



The Federal Supreme Court (F.S.C.) convened on 22.5.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Uday Awad Kazem _ his attorney, Fawzi Kazem Hassan Al-Mayahi.

The defendants:

1. The Speaker of the Iraqi Council of Representatives / in addition to his post - his agents are the Director-General of the Legal Department Sabah Juma Al-Bawi, the legal advisor Haitham Majid Salem and the human rights employee Saman Mohsen Ibrahim.
2. The Prime Minister of Iraq / in addition to his post - his agent, the legal advisor Haider Ali Jaber.
3. The President of the Republic of Iraq / in addition to his position - his agent, the head of legal experts, Ghazi Al-Janabi.
4. The President of the Kurdistan Region / in addition to his position - his agent, Counselor Iyad Ismail Muhammad.

Athraa



5. Speaker of the Parliament of the Kurdistan Region / in addition to his position - his agents are legal advisors Wrya Saadi Ahmed W. Dr. Uday Suleiman Mazuri and Sharmeen Khader Bahgat.
6. The Prime Minister of Kurdistan Region / in addition to his position.

The claim:

The plaintiff claimed, through his attorney, that the Kurdistan Parliament had previously issued several legislations that had no basis in the constitution and the law since the citizens of the region had not voted on a constitution for the region until the date of this lawsuit, even though they voted on the constitution of the Republic of Iraq for the year 2005 and therefore it is binding on all legislative, executive and judicial authorities. Throughout Iraq, including the authorities in the Kurdistan Region, which have no constitutional and legal basis for their formation, and for the lack of commitment of the federal legislative and executive authorities to abide by the provisions of the Constitution when dealing with the authorities of the region, so the plaintiff initiated an appeal before this court, requesting a ruling of the unconstitutionality of this transaction for the unconstitutionality of the legislative and executive authorities for the Kurdistan Region, as the Constitution of the Republic of Iraq of 2005 defined the federal authorities as consisting of the legislative, executive and judicial authorities, and indicated their components and competencies in Articles (47, 48, 49, 61, 66, 67, 76, 80, 87, 88, 89, 90 and 91) of it, and Article (120) of it indicated That the regions

Athraa



draw up a constitution that defines the structure of the powers of the region Its powers and the mechanisms for exercising those powers in a manner that does not contradict the provisions of the Constitution. However, the Kurdistan Region has not implemented what is stated in this article in violation of the above-mentioned details, and the Federal Supreme Court has canceled the region's oil and gas law by its decision No. (59/Federal/2012 and Unified 110/Federal/2019), but the Kurdistan Parliament is still enacting so-called laws although it is unconstitutional. For all of the above, the fact that the Iraqi Prime Minister handed over financial advances to the executive authorities in the region is a waste of public money, and limiting the vote of the Iraqi Council of Representatives to a candidate for the presidency of the republic for one of the two parties, the Kurdistan Democratic Party or the Democratic Union, and his election exclusively from the candidates of these two parties only has no constitutional basis, especially And that the presidents of the republic from the Kurdish parties since 2016 have not adhered to the text of Article (67) of the constitution, which states (the president of the republic is the head of the state and the symbol of the nation's unity), due to their participation in the region's referendum to secede from Iraq, which was annulled by the Federal Supreme Court on 20.11.2017 and all its implications and consequences. Therefore, the plaintiff asked the Federal Supreme Court to rule that the federal legislative and executive authorities' dealings with all the authorities of the region are unconstitutional, based on the provisions of the Constitution of the Republic of Iraq for the year 2005, since most of what is issued by the authorities of the region are contrary to Article (13/first and second) of the constitution and the ruling that the legislative,

