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The Federal Supreme Court (F S C) has been convened on 27/8/2023 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, 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: President of the Republic of Iraq/ being in this capacity – his general agent, the President of the Legal Experts Ghazi Ibrahim Al-Janabi.

The Defendant: 1. 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.

3. Minister of Construction, Housing, Municipalities, and Public Labors/ being in this capacity – his agents the assistants legal counselors, each of Haytham Ali Kudhair and Rusul Kamil Jawad.

4. Mayor of Baghdad/ being in this capacity – his agent the legal counselor Saad Abdul Anees Mohammed and Intisar Salman Ali.

### **The Claim**

The plaintiff claimed through his agent that the Iraqi Council of Representatives discussed in its session dated 22/10/2016 the draft law

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(municipal imports) and after a long discussion voted in the affirmative in its session No. (24) of the first legislative term / third legislative year - third session and sent the law to the Presidency of the Republic for ratification by the President of the Republic in preparation for its legislation in the letter of the Council No. (9687) on 10/11/2016. Whereas the aforementioned law ((Municipal Imports Law No. (1) of 2023)) was published in the Iraqi Gazette No. (4708) on 20/2/2023 and included many constitutional and legal violations, so he took the initiative to challenge it before this court, for the following reasons: 1. The obligation of the Real Estate Registration Department not to conduct any disposal transaction on the property in respect of which notice was received from the Municipality Department of its indebtedness to the concerned municipality following what is stated in item (1<sup>st</sup>) of Article (6) of the law is inconsistent with the provisions of the law is that the creditor department must follow the legal methods in filing a lawsuit against the debtor and seizing the property with the approval of the court, state departments need to keep pace with people's transactions under the pretext of indebtedness of their real estate, as the creditor municipal department must follow up on its debts and not stop their transactions. 2. Clause (2<sup>nd</sup>) of the aforementioned article 6 is also inconsistent with the citizen's right to renew his leave without the need to stop it on the pretext of his indebtedness to state departments, federations, and professional syndicates, as these bodies are supposed to follow up and collect their debts in accordance with the law and not prevent the citizen from obtaining his legal right to grant him (a leave) or (renew that leave). 3. The increase in the fine stipulated in Article 7 of the Law is inconsistent with the living conditions of citizens under the current situation. 4. Granting the Minister of Construction, Housing, Municipalities and Public Works and the Mayor of Baghdad the

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authority to impose wages for the services they provide following the provisions of clause (1<sup>st</sup>) of article 8 of the law means granting them discretionary power, and that this authority extends to poor areas where there are no most basic services, which affects the citizen's livelihood and his pursuit of his livelihood, and granting this authority to the governor following what is decided in clause (2<sup>nd</sup>) of article (8) is inconsistent with the text of article (28/2<sup>nd</sup>) of the constitution. 5. The provisions of clause (1<sup>st</sup>) of article 14 of the law violate the principle of equality stipulated in articles 14, 15, and 17 of the Constitution, the prohibition of this on non-Muslims, a large class of whom live on the proceeds of these articles, is a restriction of the freedom of work permitted by law, Councilion to the fact that these articles are collected by the State with taxes and fees that generate large sums of money on the general budget of the State and that their inclusion in this law is an incorrect addition and is inconsistent with the provisions of the Constitution. This article relates to the Tourism Authority, has nothing to do with municipal imports, and was supposed to amend the Tourism Law, not a law on municipal imports. 6. The increase in fees contained in the schedule of fees attached to the law in light of the current circumstances of Iraq and the presence of large numbers of citizens with interests in some paragraphs of fees mentioned in the table, is an increase in the living pressure on the citizen, as the table added a lot of amounts and fees to people while many hoped to reduce these fees, this increase may be used by some employees as blackmail at a time when the state does not currently want to raise the ceiling of suffering that citizens face daily, so the plaintiff requested a ruling of unconstitutionality (the Municipal Imports Law) and charged the defendants fees, expenses and advocacy fees. The lawsuit was registered with this court No. (34/Federal/2023), and the legal fee was collected for

