

Republic of Iraq
Federal Supreme Court
Ref. 140 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 14/8/2023 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, Ayooob 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: The International Assistance Mission accredited in Iraq and its diagnostic medical center - its Executive Director Dr. Sadiq Ali Asghar Nouredine Al-Husseini / being in this capacity

The Defendant: 1. . Minister of Finance and Economy in the Kurdistan Regional Government / being in this capacity – his agent the official jurist Dlawer Rajab Hussein.

2. Director General of the Kurdistan Region Customs Authority / being in this capacity - his agent, the official jurist Mahdawi Raouf Othman.

3. Head of the Kurdistan Regional Government Diwan / being in this capacity - his agent, lawyer Zubair Saadi Ismail

4. Head of the Kurdistan Region Representative in Baghdad / being in this capacity - his agent, lawyer Diyar Bahjat Abdullah.

The Claim

The plaintiff claimed in his petition that the Diagnostic Medical Center of the International Assistance Mission in Iraq requested the Prime Ministry to facilitate the task of supplying (medical materials and equipment, food supplies and other materials as a free donation to the Iraqi government) from the Ibrahim Al-Khalil border crossing as part of the mission's civilian efforts and operations to combat the Corona pandemic and cancer patients, and it was handed over to the sectoral health authorities at the Ministry of Health, as well as its operations to relieve the residents of cities liberated from the

saady

Republic of Iraq
Federal Supreme Court
Ref. 140 / federal /2023



Kurdish text

terrorist organization ISIS and are used by government agencies and delivered to their local governments (Nineveh - Anbar - Saladin) according to inventory documents, he also requested the zeroing of its customs duties to include them in the exemptions stipulated in the Customs Law No. (23) of 1984, as amended according to Article (155/1st/Beh) thereof, and the exceptions granted under government decisions following the Supreme Committee for National Health and Safety Resolution No. (18) of 2020, where the response of the General Authority of Customs in the region numbered (9033 on 29/6/2020) included the entry of these materials and the zeroing of their customs duties, and the delay of the region's customs in the procedures for instructing the port to enter them, after many correspondences and confirmations, the Kurdistan Region Customs Authority, in its letter No. (17258 on 11/12/2020), approached the Minister of Finance and Economy in the Kurdistan Regional Government, who indicated the origin of the book as follows: (The answer of the region's representative that these materials required to be exempted are many and what is the relationship of the diagnostic medical center to the subject), and this led to delaying their entry and destroying some of them due to their expiry, and others suffered from extinction and oxidation due to weather conditions and humidity, and thus their unsuitability for human consumption, and then their destruction Environmentally by competent teams, in addition, the Turkish supplier stipulated that the mission when extending the validity of the contract that the mission cut the quantity and transferred it within a year, after which the supply contract is considered valid, and its received value is considered revenue for it, so the plaintiff asked the court to rule on the realization of the right and correct individual errors and personal jurisprudence contrary to law and public order by interpreting laws and decisions that cause harm to public interests, and issuing the decision to refund the personal jurisprudence of the Minister of Finance and Economy in the Kurdistan Regional Government for not being based on a legal basis. The lawsuit was registered with this court at number (140/federal/2023) and the legal fee was collected for it and the

saady

Republic of Iraq
Federal Supreme Court
Ref. 140 / federal /2023



Kurdish text

defendants were informed of its petition and documents in accordance with Article (21/1st and 2nd) of the Court's Rules of Procedure No. (1) of 2022, and for the lapse of the period stipulated in item (3rd) of the article above without receiving an answer from the defendants, a date was set for the pleading and the parties were informed of it, and on the specified day, the court was formed, so the plaintiff and the defendants' agents attended, and the public presence argument began, the plaintiff repeated what was stated in the lawsuit petition and requested a ruling according to it, and the court reviewed his additional list submitted on 14/8/2023, the defendants' agents answered and requested to dismiss the lawsuit due to the court's lack of jurisdiction to consider it in accordance with Article (93/3rd) of the Constitution, and the parties repeated their previous statements and requests, and where there is nothing left 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 and after reviewing the statement of claim and the requests contained therein in accordance with the detail referred to therein, it became clear that the plaintiff, in addition to his job, filed the lawsuit against the defendants / being in their capacity before this court to demand a judgment to refund the personal jurisprudence of the Minister of Finance and Economy in the Kurdistan Regional Government being in this capacity, for violating his specific powers to implement the law and not based on any legal text with its margin on the original letter of the Kurdistan Region Customs Authority No. 17258 on 17/12/2020 (Representative answer the region that these materials required to be exempted are many and what is the relationship of the diagnostic medical center to the subject), the plaintiff also requested the invalidity of the resulting procedures, as well as obliging him to apply the Customs Law No. 23 of 1984, as amended pursuant to Article 155/1st/Beh thereof, the legal basis for the official approvals issued by the federal

saady

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Ref. 140 / federal /2023



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authority represented by the Prime Minister's Office, the Ministry of Finance and the General Authority of Customs, which include facilitating the task of entering medical materials, equipment, supplies and other materials provided as a free donation to the Iraqi government and zeroing its customs duties to include them in the exemptions stipulated in the Customs Law No. 23 of 1984, as amended, with the exceptions granted under government decisions in accordance with the Supreme Committee for National Health and Safety Resolution No. (18) of 2020 and charging the defendants / being in this capacity with expenses, fees, and attorney's fees, the Federal Supreme Court finds that the plaintiff's lawsuit / being in this capacity must be dismissed in the form of lack of jurisdiction, as the competencies and powers of this court are contained exclusively in Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2005 2021 and some other special laws, none of these competencies and powers gives the court jurisdiction or authority to decide or respond to the plaintiff's requests in addition to his position contained in the lawsuit petition, and for the foregoing, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit for lack of jurisdiction and to charge him fees, expenses and attorney fees of the defendants' agents / being in their capacity an amount of (one hundred) thousand dinars distributed following the law. 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 5/2nd) 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 26/Muharram Al-Haram/1445 Hijri coinciding with 14/August/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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