Athraa



executive and judicial authorities are unconstitutional to the Kurdistan Region and charge the defendants fees, expenses, and attorney fees. The case was registered with this court in No. (47/Federal/2022), and the legal fee for it was collected in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's internal system No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/First) from the same rules of procedure, the first defendant's attorney (the Speaker of Parliament/ in addition to his position) responded with the answer list dated 22.3.2022, the summary of which is that what the plaintiff claims does not address the litigation to his client, just as what he claims contradicts the constitution in Article (117/ First, which states: "This Constitution, upon its entry into force, recognizes the Kurdistan Region and its existing authorities, as a federal region," and Article (121) of it, which stipulates that "the powers of the regions shall have the right to exercise legislative, executive and judicial powers, in accordance with the provisions of this Constitution, with the exception of What is stated in it are the exclusive powers of the federal authorities), and what the plaintiff mentioned from the texts of Articles (47) to (91) are related to the federal legislative, executive and judicial authorities and not their counterparts in the Kurdistan Region. Moreover, the litigation is not directed against his client regarding the claim that a constitution for the region has not been established. However, the aforementioned Article (117/first) is definitive in its indication of the recognition of the existing powers of the Kurdistan Region upon the entry into force of the 2005 constitution, which are the legislative, executive, and judicial authorities that were established a long time

Athraa



ago before the constitution. 2005, without the constitutional article attaching the acknowledgment of those powers to the establishment of the region's constitution. As for what is stipulated in Article (120) of the constitution, it represents an obligation that the region must fulfill later, and it is a procedure that will reveal the public authorities in the region and will not establish them because they were created before the entry into force the constitution and derives from Article (117/first), its recognition and acknowledgment of its existence, which is what the Iraqi people agreed to when the referendum on the constitution. Also, the litigation is not directed against his client regarding the delivery of financial advances to the executive authorities in the region. However, the allocation of part of the federal revenues to the regional government finds its basis in the provisions of Article (121 / third) of the Constitution, which states that "regions and governorates are allocated a fair share of the revenues collected." federally, sufficient to carry out its burdens and responsibilities, taking into account its resources and needs, and the proportion of its population), and the legality of granting the regional government's share of federal revenues finds its legal basis in the provisions of the Federal General Budget Law of the Republic of Iraq No. (23) for the year 2021, especially Articles (10 and 11) of it. The plaintiff did not provide evidence that voting in the Council of Representatives was restricted to the candidate of one of the aforementioned parties, or even that voting was restricted to any candidate. and that the lawsuit Regarding the president's failure to abide by the text of Article (67) of the Constitution, not addressing the right of his client, as the Federal Supreme Court had previously rejected the case numbered (19/Federal/2022) in which the plaintiff

Athraa



requested a ruling of unconstitutionality of accepting the candidacy of (Barham Ahmed Salih) with a claim His participation in the referendum in question, and the court did not build on that any legal value. Therefore, he requested that the case be dismissed and that the plaintiff be charged with the judicial expenses. The second defendant's attorney (the Iraqi Prime Minister/in addition to his position) responded with the answer statement dated (21/4/2022), summarizing that the plaintiff's lawsuit does not meet the condition of interest to be submitted to the Federal Supreme Court because what he requested does not violate his constitutional rights as it is attached to him direct harm, and he did not provide evidence that real harm had been inflicted on him as a result, and therefore he lost one of the conditions for filing a constitutional case based on the provisions of Article (6 / first and second) of the internal rules of the court. In addition to the fact that looking into it is outside its jurisdiction specified in Article (93) of the Constitution and Article (4) of its law, and that the election of a candidate for the Presidency of the Republic is within the competence of the Council of Representatives, so the litigation is not realized against his client based on the text of Article (4) of the Civil Procedures Law No. (83) for the year 1969 as amended, and it is not valid as a deduction in the matter of the Kurdistan Region's failure to implement the provisions of Article (120) of the Constitution. The constitutional texts he mentioned have nothing to do with the issue of the challenge because the Constitution of the Republic of Iraq recognized the existence of the Kurdistan Region as a federal region with its legislative, executive, and judicial powers based on the provisions of Article (117) thereof, and that the Kurdistan Region approved the law