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it, and the defendants are informed of its petition and documents in accordance with Article (21 / 1<sup>st</sup> and 2<sup>nd</sup>) of the internal regulations of the Federal Supreme Court No. (1) of 2022, and the first defendant's agent (Speaker of the Council of Representatives / being in this capacity) replied with the reply list dated 16/3/2023 to summarize: Article (93/1<sup>st</sup>) of the Constitution clarified the jurisdiction of the Court to monitor the constitutionality of the laws and regulations in force and not to intersect them, the law - the subject of the lawsuit - is one of the legislations approved by the Council of Representatives following its competence in Article (61/1<sup>st</sup>) of the Constitution, as for the challenge to Article (14) of the Law, Article (2/1<sup>st</sup>) of the Constitution included that Islam is the official state religion and is a source of the basis for legislation and may not enact laws contrary to Islamic law, and Muslims have unanimously agreed in their various sects on the sanctity of the trade in alcohol and the sanctity of its consumption and that the text - the subject of the challenge - came in harmony and embodiment of the provisions of the Constitution and no violation thereof, and they asked to dismiss the lawsuit and charge the plaintiff expenses and advocacy fees. The second defendant's attorney (Prime Minister / being in this capacity) replied with the answering draft dated 22/3/2023, requesting that the lawsuit be dismissed from his client as he is not fit as a litigant because he does not have the right to legislate. The agents of the third defendant (Minister of Construction, Housing, Municipalities, and Public Labors / being in this capacity) replied with the answering draft dated 30/3/2023 summarizing that the administration has the discretionary authority to collect the fine from the violator below the maximum limit, article (8) in question is consistent with the basic purpose of municipal institutions contained in the Municipal Administration Law No. 165 of 1964, which allowed them to collect

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wages following the law, and Article (13/2<sup>nd</sup>) of the Constitution requires that no law be enacted that contradicts the Constitution, and since Islam is the official state religion and is a source of legislation and it is not permissible to enact a law that contradicts the constants of the provisions of Islam following Article (2) of the Constitution, so they requested to dismiss the lawsuit with the plaintiff bearing the expenses. The fourth defendant's attorney answered (Mayor of Baghdad / being in this capacity) in the reply list dated 22/3/2023 Conclusion: The Government Debt Collection Law vested his client with the authority of executing justice under article 9 thereof, and he may place the attachment sign as one of the legal ways to collect government debts, and the two clauses (1<sup>st</sup> and 2<sup>nd</sup>) of article 6 in question did not come Councilion to what was the case in the repealed Municipal Imports Law, as the same provision came in article 9 thereof, as well as what was included in item (1<sup>st</sup>) of article 8 in question, The same provision is contained in Article (5) of the previous Municipal Imports Law, so there is no interest in appealing these articles, and the amount of the fine is imposed only when the violation is realized, and citizens can avoid it by informing the municipal department, the amendment of the amount of the fine has become an urgent necessity, as it is in the previous canceled law does not exceed one hundred dinars, which is a worthless amount at the present time, and it is indisputable that the import, manufacture and sale of alcoholic beverages contradicts the constants of the Islamic religion, and at the qualitative level, it has become necessary at the present time to increase fees, there are many professions that have been developed and that were not stipulated in the canceled law, including the profession of Internet towers, communications, colleges and other professions. As for the quantitative level, in terms of the profession fee, the amount of fees did not increase in it, as it remained the same

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percentage calculated according to the annual rent allowance for the place of practice of the profession, as for the increase concerning the rest of the fees, it was in line with the general economic situation of the country, an increase that is not exaggerated and within the reach of the citizens who are subject to those fees. Therefore, he requested the dismissal of the lawsuit and the plaintiff to be charged with fees, expenses, and advocacy fees. After completing the procedures required by the aforementioned rules of procedure of the court, a date was set for the pleading based on Article (21/3<sup>rd</sup>) thereof and the parties were informed of it, on the specified day, the court was formed, and the plaintiff's attorney attended, and the agents of the first and second defendants attended, and the third defendant's agent, the human rights officer, Rusul Kamel Jawad, and began to conduct the public presence argument, the plaintiff's agent repeated what was stated in the lawsuit petition and requested a ruling accordingly, the defendants' agents present answered and each of them requested the dismissal of the lawsuit on behalf of his client for the reasons stated in his answering draft linked to the case papers, the court reviewed the draft of the agent of the fourth defendant linked to the case papers, and the agent of each party repeated his previous statements and requests, and where there is nothing left to be said, the 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 prosecutor, the President of the Republic, being in this capacity, and through his deputy, claimed that the Council of Representatives, in its session dated 22/10/2016, discussed the subject of

