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Federal Supreme Court
Ref 117/ federal/2024



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The Federal Supreme Court (F S C) has been convened on 13/5/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Husain 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 Majid Ahmed.

The Defendants: 1. The Prime Minister/ being in this capacity- His agent the legal adviser Qasim Suhaib Shakour.

2. The Minister of Oil/ being in this capacity -His two agents the human rights employees Saman Mohamed Hussein and Muhammad Majeed Mizaal.

The Claim:

The plaintiff, through his agent claimed that it is required that the actions of the executive branch be consistent with the provisions of the constitution and the laws in force, especially article 66 of the constitution, which stipulates that: (The federal executive authority consists of the President of the Republic and the Council of Ministers exercising its powers in accordance with the Constitution and the law), however, the first defendant, in exercising the powers assigned to him, issued the decision No. (3004/2222021) on 29/12/2022, including the approval of what was stated in the letter issued by the second defendant No. (Dal/379) on 27/12/2022, which includes in paragraph (4) thereof, the proposal to reduce the processing price of the white oil product in the Kurdistan Region to become (500 dinars/liter) instead of the previous price (750 dinars/liter), similar to private sector companies, and because of the defendants' competencies in managing petroleum

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products, distribution and marketing, which included violating the constitution in more than one place, as the quantities of oil products allocated to the governorates The Kurdistan Region is low compared to the governorates of Iraq that are not organized in the region, and this is clearly shown in the letter of the Petroleum Products Distribution Company sent to the Ministry of Natural Resources in the Kurdistan Region, numbered (101/3219) on 8/11/2023, which included that the quantity allocated to all governorates of the Kurdistan Region is (50,000) cubic meters, which equals five million liters, noting that so far this quantity has not been processed, as it appears from the aforementioned book that the share does not exceed (576) cubic meters for the governorates of all of the Kurdistan Region, while the Petroleum Products Distribution Company / Karbala Branch has already announced on the Karbala Governorate to equip citizens with more than five million liters this year until the seventeenth of November month, noting that the quantities allocated to the Kurdistan Region are not commensurate with what citizens living in the Kurdistan Region consume it is considered to meet the citizens' need of oil products through government stations that sell at official prices which are higher than the official prices in other governorates is the exception and on a small scale compared to the private stations that sell these products at prices that burden the vast majority of citizens living in the region, and that what is marketed to the governorates of the Kurdistan Region of products at higher prices than the prices at which the same products are marketed to other governorates, for example, the price of white oil product (500) dinars per liter throughout the past period, according to what was shown by the letter of the Petroleum Products Distribution Company to the Ministry of Wealth the aforementioned natural, which contradicts with the requirements of justice and equality among Iraqis,

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the executive authority also provides petroleum products such as gasoline, white oil, gasoline and cooking gas (LPG) to all governorates except the governorates of the Kurdistan Region in sufficient quantities and at reasonable prices, as the price of a liter of improved gasoline is (650) dinars, the price of a liter of regular gasoline is (450) dinars, the price of a liter of white oil is (150) dinars, and the price of a liter of fuel oil is (400) dinars and the price of a liter (LPG) cars (200) dinars and the price of a cylinder of cooking gas (5000) dinars, which are prices that the Iraqi citizen does not see in the Kurdistan Region, even at government stations, the defendants' procedures / in addition to their functions related to the processing of oil derivatives and their pricing to the Kurdistan Region clearly intersect with the principle of equality guaranteed by the Constitution in Article 14 thereof, and with the joint ownership of oil and gas by all Iraqis stipulated and guaranteed by Article 111 of the Constitution, which stipulates that: (Oil and gas belong to all the Iraqi people in all regions and governorates), which requires fair participation in the use of the exploitation of this property, which should be achieved by the management of the Ministry of Oil for this wealth and service, and with the adoption of a fair and equitable distribution commensurate with the distribution of population throughout the Iraq guaranteed by the Constitution in Article 112 thereof, and with what was decided by the Federal Supreme Court in its 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 north to south and from east to west, regardless of about nationality or religion and that oil and gas throughout Iraq belong to the Iraqi people and that no federal authority or local authorities of the regions and provinces may exceed it...) , and its decision No. (224 and its unified 269/federal/2023) and the endorsement

