



Republic of Iraq
Federal Supreme Court
Ref. 44 unified with 95/federal/2024

Kurdish text

The Federal Supreme Court (F S C) has been convened on 5/8/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Khaled Taha Ahmed who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff in the lawsuit (44/Federal/2024): Bassem Khashal Khashan.

The Plaintiff in the lawsuit (95/Federal/2024): Mustafa Jabbar Sanad.

The defendants: 1. The Prime Minister / being in this capacity - His agent the legal adviser Qasim Suhaib Shakur.

2. The President of the Republic / being in this capacity - His two agents the chief legal expert Ghazi Ibrahim Maaliyu and the Director General of the Legal Department, Salah Lazm Shamkhi.

The Claim:

The plaintiff in the lawsuit (44/Federal/2024) claimed that the Iraqi government had previously signed two agreements with United States of America on November 17, 2008, on the withdrawal of American forces from Iraq and the organization of their activity, and the Strategic framework agreement between the Republic of Iraq and the United States of America, ten days later the Council of Representatives voted the law of its approval by simple majority with the approval of (144) deputies in a session held in the presence of (198) deputies only, and this makes of the agreement is void in accordance with the Court's decision that canceled the Khor Abdullah agreement, and under Article (30) of this agreement, its validity period shall not exceed three years unless it is terminated earlier by either party, with the possibility of

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amending it except with their consent this means that its extension or the amendment of any item in it must be obtained with the approval of two-thirds of the members of the Council of Representatives, because everything that requires the approval of a two-thirds majority is only by achieving this majority, and in any case, the agreement expired under Article (30/1) on 2/1/2012, which set its validity period at (3) years starting on 1/1/2009, which is a violation of the sovereignty of the country under this agreement, without successive governments taking the necessary measures to protect the sovereignty, security and interests of Iraq, and because the Council's approval of this agreement is invalid, which is no longer in force, the plaintiff asked this court to rule that the consent of the defendants for allowing and canceling U.S. Forces to remain on Iraqi territory and obliging them to retake areas and installations exploited by U.S. Forces after the expiration of this agreement; as well as a claim for damages resulting on the operations that occurred after the expiry of this agreement, and on the exploitation of Iraqi areas and installations during the period from 1/1/2009, until their delivery to the Iraqi government, and after registering the case with this court No. (44/Federal/2024) and collecting the legal fee thereon and informing the defendants of its 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, the first defendant's agent responded with the reply statement dated 29/2/2024, which included detailed formal and substantive defenses of his request to reject the case, due to the lack of jurisdiction of the court to hear it and the lack of interest condition for the plaintiff, in addition, the agreement was approved by the legislative authority (the Council of Representatives)

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under Law No. (51) of 2008 the law ratifying the agreement of the Republic of Iraq and the United States of America, regarding the withdrawal of American forces from Iraq and the organization of their activities during their temporary presence therein, in accordance with Article (61/4th) of the Constitution, and thus this law legitimized the approval of the first defendant to the agreement by virtue of its decision No. (390) of 2008, which included his approval draft agreement between the Republic of Iraq and the United States of America on the Withdrawal of American Forces from Iraq Organizing its activities during its temporary presence therein, and referring it to the Council of Representatives for approval of the draft law for approval, in accordance with the provisions of Articles (61/4th and 80/2nd) of the Constitution, the expiration of the agreement with the implementation of its provisions by the two signatories and the withdrawal of the last American soldier on 31/12/2011, and thus the agreement (the subject of the challenge) is considered terminated by virtue of the implementation of what was concluded for it in accordance with its first article, as it cannot be considered null and void because of its expiry, as the invalidity cannot respond to an expired agreement, and the second defendant's agent replied in the reply dated 19/2/2024 to summarize: the agreement is ratified by law No. (51) of 2008 and has entered into force on 1/1/2009 and remained valid for three years and the implementation period expired on 2/1/2012, and that the plaintiff did not specify the article or item contrary to the Constitution and that his requests relate to the work and activities of the government, and the presence of the international coalition forces it is an executive decision that the government has specialized in through the Prime Minister in his capacity as

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Commander-in-Chief of the Armed Forces his client has nothing to do with this jurisdiction, therefore, he asked to reject the plaintiff's lawsuit and charge him fees, expenses and attorneyship fees, and after completing the procedures required by the court's bylaws, a date was set for the pleading in accordance with Article (21/3rd) thereof the court noted that the lawsuit numbered (95/Federal/2024) filed before this court is the same subject of this lawsuit and the unity of the subject matter and to shorten the time and effort, the court decided to unify the two lawsuits and consider the lawsuit (44/Federal/2024) as the original based on the provisions of Article (76/2) of the Civil Procedures Law No. (83) of 1969 (as amended), so the plaintiff in particular attended the lawsuit (95/Federal/2024) and began to conduct the public presence pleading and after the court heard for the statements and requests of each party and completed its scrutinies and the end of the argument has been made clear and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was noted that the summary of the plaintiff's lawsuit (Bassem Khazal Khashan) in lawsuit numbered (44/Federal/2024) and the plaintiff's lawsuit (Mustafa Jabbar Sanad) in lawsuit numbered (95/Federal/2024), which were united under the previous sequence, that they requested a ruling that the consent of the defendants is incorrect, the Prime Minister, in addition to his job, and the President of the Republic, in addition to his job, to allow US forces to remain on Iraqi territory, cancel them, and oblige them to recover the areas and facilities exploited by these forces after the expiration of the agreement that concerning the withdrawal of

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US troops from Iraq, as well as the award of compensation for damages resulting from operations that occurred after the expiry of this agreement and for the exploitation of Iraqi areas and installations during the period from 1/1/2009 until the date of their delivery to the Iraqi government for the reasons detailed in the two petitions mentioned above, and for the court to be informed after the public presence pleading of the reply list of the first defendant, Prime Minister, being in this capacity dated 29/2/2024 in the lawsuit numbered (44/federal/2024) and the regulation dated 15/4/2024 in the lawsuit numbered (95/Federal/2024) and they requested to reject the lawsuit for the reasons stated in the two regulations, the court also reviewed the regulations dated February 19, 2024 and the regulations dated April 1, 2024, submitted by the defendant's deputy, the President of the Republic, being in this capacity, in which he requested the Court also reviewed the letter sent by the Deputy Commander of Joint Operations on February 20, 2020 to the Commander of the International Coalition Forces in Iraq requesting to enter into talks for the withdrawal of the Coalition Forces, as well as the response of the Commander of the Coalition Forces to this letter and its transmission to senior officials in Washington, the court also rejected the plaintiff's request to include the Chief of Staff of the Army as a third person in the case, for lack of justification from the foregoing, this court finds that its competences are determined by 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 that the subject matter of this lawsuit and the requests submitted by the plaintiffs do not fall within the jurisdiction of this court, and therefore this lawsuit deserves to be answered, for lack of

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jurisdiction, and by request, the Federal Supreme Court decided the following:

First: Rejecting the plaintiffs' lawsuit (Bassem Khazal Khashan and Mustafa Jabbar Sanad), for lack of jurisdiction.

Second: Charging the plaintiffs with the expenses, fees and attorneyship fees of the first defendants' two representatives, the Prime Minister, The second is the President of the Republic, 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 the basis of the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq for the year 2005 Articles (4 and 5/2nd) of the Federal Supreme Court Law No. 30 of 2005, as amended by Law No. 25. for the year 2021 and it has been made clear on 29 Muharram 1446 Hijri corresponding to 5/8/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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