

Republic of Iraq
Federal Supreme Court
Ref. 60 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 14/5/2023 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 Ali, and Dyar Mohammed Ali, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Ayad Jaafar Ali Akbar Al-Asadi – his agent the barrister Saad Ghazi Muslih.

The Defendant: Speaker of the ICR/ being in this capacity- his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed through his agent that the Iraqi Council of Representatives issued the Health Insurance Law No. (22) of 2020 and published in the Official Gazette No. (4614 dated 1/2/2021) and entered into force as of 1/8/2021 and took the initiative to challenge its constitutionality for the following reasons: First: Article 16 thereof makes participation in the Health Insurance Fund mandatory for a certain category of employees, and optional for other categories, which violates the Constitution in articles 30, 14, 111, and 2/1st/Alif thereof, where Article 30 of it stipulates (First: The State guarantees to the individual and the family - especially children and women - social and health security and the basic elements for living a free and dignified life, providing them with an adequate income and adequate

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housing), It turns out that sponsorship means (ensuring the thing, that is, committing himself to it, that is, bearing it), and this means that the state bears the sole responsibility for providing free health care, and that the Iraqi legislator may have made a serious mistake when he confused two terms, which is sponsorship and (solidarity - which is cooperation), which was indicated by the reasons for the law, and that the law made health insurance (mandatory) for all state employees, not (optional), and this contradicts the principle of equality between citizens contained in Article (14) of the Constitution, whereas Article (111) of the Constitution stipulates that (oil and gas belongs to all the Iraqi people in all regions and governorates), which means that the citizen has paid his bill in advance, and entrusted the government with his management, and there is no way to pay again and from his own income that he receives in return for the work or service he provides to the state under the pretext of solidarity, the services must be free, because they are paid in advance to the government through the annual budgets allocated to ministries, and that the canceled Iraqi Constitution of 1970 decided An acquired right of citizens, which is represented by free medical health services under a dictatorial regime, but the people lost this right acquired under the democratic system after 2003, and Article (2/1st/Alif) of the Constitution stipulates that (it is not permissible to enact a law that contradicts the constants of the provisions of Islam), and it was stated in the hadith that (people are in control of their money), and under Article (16 / fourth) of the law, which states (registrants are granted a health insurance card and health services are provided to subscribed citizens after six months from the date of registration) will be deducted, and then services will be provided after 6 months from the date of registration, and this is

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contrary to justice, and it was stated in article 16/ninth of the law that the council issues instructions according to which the value of the subscription allowance and the premium to be paid to the individual and family are determined, this means that the contribution amount can be increased against the employee's will, which is a new door for corruption through which deduction is made without the employee's consent, and the Council of Ministers has the authority to amend the percentages, monthly installments, and subsidy ratios contained in the law based on the proposal of the authority's board of directors, under articles 27/third/Heh and 34 thereof, and through this it is clear that the state is towards privatizing the health sector, and increasing the amounts of contribution and deduction, which constitutes a violation of the constitution, which affirmed that there is no tax, no fee, No exemption, except by law, it is also stated in articles 16 / fifth and 25 of the law that the Fund Authority may contract with health government institutions, while it is obligated under the Constitution and the law to provide health care, in addition to what is stated in the reasons that the law aims to ensure the quality of health services, reduce burdens on citizens, reduce poverty, and achieve the principle of solidarity and health justice, which is misplaced reasoning that the law violates the text of article 30 of the constitution, and contradicts reality, as it will not improve Medical services being the same services, the law does not oblige specialist doctors to contract, which means that the contractor will be new, not practitioners. Second: Article 36 of the law violated the constitution, as it did not include provisions to compensate the citizen, and was limited to financial penalties for the contracting parties, and the law did not specify the responsibility of the fund and its management for any defect that occurs to the patient, contrary to article 19/sixth of the constitution,

