

Republic of Iraq
Federal Supreme Court
Ref 247/ federal/2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 17/3/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih ,Dyar Mohammed Ali, and Khalid Taha Ahmed, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs:

1. Azi Barzan Aref.
2. Mohammed Hussein Karim.
3. Khabat Latief Marf
4. Najm al-Din Mohammad Saleh Karim.
5. Dlawer Ali Mohammed Saleh.
6. Awaat Azad Mohammad Tal.
7. Dilshad Mohammed Amin Saeed.
8. Saman Ali Saleh.
9. Rebwar Baher Ahmed.

**Their agent the barrister
Karwan Shihab Ahmed**

The Defendants:

1. Prime Minister of the Kurdistan Region of Iraq
/ being in this capacity.
2. Minister of Finance and Economy in the Kurdistan
Regional Government of Iraq / being in this capacity.

**Their agent the
adviser barrister
Ayad Ismail
Mohammed**

The Claim:

The plaintiffs, through their agent, claimed that the defendants, in addition to their jobs, implemented the Federal Amended Law of State and Public Sector Employees No. (22) of 2008, automatically and without legal legislation issued by the Kurdistan Parliament of Iraq to enforce it, but was applied under the Financial Instructions No. (21) issued by the Ministry of Finance in the Kurdistan Region of Iraq in

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light of the decision of the Presidency of the Council of Ministers in Kurdistan Region of Iraq according to the book (6943) on 24/6/2008. Since 2015, they have issued a series of decisions and instructions contrary to the aforementioned federal law without having the constitutional and legal authority to do so, including the Kurdistan Region Council of Ministers Resolution No. (56) on 21/12/2015, and Instructions No. (11) of 2016 issued by the Ministry of Finance and Economy in the region, and signed by the minister to stop the promotion of the region's employees. This constitutes a violation of articles (6, 7, 8, 9) of the aforementioned Federal Law, and article (2) of the first amendment law to the law on the salaries of state and Public Sector Employees No. (103) of 2012, and refrain from implementing them. This suspension continues until now, as in accordance with Instructions No. (8) and No. (15) of 2017, issued for the Ministry of Finance and Economy in the region, the promotion of public sector employees was stopped again based on a letter from the presidency of the Council of Ministers of the region, and this resulted in serious financial damage against plaintiffs and other employees in the region, as the legal promotion of employees was stopped (7) years ago, which led to the loss of nearly two raises in the salaries of most of the region's employees. The lack of proper application of this law also affects their future pensions, and all of this also contradicts the principle of separation of powers recognized by the Constitution in article 47 thereof, as the executive authority, whether federal or regional, cannot stop the implementation of the provisions of laws, especially federal ones, as well as a clear violation of the principle of equality between citizens in the Federal Republic of Iraq and their right to fair treatment, which is approved by the Constitution in articles (14 and 19/6th) thereof, according to the procedures, circulars and instructions of the

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Federal Ministry of Finance, including the issuance of the number (13228 on 4/4/2023) and the number (13240 on 6/4/2023), the competent authorities must not stop or delay the transactions of promoting employees and calculating the promotion entitlement from the date of reaching the legal entitlement for promotion and not from the date of issuance of the ministerial order on promotion based on article (7/2nd) of the amended law on salaries of state and Public Sector Employees No. (22) of 2008, which is a federal law that falls within the exclusive competences of the federal authorities, with regard to (drawing up fiscal policy), according to clause (third) of Article (110) of the Constitution, where the federal authorities exercise their exclusive jurisdiction represented by (drawing up fiscal policy) by legislating and issuing laws, regulations and instructions to regulate taxes, fees (revenues), salaries, government compensation, subsidies, infrastructure and other government expenses (expenditures), because fiscal policy is the simplest credibility is (an estimate of taxes and government spending that affect the economy), the decision of this court No. (168/Federal/2023) stated the following:

((... Whereas the Region has the right to exercise legislative, executive and judicial powers in accordance with the provisions of this Constitution on the basis of article (121/1st) thereof, but this exercise must not intersect with the public policy adopted by the state, otherwise the exercise of these powers is illegitimate and outside the constitutional framework)), and therefore the law of state and public sector employees No. 22 of 2008, as amended, is a federal law enforceable in the Region, its execution by the defendants automatically without enacting a law enforceable from the Kurdistan Parliament of Iraq is an explicit and clear acknowledgment on their part that issues related to salaries and compensation of