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the draft law on municipal imports, voted on this law and sent it to the Presidency of the Republic, where it was published in the Official Gazette No. (4708) on 20/2/2023, and since the law includes several constitutional and legal violations, therefore, he took the initiative to challenge it before this court for the reasons stated in the lawsuit petition in detail, requesting a ruling that this law is unconstitutional and that the defendants be charged with fees, expenses and advocacy fees, and after the public presence pleading, the court reviewed the answer of the first defendant's two agents, the Speaker of the Council of Representatives, Councilion to his job contained in their list No. (34/Federal/2023 on 16/3/2023), which concluded: That the plaintiff, being in this capacity, refers to the violation of the law - the subject of the appeal - to other laws and that the court is competent to monitor the constitutionality of laws and not to interrupt them, as the plaintiff's attorney did not indicate in paragraphs (2, 3, 4 and 6) of the lawsuit petition constitutional articles that were violated by the law, as for Article (14) of the law, Islam is the official state religion and is a source of basis for legislation and it is not permissible to enact laws that contradict the constants of the provisions of Islam, the court also reviewed the response list of the second defendant, the Prime Minister, Councilion to his job numbered (s/2/2/68/13964 on 22/3/2023), which concluded: that his client is not suitable as a litigant in this lawsuit and requested the dismissal of the lawsuit to this party, and the court also reviewed the answer of the third defendant's agents, the Minister of Construction, Housing, Municipalities and Public Works, being in this capacity under the regulation dated 30/3/2023, which concluded: The plaintiff is the one who ratified the law - the subject of the lawsuit - and is thus like the one who sought to overturn what was done on his part, so his quest is returned to him, as the challenge to Article (6 / 1<sup>st</sup> and 2<sup>nd</sup>) of the

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Municipal Imports Law No. (1) of 2023, the payment of debts does not require the filing of a lawsuit except if it is not possible to meet them by legal means and is one of the means of forcing the debtor to implement his obligation forcibly, and Article (9) of the Municipal Imports Law No. (130) of 1963 the cancellation stipulates not to conduct a disposable transaction on the property unless it is sure that the municipal debts incurred by the taxpayer have been paid in full, as well as Article (24) of the Real Estate Tax Law No. (162) of 1959 as amended, all state departments recommended that no transaction be conducted on the property unless they verify the tax estimated on the taxpayer and that it has been paid, as for Article (7), the fine is one of the penalties imposed to induce the debtor to pay and the administration has the discretion to collect the fine, as for the appeal against Article (8 / 1<sup>st</sup> and 2<sup>nd</sup>) of the law, it does not conflict with the provisions of the law and is consistent with the basic purpose of municipal institutions, as for Article (14) of the law, its legislation is consistent with the sanctity of drinks Alcohol, which is a fixed sanctity in Islamic law, and that Islam is the religion of the state, and it is not permissible to enact a law that contradicts the constants of Islam, he requested the dismissal of the lawsuit, and the court also reviewed the answer of the fourth defendant, Mayor of Baghdad, being in this capacity in his list dated 22/3/2023, in which he requested the dismissal of the lawsuit for the reasons detailed in the regulation, including what was stated regarding the appeal in Article (6/ 1<sup>st</sup> and 2<sup>nd</sup>) of the law, which is a means of collecting government debts and was stipulated in Article (9) of the repealed law and Article (7) the amount of the fine is imposed only when the violation is realized, item (1<sup>st</sup>) of Article (8) is the same as what is stated in Article (5) of the repealed law and there is no interest for the plaintiff to challenge it, as for Article (14), Islam is the religion of the State and there is no dispute