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which gives the right to every individual to be treated fairly in judicial and administrative procedures. Third: The law introduced several formations that burden the state and positions that contradict the policy of administrative rationalization, and did not follow the legal fundamentalist methods to occupy those positions, but rather adopted quotas. Fourth: The Minister of Health is the one who manages the fund and has broad powers, and this is contrary to the principle of independence stipulated by law. Fifth: Article (15/second) of the law states (in the event of a financial deficit in the fund, the Council of Ministers must choose the method of filling the deficit), and that the Council of Ministers did not object to the law, although it is a proposal submitted by Parliament, not a draft law, and it contains a financial commission contrary to the direction of the constitutional judiciary Sixth: Article (9/I/S) of the law violates the constitution, which gave the board of directors of the authority, headed by the Minister of Health, the right to borrow external and internal to fill the deficit in the fund, and this is a serious issue and has Financial and sovereign implications and consequences on the government. Seventh: The issuance of the law in its entirety contradicts articles 114 / fifth and 115 of the constitution, which made the formulation of public health policy one of the joint powers in cooperation with the region and governorates that are not organized in a region, as it was issued, which is a federal law without reference to the region and governorates that are not organized in a region, and in practice and based on article 115, the law will be implemented in the governorates and not implemented in the region, because it is one of the joint powers between the federal government and the region, and priority is given to the law of the region, and for the foregoing and the fact that the subject matter of the lawsuit is

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diamond. Therefore, the plaintiff asked this court to rule that Article 16 of the Health Insurance Law No. 22 of 2020 in particular, and the law in general is unconstitutional. The case was registered with this court in number (60/federal/2022) and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2005 and the defendant is informed of its petition and documents in accordance with the provisions of Article (2/1st) of the same system, and his agents replied with the reply regulation dated 23/3/2022 Conclusion: that the law - the subject of the challenge - was enacted by the House of Representatives in accordance with its constitutional powers contained in Article (61/1st) of the Constitution in force of 2005, which is (Legislation of laws Federal) where the law aims to ensure the quality of health services and access to all citizens of all categories, whether they are employees, private sector, retirees and others, and to achieve the principle of social solidarity, and reduce the financial burdens on those covered by its provisions, and that it was a legislative choice in accordance with the provisions of the Constitution and does not contradict any of the provisions referred to by the plaintiff, nor may the plaintiff make himself an agent in place of the bodies that bear the burden of what he referred to regarding the financial burdens, and the creation of formations to impose his claim, and the Interim Constitution of 1970 was abrogated by the Constitution of the Republic of Iraq of 2005, so the defendant's agent requested the dismissal of the plaintiff's lawsuit and charged him judicial fees, expenses and attorney's fees. After completing the procedures stipulated in the Court's Rules of Procedure, mentioned above, a date was set for pleading in accordance with article 2/2nd thereof and notified to the parties, and on the appointed day, the court

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was formed, and the plaintiff and his agent attended, and the defendant's agent attended and began to conduct the public presence pleading, the plaintiff and his agent repeated what was stated in the lawsuit petition and requested judgment according to what was stated therein, the defendant's attorney answered and requested the dismissal of the lawsuit for the reasons mentioned in the regulation dated 23/3/2022, the court checked, and decided to include the Minister of Health and the Minister of Finance/ being in their capacity, the Iraqi Medical Association, the Dental Syndicate, the Iraqi Pharmacists Syndicate and the Iraqi Nursing Syndicate, third persons in the lawsuit to clarify from them what is necessary to resolve it, so the (Minister of Health /being in this capacity) attended his two legal agents, Farid Kazem Sidra and Ahmed Dawood Ahmed, and attended on behalf of (Minister of Finance / being in this capacity) his agent, human rights employee Jassim Muhammad Saeed, and attended on behalf of (Doctors Syndicate) its agent, Dr. Jassim Mutashar Thamer, and attended by the President of the (Dentists) Dr. Abu Bakr Ziad Shafiq, and attended the President of the Syndicate (Pharmacists) Dr. Mustafa Muhammad Amin, and attended the Syndicate (Nursing) Firas Ali Al-Moussawi, and after the completion of the court for clarification decided to remove the third persons from the lawsuit, the court noted the receipt of the letter of the General Secretariat of the Council of Representatives / Legal Department No. (642 on 18/1/2023) and its attachment a copy of the preparatory work for the legislation of the law - the subject of the challenge - upon its request, which the court reviewed and linked within the case papers, and the parties repeated their previous statements and requests, and where there is nothing left to be said, I

