

Republic of Iraq
Federal Supreme Court
Ref. 141 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 3/8/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mohammed Majeed Risan Al-Saidi – his agent the barrister Ahmed Mazin Makkiya.

The Defendants: 1. The President of the Republic of Iraq/ being in this capacity – his agent the chief of legal experts Ghazi Ibrahim Al-Janabi.

2. Chairman of the Judiciary Council of the Kurdistan Region / being in this capacity – his agent the barrister the counselor Ayad Ismaeel Mohammed.

The Claim

The plaintiff claimed through his agent that the Chairman of the Judiciary Council of the Kurdistan Region had previously issued statement No. (1511) on 30/5/2022, which included clear and explicit constitutional violations, stating that the actions of the Regional Government regarding operations related to oil and gas are in accordance with the Constitution, in violation of the decision of the Federal Supreme Court No. (59/Federal/2012 and its unified 110/Federal/2019) issued on 15/2/2022 which ruled that those actions were incorrect, and the non-commitment of the Regional Government to

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implement the provisions of this decision is a constitutional violation since the decisions of the Federal Supreme Court are clear and binding on all authorities without exception, and this is confirmed by the Constitution of the Republic of Iraq of 2005 in Article (94) thereof. Moreover, the Regional Judicial Council was not subject to constitutional legitimacy when it was formed and did not commit to the application of Article (120) of the Iraqi Constitution, which stipulated that "the Region shall draw up a constitution for it specifying the structure of the powers of the Region, its powers, and the mechanisms for exercising those powers, provided that it does not conflict with this Constitution" and all its powers were formed without adhering to what was stipulated in the Iraqi Constitution, which was voted on by all components and which became binding on all, so the existence of the Regional Judicial Council is illegitimate and contrary to the Constitution. Therefore, all that it issues is incorrect and contrary to the Constitution, and the authorities of the region violated the Constitution in Article (13), which affirmed that this Constitution is the supreme and supreme law in Iraq and that no law may be enacted that contradicts it, and Article (19), which granted the judiciary independent authority, and that it rebelled against the Constitution, the law and the decisions of the Court, and contrary to the text of Article (92/1st The Federal Supreme Court is a financially and administratively independent judicial body) was legislated based on the legislation of Law No. (30) of the year 2005 at the time, and that the statement (subject to appeal) stated that "there is no federal court established in Iraq in accordance with the Constitution and that the court that issued the decision does not have constitutional authority." It has been missed by the author of the statement and his signee that the Federal Supreme Court has already issued decisions to which the author of the statement and his signatory have adhered and

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that it was established in accordance with Law No. (30) of 2005, which was voted on by the Council of Representatives in its session (45) of 2021 in the presence of (205 deputies) and was voted on by the deputies of the region, and this is an acknowledgment by the region of its legitimacy, and that the implementation and application of its decisions is binding, and the author of the statement has missed the presence of members in the composition of the court nominated by the region, as well as there, are many and many violations, including the violation of the text of Article (5) of the Constitution, which affirmed that "the sovereignty of the law and the people are the sources of powers and their legitimacy.", and the Court is a legitimate constitutional institution under the Constitution and the Law and its amendments, so the plaintiff asked the Federal Supreme Court to rule the statement issued by the Kurdistan Regional Judicial Council unconstitutional and to charge the defendants fees, expenses, and advocacy fees. The case was registered with this court in the number (141/federal/2022), and the legal fee for it was collected in accordance with Article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and the defendants are informed of its petition and documents in accordance with Article (2/1st) of the same Bylaw above. The agent of the first defendant (President of the Republic / being in this capacity) replied in the Reply Regulation dated 5/7/2022 to conclude that his client does not fit an opponent in this case in accordance with the decision of Article (4) of the Code of Civil Procedure No. (83) of 1969, which stipulated that the defendant should be a litigant on the declaration of whom a judgment is released, supposing that a declaration is released by him. He should be sentenced or obliged to something, supposing that the case is approved. The Federal Supreme Court is not competent to consider the plaintiff's application because the implementation of its decisions is carried out

