

Republic of Iraq  
Federal Supreme Court  
Ref. 232 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/1/2023 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, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1- Mohammed Ali Ghali.  
2- Qutaiba Khudhir Ahmed.  
3- Saleem Farhood Hussein.

The Defendant: The Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiffs claimed in the lawsuit petition that Law No. (28) of 2019 (Law on the Cancellation of Financial Privileges for State Officials) published in the Iraqi Gazette No. (4566) on 9/12/2019 stipulated in Article (5) thereof ((The delegate's entitlements shall be reduced from the night dispatch allowances contained in the Dispatch and Travel Law No. (38) of 1980, as amended, and the Council of Ministers Order No. (2) of 2005 by (50%) fifty percent)), and stipulated in Article (9) thereof that (the provisions of this law shall apply to The President of the Republic and his deputies, the Speaker of the Council of Representatives and his deputies, the Prime Minister and his deputies, the President of the Supreme Judicial Council, the President and

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members of the Federal Supreme Court, members of the Council of Representatives, ministers, and their rank, heads of independent bodies, governors, agents, and their rank, advisers and those of their grade and special grades, and the general directors and those in their grade and employees of the third grade up), and stipulated in the reasons for its legislation (to reduce expenditures and abolish the privileges of officials in the state and to ensure the achievement of social justice and reduce disparities among the Iraqi people, this law was legislated), whereas the deprivation of first, second and third grade employees violates article 14 of the Constitution of the Republic of Iraq of 2005, which stipulates that "Iraqis are equal before the law...", and violates the principles of social justice and legal equality among employees under the aforementioned text, and that the reasons for enacting the law are the abolition of (privileges) intended to grant financial allocations, facilities, exemptions or other procedures to a group of persons (officials) and not others by virtue of laws, instructions, controls and others, an (official) is a person who has held a managerial position or responsibility to a special degree in the federal authorities and does not include employees who are in the first grade career ladder down according to certification, years of service, etc. according to their legal entitlement. Also, the employee's job grade is (job entitlement) and not (privilege) or special grade, and this deprivation of the (50%) of the delegation allowances mentioned in Article (5) of the aforementioned law in terms of the deficit of Article (9) thereof violates the principles of social justice and legal equality among employees, as it equates employees with general grades who do not have any privilege in the position or allocations with officials with important positions and privileges in terms of deduction, and this is inconsistent with Employee privileges assumed in law which is a false assumption that the employee in the grades described has no position or

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privileges, the text of Article (9) of the law came to address the case of external dispatch of officials, which is usually costly on the budget, so the legislator's desire to reduce or reduce it is directed, and since this distinction between employees achieves differences between the aforementioned job grades and other job grades, so that the allocations for the dispatch of fourth-grade employees are higher than twice the allocations for third-class employees up and they are in the same delegation, and they ride the same mode of transport and stay at the same hotel. Also, the letter of the Legal Department in the General Secretariat of the Council of Ministers No. (31537 on 10/9/2022) supports what was stated in the letter of the Ministry of Oil No. (236 on 4/9/2022), which includes the same reasons for this appeal, and this reflects the conviction of the legal authority of the aforementioned grievances, so the plaintiffs asked this court to rule on the unconstitutionality of the phrase (and employees of the third grade upwards) contained in the text of Article (9) of the Law on the Cancellation of Financial Privileges for State Officials No. (28) of 2019, and to burden the defendant with the judicial expenses and fees, the lawsuit was registered with this court with the number (232/federal/2022) and the legal fee was collected for it based on the provisions of Article (21/1<sup>st</sup>) of the Court's Rules of Procedure No. (1) of 2022 and the defendant was informed of its petition and documents following item (2<sup>nd</sup>) of the same article, and his agent replied with the response list dated 30/10/2022, which included that the challenged text was a legislative option for the Council of Representatives following the provisions of Article (61/1<sup>st</sup>) of the Constitution to compress spending in the sections of the general budget, the phrase "and third-degree employees upwards" in question does not imply a constitutional violation, in addition to the fact that what the plaintiffs aspire to requires

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legislative intervention if its reasons and conditions are met. Therefore, they requested that the lawsuit be dismissed and that the plaintiffs be charged fees, expenses, and advocacy fees. After completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof and the parties were informed of it, and on the appointed day, the court was formed, so the plaintiffs attended in particular and the defendant's attorney attended and the public adversarial pleadings were initiated, the plaintiffs repeated what was stated in the lawsuit petition and requested a ruling according to it, the defendant's attorney answered and requested the dismissal of the lawsuit for the reasons contained in the reply list linked within the lawsuit papers. The court checked and decided to introduce a representative of the (Ministry of Finance) a third person in the case for the purpose of clarifying from him what is necessary to resolve the case, so the Undersecretary (Minister of Finance / in addition to his job) attended the legal employee Amer Abbas Qadir and answered the response list dated 28/12/2022, which concluded (that the circular of his client's department No. (1625) on 9/1/2013 included the classification of employees covered by the provisions of the Dispatch and Travel Allocations Law No. (38) of 1980, including (the second category), which includes job titles that fall in the (first) class contained in the Schedule of Jobs issued pursuant to the repealed Order of the dissolved Coalition Provisional Authority No. 30 of 2003 and (Class 3<sup>rd</sup>), which includes job titles that fall in the (2<sup>nd</sup>) grade and below of the said Schedule of Jobs, after the issuance of the law subject to the lawsuit, these allocations are disbursed in accordance with Article (5) thereof, and accordingly, the night delegation allowances are disbursed at the rate of (50%) of the amounts specified in the aforementioned order, and this is what was approved by the General Secretariat of the Council of