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understand the conclusion of the pleading, and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's agent, after limiting his client's claim to the court session dated 10/5/2022, challenged the constitutionality of the Health Insurance Law No. (22) of 2020 in Article (16) thereof, which made participation in the Health Insurance Fund mandatory for a certain category of employees, and optional for other categories under item (3rd/Alif) thereof, for violating Article (14) of the Constitution of the Republic of Iraq for the year 2005, which stipulates: (Iraqis are equal before the law without discrimination as to sex, race, nationality, origin, color, religion, sect, belief, economic or social status), and clause (9th) of the same aforementioned article of the law, which states: (The Council shall issue instructions specifying the following: Alif- The value of the contribution allowance and the premium to be paid to the individual and the family) and Article (27/first) of the law, which determined the contribution allowances of employees and retirees and its equivalent in the private sector and citizens for one time for violating Articles (2, 30 and 31) of the Constitution, also, the law did not take its right path in legislation, as it was not a project submitted by the Prime Ministry or the Presidency of the Republic. The court reviewed the defenses of the defendant (Speaker of the Council of Representatives /being in this capacity) submitted to it by his agents through their response list and during the pleading, according to which they requested the dismissal of the lawsuit, as the law came as a

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legislative option for the House of Representatives following its constitutional powers under Article (61/1st) of the Constitution to ensure the quality of health services and access to them for all citizens and achieve the principle of social solidarity, and the plaintiff does not have to make himself an agent for the authorities concerned with the law. After hearing the statements of the third persons for clarification, the Minister of Health and the Minister of Finance, in addition to their functions, the Iraqi Medical Association, the Dental Syndicate, the Iraqi Pharmacists Syndicate, and the Iraqi Nursing Syndicate, and reviewed their regulations, as well as the preparatory work for the enactment of the law, the Federal Supreme Court finds the following:

First: The legislation of the Health Insurance Law No. (22) of 2020 came in the application of the text of Article (30) of the Constitution of the Republic of Iraq for the year 2005, which stipulates (First: The State guarantees to the individual and the family - especially children and women - social and health security and the basic elements to live a free and decent life, which provides them with an appropriate income, and adequate housing. Second- The State shall guarantee social and health security for Iraqis in the event of old age, illness, inability to work, homelessness, orphanhood, or unemployment, protect them from ignorance, fear, and want, and provide them with housing and special curricula for their rehabilitation and care, which shall be regulated by law. The aim of enacting the law, according to the reasons for it, is to ensure the quality of health services and citizens' access to them everywhere in the country and at any time, to reduce the financial burdens on citizens, reduce poverty and achieve the principle of social solidarity and health justice stipulated in

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Article (30 / 1st and 2nd) of the Iraqi Constitution to promote the proper application of the Health Insurance Law and to return the health departments and separate them from the governorates so that the provinces enjoy equal health services. The goal of the Health Insurance Law is to provide health service to subscribers in return for the insurance premium based on the factors that affect the calculation of the premium, and health insurance represents an economic and social organization aimed at facilitating medical service without the financial obstacle standing as a barrier between the individual and the possibility of obtaining health service as it represents, not a guarantee against disease, but a guarantee against the cost of medical service, as care for the health and environmental reality is one of the priorities of countries with advanced political systems, and the Republic of Iraq is one of the countries that seek to achieve this under the Constitution, Article (31/1st) of the Constitution stipulates: (Every Iraqi has the right to health care, and the State is concerned with public health, and the means of prevention and treatment are ensured by the establishment of various types of hospitals and health institutions). Second: All those interested in the health reality in the world, not in low-income countries, seek to draw the ideal policy through which the health sector can be financed, whether in terms of the method of collecting funds and how to collect them to distribute potential risks and what services are provided or in terms of how to pay the fees of their providers, and the goals vary from one country to another, but the common concern is the need to provide sufficient funds for health, improve efficiency, reduce expenses and reduce financial risks that Involved in access to health care. Health coverage consists of the availability and provision of promotional, preventive, curative, and rehabilitative health care to all at an affordable cost, thus

