

Republic of Iraq
Federal Supreme Court
Ref. 13 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 14/3/2023 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 Plaintiff: Dr. Raid Jahid Fahmi/Secretary of the Central Committee of the Iraqi Communist Party/ being in this capacity – his agents, the barristers Zuhair Zia Al-Deen and Salam Zuhair Zia Al-Deen.

The Defendant: 1. The Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.
2. The Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiff claimed through his agent that the final accounts of the state reflect the processes of applying the general budget following the legal regulations, regulations, and financial instructions issued to show the financial position of the state with its collectible rights and obligations payable, and the final account shows the increase and decrease in the state's assets by preparing them in accordance with the provisions of Article (34) of the Federal Financial Management Law in force No. (6) of 2019 and the state has not been able to approve the final accounts since 2013 and therefore not present them before The legislative authority, which is the first supervisory authority in the state.

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Also, the General Budget Law for the years (2014-2020) was also not enacted, which constituted a legislative deficiency and a major imbalance in the control of government expenditure. The defendants violated the Constitution by ignoring its provisions contained in both Article (27 / 1st, public funds are inviolable and their protection is the duty of every citizen) and Article (62 / 1st, the Council of Ministers submits the draft general budget and final account to the Council of Representatives for approval) and based on the aforementioned texts and the legal texts contained in the aforementioned Financial Management Law in Articles (28 and 34) thereof, which specify the date of closing the final accounts for the ended fiscal year, provided that they do not exceed 1/31 of the following year and the date of Submission of expenditure units and self-financed departments to the Federal Financial Audit Bureau and the issuance of its report by the Financial Audit Bureau no later than the end of June of the following year, and the fulfillment of the condition of Article (20) of the Court's Rules of Procedure that he has an interest in filing the lawsuit, as the protection of public funds is a duty of every citizen under Article (27/ 1st) of the Constitution, in addition to being the Secretary-General of a party representing thousands of citizens, whose rights and interests are linked to the Federal Budget Law and the method of its legislation, and the subject matter of the lawsuit relates to the failure of the concerned authorities to prepare the final accounts of the State, on which the task of preparing the Federal Budget Law is based. Therefore, the plaintiff asked this court to order 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, which have not been completed so far, and the completion of the final accounts for each year preceding the submission and approval of the Federal

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Budget Law for the following year to be prepared based on real data and not fictitious pursuant to the provisions of Article (62 / 1st) of the Constitution, with the obligation to submit these budgets within the timings specified by the Constitution and the Federal Financial Management Law, and obliging the Council of Representatives not to legislate the Federal Budget Law unless the final accounts of the state for the previous year are submitted. The lawsuit was registered with this court with a number (13/federal/2023) and the legal fee was collected for it based on the provisions of Article (21/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 and the defendants shall be informed of its petition and documents following paragraph (second) of the same article, the agent of the first defendant replied in the reply list dated 12/2/2023, which concluded that the plaintiff has no interest in filing this lawsuit following the provisions of Article (6) of the Civil Procedure Law No. (83) of (1969) as amended and Article (20 / 1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and his request to oblige the Council of Representatives not to legislate a law that has no basis in law and the Constitution is premature, because the competencies of the Council of Representatives under Article (61) of the Constitution is to legislate federal laws, and the laws in force that are enacted by it are subject to oversight following the provisions of Article (93/1st) of the Constitution by challenging their constitutionality before the Federal Supreme Court. Accordingly, the plaintiff's request is outside the jurisdiction of the Federal Supreme Court, so they requested the dismissal of the lawsuit and the plaintiff to burden the expenses, fees, and advocacy fees. After completing the procedures required by the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, a date was set for the pleading based on Article (21/3rd) thereof, and the parties were informed of it, and

