

Republic of Iraq
Federal Supreme Court
Ref. 236 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/10/2023 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: Aliya Nusaif Jassim/ member of the ICR – her agents are the barristers, Mohammed Majeed Risan and Ahmed Mazin Abdul Wahid.

The Defendant: Minister of Transportation/ being in this capacity – his agent the official jurist Hala Khaleel Ibrahim.

The Claim

The plaintiff, through her agent, claimed that the court had previously issued its decision No. (105 and its unified 194/federal/2023), which included in paragraph (1st) the ruling on the unconstitutionality of Law No. (42) of 2013 on the Law Ratifying the Agreement between the Government of the Republic of Iraq and the Government of the State of Kuwait on the Regulation of Navigation in Khor Abdullah, because it and the annexed agreement contain many explicit and implicit violations and violations of the provisions of the Constitution of the Republic of Iraq for the year 2005, and in view of the fact that the agreement contains the swap protocols in Khor Abdullah, which were also canceled based on the court's decision that ruled the aforementioned agreement unconstitutional, which included a joint plan to ensure the safety of navigation in Khor Abdullah, as it was edited and signed in Baghdad on 28/12/2014 based on the agreement ruled unconstitutional signed on April 29, 2012, which included the establishment of a management committee Joint organizes and coordinates navigation in the Khor Abdullah shipping lane, and since the agreement has been annulled by the court, all its consequences are null and void, therefore, the joint plan, which gained its

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legitimacy from the agreement and the canceled protocol map, is considered null and void, and does not have any legal effect from it, because it is inconsistent with the full Iraqi sovereignty affirmed in Article (1) of the Constitution, and because it may not be implemented after the cancellation of the agreement, so the plaintiff asked this court to rule that the joint plan to ensure the safety of navigation in Khor Abdullah is invalid and canceled and the defendant is charged fees, expenses and advocacy fees. The case was registered with this court in the number (236/Federal/2023) and the legal fee was collected and the defendant was informed of her petition and documents in accordance with the provisions of Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the defendant's agent replied in the reply list dated 10/10/2023 Conclusion: The aim of the joint plan between the two countries is to regulate the use of the sea lane, ensure the safety and sustainability of navigation, prevent pollution of the sea lane and preserve it from everything that may hinder navigation in it, therefore, its cancellation at the present time leads to the disruption of the public facility and the inability to use it causes damage to ships and marine tankers, which leads to disruption of trade for both countries, and the joint plan is based on international laws and conventions related to navigation previously approved by the International Maritime Organization (TMO) and the International Labor Organization (ILO) and it is clear from this that the joint plan is free of any agreement or opinion that leads to prejudice to the sovereignty of Iraq and prejudice to its water borders, but it is organizational and based on Purely technical matters, developed by specialists in the subject of maritime navigation, article (1st/6) of the Joint Plan has provided for the application of local or international laws to the party that causes damage when it engages in any activity harmful to the shipping lane, so the Iraqi government can claim compensation for any damage that may be caused to its interests, and the cancellation of this plan for the time being without finding an alternative to the organization of navigation may lead to chaos. Risks to navigation within the navigational corridor (Khor Abdullah) and resulting in the loss of the right of the victim to claim compensation, therefore, he requested the dismissal of the lawsuit and the plaintiff to charge the fees and expenses and after completing the procedures required by the court's Bylaw, a date was set for the consideration of the lawsuit without pleading in accordance with

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Article (21/3rd) thereof, in which the court was formed and began to consider the case, and after the court checked the plaintiff's requests, her grounds and the defenses of the plaintiff's agent, 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 this lawsuit against the defendant, the Minister of Transportation/ being in this capacity, and requested a ruling on the invalidity of the joint plan to ensure the safety of navigation in Khor Abdullah and requested its cancellation and charging the defendant fees, expenses and attorney's fees, and this court finds that its competences are limited under Articles (52/2nd and 93) of the Constitution of the Republic of Iraq for the year 2005, as well as in Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended. Law No. (25) of 2021, and among those competencies are not the requests contained in the plaintiff's lawsuit petition, therefore, the plaintiff's lawsuit is outside the jurisdiction of this court, so the court decided to dismiss the plaintiff's lawsuit Alia Nassif Jassim for lack of jurisdiction and to charge her fees and expenses and the amount of one hundred thousand dinars attorney fees of the defendant's agent being in this capacity, the official jurist Hala Khalil Ibrahim. 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 article (4) 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 2/Rabea Al-Akhir/1445 Hijri coinciding with 18/October/2023 AD.

Judge
Jassim Mohammed Abboud
President of the Federal Supreme Court

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