit falls within the court's jurisdiction based on the provisions of Clause (Third) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 and Clause (Third) of Article (4) of the Federal Supreme Court Law No. (30).) of 2005 amended by Law No. (25) of 2021, and the plaintiff's interest condition is fulfilled in the case based on the text of Article (27/First) of the Constitution of the Republic of Iraq, which states that public funds are inviolable and protecting them is a duty for every citizen, and this is what has been settled on. The jurisprudence of this court in many of its decisions, but from an objective standpoint, the Federal Supreme Court reached the following:

First: The state's general budget is a plan presented by the government that includes an estimate of the state's revenues and expenditures for an existing and specific period, usually one year. Article (4/second) of the Federal Financial Management Law No. (6) of 2019, as amended, authorized the Ministry of Finance to prepare a medium-term budget for three years. It is submitted once and legislated, and the first year is obligatory. The Council of Ministers, based on a proposal from the Ministries of Planning and Finance, may amend it for the second and third years and with the approval of the Council of Representatives. Article (1/second) of the Federal Financial Management Law No. (6) of 2019, as amended, defines it as (a financial plan). It expresses the programs and projects that the state intends to undertake and includes planning tables for estimating revenues and expenditures, both current and investment, for a single fiscal year specified in the Federal General Budget Law. It represents data for expectations of what the state collects and spends during that period, and constitutes the state's work program, and reflects its policies in the areas of Political, economic, and

saady

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

social, the legislator has placed an obligation on the Council of Ministers following Article (11) of the amended Federal Financial Management Law No. (6) of 2019, according to which the Council of Ministers shall discuss the draft federal general budget law for the coming year, approve it, and submit it to the Council of Representatives before the middle of October of each year. year; So that the Council of Representatives has sufficient time to review the draft budget law from the relevant committees, approve it, and publish it in the Official Gazette on time allowing ministries and entities not affiliated with the Ministry to implement its paragraphs. The budget numbers are estimated numbers, and their accuracy, validity, and legality of implementation cannot be revealed except through the final account. The numbers are actual and real, and they reflect the actual financial performance of the state for the ending fiscal year reflect the extent of the government's commitment to the approved budget, and help in preparing it for the coming year in a way that improves planning processes and performance.

Second: The state's final accounts constitute an important axis for the actual verification of the expenditures that have been spent and the revenues that have been collected. Therefore, they represent a system according to which the results resulting from the implementation of the annual budget are evaluated and constitute an important starting point for the oversight and auditing bodies in ministries, institutions, or entities not affiliated with the Ministry and the Bureau to take Financial oversight, and then the Council of Representatives, have their supervisory role and bear professional and national responsibility in addressing legal violations that lead to the waste of public money through the stages of preparing and approving the final accounts, because they constitute an important starting point for those bodies and authorities that play a supervisory role over the government, as the final account It is considered one of the tools for monitoring government activity through the data contained in it, through which it is possible to verify the executive authority's commitment to what the legislative authority decided in the budget law. Its importance also lies in showing the state's financial position, showing the deficit and surplus, ensuring that the financial allocations stipulated in the federal budget are not exceeded, and ensuring that violations, if any, have been dealt with following the financial powers granted by law, it is the outputs of the government accounting system or the outputs of implementing the

saady

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

state's general budget, which is prepared after the end of the fiscal year and the necessary settlement is made and the accounts are closed following the requirements of the Federal Office of Financial Supervision. It includes two basic parts, the first represents the financial statements and includes actual expenses and revenues and comparing them with the appropriations approved in The state's general budget, and the second represents the objective aspect expressed in the goals achieved in the economic, social, and political fields compared to the goals set in the federal general budget. Therefore, the final account constitutes an essential factor, if not the first factor, in stopping the waste of public money and reducing the phenomena of financial and administrative corruption that State institutions suffer from.

