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Federal Supreme Court  
Ref. 29 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 17.4.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

**The plaintiff:**

The lawyer Amir Karim Ghaith Al-Daami - his agent, lawyer Muhammad Ali Muhammad.

**The defendants:**

1. The Minister of Oil, in addition to his post, and his two agents the legal officials, Hadeel Ghazi Abdel Razzaq and Nawal Qassem Hashem.
2. Director of the Iraqi National Oil Company / in addition to his post \_ his two agents are the legal officials Ali Abdul-Hussein Wahhab and Aziz Abdul-Aziz Sadiq.

**The claim:**

The plaintiff claimed through his attorney that the Federal Supreme Court had previously issued its decision in No. (66/ Federal/ media/2018) on 23/1/2019, according to which the Court ruled that Articles (3), (4/Third and Fifth) and (7/2<sup>nd</sup>/ha.), (8, 11, 12), (13/ second), (16) and (18/sixth) of the National Oil Company Law were unconstitutional, and since these articles are an essential pillar

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in the formation of this company and a source of authority and power in its legislation, and what this error has international and national legal, financial and economic consequences and the risks envisaged towards the formation of this company from prejudice to private and public interests, and because the law carries with it the risks to those interests that threaten all rights at all levels, not to mention the authorized director of the National Oil Company issued administrative and contractual orders in light of a law whose articles are ruled to be unconstitutional, therefore, the plaintiff asked the Federal Supreme Court to rule the unconstitutionality of all orders and contracts taken by the director of the National Oil Company. The plaintiff submitted a draft to the case petition requesting in it to issue a state order to suspend the procedures. The case was registered with this court in No. (29/ Federal/2022), and the legal fee was collected for it in accordance with Article (1/Third) of the Federal Supreme Court's Bylaw No. (1) of 2005, the defendants were informed of its petition and documents in accordance with Article (2/first) of the same bylaw mentioned above, the attorneys of the first defendant responded with the answer list dated 3/28/2022, summarizing that the Council of Ministers had previously issued Resolution No. (106) for the year 2020 addressed to the Ministry of Oil under the letter of the General Secretariat of the Council of Ministers No. (Shin.Zin.Lam/10/1/3/10/15206 on 9/9/ 2020), which includes approving the first amendment to the law of the Iraqi National Oil Company and referring it to the council of Representatives, and completing the steps for establishing the Iraqi National Oil Company through its board of directors by choosing a specialized office to make the administrative structure and classify tasks and

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responsibilities in preparation for its disengagement from the (Ministry of Oil), as well as assigning their client (the Minister of Oil) the duties of the company's president (in addition to his post) to ensure the implementation of what was stated in paragraph (Second) of the aforementioned decision related to completing the establishment of the company. The Council of Ministers, by virtue of this decision, has exercised its powers granted to it based on the provisions of Article (80/First) of the Constitution of the Republic of Iraq for the year 2005, which is to plan and implement the general policy of the state and general plans and supervise the work of ministries and agencies not affiliated with a ministry, in addition to what was stated in Paragraph (Third) of the same aforementioned article that authorized the Council of Ministers to issue regulations, instructions and decisions with the aim of implementing laws, and with that decision it exercised its powers for the purpose of implementing the provisions of the Iraqi National Oil Company Law No. (4) of 2018, and in light of the aforementioned decision, Ministerial Order No. (711) was issued in 11/2/2021 containing the activation of Ministerial Order (2) of 10/18/2018 regarding the disengagement of companies affiliated with the National Oil Company, stipulated by law, from the Ministry of Oil, except for companies whose association with the company has been canceled, under the Federal Supreme Court decision No. (66 unified with 71, 157, 224 /federal /media/2018) under the mentioned order these companies has disengaged from the ministry of oil, in addition to the transfer of rights and obligations related to these companies to the Iraqi National Oil Company in accordance with the law. Referring to the law and the decisions issued regarding the establishment of the

