

Republic of Iraq  
Federal Supreme Court  
Ref. 202 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 10/10/2023 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: 1- Sarwa Abdul Wahid Qadir/ member of the ICR.  
2- Rebwar Orahman Wosta/ member of the ICR.

Their agent, the  
barrister Ali  
Kamil Rasool

The Defendants: 1- The Prime Minister of Kurdistan Region/ being in this capacity.  
2- Minister of Finance and Economy in Kurdistan Region Government/ being in this capacity.

Their agent,  
the barrister  
Ayad Ismaeel  
Mohammed

### **The Claim**

The two plaintiffs claimed by their agent that the Ministry of Finance and Economy in the Kurdistan Regional Government issued financial instructions No. (10) of 2021 on 12/7/2021 based on the powers dealt with to the minister under the Ministry of Finance and Economy Law of the Kurdistan Regional Government - Iraq No. (5) for the year 2010 and the provisions of paragraphs (1 and 5) of Article (61) of the Income Tax Law No. (113) for the year 1982 amended, and since these instructions lack the correct constitutional support and contradict the provisions of the constitution in Articles (13/ 1<sup>st</sup> and 2<sup>nd</sup>) and (28/1<sup>st</sup>) and (110 / 3<sup>rd</sup>) concerning the exclusive powers of the central government represented by drawing the financial policy of the state through its regions and provinces and drawing the monetary policy of the state, It also opposes it with Article (130) regarding the laws in force, including the Income Tax Law No. (113) of 1982, which defined Article (1<sup>st</sup>/12) of which the minister: is exclusively the Minister of Federal Finance, and Article (1<sup>st</sup>/ 13) that defines the financial authority - - Which is considered according to the constitution from the powers of the federal

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government exclusively- (an employee or a group of employees authorized by the powers stipulated in this law), and since Article (1) of the law stipulates: (1. Tax: Income tax imposed under this law) The Federal Minister is the owner of the exclusive authority to issue instructions for implementing the law, and he did not delegate his powers to the Minister of Finance and Economy and no one authorized this, the reference bond mentioned in the challenged instructions No. (10) of 2021 regarding the provisions of Article (61) is contrary to the constitution; Being one of the specializations of the exclusive federal authority, and its issuance on the one hand does not have the right to issue instructions, so the two plaintiffs asked the ruling to nullify financial instructions No. (2) issued on 16/2/2021, and financial instructions No. (10) issued on 12/7/2021, and what It was built from legal actions, Including instructions No. (10) of 2021 on 12/7/2021 regarding the acquisition of the tax from civil hospitals within the region because they lack the correct legal support, and to download the defendants on the expenses, fees, and law fees. The lawsuit was registered with this court in the number (202/federal/2023), the legal fee was met and the defendant was informed of its wide and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) from the internal system of the Federal Supreme Court No. (1) for the year 2022, and they were asked to answer within 15 days From the date of notification, to proceed with the mentioned period based on Article (21/3<sup>rd</sup>) of the court's Bylaw, a date was set to hearing the lawsuit without pleading, in which the court was formed and the argument proceeded, the court raised the claims and support of the plaintiffs, and it was briefed on the list of the defendant's agent dated 10/10/2023, which was concluded: ((His request to return the lawsuit towards the first defendant because he is not considered the legal opponent concerning its subject, the challenged instructions are not issued by him which required to reject it, this is because the court's jurisdiction is limited, in accordance with the two aforementioned articles, to considering requests and lawsuits related to the constitutionality or unconstitutionality of laws and regulations without instructions. The legislative hierarchy applicable in the constitutional and legal system in Iraq is based on the arrangement of legislation from highest to lowest (constitution - laws - regulations - instructions). ), and if the constitutional legislator limits the jurisdiction of the Federal Supreme Court to examining the constitutionality of laws and regulations

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in force only, this means excluding instructions from the possibility of challenging their unconstitutionality before it, and the phrases of the legislator in general, and the constitutional legislator a fortiori, they are selected and intended phrases and subject to accurate linguistic and legal formulations, and that considering the constitutionality of the instructions, whether it is issued by the federal authorities or in the region, the appeal is released from the jurisdiction of this court, and this is what was stated in the numbered federal lawsuit (144/federal/2018), and if The prosecutor filed his lawsuit in his personal capacity and does not represent any official body and any civil hospital, and the legal conditions and standards mentioned in Article (20) of the court's Bylaw are not met, he has no interest, direct or influential in his legal, financial or social position, and no direct or independent damage was caused by its elements, and it can be removed and the rest of the conditions and other criteria contained in this applicable article or in Article (6) of the Civil Procedures Law that qualifies it to be to be A deduction for the defendants, he must be the litigation incompatible with this lawsuit)), and after the court completed its audits, the end of the argument has been made clear and issued its following decision:

### **The decision:**

Upon checking and deliberating from the Federal Supreme Court, it was found that the claim of the two plaintiffs is on the ruling to nullify financial instructions No. (2) issued on 16/21/2021 and Financial instructions No. (10) issued on 12/7/2021 and the legal actions that were based on them, including instructions No. (10) of 2021 on 12/7/2021 regarding the acquisition of the tax from private hospitals within the region because of the lack of the correct legal support for the reasons and the verdicts referred to in the case of the lawsuit and the resulting from it in the preamble of this decision, this means that the plaintiffs have filed their lawsuit based on the jurisdiction of this court contained in Article (93/1<sup>st</sup>) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/1<sup>st</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended. The two articles were stipulated in identical pronouncement. However: (The Federal Supreme Court has jurisdiction over the following: First - Oversight of the constitutionality of laws and regulations in force). Therefore, the aforementioned article has limited the

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jurisdiction of this court to consider requests and lawsuits related to the constitutionality or unconstitutionality of laws and regulations in force exclusively, without instructions, contrary to what was stipulated. The Iraqi State Administration Law for the Transitional Period of 2004, was repealed in Article (Forty-Four/Jim) thereof, whereas the legislative hierarchy applicable in the constitutional and legal system in Iraq is that it arranges legislation from highest to lowest into (Constitution - Laws - Regulations - Instructions), and when the constitutional legislator limited the jurisdiction of this court to consider the extent of the constitutionality of the laws and regulations in force, then, in the sense of violation, he was excluded from These instructions are because the phrases of the legislator in general and the constitutional legislator a fortiori are selected and intended phrases and are subject to precise linguistic and legal formulations. Therefore, considering the constitutionality of the instructions, whether issued by the federal authorities or the region, is outside the jurisdiction of this court. For all of the above and due to the lack of jurisdiction, the Federal Supreme Court decided to dismiss the plaintiffs' lawsuit in form without entering into its origin and substance and to charge them with the legal expenses, including the attorney's fees for the attorney. The defendants' barrister Iyad Ismail Muhammad, 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 (93/1<sup>st</sup> 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 24/Rabea Al-Awal/1445 Hijri coinciding with 10/October/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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