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thereof of the principle fair distribution of wealth among all Iraqis without discrimination and regardless of their presence in any governorate or region, therefore, and based on Article (93/3rd) of the Constitution, the plaintiff asked this court to rule the invalidity of the Prime Minister's decision No. (3004/2222021) on 29/12/2022, approving what was stated in the letter issued by the second defendant in the number ((D/379 on 27/12/2022 - containing in paragraph (4) thereof, the proposal to reduce the price of white oil product in the Kurdistan Region To become (500 dinars / liter) instead of the previous price (750 dinars / liter) like private sector companies)) and asked to oblige them to abide by the principle of equality in providing the services they are specialized in providing among citizens in all governorates of Iraq in a way that contributes to securing the basic elements for living a decent life in accordance with the requirements of the constitution and providing petroleum products in the governorates of the Kurdistan Region like the governorates of other Iraq and at the prices at which these products are sold to other governorates and charging the defendants fees, expenses and attorneyship fees. After registering the case with this court No. (117/Federal/2024) and collecting the legal fee for it, and notify the defendants of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) for the year 2022, the first defendant's attorney responded by the reply dated 12/5/2024 in conclusion: that the plaintiff's claim must be rejected for lack of jurisdiction, the plaintiff does not have the right to file this lawsuit, due to the lack of interest under its conditions stipulated in Article 20 of the court's internal system, and article 6 of the Civil Procedure Law No. 83 of 1999, as amended, and he is not entitled as a deputy in the Council of Representatives, this lawsuit was filed where the court, by its decision

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No. (140 and its unified 141/federal/2018), had previously issued a ruling the unconstitutionality of Article 6/II of the Law of the Council of Representatives and its Formations No. 13 of 2018, which included the right of the deputy to litigate before the judicial authorities representing 100,000 people, this is what the court's judgment has settled on, and this lawsuit is subject to reject in this regard, as the plaintiff has previously filed the lawsuit with the number (230/federal/2023) before the court against the Minister of Oil / in addition to his job, as well as the lawsuit with the number (156/federal/2023), so for the previous decision on the same subject, the lawsuit is subject to reply, and there is no decision from the Council of Ministers, but rather the approval of the Prime Minister on what was stated in the letter of the Ministry of Oil / Petroleum Products Distribution Company (PJSC) in number (D/379) On 27/12/2022, which includes reducing the price of a liter of white oil to (500) dinars instead of (750) dinars, similar to private sector companies, as this appeal it is against the interest of the Kurdistan Region because its cancellation causes harm to them, and the price of a liter of white oil returns to (750) dinars, whereas, the Petroleum Products Distribution Company is a self-financing economic unit wholly owned by the state and enjoys legal personality and financial and administrative independence and operates on economic bases (according to the profit and loss criterion), as the region's share is secured by importing in the international bulletin through the Oil Marketing Company and it is transported in the basins from the southern ports, so these prices are higher than the prices of local oil products that are processed by refineries affiliated with the Ministry of Oil, and the Kurdistan Regional Government can support the price of oil products through its share in the federal general budget, which is determined in a total manner similar to the federal government, as well as providing

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them from the oil refineries in the region affiliated to the Ministry of Natural Resources, so the court was asked to rule on rejecting the appeal in form and charging the plaintiff with expenses, fees and attorneyship fees. After completing the procedures required by the Court's Rules of Procedure No. (1) of 2022, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, in which the court was formed, so the plaintiff and his agent attended, the defendants' agents attended, and the public presence of the plaintiff and his agent began to conduct the public presence pleading, the plaintiff and his agent repeated what was stated in the lawsuit petition and requested a ruling accordingly, the agent of the first defendant answered requesting to reject of the lawsuit for the reasons stated in his list linked to the lawsuit, the second defendant's agent answered and requested to reject of the lawsuit for the reasons stated in their regulations dated 13/5/2024 high lighted in the session ((which came in repetition of what was stated in the list of the first defendant's agent in terms of jurisdiction and interest and previously ruled they added that the prices of petroleum products available to citizens through the Petroleum Products Distribution Company and its distribution outlets are subsidized by the federal government, as well as the crude oil that supplies to the refineries of the federal government at the price of the cost of extraction only, while the products supplied by the Kurdistan Region are through import from the Ministry of Oil and at the price of the international bulletin through the Oil Marketing Company, and the Kurdistan Regional Government can support the price of oil products through its share in the federal general budget, which is determined in a total manner similar to the federal government, and the Ministry of Oil sells petroleum products directly to citizens in the Kurdistan Region, but it is sold directly through the directorates of oil and minerals (Erbil,