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 47 / Federal / 2022



Kurdish Text

approving the constitution of the Kurdistan Region of Iraq No. 16 of 2008 Published in the Kurdistan Chronicle, issue No. (95) dated 12/30/2008, and Article (121) of the Constitution of the Republic of Iraq for the year 2005 stipulated, first - the powers of the regions have the right to exercise executive, legislative and judicial powers, in accordance with the provisions of this constitution. And that Articles (11 and 10) of the General Budget Law for the year 2021 regulate the entitlements of the Kurdistan Region, and therefore the release of sums to the region is not contrary to the constitution as long as there are entitlements to the region according to the percentage specified in the budget law. And that the mechanism for electing the President of the Republic is an option for the Council of Representatives according to Article (70) of the Constitution, and that the accountability of the President of the Republic also falls within his jurisdiction based on the provisions of Article (61/sixth) of the Constitution. Therefore, he requested that the case be dismissed from the formal and substantive aspects and that the plaintiff is charged with expenses, fees, and attorney's fees. The third defendant's attorney answered the President of the Republic, in addition to his position, in the answer list dated 3/22/2022, summarizing that the litigation of his client is not validated in the case. The text of Article (117/First) of the Constitution explicitly states that the Kurdistan Region is a region formed according to the Constitution of the Republic of Iraq for the year 2005. And if the federal state authorities deal with the authorities of the Kurdistan Region, it is not constitutionally permissible to cut them off as long as the Iraqi constitution recognizes the existing powers of the region upon its entry into force Thus, its legislative, executive and judicial

Athraa



bodies have gained their legitimacy from the constitution and exercise their powers and authorities accordingly. The constitution did not specify a time limit that obliges the regions to draw up their constitutions and did not require a referendum on them when they were issued. The region was given the power to draw up a constitution for itself that defines the structure and powers of the region. It also granted it the right to exercise legislative, executive, and judicial powers in accordance with its provisions and accordance with the provisions of Articles (120 and 121) of the Federal Constitution. It has been custom since the issuance of the Constitution of the Republic of Iraq for the federal authorities to deal with the authorities of the region in accordance with the provisions of the constitution and federal laws. and Article (121/Third) of the constitution stipulates that “the regions and governorates shall be allocated a fair share of the federally collected revenues that are sufficient to carry out their duties and responsibilities, taking into account their resources, needs, and the proportion of the population in them.” Organized in a region, and item (Fifth) of the same article stipulates (The regional government is responsible for all that is required for the administration of the region, in particular, the establishment and organization of the internal security forces for the region, such as the police, security, and guards of the region). It is an explicit text on the legitimacy of the region’s institutions and their work in managing public utilities in the region and satisfying the public needs in it such as security, economy, health, education, and others. and attorney fees. The fourth defendant (the President of the Kurdistan Region / in addition to his position) responded with the answer list attached to the Diwan letter with the number (Dal-426) on

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 47 / Federal / 2022



Kurdish Text

29.3.2022, which included the following: What was stated in the plaintiff's requests lacks any basis from the provisions of the Iraqi constitution in force and based on a completely incorrect understanding of the provisions of the Constitution. The constitutional and legal evidence that denies the validity of what was stated in the lawsuit are: First: The Iraqi constitution recognized the Kurdistan Region and its powers in explicit texts at a time when the region did not have a constitution of its own when the Iraqi constitution of 2005 entered into force, including 1- Article (117/first) of it, which states (when this constitution comes into force, the Kurdistan region and its existing powers are recognized as a federal region), when this article was drafted, the Iraqi constitutional legislator was fully aware that those (existing powers) of the region were established based on laws Kurdistan Parliament and not based on a constitution specific to the region or the Iraqi constitution. If the intention of the constitutional legislator was the opposite, he would not have put such a text. 2. Article (143) of it, which states: (The Law of Administration for the Iraqi State for the Transitional Period and its annex shall be repealed upon the establishment of the new government, with the exception of what is stated in paragraph (a) of Article 53 and Article (58) thereof. For the transitional period with the exception of paragraph (a) of Article (53) which states (The Kurdistan Regional Government is recognized as the official government of the lands that were administered by the mentioned government on March 19, 2003, located in the governorates of Dohuk, Erbil, Sulaymaniyah, Kirkuk, Diyala, and Nineveh. The term Kurdistan Regional Government contained in this law means the Kurdistan National Assembly, the Kurdistan Council

