

Republic of Iraq
Federal Supreme Court
Ref 130/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 28/7/2024 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: Sarwa Abdul Wahid Qadir / Member of the Iraqi Council of Representatives- Her agent, the barrister Ali Kamel Rasul.

The Defendant: Prime Minister of the Kurdistan Region Iraq / being in this capacity - His agent the barrister adviser Iyad Ismail Mohamed.

The Claim:

The plaintiff claimed through the mediation of her agent that the court had previously issued several of its decisions, including decision (121/Federal/2022) according to which the phrase daily caretaker contained in Article (64/2nd) of the Constitution of the Republic of Iraq of 2005 was interpreted to mean that government transformed from a normal government with full powers to a government with limited powers, and this is achieved in two cases: The first is to withdraw confidence from the Prime Minister until a new Council of Ministers is formed based on the provisions of Article (61/ 8th, Alif, Beh, Jim, and Dal), and the second is when the Council of Representatives is dissolved in accordance with Article (64/1st) of the Constitution, and in both cases the Council of Ministers is considered resigned and continues to conduct daily matters that include taking decisions and procedures that will continue the work of public utilities regularly and the continuity of the continued provision of services to the people, and whereas, the defendant / being in this capacity, he represents a caretaker prime

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minister and may not deviate from the specified limitations, however, he issued many decisions that affect the citizen's sustenance in the Kurdistan Region, which is contrary to the constitution and the law, it took advantage of the absence of parliamentary oversight, as the court's decision to number (233 and its units 248 and 253/federal/2022), according to which the decision to extend the life of the parliament and dissolve the parliament of the Kurdistan Region Iraq was annulled, and in this case the government turned into a caretaker government, and the defendant issued / being in this capacity cabinet resolution No. (227) of 20/9/2023, imposing tax fees that affect the livelihood of the people in the region, he also issued the Council of Ministers Resolution No. (232) on 22/11/2023, regarding the retirement of employees of the higher grades, he also issued Resolution (226) on granting pensions and allowances to members of the parliament of the fifth session of the Kurdistan Parliament on 20/9/2023 in addition to many decisions that violate the law and the constitution, so the plaintiff asked this court to rule the invalidity of the decisions taken by the aforementioned defendant, and to dissolve the caretaker government in the Kurdistan Region if elections are not held within the next three months and charging the defendant with fees, expenses and advocacy fees. After registering the case with this court No. (130/Federal/2024) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with Article (21 / first and second) of the internal regulations of the Federal Supreme Court No. (1) of 2022, in the absence of his answer, a date was set for the consideration of the case without pleading based on Article (21/3rd) thereof, in which the court was formed, the court examined the plaintiff's requests, her supports and the defendant's agent's defenses under the regulation dated 21/7/2024 according to which he requested to reject of the case, as they are outside

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the jurisdiction of the court based on the provisions of Article (93/1st) of the Constitution and where the court has completed its scrutinies, the end of the minutes 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 (Sarwa Abdul Wahid Qadir), a member of the Iraqi Council of Representatives, this lawsuit was filed against the Prime Minister of the Kurdistan Region Iraq/ being in this capacity, claiming that this court had previously that it issued many of its decisions, including Resolution (121/Federal/2022), in which it clarified the meaning of the caretaker government stipulated in Article (64/2nd) of the Constitution of the Republic of Iraq of 2005, as meaning that government transformed from a normal government with full powers to a government with limited powers, and this is achieved in two cases, the first is when withdrawing confidence from the Prime Minister until a new cabinet is formed, and the second is when the Council of Representatives is dissolved, and that this court had previously issued its decision No. (233 and its units 248 and 253/federal/2022), according to which the extension and dissolution of the Kurdistan Iraq distan Regional Parliament was ruled unconstitutional, and thus the government in the Kurdistan Region turned into a caretaker government daily, and despite that, the defendant, being in this capacity, took advantage of the absence of parliamentary oversight and issued many decisions that do not can be issued by the caretaker government, including the decision of the Council of Ministers of the Region No. (227) on 20/9/2023, according to which new tax fees are imposed, as well as Resolution No. (232) on 22/11/2023 regarding the retirement of

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employees of higher grades, and Resolution No. (226) on 20/9/2023 containing granting pensions and allowances to members of the Kurdistan Parliament Iraq the fifth session, so she requested to invite the defendant/ being in this capacity to plead and rule that the aforementioned decisions are invalid, and dissolve the caretaker government in the Kurdistan Region Iraq if it does not elections will be held within the next three months, and charging the defendant/ being in this capacity with fees and expenses and advocacy fees. The court reviewed the answer of the defendant's agent/ being in this capacity under his regulation dated 21/7/2024, in which he requested to reject of the plaintiff's lawsuit as it is outside the jurisdiction of this court, as its jurisdiction is limited to challenging the constitutionality of the laws and regulations in force based on the provisions of Article (93/1st) of the Constitution of the Republic of Iraq, and that what the plaintiff requested in her lawsuit was not within the competences of this court, and the Federal Supreme Court finds that the plaintiff has requested in her lawsuit to rule that a number of decisions taken by the Council of Ministers of the Kurdistan Region Iraq after the dissolution of the region's parliament, in addition to her request to dissolve the government of Conduct day-to-day business in the Kurdistan Region Iraq if elections are not held within the next three months, the Court finds that what the plaintiff requested its claim can be considered in accordance with its jurisdiction stipulated in item (third) of Article (93) of the Constitution of the Republic of Iraq of 2005 and item (third) of Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by law No. (25) of 2021 adjudicating cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority, and since the judgment of this court has established that its aforementioned jurisdiction is limited

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only in cases arising from the application of federal laws, decisions, regulations and instructions issued by federal authorities and independent authorities, whereas the Kurdistan Regional Government Iraq is not one of the federal authorities stipulated in Article (47) of the Constitution of the Republic of Iraq of 2005, and is not one of the independent authorities stipulated in the Constitution, so the appeal in the decisions issued by it shall be outside the jurisdiction of this Court, for all of the foregoing and by request, the Federal Supreme Court has decided the following:

First: Ruling on rejecting the plaintiff's lawsuit (Sarwa Abdul Wahed Qadir), for lack of jurisdiction.

Second: Charging the plaintiff with the fees, expenses and advocacy fees of the defendant's agent/ being in this capacity, lawyer Iyad Ismail Mohamed an amount of 150,000 dinars (one hundred and fifty thousand dinars).

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 of 2005, and 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 edited in the session dated 21 Muharram 1446 A.H. corresponding to 28/7/2024 AD.

Judge
Jasem Mohammed Abood
President of the Federal Supreme Court

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