

Republic of Iraq
Federal Supreme Court
Ref. 213 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/10/2023 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: Wasfi Asi Hussein/ member of the ICR – his agent the barrister Anmar Abdul Jabbar Abbas.

The Defendants: 1- The Iraqi Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.
2- President of the Democratic Kurdistan Party/ being in this capacity.

The Claim

The plaintiff claimed through his agent that the first defendant, the Prime Minister, in his capacity as Commander-in-Chief of the Armed Forces / being in this capacity, issued an order mediated by the Deputy Commander of Joint Operations by telegram No. (843 of 2023) sent to the Kirkuk Operations Command (Planning) No. (3/3/640 dated 25/8/2023) and included in paragraph (2) thereof (The headquarters of the Kirkuk Operations Command and its units, the headquarters of the Faq/11, Commands, Categories and its affiliated services shall move from their current headquarters to the new places as of hour 600 on 1/9/2023 to evacuate the current headquarters of the Kirkuk Operations Command and hand it over is free of vacancies and imposing security and stability), and that this came intending to hand over part of the land on which the Kirkuk Operations Headquarters was built to the second defendant / in addition to his job, as he was previously usurped by it because he had already put his hand on the ground and built his headquarters on it, and occupy it without right and without any legal justification, because the land belongs to the Ministry of Finance under the real

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estate deed number (13/11 Province 9 Korka - freehold) and after the operations to liberate Kirkuk province from the desecration of the terrorist gangs of ISIS with the strength and vigor of the heroes of the security forces, the land was occupied by the Kirkuk operations as federal forces, and for what was stated in paragraph (13) of the government program (the right of all Kurdish parties and others to exercise their activities and constitutional political effectiveness, in Nineveh, Kirkuk, Diyala and Salah Al-Deen and the evacuation of party headquarters that have been occupied by others), and for violating the provisions of the Constitution of the Republic of Iraq for the year 2005, the provisions of the Civil Code and the Political Parties Law No. (36) of 2015, Article (28/Beh) thereof, which stipulates: (Determining the address of the party's headquarters and its sub-headquarters, and that none of them is within the places of worship or the headquarters of any public, charitable, religious, educational, union, military or judicial institution), and as a result, the letter of Kirkuk Governorate and the Chairman of the Security Committee in the province No. (73) issued on 17/9/2022, which shows the situation of the people of Kirkuk province from the handover of government facilities, especially since the governorate's book above has proven that these headquarters have already been used to practice murders, kidnappings, and national racism that made terror and fear in the hearts of the people and people of Kirkuk, on 2/9/2023, the first defendant (Prime Minister - Commander-in-Chief of the Armed Forces) issued a curfew order throughout Kirkuk Governorate, due to acts of violence and clashes between the people of Kirkuk Governorate and the supporters of the Kurdistan Democratic Party, and there are material losses in the wheels of civilians, and the plaintiff asked this court to issue a state order urgently not to hand over the headquarters to the second defendant, the Kurdistan Democratic Party, and to stop the procedures in the Joint Operations Book No. (843) of 2023 and the Kirkuk Operations Command No. 3/3/640 And to maintain the federal forces and oblige the first defendant / Prime Minister, being in this capacity, to cancel the joint operations order No. (843) of 2023 due to its unconstitutionality if its purpose is to hand over the headquarters to the second defendant for occupation by the Kurdistan Democratic Party and the ruling on the unconstitutionality of the agreement concluded between the defendants / being in their capacity if its purpose is to hand over the headquarters to the second

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defendant being in this capacity, after clarifying from the first defendant in addition to his position what is stated in paragraph (13) of the government program, and charging the defendants, in addition to their jobs, fees, expenses and attorney's fees. The lawsuit was registered with this court in the number (213/Federal/2023), and the legal fee was collected for it and notified to the defendants in addition to their jobs, according to Article (21 /1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and for the end of the period specified for the answer, set a date for considering the case without pleading following item (3rd) of the same article, and on the specified day, the court was formed and the lawsuit was considered, the court examined the plaintiff's requests, his supports, and the defenses of the first defendant's attorney with the reply dated 2/10/2023 ((according to which he requested the dismissal of the lawsuit, as the plaintiff's request is outside the court's jurisdictions), it does not meet the condition of interest, and that the directive of his client (the subject of the appeal) was issued based on his constitutional powers in Article (78) of the Constitution and professionally in his capacity as commander-in-chief of the armed forces away from all political circumstances in the city of Kirkuk, and that his directive included the evacuation of (Surau headquarters) in the city of Kirkuk from the Operations Command and the directive did not include handing over the aforementioned headquarters to the (Kurdistan Democratic Party), telegram (843) of 2023 did not include any directive to hand over part of the land on which the Kirkuk operations headquarters was built to the second defendant, especially since the plaintiff based his lawsuit on the assumption of the intention of the first defendant, which is an imaginary imposition, and that the original clearance is in accordance with Article (6) of the Evidence Law No. (107) of 1979, and what is stated in paragraph (13) of the government program for the year 2022 regarding the right of all parties, whether Kurdish or otherwise, to exercise their political activities The constitutionality in the governorates indicated therein has nothing to do with the directive - the subject of the appeal - and that what is stated in the government program is a general commitment by the government to support the parties in the implementation of the law in general and the application of the constitutional obligations stipulated in article (39) of the Constitution)), and after