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aforementioned company, it is clear that there is no post title in the name of (the director of the National Oil Company), and since the lawsuit has elements and conditions, and among its elements are (the litigants) if the plaintiff missed an element of its case that makes it binding to be dismissed formally, and he shall not have time to correct it as stipulated under the provisions of Article (50) of the Civil Procedures Law No. (83) of 1969, as amended, because litigation is a cornerstone of the case and not one of its conditions, and since formality is part of public order and the court has the right to decide on it on its own if it finds a defect in it. This results in the invalidity of the petition against this second defendant from the formal aspect. As for the objective aspect, the contracts under challenge are concluded directly by the oil companies affiliated with the Ministry of Oil or the companies owned by the National Oil Company based on their powers under Public Companies Law No. (22) of the year 1997 with the contractors or the executing companies as it possesses the legal personality and financial and administrative independence in accordance with the provisions of the aforementioned law and has all the legal powers in managing its technical, financial and administrative formations, and that the tasks of the Ministry of Oil towards its subsidiaries or the National Oil Company, is the direction of the companies owned by it is to develop strategic plans and approve companies' decisions for projects and tenders that exceed their financial powers in accordance with the standards and instructions decided by the Ministry of Planning or the Ministry of Finance. In view of the foregoing, and since the orders and contracts in question were issued by the Iraqi National Oil Company after disassociating it from the Ministry of Oil in

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accordance with the law, therefore the two agents of the first defendant requested that the case be dismissed from their client because the litigation was not directed, as the Ministry of Oil is not responsible for issuing those orders and contracts, as well as dismissing the case from the second defendant in the form of non-realization of the litigation. The attorneys of the second defendant replied with the answering draft that the Federal Supreme Court had previously settled the issue of the constitutionality of the Iraqi National Oil Company Law No. (4) of 2018 by virtue of its Resolution No. (66) of 2018, in which it confirmed the validity of most of the articles of the law except for some of its articles and paragraphs, where the paragraph stipulated (Second) of the decision to reject the rest of the appeals against the law because it does not conflict with the provisions of the constitution and the general policy of the state stipulated in Article (80) of the constitution and because it came as a legislative option for the Council of Representatives. Based on Article (94) of the Constitution, the rulings and decisions issued by the Federal Supreme Court are final and binding on all authorities, and thus they have an absolute argument against all and prevent the re-appeal of the law and its texts again, and the consideration of the claims of the plaintiff falls outside the jurisdiction of the court specified by virtue of Article (93) of the Constitution and Article (4) of its Law No. (30) of 2005 (amended) and in this regard issued its decision No. (126/Federal/2021 on 11/3/2021), also the condition of interest is not available to file a lawsuit, and that the litigation is not directed to their client based on the provisions of Article (80) of the Civil Procedures Law No. (83) of 1969 because the company is managed by a head of a company

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and not a general manager, as stated in the plaintiff's petition, and since Article (129) of the constitution stipulates (Laws are published in the Official Gazette and are in force from the date of their publication, unless otherwise stipulated) In addition to the fact that the Iraqi National Oil Company Law No. (4) of 2018 was approved by the Iraqi Council of Representatives and ratified by the President of the Republic and published in the Iraqi Gazette in issue (4486 on 9/4/2018), which is the official gazette in Iraq, therefore, the law of this company has become enforceable, and the failure to implement it constitutes a violation of the provisions of the constitution. The company has handled all the contested materials, in line with the provisions of the Constitution, the laws in force, and the court's decision No. (66) for the year 2018, where the Ministry of Oil proceeded to make the necessary amendments to the law by preparing the draft law of the first amendment to the law of the Iraqi National Oil Company, which was approved by the Council of Ministers by its resolution No. (109) for the year 2020. It was read in the Council of Representatives, first and second readings, and it is awaiting a vote on it. As the company is a public company, it possesses legal personality and financial and administrative independence based on Article (2/1<sup>st</sup>) of its aforementioned law, it carries out its activities and business in accordance with the legal frameworks and powers stipulated in Public Companies Law No. (22) of 1997 (amended) and in a manner that does not conflict with the provisions contained in its law and has the right to conclude all contracts related to its activity in accordance with the laws and instructions in force, including the Government Contracts Law No. (87) of 2004 and instructions to facilitate its implementation No. (2)

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of 2014 and is committed to working in accordance with the Federal Financial Management Law No. (6) of 2019 and the Budget Law, also abides by all decisions issued by the Council of Ministers, and the contracts of the Iraqi National Oil Company with Iraqi and foreign companies were made by the companies owned by it and according to approvals from the Council of Ministers based on the powers stipulated in its founding statements and its internal regulations that it still operates in based on the text of Article (14/First) of its aforementioned law. Under Article (7/Second/2), the company's president has two deputies. The first is the executive director who supervises technical, contractual, and economic matters, and the second supervises administrative, financial, and legal matters. Whereas, the decisions of the legislative, executive, and judicial authorities, including the decisions of this court and other courts of all levels, have included the endorsement of the validity of Law No. (4) of 2018 (the Iraqi National Oil Company Law), its enforcement, the continuation of the company's work and the establishment of its legal existence, and this is explicit evidence of the importance of its existence to support the Iraqi economy and the implementation of the policy of the Ministry of Oil in developing the oil and gas industry, as it is the executive arm that implements the general oil policy of the state, pointing out that the company's practice of its work has included the establishment of centers and legal statuses for a large number of employees whose owners have been transferred from the Ministry of Oil and its owned companies with the approval of the Ministry Finance. Also, Law No. (4) of 2018, through its compelling reasons, emphasized the importance of establishing the company as an urgent economic necessity that contributes to the development of