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employees fall within the core of (drawing up fiscal policy), which is within the exclusive competence of the federal authorities. At the same time it was not issued by the regional parliament is a law related to the salaries of state employees, but it has applied federal laws or the laws of the former Iraqi regime in this regard, such as the Civil Service law No. (24) of 1969, as amended, this is also the best proof that this matter is the responsibility of the federal authorities, therefore, the plaintiffs requested this court to order the defendants to be obliged to properly apply the salaries of state and public sector employees law No. (22) of 2008, as amended by the federation, especially articles (9,8,7,6) thereof, and to count the decisions and instructions mentioned in the lawsuit petition issued by the defendants in addition to their functions regarding stopping the increase in the salaries of employees because they were issued by a non-significant, and in violation of the articles of the Constitution and the Federal Law, pursuant to the provisions of article (110/3rd) and articles (19, 14/6th and 47) of the Constitution, and in accordance with the powers of the court under article (93/3rd) of the Constitution in the jurisdiction of the Federal Supreme Court (adjudication of cases arising from the application of federal laws, and the law guarantees the right of both the Council of Ministers and concerned individuals and others the right of direct appeal to the court), as well as according to article (35) of the Rules of Procedure of the Federal Supreme Court, especially the condition contained in the second item thereof, which stipulates: (The text or procedure must be issued by one of the federal authorities stipulated in article 47 of the Constitution). After registering the case with this court No. (247/Federal/2023) and collecting the legal fee for it, the defendants are informed of their petition and documents in accordance with article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court

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No. (1) of 2022, their agent replied in the reply dated 26/11/2023, that the lawsuit petition is devoid of reference to the contested text alleged to violate the Constitution as required by article (20/IV) of the Court's Rules of Procedure, which required that the lawsuit petition include (a clear statement of the contested text, the constitutional text alleged to have violated, and the reasons for the constitutional violation). In addition to the lack of jurisdiction of the court to hear the case, as article (93/1st) of the Constitution limited the court's jurisdiction to consider requests and lawsuits related to the constitutionality or unconstitutionality of laws and regulations exclusively without addressing other subjects, especially subjects that fall within the jurisdiction of other courts under the functional jurisdiction mentioned in the Code of Procedure and the laws of judicial organization. After completing the procedures required by the Court's Rules of Procedure, a date was set for the pleading in accordance with article (21/3rd) thereof, and the parties were informed of it, and in which the court was formed, and the plaintiffs and their agent attended, and the defendants' agent attended, and the public presence pleadings began, the court heard the statements of the parties, and after scrutiny, it decided to include the Minister of Finance / in addition to his job a third person in the case for the purpose of clarifying from him what is necessary to resolve it, his agent, the official jurist, Amer Abbas Qadir attended, and after the court was informed on his explanatory answering draft dated 25/2/2024, and completed its clarification from it, it decided to remove the third person from the case, and after the court heard the statements of the parties and completed its scrutinies, the end of the argument has been made clear and issued the following decision:

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The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs filed this lawsuit against the defendants, the Prime Minister of the Kurdistan Region of Iraq and the Minister of Finance and Economy of the Kurdistan Regional Government of Iraq / being in their capacity, and they requested to judge by oblige the defendants to properly apply the Federal Salaries Law No. 22 of 2008, as amended by the Federal Courts, especially Articles 6, 7, 8, 9 thereof, and to count the decisions and instructions mentioned in the lawsuit petition issued by the defendants/ being in their capacity, which are related to stopping the increase in employees' salaries, they are non-existent because they are issued by a non-competent authority, and are contrary to the constitution. After conducting the public presence pleading, hearing the statements and defenses of the parties, and reviewing the regulations exchanged between them. Having heard the legal representative of the Federal Ministry of Finance and his defences, who were introduced by the Court to a third person for clarification. This court finds that its jurisdiction is limited under Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005, as well as in Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law (25) of 2021, and among those competencies is not to consider the requests contained in the lawsuit petition, and for the foregoing, the requests of the plaintiffs in this lawsuit fall outside the jurisdiction of this court, and if their claim is subject to dismissal due to lack of jurisdiction, the Federal Supreme Court decided to rule as follows:

First: Reject of the plaintiffs' lawsuit (Azi Barzan Aref, Muhammad Hussein Karim, Khabat Latif Marv, Najm al-Din Muhammad Saleh Karim, Dalawir Ali Muhammad Saleh, Awat Azad Muhammad Tal,

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Dilshad Muhammad Amin Saeed, Saman Ali Saleh, and Rebwar Baher Ahmed) for lack of jurisdiction.

Second: Charging the plaintiffs with fees, expenses and attorneyship fees for the defendants' agent, lawyer Counselor Iyad Ismail Mohamed an amount of one hundred thousand dinars. The decision has been issued unanimously, final and binding according the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 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. The decision has been made clear on 6/Ramadan/1445 A.H. corresponding to 17/3/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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