Third: Given the importance of the final account, the constitutional legislator made it an obligation for both the Council of Ministers and the Council of Representatives, as Article (62/First) of the Constitution of the Republic of Iraq for the year 2005 stipulated that (the Council of Ministers shall submit the draft general budget law and the final account to the Council of Representatives for approval.) and accordingly, Therefore, the Council of Ministers must prepare the draft final account law and submit it to the Council of Representatives within the legal timings specified in the Federal Financial Management Law No. (6) of 2019, so that the Council of Representatives can approve it by law and not by decision because the constitutional legislator did not differentiate between it and the general budget law. They were required to be issued or approved by law, as it stipulated that each of them be submitted in the form of a draft law. The Federal Financial Administration Law explained in detail the mechanisms for implementing the budget, its procedures, and the timing of its submission. It also clarified in precise detail the mechanisms of the state's final accounts procedures and the timing of its submission, as it was stated in Article (28/First) that "(The Minister of Finance shall announce the date of closing the final accounts for the ending fiscal year, provided that it does not exceed (1/31) of the following year)," and It was stated in Clause (Second) thereof that "Previous Spending units and self-financed departments submit their final accounts to the Federal Office of Financial Supervision no later than the end of March of the following year) and this is confirmed by Article (34/Third/Alif) of the law, as it placed this obligation on the

saady

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

Minister of Finance as well, and it was stated in Clause (Third).) of Article (28) provided that (the Federal Office of Financial Supervision shall issue its report on the final accounts... no later than the end of June of the following year) and Article (30) of the same law states (The Minister of Finance shall be responsible for the accounts related to all receipts Payments made in all ministries and entities not affiliated with a ministry, the region, and the governorate not organized in a region belong to the federal general budget, and he must monitor their financial and accounting transactions in ways determined by the Ministry of Finance. It was stated in the reasons for the Federal Financial Management Law that the law aims to establish mechanisms related to Implementing budgets, the commitment of each implementing agency, and determining the responsibility of the Ministry of Finance in the implementation phase, in addition to setting specific dates for submitting trial balances and final accounts, and adhering to budget principles, which are transparency, comprehensiveness, and budget unity.

Fourth: The court has proven, through its investigations, that both the Ministry of Finance and the Council of Ministers are not committed to completing the final accounts within the time specified in the Constitution and the law. What was argued by the Deputy Prime Minister, in addition to his job, and the Deputy Minister of Finance, being in this capacity, is that the final accounts for the years 2005 to 2011 and published in the Official Gazette, and that they have sent the draft accounts for the fiscal years from 2012 to 2015 to the Council of Representatives for approval, and that they will provide the Council of Representatives with the final accounts for the years from 2016 to 2019, as they are in progress, without abdicating their responsibilities for preparing the draft final accounts for all years. Within the timings specified by the Constitution and the law, the court does not find any constitutional or legal basis for the ruling obliging the Council of Representatives not to legislate the general budget law unless the final accounts for the previous year are submitted with it following what the plaintiff requested in his petition, although this entails legal responsibility for the competent authorities to submit these accounts following what the Constitution and the law require in the event of their abstention or negligence in doing so, and since one of the first tasks of the Federal Supreme Court, under its powers stipulated in the Constitution and its law, is to stand up to the constitutional and

saady

Republic of Iraq
Federal Supreme Court
Ref. 190 / federal /2023



Kurdish text

legal deviation of the legislative and executive authorities and restore them. According to final and binding decisions following the Constitution and the law, Clause (Third) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 stipulates the jurisdiction of the Federal Supreme Court to adjudicate cases that arise from the application of federal laws and oblige those who refrain from applying them.

Accordingly, and by request, the FSC decided the following:

First: Obligating the second defendant, the Prime Minister, and the third person, the Minister of Finance, being in their capacity submit the final accounts following the provisions of Article (62/First) of the Constitution of the Republic of Iraq for the year 2005 and the provisions of the Federal Financial Management Law No. (6) of 2019, as amended.

Second: Rejecting plaintiff Raed Jahid Fahmy's lawsuit on behalf of the first defendant, Speaker of the Council of Representatives, being in this capacity.

Third: The plaintiff, the second defendant, and the third person shall be charged the relative expenses and fees, and the plaintiff shall be charged the attorney fees of the first defendant's representative, the Speaker of the Council of Representatives, in addition to his position, the legal employee, Saman Mohsen Ibrahim, an amount of one hundred thousand dinars, and the second defendant shall be charged the Prime Minister and the third person, the Minister of Finance, in addition to their positions, attorney fees. The plaintiff's attorneys, lawyers Zuhair Daa Al-Din Yaqoub and Salam Zuhair Daa Al-Din paid an amount of one hundred thousand dinars.

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 made clear on 27/Rabea Al-Akhir/1445 Hijri coinciding with 12/November/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court

saady