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achieving justice and equity in obtaining it. Achieving universal health coverage depends on regulatory mechanisms that allow financial contributions to be collected to build an efficient and equitable health system and to pool these contributions together so that the costs of health services are shared by all and not borne by each suffering from the disease alone. Although there are various regulatory options for achieving universal health coverage, the main common advantage of successful systems is that part of the financial contributions depends largely on sources of mandatory funding such as various forms of taxation, salary deductions, or mandatory contributions to health insurance. The relative acceptance of the importance and concept of solidarity in society and citizens' trust in their governments and institutions, and the decisive obstacle to this is the ability of governments to mobilize tax revenues or contributions to create sufficient financial means to achieve health coverage for all citizens. Third: Health insurance or health insurance is a branch of social insurance as defined by the World Health Organization as (the means by which some or all of the cost of health care due to the patient subscribed to the system is paid when he falls ill, it protects the insured from paying the high cost of treatment in cases of illness and the basis of health insurance is that the insured subscriber pays a regular subscription to an administrative institution, the General Authority for Health Insurance, which is responsible for managing those payments within the framework of a system that pays the expenses of treatment when he falls ill to health service providers) and health insurance is based mainly on the concept of distributing the expected risk that the individual may face, which leads to reducing the burdens and costs incurred when treating the sick conditions to which the insured are exposed, and thus it is a social

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system based on cooperation and solidarity between individuals to bear what one of them cannot bear alone, and insurance companies organize the benefit of risk distribution for a known fee, and health insurance aims to remove the financial obstacle between the patient and his access to an integrated medical service at an acceptable cost, in addition to raising the level of social security of the individual and improving the level of medical services provided to him, as well as urging more diversification and competition in the provision of medical services. It should be noted that the health insurance benefits for the content and government agencies in addition to the national gains, for the content, with the increase in the cost of health services, the disease threatens every citizen and is accompanied by financial burdens that most cannot afford due to the decline in the level of income, and without health insurance or health insurance, health care costs become large and unavailable, as through health insurance, health care does not depend on the subscriber's financial ability but rather depends on the presence of the disease or not, as for government agencies, health insurance helps state departments to raise their productivity by maintaining health care for their employees, reducing losses resulting from interruption from work under the pretext of illness, achieving job satisfaction among employees and workers, and enhancing their association with their employers and their sense that their employer is not only concerned with the salaries it provides them in exchange for their work, but also cares about their health and social conditions. Health insurance brings benefits to service providers from the application of the guarantee, as there is a large influx of patients because everyone can visit health service providers at low prices or sometimes for free, under the umbrella of health insurance. On the other hand, health

