

Republic of Iraq
Federal Supreme Court
Ref 176/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/7/2024 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: Saud Saadoun Ali Al-Saadi – His agent the barrister Mahdi Abdul Redha Jassim.

The Defendants: 1. Prime Minister / being in this capacity – His agent the Legal adviser Haider Ali Jaber.

2. Minister of Foreign Affairs / being in this capacity - His agent the adviser Abdul Amir Hassoun.

The Claim:

The plaintiff claimed through his agent that the first defendant issued Resolution No. (115) on 3/4/2019 approving the new proposal regarding the redrawing of the baseline of the Iraqi territorial sea to be deposited with the office of the Secretary-General of the United Nations, and that the decision contained many violations of Iraq's sovereign rights regarding the demarcation of Iraqi maritime borders and the determination of coordinates which was proven in violation of the supreme interest of Iraq, so the plaintiff took the initiative to appeal the decision for violating the provisions of Article (80) of the Constitution which indicated the powers of the Council of Ministers to issue regulations, instructions and decisions with the aim of implementing laws, and also for violating the principle of separation between the authorities under Article (47) of the Constitution, the determination of the Iraqi-Kuwaiti border in general and the maritime baseline in

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particular are among the sovereign competencies granted exclusively to the Council of Representatives, which must be regulated by an international agreement it was approved by the Council of Representatives in accordance with Article (61/4th) of the Constitution, and the decision violated the legislative contexts followed by the Council of Representatives on sovereign matters, as the legislative demarcation of part of the maritime border shared by Iraq and Kuwait took place in Khawr Abdullah under Article (2) of the agreement promulgated by the law ratifying the agreement between the two countries No. (42) of 2013, the decision violated the Iraqi Treaty Conclusion Law No. (35) of 2015, which affirmed in Article (17) thereof that the Republic of Iraq by treaties concluded in accordance with its provisions, to the approval by the Council of Representatives of the law ratifying the treaty or the law of accession to it by an absolute majority of the number of members of the Council, except for treaties which must be approved by a two-thirds majority, including treaties of boundaries and treaties affecting the territorial sovereignty of the Republic of Iraq, in addition to violating international and regional contexts in determining the maritime baseline, and violating the United Nations Convention on the Law of the Sea of 1982, by choosing the criterion (straight baselines), which led to the expansion of the Kuwaiti maritime baseline at the expense of the Iraqi maritime baseline, whereas the plaintiff requested this court to rule on the constitutionality of the Council of Ministers' decision No. (115) dated 3/4/2019, and charging the defendants the fees and expenses. After registering the case with this court No. (176/Federal/2024) and to collect 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) of 2022, the first defendant's agent replied with the reply

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regulation dated 28/7/2024 which included detailed formal and substantive defenses in which concluded to reject the lawsuit because the court lacked jurisdiction to hear it. After completing the procedures required by the court's rules of procedure, a date was set for the consideration of the lawsuit without pleading in accordance with Article (21/3rd) thereof, in which the court was formed and the lawsuit began to be heard, the court scrutinized the plaintiff's requests, his supports, and the defenses of the first defendant's agent under the regulation dated 28/7/2024, and noted the receipt of the answer of the second defendant's agent according to the letter of the Ministry of Foreign Affairs / Legal Department No. (9/7/Lawsuits/4333) dated 30/7/2024 and attached to it a response list summarizing its request to reject the lawsuit for lack of jurisdiction, and after completing 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 requested a ruling on the constitutionality of the Cabinet Resolution No. (115) of 3/4/2019 on the adoption of the new proposal submitted by the competent technical committee regarding the redrawing of the baseline for the violation of the aforementioned decision to the provisions of Articles (47 and 80) of the Constitution of the Republic of Iraq for the year 2005, in addition to violating the legislative contexts followed by the Council of Representatives on sovereign matters, in particular the law treaties No. (35) of 2015, as well as the decision violating the international and regional contexts in which neighboring countries are going in determining the maritime baseline, the Federal Supreme Court finds, through scrutiny and review of the case file and the defenses and requests of the two parties in conflict, that

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the competences of this court are specified under Article (93) of the Constitution, including monitoring the constitutionality of laws and regulations in force, and not among those powers is monitoring the constitutionality of decisions, orders and instructions regardless of the issuing authority, and thus the hearing of the plaintiff's lawsuit in accordance with the form filed therein shall be outside the jurisdiction of the Court, in view of the foregoing, the Federal Supreme Court decided as follows:

First: Rejecting the plaintiff's lawsuit (Saud Saadoun Ali Al-Saadi), for lack of jurisdiction according to the form in which the lawsuit was filed.

Second: Charging the plaintiff the expenses, fees and attorneyship fees of the defendants' agents / being in their capacity an amount of one hundred and fifty thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005, and Articles (4 and 5/Second) 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 23 / Muharram / 1446 A.H. corresponding to 30/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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