

Republic of Iraq  
Federal Supreme Court  
Ref. 329/ federal/ 2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24/1/2024 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: Nehru Mahmoud Qadir – His agent the barrister Ahmed Maged Ahmed.

The Defendants: 1. Minister of Finance / being in this capacity.  
2. Minister of Planning / being in this capacity.

### **The Claim:**

The plaintiff claimed through the mediation of his agent that the Ministries of Finance and Planning in exercising what was assigned to them in the Federal Financial Management Law No. (6) of 2019, and the Federal Budget Law of the Republic of Iraq for the fiscal years (2023-2024-2025) No. (13) of 2023 of the competence to implement the federal general budget through financing payments have violated the constitution and the law, in particular Article (14/I/A) of the Federal Financial Management Law, which stipulates that (the federal general budget shall be implemented through financing payments and at the discretion of the Ministry of Finance from the unified public treasury account based on the allocations prescribed in the Federal Budget Law and in accordance with the mechanism determined by the Ministry of Finance), where the shares of the governorates that are not organized in a region are calculated, and funding payments are launched on the basis of the planned allocations and estimates estimated by the governorates

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in the federal budget law, while the share of the Kurdistan region from the expenditure financing is calculated according to the actual expenditure ratios of the governorates that are not organized in the region and the federal ministries of the Republic of Iraq except the region, not on the basis of the allocations prescribed in the budget law. Rather, the funding payments launched by the Ministry of Finance are calculated on the basis of the actual expenditure ratio of the fifteen governorates that are not organized in a region and not on the total actual expenditures of all the governorates of Iraq, the Federal Budget Law No. (13) of 2023 stipulates in Article (11) that the share of the Kurdistan Region shall be determined from the total actual expenditures set forth in Table Dal (Governing Expenditures) attached to the law, and shall be paid by the Federal Ministry of Finance and with the approval of the Federal Prime Minister, and the region's share of the total actual expenditure (current expenditures and investment project expenditures) shall be determined after excluding sovereign expenditures, as the text came absolutely and includes the expenditures of all governorates, including the expenditures of the governorates (Kurdistan Region of Iraq) and the absolute is being launched. Unless there is evidence that it is restricted by text or indication, however, the first and second defendants, in addition to their functions when applying the budget law, did not comply with the law, and it also violated the text of Article (11) mentioned above, where the actual expenditure of fifteen governorates was calculated and it did not include the governorates of the Kurdistan region, which means excluding part of Iraq when calculating the actual expenditures of the Republic of Iraq, and on the basis of the extracted output, the product is multiplied by the share of the Kurdistan Region of Iraq specified in the Federal Budget Law No. (13) of 2023, amounting to (12.67%) while

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the output in the actual application currently followed by the Ministry of Finance does not exceed the percentage of the Kurdistan Region (10.8) and this is fixed through the table for calculating the Kurdistan Region's share of the total expenditures according to the months until June 2023, and that this procedure violates the law and the Constitution, Because it intersects with the principles of equality and fair distribution of imports in proportion to the population distribution guaranteed by the Constitution in articles (14 and 112/I) and also contradicts the court's decision No. (59/Federal/2012 and its unified 110/Federal/2019), which included that (the expression of the Iraqi people includes all Iraqis without exception from its north to its south and from east to west, regardless of nationality or religion...) Therefore, the plaintiff requested a ruling that the calculation of the share of the Kurdistan Region of Iraq on the Basis of the actual expenditure of fifteen governorates is un constitutional, It is imperative to calculate it on the basis of actual expenditure for all governorates of Iraq, including the governorates of the Kurdistan Region of Iraq, and to oblige both the Federal Ministry of Finance and the Ministry of Planning to adhere to the principle of equality in the implementation of the budget law in particular funding payments from the unified public treasury account shall be directed on the basis of the allocations prescribed in the Federal Budget Law similar to other governorates of Iraq. After registering the case with this court No. (329/Federal/2023) and collect the legal fee for it, and notify the defendants of its petition and documents in accordance with Article (21/I and II) of the Court's Rules of Procedure No. (1) of 2022, At the end of the period specified for the answer, the court set a date for hearing the case without pleading, in which the court was formed and the case began to be heard, and after examining the

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plaintiff's requests and substantiations, the court understood the conclusion of the minutes and issued the following decision:

**Referee Decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the summary of the plaintiff's lawsuit Nehru Mahmud Qadir It is a request to rule that the share of the Kurdistan Region of Iraq is unconstitutional on the basis of the actual expenditure of fifteen governorates, and the inevitability of calculating it on the basis of the actual expenditure of all governorates of Iraq, including the governorates of the Kurdistan Region of Iraq, and obliging the defendants the Federal Ministry of Finance and the Ministry of Planning to abide by the principle of equality in implementing the budget in particular directing funding payments from the unified public treasury account on the basis of the allocations prescribed in the Federal Budget Law, as in other governorates of Iraq, for the reasons detailed by the plaintiff in the petition of claim referred to in the preamble to the decision, and despite the defendants' failure to respond to the plaintiff's claim, the decision of this court to hear the case without pleading in accordance with the provisions of Article (21/3<sup>rd</sup>) of the Rules of Procedure Fedral Supereme Court No.(1) of 2022, the Court noted that the lawsuit included two requests, the first is the ruling that the calculation of the share of the Kurdistan Region of Iraq on the basis of actual expenditure is unconstitutional, This request, as the case was filed, does not have the jurisdiction of the Court, because its jurisdiction is in accordance with Article 93/1<sup>st</sup> of the Constitution of the Republic of Iraq of 2005, is to decide on the constitutionality of laws and regulations in force, not to decide on the constitutionality of decisions and procedures issued by ministries and other state

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institutions, As for the second request of the plaintiff which is to oblige the defendants The Ministries of Finance and Planning abide by the principle of equality in the implementation of the budget as the court noted that the lawsuit had been instituted The Federal Ministries of Finance and Planning, which are not among the federal authorities referred to in Article (47) of the Constitution, and whereas this court according to what was established for it from the previous judiciary has jurisdiction in accordance with item (third) of Article (93) adjudicating cases arising from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority, this court is thus not competent to hear this case. For the foregoing, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit Nehru Mahmoud Qadir for lack of jurisdiction, and to charge him fees and expenses. The decision has been issued unanimously, final and binding based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and Articles (4 and 5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and the decision has been issued on the session dated 12/Rajab/1445 A.H. corresponding to 24/January/2024 A.D.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

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