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over the sanctity of importing, selling and manufacturing alcoholic beverages, as for the increase in fees at the qualitative and quantitative levels, this was imposed by the introduction of new professions - which did not exist previously - and the economic situation, as the court heard the statements of the agents of the parties recorded in detail, and upon considering the texts expressly contested in this lawsuit and considering the mutual requests and defenses between the parties in this lawsuit, this court finds that the challenge to item (first) of Article (6) of the law is not based on any constitutional basis that this court can adopt to destroy the presumption of validity of this text and its legitimacy, this text is also considered by the court to be a branch of the constitutional text contained in Article (27) of the Constitution, which made public funds inviolable, and obligated their protection on every citizen, and therefore the purpose of this text is to achieve protection for public money that is represented by the debts of the state on the property to be disposed of, and therefore the court concludes that there is no constitutional violation that requires the case to be answered in this regard, The same constitutional argument above can be relied upon by this court in determining the safety of item (2<sup>nd</sup>) of Article (6) of this law from the constitutional violation, as for Article (7) of the law, which stipulates ((The taxpayer shall be punished for violating the provisions of item (first) of Article (5) of this law and item (3<sup>rd</sup>) of Section 7<sup>th</sup> of the table attached to this law with a fine not exceeding (500,000) five hundred thousand dinars)) and the defect attributed by the plaintiff's agent that this is inconsistent with the living conditions of citizens, this court finds that the plaintiff did not refer to any constitutional text that intersects with the imposition of this fine, the imposition of fines does not take into account the living conditions, even if we take into account the argument of the plaintiff that the fine is not in line with the living

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conditions of citizens, but rather the imposition of the fine is to achieve the principle of deterrence from committing what the legislator considered a punishable violation that the citizen can avoid by not committing these acts, and the policy of criminalization and punishment is one of the original powers of the legislator within the constitutional limits, as for challenging items (1<sup>st</sup> and 2<sup>nd</sup>) of Article (8) and they contradict Article (28/2<sup>nd</sup>) of The constitution and if this has an impact on the livelihood of the citizen, this court finds that Article (28/2<sup>nd</sup>) of the Constitution exempts low-income people from taxes, with regard to article 8 and the provisions of the first and second items thereof, this relates to the authority of the Ministry of Construction, Housing and Municipalities and Mayorality of Baghdad to impose wages for the services they provide after obtaining the approval of the Economic Affairs Committee, on the other hand, there is no constitutional provision that contradicts the provisions of this article, nor is there justification for assuming the arbitrariness of these authorities in imposing wages that are not commensurate with the living conditions of citizens. Especially since the bodies responsible for determining these wages are those who assumed power through a democratic way that ensures popular control of these authorities, which makes them abide by the constitutional limits in imposing these wages in a reasonable manner commensurate with the living conditions of citizens, and this also falls within the periodic accounting of these authorities through general elections, as for the challenges raised by the plaintiff's agent regarding Article (14) of the law, it violates Articles 14, 15 and 17 of the Constitution it is a restriction of the right to work and deprives the state of fees and taxes that were generating large funds for the public budget this court finds that the sanctity of alcohol is a fixed matter in Islam and that the fatwa of all Muslims scholars of various sects because this

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sanctity is fixed in the Holy Book of God with conclusive Quranic verses in determining the sanctity of alcohol in its pronunciation and significance, his Almighty said ((you who believe! Intoxicants, gambling, idolatry, and divination are abominations of Satan's doing. Avoid them, so that you may prosper. Satan wants to provoke strife and hatred among you through intoxicants and gambling, and to prevent you from the remembrance of God, and from prayer. Will you not desist?)) Surat Al-Ma'idah – verse (90-91) We find in the two verses that God Almighty associated wine with monuments and children, which the Almighty said about in another place in His Holy Book (For it is immoral) Surat Al-Ma'idah – verse (3) Then the Qur'an expressed it that he called it (abomination) and the word (abomination) was launched in the Qur'an on idols and pork, which indicates alienation and severe reprisal, and then that the verse used the word (Avoidance) and the word avoidance is a word used in reprisals for idols and worship, and the Almighty said: (So stay away from the abomination of idols, and stay away from perjury.) Surat al-Hajj – verse (30), his Almighty also said (To every community We sent a messenger: "Worship God, and avoid idolatry) Surat an-Nahl – verse (36), and he said (As for those who avoid the worship of idols) Surat az-Zummar – verse (17), And he used (avoidance) to leave the major sins and sins, and the Almighty said (If you avoid the worst of what you are forbidden, We will remit your sins, and admit you by a Gate of Honor.) Surat an-Nisa' – verse (31) and (Those who avoid gross sins and indecencies—except for minor lapses) Surat an-Najjim – verse (32), in the Sunnah of the Prophet, the Prophet, may God's prayers and peace be upon him, said: "Every intoxicant is alcohol and every intoxicant is forbidden" and he said (He does not drink alcohol when he drinks it while he is a believer) and he said (Jibril came to me and said: O Muhammad, God cursed wine, who squeeze it,

