



The Federal Supreme Court (F.S.C.) has been convened on 12.3.2013 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

- **Who request to specify the competence (the plaintiff):**  
The Managing Director of Alokozi International Limited/ in addition to his post - his agent the attorney (ha.ra.).
- **The request to specify the competence is against (the defendant):**  
Chairman of the Judicial Council in the Kurdistan Region/ in addition to his post.

### **The claim:**

The agent of the plaintiff claimed that the competence appointment requester/ in addition to his post is a foreign company registered in the United Arab Emirates and does not have a branch, office or representation registered in Iraq, and it is the exclusive and only distributor in the Middle East and

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Iraq to distribute Korean cigarettes, it does not have any exclusive agent in Iraq. The Khoshnaw Company Ltd. and Bariz Company Ltd. have filed a lawsuit before Erbil Court of First Instance against the plaintiff company requesting the annulment and compensation, the Erbil Court of First Instance ruled in the lawsuit no. (2141/2/2009) to obliging the plaintiff to pay to the plaintiffs in that lawsuit an amount of two hundred seventy million US dollars. This decision was issued in violation of the law without completing investigations, and violations by the court of first instance in Erbil which are that the plaintiff in this lawsuit is a foreign company that does not have a branch in Iraq and has nothing to do with (Khoshnaw) company distributing cigarettes, and this lawsuit exceeded the three-month period of its establishment without the notifications take place, also passed a period of more than six months and no supporting documents were submitted. An administrative precautionary seizure has been placed by the Ministry of Interior in Kurdistan, which overrides the jurisdiction of the judiciary, the Erbil Court of First Instance did not take the claim that it was not competent to hear the case, and Erbil court based its judgment on a letter to facilitate customs procedures issued by a person named (Khoshna Group), it also covered up the occurrence of tampering in the

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translation of the facilitation book issued for customs purposes. It also elected experts arbitrarily without call upon the parties, the court neglected all the defenses of (Al-Koozi Company) and the documents submitted by it, including the agreement made in Istanbul in which it was agreed to appoint an international auditor, his report was submitted which included that Al-Kozi Company is the creditor in the amount of thirty-one million dollars. He requests from the Kurdistan Court of Cassation to step down the judge, and this did not happen until he was transferred, another judge came, but he is more violation than the previous. upon the issuance of the initial ruling, the judgment was appealed before the Erbil Appeal Court, the appeal was registered by the number (154/155/sin/2012), meanwhile the applicant for assigning jurisdiction submitted a request to the Federal Court of Cassation on 9/7/2012 to transfer the case from the Erbil court of appeal, the Federal Court of Cassation through the Coordination Committee requested the Judicial Council of the Kurdistan Region according to the letter of the Federal Court of Cassation no. (99/appellant committee- transfer/2012) to send the dossier, the Erbil Appeal Court after the transfer request sent the dossier to the Federal Court of Cassation in Kurdistan Region, whereas considering the transfer request of the case

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from one court to another is the jurisdiction of the Federal Court of Cassation under the provisions of the Article (97) of the amended Civil Procedure Law. However, the Judicial Council in the Kurdistan Region issued its letter no.(2436) on 24.10.2012 through the Joint Coordination Committee, which includes that the presidency of the Erbil Court of Appeal with its letter no. (28/4069) on 15.10.2012 returned all attachments of the Federal Court of Cassation letter, and that the transfer of the lawsuit has nothing to do with it. From that, a jurisdiction conflict arose between the Federal Court of Cassation and the Arbil Court of Appeal, and that the Federal Supreme Court, in accordance with the provisions of paragraph (8<sup>th</sup>) of Article (93) of the Constitution of the Republic of Iraq for 2005 is competent to consider this dispute. The one requested assignment of jurisdiction against him the head of the Kurdistan Region's Judicial Council answered in his letter no.(538) on 20.2.2013 that the case is binding to be dismissed from the litigating aspect, as the Judicial Council of the region and its president represent the administrative body in the judicial authority and not the judicial authority, it is not permissible to dispute the Judicial Council in this case, and from the other side, court decisions deviate from the jurisdiction of the Federal Supreme Court and he requested to

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dismiss the case. after completing the procedures stipulated in article (2/1<sup>st</sup>) of the F.S.C. bylaw, a date for argument was set according to paragraph (3<sup>rd</sup>) of the mentioned article. On that date the plaintiff agent attended, the defendant agent didn't attend and start the argument publicly. whereas nothing left to be seed, the argument is closed, the decision issued publicly.

**The decision:**

During scrutiny and deliberation by the F.S.C., it found that the plaintiff requested in his lawsuit to adjudicate the dispute of competence of the federal judiciary represented by the Federal Court of Cassation with the judiciary of the Kurdistan Region, according to the provisions of Article (93/8<sup>th</sup>) of the Constitution of Iraq of 2005, the plaintiff requested the Federal Court of Cassation to transfer the case (154/155/sin/ 2012) from the Erbil court of appeal to the Baghdad court of appeal, the request of transfer was registered in no. (99/appellant committee- transfer/2012) in the Federal Court of Cassation, the Federal Court of Cassation requested the dossier of the lawsuit (154/155/sin/ 2012) throw the Joint Coordination Committee, the committee addressed the judicial Council in Kurdistan Region by the letter no.(836) on 12.7.2012

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and the attachment letter of the federal court of cassation, the judicial Council of Kurdistan region responded with the letter no.(2436) on 24.10.2012, that the presidency of the Erbil Court of Appeal is not related to lawsuit transfer. From the aforementioned, the F.S.C. finds that the Federal Court of Cassation didn't issue any decision to be subject of dispute, as a request to transfer the lawsuit was submitted to it, so it issued a letter requesting the lawsuit subject of dispute, also no decision was issued from the judicial Council in Kurdistan region that is subject of dispute, except that it sent it letter which included that the Erbil court of appeal notify it that it has no relation with the transfer of the lawsuit. From the aforementioned, the F.S.C. finds that there was no dispute to adjudicate by the Court. It decided to dismiss the lawsuit and to burden the plaintiff the expenses and advocacy fees. This decision has been issued unanimously and public on 12.3.2013.

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