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the court 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 filed the lawsuit before this court against the defendants (the Prime Minister and the President of the Kurdistan Democratic Party) being in their capacity to demand the urgent issuance of a state order not to hand over the headquarters of Kirkuk Operations Command to the second defendant, the Kurdistan Democratic Party, and to stop the procedures contained in the letter of the Joint Operations Command No. (843) for the year 2023 and the Kirkuk Operations Command letter No. (3/3/640), and to maintain the federal forces and oblige the first defendant (Prime Minister / being in this capacity) to cancel the Joint Operations Command order No. (843) of 2023 due to its unconstitutionality if its purpose is to hand over the headquarters to the second defendant/head of the Kurdistan Democratic Party / being in this capacity because it is occupied by the Kurdistan Democratic Party and to rule the unconstitutionality of the agreement concluded between the defendants / being in this capacity if its purpose is to hand over the headquarters to the second defendant/ being in this capacity, after clarifying from the first defendant in addition to his position what is stated in paragraph (13) of the government program, and charging the defendants / being in their capacity fees, expenses, and advocacy fees, and the Federal Supreme Court finds that it issued a state order in response to the plaintiff's request contained in the statement of claim, under its decision No. (213/Federal/State Order/2023) on 3/9/2023 according to the reasons and details referred to therein, and upon consideration of the rest of the plaintiff's requests contained in the lawsuit petition, it became clear that they must also be dismissed for lack of jurisdiction according to the form in which the lawsuit was filed, as the court's jurisdictions and powers are exclusively limited to what is stated in Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and other special laws, and did not these competencies and powers include a jurisdiction of

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the Federal Supreme Court, the ruling shall be made according to the plaintiff's requests, as the challenge of unconstitutionality must focus on the laws and regulations in force based on the provisions of Article (93/1st) of the Constitution and Article (4/1st) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and this appeal does not exceed others, and that the Joint Operations Command Order No. (843) of 2023 is not subject to challenge of unconstitutionality, as well as paragraph (13) of the government program Whether it is based on the agreement concluded between the defendants / being in their capacity, in addition to the above, the Joint Operations Command order No. (843) of 2023 is not subject to appeal before this court, as well as invalidity, based on the provisions of Article (93/3rd) of the Constitution, Article (4/3rd) of the amended Federal Supreme Court Law, and Article (25) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, which stipulated the jurisdiction of this court to challenge invalidity and adjudicate cases arising from the application of federal laws, decisions, regulations, instructions, and procedures, to be issued by one of the federal authorities stipulated in Article (47) of the Constitution or one of the bodies stipulated in Chapter Fourth of Section Three of the Constitution (independent bodies), especially since Article (47) of the Constitution specified the components of the federal authorities in the State with the legislative, executive and judicial authorities, and exercises their powers and functions based on the principle of separation of powers, and the components of each of the aforementioned authorities have been determined following the detail referred to in Articles (48, 66 and 89) of the Constitution, article 102 and subsequent states that the Joint Operations Command is not considered one of the federal authorities or the independent bodies stipulated in the Constitution, and on the basis of the foregoing, the orders, decisions and procedures issued by it shall not be subject to challenge of invalidity before this court, which requires the dismissal of the plaintiff's claim for lack of jurisdiction in accordance with the form in which the lawsuit is filed and the cancellation of the aforementioned state order issued at the request of the plaintiff. Accordingly, the court decided the following:

First - Dismissal of the plaintiff's lawsuit Wasfi Assi Hussein for lack of jurisdiction according to the form in which the lawsuit was filed.

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Second - Cancellation of the state order issued by this court No. (213/Federal/State Order/2023) on 3/9/2023.

Third - The plaintiff shall charge the expenses, fees, and advocacy fees of the first defendant's attorney / being in this capacity, the legal adviser Haider Ali Jaber an amount of one hundred thousand dinars distributed following the law. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 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 edited in the session dated 25/Rabea Al-Awal/1445 Hijri coinciding with 11/October/2023 AD.

Judge

Jassim Mohammed Abboud

President of the Federal Supreme Court

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