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service providers are reassured that insurers can pay any costs, no matter how high, as long as they are within the contractual terms. As for the national gains achieved from health insurance, they are represented in increasing the productivity of human resources, increasing the rate of economic growth, and the growth of the public and private health sectors because they competed in attracting health content. Fourth: The increase in the costs of health services sometimes makes the state unable to meet those costs and develop them to ensure the provision of full health coverage for all citizens, as the reasons for increasing the costs of health services vary from one country to another, but in most cases, they are either demographic reasons represented by changes in the population, whether in terms of increasing the population or in terms of increase towards groups with the greatest need for health care, such as increasing the number of the elderly or young. Age or homeless population. Economic trends also have a significant impact on the health reality and the costs of health services, in addition to the general increase in prices, the increase in the number of doctors and hospitals, the number of workers in the health sector, technological progress represented by the use of advanced medical devices, and the change in disease patterns, whether chronic diseases, long-term diseases, or an increase in modern diseases, all of which lead to an increase in the costs of health services, therefore, most countries of the world have turned to the health insurance system or health insurance to face this increase, but all of this depends on the political factors in the country, and the extent to which full faith is achieved on the need to work with the required national spirit, high care and adherence to the values of integrity, and to spread a culture of cooperation and unify efforts for the purpose of advancing the health

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reality in the country in a way that ensures the provision of full health coverage in a way that leads to high-quality health services, and at the lowest costs, otherwise the application of the health insurance system With the absence of these values, it represents more financial burdens on citizens and a deprivation of their constitutional rights. Fifth: Each type of health insurance or health insurance has its advantages, and each type has its defects, caveats, and requirements necessary for its success, however, the application of any type of health insurance is better than the complete absence of insurance because the alternative to insurance is direct payment, which causes low-income people to face the problems of high costs of health services. There are two types of health insurance or health insurance, the first is governmental – insurance established and managed by the state, also called the compulsory health insurance system. The second type: is the private health insurance system - The Iraqi Health Insurance Law No. (22) of 2020 has adopted the principle of compulsory registration for all state employees, as Article (16/3rd) of it stipulates: (Registration shall be: A- Mandatory and includes all state employees. B- Optional and includes: 1. All retirees. 2. Unions. 3. Associations. 4. Companies and employers. 5. Citizens and their families individually), and whereas what was stated in the plaintiff's lawsuit after it was limited to the appeal to Articles (16 / third - a), (16 /9th) and (27 / first - Beh, Jim, Dal, Heh) of the Health Insurance Law No. (22) of 2020 and the method of its legislation is considered a legislative option for the House of Representatives in accordance with its competence contained in Article (61/first) of the Constitution and does not violate any of its provisions, which requires the dismissal of the lawsuit in this regard. Sixth: Whereas Article (27/3rd/Alif) of the Health Insurance Law stipulates: ((Third:

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Determines and includes the monthly installment for employees and retirees, and their equivalents in the private sector, as follows: A - Higher and special grades of a general manager and above and their equivalent in the private sector (2.5% two and a half percent of the total monthly salary)) and that what is stated therein contradicts the provisions of Article (14) of the Constitution, which stipulates: (Iraqis are equal before the law without discrimination as to sex, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status) which requires a ruling on its unconstitutionality. The provisions of Article (27 /3rd - Beh), which stipulates ((determines and includes the monthly installment for employees and retirees and their equivalents in the private sector as follows: Beh- All state employees and their equivalents in the private sector (1%) one percent of the total monthly salary)) includes all employees and the deduction increases according to the mentioned percentage by increasing the amount of salary and achieves more justice following Article (14) of the Constitution. Seventh: Based on the provisions of Article (46) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, which states (the court, when considering the challenge to the unconstitutionality of a legislative text, may address the unconstitutionality of any other legislative text related to the contested text), so and since Article (9 / first / Jim - Sin) stipulates: (The Board of Directors of the Authority shall assume the following tasks: Jim- Determining or amending the value of the contribution allowance and the annual or monthly premium for state employees and retirees and the controls for the inclusion of family members not provided for in this law. Sin- Contracting internal and external loans in accordance with the law) The provisions of Article (9/1st- Jim) shall contradict the provisions of Article (28/1st) of the Constitution,