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drinker, bearer, carry-to, seller, purchaser, and who serve it), since it is not permissible to enact a law that contradicts the constants of Islam, including this constant based on Article (2/1<sup>st</sup>/ Alif) of the Constitution, so the contested text is consistent with what was decided by Islamic law in that, but what the plaintiff's attorney stated that this text violates the provisions of Articles (14, 15 and 17) of the Constitution, this statement is not based on significant arguments, this is because the principle of equality stipulated in Article (14) is summarized by the determination of equality among Iraqis in rights and duties, and the contested article does not imply any privilege for one segment of Iraqis without the other, while the concept of rights and freedoms affirmed by the Constitution in Article (17) for Iraqis has been detailed by the Constitution in subsequent articles, namely the right in life, security and freedom in a manner that does not conflict with the rights of others, public morals, the right to privacy, the sanctity of housing, the right to litigation and defense, the right to work, the right to private property, the right to nationality, the rights to preserve the family, the protection of childhood, motherhood, old age, the care of young people and youth, the freedom of travel and expression, and other rights and freedoms necessary for a decent and decent life expressly stipulated in the provisions of the Constitution, on the contrary, the Court finds that this prohibition contained in the above text supports the enjoyment by Iraqis of their rights to live in a cohesive family in its religious, moral and national entity and values as determined by Article (29/I/A) of the Constitution, because of the evils in the spread of alcohol consumption that strike at religious, moral and social values that must be preserved in the community, there is no common sense that there is room for tolerance in the circulation and consumption of alcohol, its import or manufacture, and among the moral values of society that are intended to prevail. As

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for the argument that the text of Article (14) will deprive the state treasury of financial revenues that were supplied by the fees and taxes imposed on the trade and manufacture of liquor, this argument is irrelevant, because the state and its treasury are a means to achieve a decent life envisioned by the constitutional legislator for society and its members, which is not an end in itself, as the purpose of developing constitutional texts and then laws is for the individual to live in a society healthily and morally sound, has opportunities for a decent living, fights crime and its causes, and everything that worries about living in peace, perhaps one of the causes of many crimes and social problems is the consumption of alcohol and that combating these crimes and social problems often costs the state treasury significant and invisible funds spent by the state in police, educational, sometimes health and other institutions related to this, from the foregoing This court finds that the plaintiff's claim to the President of the Republic Councilion to his job was not based on sufficient constitutional reasons to answer it against the first defendant, the Speaker of the Council of Representatives. As for the other defendants, being in their capacity, the Prime Minister, the Minister of Construction, Housing, Municipalities, and Public Labors, and the Mayor of Baghdad, the court finds that they do not fit litigants in this lawsuit because they are executive bodies that are not legislating this law, therefore, the lawsuit shall be subject to dismissal against them from this side, for all of the foregoing, the Federal Supreme Court has decided the following:

First: Dismissal of the lawsuit of the plaintiff President of the Republic / being in this capacity against the defendant Speaker of the Council of Representatives being in this capacity for lack of constitutional violation.

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Second: Ruling to dismiss the plaintiff's lawsuit against the Prime Minister, Minister of Construction, Housing, Municipalities, and Public Works, and the Mayor of Baghdad / being in this capacity for not directing the litigation based on Article (80) of the Civil Procedure Law No. (83) of 1969, as amended.

Third: the plaintiff being in this capacity, shall be charged with the expenses and attorney fees of the defendants' agents in addition to their jobs, the legal advisor Haitham Majed Salem, the official jurist Saman Mohsen Ibrahim, the legal counsel Haider Ali Jaber, the assistant legal advisor each of (Haitham Ali Khudair and Russel Kamel Jawad) and the counselor Saad Abd El, Anis Mohammed, and Counselor Intisar Salman Ali an amount of one hundred thousand dinars distributed equally among them.

The decision has been issued with majority, 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 and 5) 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 10/Sufur/1445 Hijri coinciding with 27/August/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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