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on the appointed day, the court was formed, and the plaintiff and his agent, lawyer Zuhair Ziauddin Yaqoub, attended on behalf of the first defendant, his agent, the official jurist Saman Mohsen Ibrahim, and on behalf of the second defendant, his agent, the legal adviser Haider Ali Jaber. The plaintiff's agent repeated what was stated in the lawsuit petition and requested a judgment according to it, the first defendant's agent replied and requested the dismissal of the lawsuit for the reasons stated in the reply list linked to the lawsuit papers, and the second defendant's agent replied repeating what was stated in his draft dated 27/2/2023, which concluded ((The plaintiff's interest in filing the lawsuit, and he also does not have the legal capacity that must be available to the parties to the lawsuit in his capacity as secretary of the Communist Party to file a lawsuit on behalf of the people based on Article (19/1st) of the Parties Law, in addition to the lack of jurisdiction of the court to consider what he requested, the Council of Ministers has previously submitted the final accounts of the Republic of Iraq for the past years until 2014 as indicated in the letter No. (Qaf/2/2/21/13972) on 3/6/2021 addressed to the General Secretariat of the Council of Representatives and following the Council of Ministers Resolutions No. (190) of 2019, which approved the final accounts for the years (2012-2013) and the Council of Ministers Resolution No. (36) of 2020, which approved the final account for the fiscal year 2014 and sent it to the Council of Representatives to take appropriate measures, and the Council of Representatives will be provided with the accounts Closing for the years from 2015 to 2019, it is under completion and will be sent to the Council of Representatives upon completion, especially since the government program came in completing the final accounts of previous years)) and for the reasons mentioned a request to dismiss the lawsuit, the agents of each party repeated its previous statements and requests,

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and since nothing remained to be said, the end of the argument 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 plaintiff claimed that the authorities did not approve the final accounts of the state since (2013) and were not presented to the legislative authority as the first supervisory authority in the state, and a general budget law for the years 2014/2020 was not enacted, which constitutes a legislative deficiency and a defect in controlling government spending, so he requested to invite the defendants to plead and then rule to oblige the Council of Ministers to complete the final accounts within timings specified in the Federal Financial Management Law No. (6) of 2019, including previous years which has not yet been completed, and the completion of the final accounts for each year preceding the submission and approval of the Federal Budget Law for the following year to be prepared based on real data and not fictitious according to the provisions of Article (62/1st) of the Constitution of the Republic of Iraq for the year (2005), with the obligation to submit these budgets within the timings specified by the Constitution and the Federal Financial Management Law and oblige the Council of Representatives not to legislate the Federal Budget Law unless the final accounts of the State for the previous year are submitted. The court reviewed the case documents and drafts submitted by the agents of its parties. The Court finds that the Iraqi Communist Party is one of the Iraqi political parties, and Article (18) of the Political Parties Law No. (36) of 2015 granted it the legal personality to practice its activity, and Article (19/1st) of the said law allowed the head of the party and in his capacity and according

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to the rules of procedure to represent the party in all matters related to its affairs before the judiciary and other parties, and that the political party has the right to participate in elections and political life following the law, as well as its right to meet and demonstrate peacefully following what Stipulated in Article (21) of the said Law, whereas the plaintiff instituted his claim in his capacity as Secretary of the Central Committee of the Communist Party in addition to his function following Article 17 of the bylaws of the said Party, The aforementioned capacity entitles him to represent the party in all matters related to the affairs of the party itself before the judiciary and other parties, as the legal personality granted by Law No. (36) of 2015 to the party entitles the president of the party in his capacity to represent the party before the judiciary following the objectives set for the party in light of the aforementioned Political Parties Law and does not exceed otherwise, and since the subject matter of the lawsuit is related to the financial affairs and final accounts of the state, so the litigation of the plaintiff in addition to his job is not directed in the lawsuit. If the litigation is not directed in the case, the court shall rule on its motion to dismiss it without entering into its basis according to Article (80/1) of the Civil Procedure Law No. (83) of 1969, as amended. Accordingly, the Federal Supreme Court decided to dismiss the lawsuit of the plaintiff Raed Jahed Fahmi, Secretary of the Central Committee of the Iraqi Communist Party / being in this capacity in terms of litigation and to bear all judicial expenses, including the attorney fees of the defendants' agents / being in this capacity, an amount of one hundred thousand dinars distributed to them in accordance with the law. The decision has been issued unanimously and final according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2nd) of the FSC's law No. (30) for 2005 which was amended by law

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No. (25) for 2021. The decision has been made clear on dated 21/Shaabab/1444 Hijri coinciding 14/March/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court

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