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the oil industry in accordance with international standards recognized by the national oil companies, which reflects positively on the Iraqi economy and on Iraq's stipulated oil imports stipulated in Financial Management Law No. (6) of 2019, on which the state's general budget depends by (90%), and on this basis, the Council of Ministers, based on its powers stipulated in Paragraph (80/Third) of the Constitution of the Republic of Iraq, issued many binding decisions to establish the company and enabling it to carry out its activities in accordance with the legal frameworks it drew, including Resolution No. (109) of 2020, which included the approval of the First Amendment Law to the Law of the Iraqi National Oil Company, and the completion of the company's founding steps, in line with Article (80) of the Constitution. it also issued Resolutions No. (211), (232), (369), and (438) for the year 2021, according to which members of the company's board of directors were named to activate its work based on Article (7/first/2,3,4,5) of the Iraqi National Oil Company Law No. (4) for the year 2018 and the approval of the bylaw, in addition to all that, the Ministry of Finance obtained the approval of the company's planning budget for the year 2021 to secure the company's revenues and expenses. Accordingly, the attorney of the second defendant requested to dismiss the case and charge the plaintiff with all expenses and attorney fees. After completing the procedures required by the court's bylaw, a date for the pleading was set in accordance with Article (2/Second) of it, and the parties were informed of it. On the appointed day, the court was formed, so the parties' attorneys attended and the public pleading started. The agent of the plaintiff repeated the case petition and requested to rule according to it, the two attorneys of the first defendant answered and

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requested that the case be dismissed for the reasons stated in their answer draft, and the two attorneys of the second defendant answered and requested that the case be dismissed for the reasons stated in their answer draft since nothing remains to be said, the court decided the conclusion of the pleading, and issued the following ruling:

**The decision:**

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff filed the lawsuit before this court to challenge the constitutionality of all orders and contracts taken by the second defendant, the director of the National Oil Company, in addition to his post, for the reasons indicated in detail in the lawsuit petition. Also requested the issuance of the state order to stop the procedures for the reasons referred to in it, the case was registered in the number (7/federal/state order/2022), and it was decided by the decision issued by this court to reject the request in the session dated 3/14/2022 for the reasons referred to in the rejection decision, and with consideration of the original case for appealing unconstitutionality it turned out to be obligatory to be dismissed in the form, because the plaintiff lack the interest when it was instituted, as Article (6) of the Federal Supreme Court's bylaw No. (1) of 2005 stipulated that the plaintiff have an interest in filing a suit to challenge unconstitutionality is a case, direct and influential in the case. His legal, financial or social status, and to provide evidence that actual harm has been caused to him by the legislation to be repealed, and that the harm is direct and independent of its elements, and it can be removed if a ruling is issued against the illegality of the legislation, and that the damage is not theoretical, future or unknown, and that the plaintiff has not benefited from part of the text to be

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repealed, and that the text required to be repealed has actually been applied to the plaintiff or is intended to be applied to him, and the interest is intended, the practical benefit that the plaintiff aims to achieve when ruling according to his requests, the condition of personal interest is considered one of the conditions for accepting the constitutional lawsuit before the Federal Supreme Court, as no lawsuit is without interest, and since the absence of the condition of interest strips the plaintiff's requests from legal protection, as it is unthinkable that the constitutional lawsuit will be a tool through which the plaintiffs express personal opinions, and in the absence of the conditions, for the application of Article (6) of the aforementioned Federal Supreme Court bylaw when filing the lawsuit, due to the plaintiff's lack of interest in it, so the plaintiff's lawsuit is obligatory to be dismissed in form. So, the court decided to dismiss the lawsuit due to his lack of interest when filing the case, he was charged with expenses, fees, and attorney fees for the defendants' attorneys, in addition to their posts, an amount of one hundred thousand dinars distributed according to the law. The decision was issued by the agreement under the provisions of Articles (93/First and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/First and 5/Second) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, final and binding on all authorities and publicly understood on the 15 Ramadan 1443 AH corresponding to 17/4/2022 AD.

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Signature of  
The president

***Jasem Mohammad Abbood***

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