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through the Kurdistan Regional Government, as those decisions are clear and binding on all authorities in accordance with the provision of Article (94) of the Constitution, and the statement in question is only a declaration that carries no obligation and is nothing more than a statement expressing a personal point of view, and therefore it is not one of the procedures that are subject to appeal to the Federal Supreme Court, nor is there anything to support the existence of direct or deferred damage to the plaintiff or his future damage as a result of the issuance of the statement, because it was the Constitution that determined the manner of implementation of the decisions of the court and there is no authority to prevent their entry into force because they are binding and enforceable whether that authority approves them or not, so he requested the dismissal of the plaintiff's claim and the charging of fees, expenses, and advocacy fees. The agent of the second defendant (Chairman of the Kurdistan Regional Judicial Council /being in this capacity) replied to the answering draft dated 3/8/2022 concluding that the provisions of Article (20/1st) of the Bylaw in force of the Federal Supreme Court grant private natural or legal persons the right to institute proceedings before the Court to determine the constitutionality of a provision in a law or regulation, provided that the case meets all the conditions stipulated in the Civil Procedure Law No. 83 of 1969 as amended, namely, that the plaintiff in the subject matter of the case has a current, direct and influential interest in his legal, financial or social status, provided that it is available from the time of the filing of the case until the issuance of the judgment therein, that the challenged text has already been applied to the plaintiff, and that the plaintiff has not benefited from the challenged text, all or part. By returning to the exclusive powers of the jurisdiction of the Court listed in the provisions of Articles (52 and 93) of the Constitution, it is clear that the consideration of this case is

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outside its competences, and on the other hand, the plaintiff fell into a contradiction manifested in his bylaws at a time that acknowledges that the Judicial Council of the Kurdistan Region has applied the decisions issued by the Federal Supreme Court and at times denies this and that the contradiction prevents the hearing of the case, so he requested that the plaintiff's case be dismissed and that he be charged the expenses. After completing the required procedures in accordance with the rules of procedure of Court No. (1) of 2022. A date for the argument was scheduled according to the article (21/3rd) of which, all parties were notified with it, and on the appointed day the Court convened. On the behalf of the plaintiff, his agent the barrister Ahmed Mazin Makkiya attended, and on behalf of the first defendant (the President of the Republic/ being in this capacity) his agent the chief of the legal experts Ghazi Ibrahim Al-Janabi attended, and on behalf of the second defendant (Chairman of the Judiciary Council of the Kurdistan Region / being in this capacity) his agent, the counselor barrister Ayad Ismaeel Mohammed attended. The public in presence argument proceeded, and the agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it. The agents of the defendants answered and each one of them requested to reject the case against his client for the reasons listed in their answering drafts attached to the case's papers, and the agents of all parties repeated their previous sayings and requests. Whereas nothing was left to be said, the end of the argument has been made clear and the Court issued the following decision:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was noted that the conclusion of the plaintiff's case is the ruling on the unconstitutionality of the statement issued by the Kurdistan Regional Judicial Council as it is contrary to the Iraqi Constitution and for the reasons that have been listed in detail in the foregoing, and the defendants are charged with judicial fees and expenses, and after the public present pleading, and the court's access to the regulations submitted by the agents of the parties to the lawsuit and their statements are written exactly, this court finds that one of the conditions of the constitutional lawsuit that must be met to accept the lawsuit is the condition that the plaintiff has an interest Status, direct and influential in his legal, financial or social status and this is what is stated in the rules of procedure of this court No. (1) of 2022 in Article (20/1st) thereof, and it is affirmed in Article (25) thereof that the absence of interest in the initiation of the lawsuit strips the plaintiff of the legal protection provided by the constitutional suit as a means of safeguarding constitutional rights and the interest is the practical benefit or benefit that accrues to the plaintiff when he resorts to the constitutional judiciary, whether this benefit is the protection of a constitutionally or legally assessed right that has been violated or threatened by it, and that one of the characteristics of this interest is to be based on constitutional or legal protection and thus the interests are not exited. Legitimate within the scope of the concept of constitutional interest and that the interest should be personal, which is that the benefit that the plaintiff seeks to obtain belongs to the plaintiff himself, who is the holder of the right to be protected. This interest shall be direct, i.e. the plaintiff proves that there has been or will be caused to him by reason of the facts

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attributed to the defendants because the constitutional lawsuit as a means of protecting constitutional rights is not for any person to initiate proceedings by merely violating constitutional provisions unless it is proved that personal harm has been suffered by him or there is a threat of future occurrence that gives the plaintiff the power to use this means to defend his constitutional and legal rights. Since this condition and the qualities simplified above were not met in the plaintiff's claim, his claim therefore should be rejected. Accordingly, and for all foregoing reasons, the FSC decided to reject the case of the plaintiff Mohammed Majeed Risan Al-Saidi for lacking the interest in initiating it, and to burden him with the fees and expenses, including the advocacy fees for the agent of the first defendant the President of the Republic/ being in this capacity the chief of the legal experts Ghazi Ibrahim Al-Janabi and the agent of the second defendant Chairman of the Judiciary Council of the Kurdistan Region / being in this capacity the counselor barrister Ayad Ismaeel Mohammed amount of one-hundred thousand Iraqi dinars, to be divided between them equally and according to the legal proportions. The decision has been issued unanimously, decisive and binding for all powers according to the provisions of article (93/3rd) of the Constitution of the Republic of Iraq for 2005 and article (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 dated 4/Muharram/1444 Hijri coinciding 3/August/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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