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Ministers in its circular No. (14880) on 21/4/2022, and that the job grades (first, second and third) are covered by the provisions of Article (9) of the law in question, and there is a communication with the General Secretariat of the Council of Ministers regarding the delegation allowances received by employees who include job grades below the (3<sup>rd</sup>), the court reviewed the aforementioned list and linked it within the case papers, and after the court completed its clarification from the third person, it decided to remove him from the lawsuit, and each party repeated its previous statements and requests, and since there was nothing left to say, the end of the argument has been made clear, and the court issued the following judgment decision:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs filed the lawsuit before this court to challenge the unconstitutionality of the phrase (and employees of the third degree upwards) contained in the text of Article (9) of the Law on the Cancellation of Financial Privileges for State Officials No. (28) of 2019, which stipulated (The provisions of this law shall apply to the President of the Republic and his deputies, the Speaker of the Council of Representatives and his deputies, the Prime Minister and his deputies, the President of the Supreme Judicial Council, the President and members of the Federal Supreme Court, members of the Council of Representatives, ministers and those who are with their grade, heads of independent bodies, governors, undersecretaries and their rank, advisers and their grades and special grades, and the general directors and those of their rank and employees of the third grade up), on the basis of violating the provisions of Article (14) of the Constitution of the

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Republic of Iraq for the year 2005, which stipulates (Iraqis are equal before the law without discrimination on grounds of sex, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status), and the principles of social justice and legal equality among employees, in accordance with the detail referred to in the petition, and the Federal Supreme Court finds that The purpose of the legislator in legislating the Law No. (28) of 2019 on the Cancellation of Financial Privileges for State Officials, published in the Iraqi Gazette No. (4566) on 9/12/2019 Based on what is contained in its positive reasons lie (reducing expenses and canceling the privileges of state officials and ensuring the achievement of social justice and reducing disparities among the Iraqi people), and that the word official, according to what is mentioned in the dictionaries of the language, is the name of the effect of the one who asked, and goes to the meaning of the accountant, that is, the one who is responsible for an action or order, (you are all a shepherd and you are all responsible for his flock), as stated in the hadith, it goes to the officials of the statesmen, who are entrusted with the work of those who have responsibilities in the state apparatus, and responsibility means: the ability to control, manage and have rational thinking, the concept of the official is the person who has the responsibility and can bear great responsibilities, as that capacity gives him the right to make important decisions or take a certain action without the need to obtain permission from another person, he is the one who occupies a functional position and participates in the exercise of power, in more precise words he is the one who received an administrative position with a high degree or responsibility to a special degree in the federal authorities stipulated in Article (47) of the Constitution, which stipulated ( The federal authorities consist of the legislative, executive, judicial...) This includes the President of the

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Republic and his deputies, the Speaker of the Council of Representatives and his deputies, the Prime Minister and his deputies, the President of the Supreme Judicial Council, and the President and members of the Federal Supreme Court, members of the Council of Representatives, ministers and their rank, heads of independent bodies, governors, undersecretaries and their grade, advisers and their grade and special grades, directors general and those of their grade), being in legal positions and enjoying the privileges prescribed for each of them according to the laws in force, and this description does not extend to employees of the third, second and first grades as they are in a legal position different from the legal positions enjoyed by officials in the legislative, executive and judicial authorities, due to the different privileges enjoyed by by each of them, especially since the third grade and beyond up the ladder of public service, are not considered as privileges granted to the employee, without controls, because the employee is entitled to those grades according to the career progression to which he is subject under the laws of the public service and its conditions based on certificate, age, length of years of service, promotion, bonus, etc., and thus they do not enjoy the privileges enjoyed by officials, and on the basis of the foregoing, and since the reasons for enacting the law are (for the purpose of reducing expenses, abolishing the privileges of officials in the state, ensuring the achievement of social justice and reducing disparities among the Iraqi people). Therefore, the equality of third, second, and first-grade employees with the aforementioned officials and their inclusion in the text of Article (9) of the Law on the Cancellation of Financial Privileges of State Officials No. (28) of 2019, and their subjection to the provisions of the aforementioned law contradicts the provisions of Article (14) of the Constitution of the Republic of Iraq for the year 2005, which stipulates

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that "Iraqis are equal before the law without discrimination on grounds of sex, race, nationality, origin, color, religion, sect, belief, opinion or status." economic or social), since the principle of equality contained in the Constitution requires its application under the provisions of the law to groups of similar legal status, because the principle of equality cannot be applied to those who enjoy different legal posts. Especially, the legal status enjoyed by third-tier employees differs from the legal status enjoyed by officials who are employees or those entrusted with public service according to the legal description or qualification that applies to them, due to the violation of the phrase (employees of the third-grade upwards) mentioned in the deficit of Article (9) of the Law on the Cancellation of Financial Privileges for State Officials No. (28) of 2019, the provisions of the Constitution, and for the foregoing, the Federal Supreme Court decided to rule as follows:

1. The unconstitutionality of the phrase (employees of the third grade upwards) mentioned in the deficit of Article (9) of the Law on the Cancellation of Financial Privileges for State Officials No. (28) of 2019, for violating the provisions of Article (14) of the Constitution of the Republic of Iraq for the year 2005.
2. To burden the defendant, the Speaker of the ICR/ being in this capacity the expenses and fees.

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 (4/1<sup>st</sup> 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 made clear on dated 25/Jamada Al-Akhir/1444 Hijri coinciding 18/January/2023 AD.

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Judge  
Jassim Mohammed Abbood  
President of the Federal Supreme Court