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Sulaymaniyah, Dohuk) and is under its direct management and supervision, and the Ministry of Oil has no authority over the distribution outlets in the Kurdistan Region, Rather, it is under the management and authority of the Ministry of Wealth in the Kurdistan Regional Government, and has determined the amount of (5000 m³) of white oil for this season from the Ministry of Oil, as in previous years, based on the Prime Minister's directive No. (2329054) on 10/10/2023, regarding what was stated in the letter of the Iraqi Council of Representatives No. (258) on 5/10/2023, and that the supplied quantity of white oil allocated in the aforementioned paragraph it reached an implementation rate of (80%) in all governorates of the region, where the total quantity reached (40237 m³) until 28/2/2024, not as stated in the lawsuit (576 m³), and quantities have been allocated to support the displaced in camps in the governorates of the region at the expense of Ministry of Migration and Displacement with a total amount in the governorates of the region (3230200) liters of white oil, (200) liters per family during the season, and (799805/ liter) of gas oil for generators in IDP camps during the current winter season, starting from September/2023 until February/2024, it also prepared a quantity of (130,000 / liter) of white oil free of charge to needy families in Sulaymaniyah province according to the directives of the Ministry of Oil fixed on the letter of the Prime Minister's Office No. (2404758) on 11/2/2024, and the decision of The Prime Minister - the subject of the challenge - included reducing the price of white oil product to be (500 dinars / liter) instead of (750 dinars / liter) this is positive, especially since the oil products processed for the governorates of the Kurdistan Region are secured by importing in the international bulletin through the Oil Marketing Company / one of the formations of the Ministry of Oil and are transported in the basins from the southern ports, and that the

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price difference is borne by the Ministry of Oil)), the court reviewed the aforementioned regulation and linked it within the case papers and after the court completed its scrutinies, 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 requested, through his agent to rule that the decision of the first defendant was invalid Prime Minister / being in this capacity No. (3004/2222021) on 29/2/2022, which included the approval of what was stated in the letter issued by the second defendant, Minister of Oil, being in this capacity No. (Dal/379) on 27/12/2022 contained in paragraph (4) thereof, proposal to reduce the price of white oil product in the Kurdistan Region to become (500 dinars /liter) instead of (750 dinars / liter) like companies the private sector, and also requested that the first and second defendants be obliged to abide by the principle of equality in the provision of services they are competent to provide to citizens in all governorates of Iraq, and in a way that contributes to securing the basic ingredients for living a decent life in accordance with the constitution and providing petroleum products in the governorates of the Kurdistan Region, similar to the governorates of other Iraq and at the same prices at which they are sold to other governorates, and with regard to the plaintiff's request regarding the ruling on the invalidity of the Council of Ministers Resolution No. (3004/2222021) on 29/2/2022 approving what was stated in the letter of the second defendant Minister of Oil / Petroleum Products Distribution Company Reducing the processing price of white oil products for the governorates Kurdistan Reion to be (500 dinars / liter) instead of (750 dinars / liter) like private sector companies the court finds that the

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plaintiff does not meet the interest condition necessary to file this lawsuit stipulated in Article (20) of the rules of procedure of this court No. (1) of 2022 which requires the plaintiff to have a current, direct and influential interest in his legal, financial or social status starting from the filing of the lawsuit until a ruling is rendered therein, Consequently, the plaintiff's claim is dismissable in respect of his aforementioned request, as for the plaintiff's request oblige the first and second defendants to apply the principle of equality in the provision of services and the provision of petroleum products to citizens in the governorates of the Kurdistan Region, like the rest of the governorates in Iraq, this request is also obligatory to reject, because there is nothing that violates the principle of equality, and for the foregoing, the Federal Supreme Court decided the following:

1. Ruling to reject the plaintiff's lawsuit Nehru Mahmoud Qadir regarding the challenge of the invalidity of the Prime Minister's decision No. (3004/2222021) on 29/12/2022, due to the lack of the interest condition necessary to establish it.
2. Reject of the plaintiff's lawsuit Nehru Mahmoud Qadir regarding the claim to oblige the defendants to the Prime Minister and the Minister of Oil/ being in their capacity to apply the principle of equality in the provision of services they specialize in and the provision of petroleum products in the governorates of the Kurdistan Region, similar to the governorates of Iraq and at the same prices at which they are sold to the governorates, there is nothing that prejudices the application of the principle of equality.

The plaintiff shall burden the expenses, fees and advocacy fees to the defendants' agents / being in their capacity an amount of one hundred thousand dinars distributed in accordance with the law.

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The judgment has been issued with majority, final and binding on all authorities in accordance with the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq of 2005 articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and it has been made clear on 4/Dhu al-Qi'dah/1445 A.H. corresponding to 13/5/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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