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which stipulates that: (Taxes and fees shall not be imposed, amended, collected, and exempted from them, except by law), which requires addressing them, and ruling them unconstitutional. The provisions of paragraph (Sin) of the same above-mentioned article contradict the provisions of Article (110/1st) of the Constitution, which stipulates that: (The federal authorities shall have the following exclusive competencies: First: drawing up foreign policy and diplomatic representation, negotiating international treaties and agreements, borrowing policies, signing and concluding them, and drawing up sovereign foreign economic and trade policy), which requires addressing them and ruling them unconstitutional. The Federal Supreme Court found that Article (15/1st) of the Health Insurance Law No. (22) of 2020 stipulates: (First: The Commission shall seek the assistance of an Iraqi or foreign consulting office to audit and examine the financial position of the Fund once a year, and the office's report shall be submitted to the Board through the Director General of the Fund) and that the phrase (or foreigner) contradicts the provisions of Article (103) of the Constitution, considering that the Constitution of the Republic of Iraq for the year 2005 specified under Chapter 4th of Part Three independent bodies, including what was stated in Article (103/1st) thereof, which stipulates: (First: The Central Bank of Iraq, the Financial Supervision Bureau, the Media and Communications Commission, and the Endowments Bureaus are financially and administratively independent bodies, and the law regulates the work of each body) Thus, the Financial Supervision Bureau is a financially and administratively independent body and one of the federal bodies, and the Financial Supervision Bureau Law No. (31) of 2011 has regulated the work of the Audit Office, where the functions and competencies of the Bureau are defined under

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Articles (3 and 4) of the aforementioned law, so the phrase (or foreign) mentioned above requires addressing them and ruling them unconstitutional. The court also found that what was stated in Article (16 / Second and Fourth) of the Health Insurance Law No. (22) of 2020, which stipulated: (Second: The registration of citizens begins immediately after the formation of the authority. Fourth: Registrants are granted a health insurance card and health services are provided to subscribed citizens after six months from the date of registration) which contradicts the provisions of Article (31/1st) of the Constitution, considering that the provision of health care and care for public health should not be restricted to a specific time, but rather it is a continuous government platform for action, which requires addressing the two aforementioned paragraphs, and ruling them unconstitutional. Whereas Article (18/3rd) of the Health Insurance Law stipulates: (Service providers may object to the decisions of inspectors to the Board of Directors and the Board may appoint a committee for the purpose of deciding on the application and its decision shall be final), the Court found that the phrase (and its decision shall be final) contained in item (third) of Article (18) above contradicts the provisions of Article (100) of the Constitution of the Republic of Iraq, which stipulates: (It is forbidden to stipulate in the laws that any act or administrative decision is immune from appeal), so it is necessary to address the said statement and to rule it unconstitutional. Also, article (36/1st) of the Health Insurance Law stipulates: (First: The late payment of all installments due from the date of entry into force of this law) contradicts the provisions of Article (19/9th) of the Constitution, which stipulates: (Laws have no retroactive effect unless otherwise stipulated, and this exception does

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not include tax and fee laws), which requires addressing them and ruling them unconstitutional.

Accordingly, and for all what above-mentioned. The Federal Supreme Court decided the following:

1. Dismissal of the plaintiff's lawsuit (Ayad Jaafar Ali Akbar) regarding the challenge to the constitutionality of the provisions of Article (16/3rd-Alif), Article (16/9th), and Article (27/1st - Beh, Jim, Dal, Heh) of the Health Insurance Law No. (22) of 2020 for lack of constitutional violation.
2. The unconstitutionality of Articles (9 / 1st - (Jim) and (Sin)), the phrase (or foreign) of Article (15 / 1st), Article (16 / 2nd and 4th), the phrase (and its decision shall be final) of the item (3rd) of Article (18), Article (27 / third - Alif), and Article (36/1st) of the Health Insurance Law No. (22) of 2020.
3. To burden the parties with the relative expenses and fees, and charging each party the attorney's fees and the agent of his opponent an amount of (one hundred thousand) dinars distributed in accordance with the law. The decision has been issued with the majority, final, and binding for all authorities according to the provisions of articles (93/1st and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/1st 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 23/Shawwal/1444 Hijri coinciding with 14/May/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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