Athraa



of Ministers, and the regional judicial authority in the Kurdistan region). Even the court has relied on this paragraph in several decisions, including Resolutions No. 113/Federal/2017 of 10/29/2017 and 11/21/2017 and others. 3. Article (141) of it, states: “The laws that have been enacted in the Kurdistan Region since 1992 shall remain in force, and the decisions taken by the Kurdistan Regional Government – including court decisions and contracts – are considered effective, unless they are amended or canceled according to the laws of the Kurdistan Region.” by the competent authority therein unless it violates this Constitution). When this article was drafted, the Iraqi constitutional legislator was fully aware that these laws and decisions were not issued based on the provisions of a constitution specific to the Kurdistan Region or based on the constitution of Iraq. Second: The Federal Supreme Court has acknowledged the existing authorities in the Kurdistan Region, including the decision (1/Federal/2015) dated 5/16/2011 and others. Third: The plaintiff's request means, in a practical way, the separation of the region from Iraq. Whereas, the Iraqi constitution obligates the federal authorities to preserve the unity of Iraq, as Article (109) of it states (the federal authorities shall preserve Iraq's unity, integrity, independence, sovereignty, and its federal democratic system). Fourth: The claim of violating Article 13/First and Second of the Constitution is unfounded and embodied in a complete disregard for the jurisdiction and function of the Court as the body competent to rule the unconstitutionality of any legislative act in violation of the Constitution. Therefore, he requested that the plaintiff's lawsuit be dismissed and that he be charged with the fees and costs of the lawsuit. After completing the required procedures

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 47 / Federal / 2022



Kurdish Text

according to the court's internal system, a date was set for the pleading 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 prosecutor's attorney attended and the attorneys of the first, second, third, fourth, and fifth defendants did not attend, and the sixth defendant (President of the Board of Directors) did not attend Kurdistan Region Ministers (in addition to his post) or his representative despite being notified according to the law and the public pleading was initiated. Ali / Fifth Speaker of the Parliament of the Kurdistan Region) showing a reply list that included his request to dismiss the case on behalf of his client, and the parties' attorneys repeated their previous statements and requests, and where there was nothing left to be said, the court decided the conclusion of the pleading, and the court issued the following ruling:

The decision:

Upon examination and deliberation by the Federal Supreme Court of what was stated in the plaintiff's lawsuit and the mutual regulations between the two parties and what was stated by their attorneys in the pleading session, it was found that the plaintiff's representative requested a ruling that the federal legislative and executive authorities' dealings with all the authorities of the Kurdistan region are unconstitutional, claiming that they violate the provisions of Articles (13/1 and 2nd) and (120) of the Constitution of the Republic of Iraq for the year 2005 because the region did not commit to setting up a constitution for it, while the people in the region voted on the constitution of the Republic of Iraq for the year 2005, which the region's authorities did not abide by. Therefore, the

Athraa



plaintiff claims that the legislative and executive authorities' dealings with the region's authorities are inconsistent with provisions of the Constitution. This court finds that the plaintiff's lawsuit focused on the request for a ruling that the federal executive and legislative authorities deal with the authorities of the region unconstitutional, and that the court must abide by the limits of requests in the case and may not decide what the litigants did not request or more than what he requested, and it may not modify the Their requests therein, as the court's obligation to adjudicate what the litigants demand is a matter stemming from the function of the judiciary as arbitration between litigants over a disputed right, and since the jurisdiction of the Federal Supreme Court is specified in Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005 and some texts in special laws Others and that the jurisdiction of the court in constitutional oversight extends to oversight of the constitutionality of laws and regulations in force only without other legislation and other procedures in accordance with what is stated in Clause (First) of Article (93) of the Constitution and Clause (First) of Article (4) of the Federal Court Law Supreme Court No. (30) for the year 2005 amended by Law No. (25) for the year 2021, so the plaintiff's request to be considered is outside the jurisdiction of this court, and since the specific jurisdiction of the courts is from the public order and they may rule on it on their own The litigants may also pay it at any stage of the litigation. For all of the foregoing and the request, the Federal Supreme Court decided to rule dismissing the claim of the plaintiff, Uday Awad Kazem, for not having jurisdiction over it and charging him with fees, expenses, and attorney fees for the defendants' attorneys. The Iraqi Council of Ministers, in addition to his post,

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 47 / Federal / 2022



Kurdish Text

Legal Adviser Haider Ali Jaber and Deputy President of the Republic, in addition to his post, Chief Legal Expert Ghazi al-Janabi, Deputy President of the Kurdistan Region, in addition to his post, Counsellor Iyad Ismail Muhammad, and Deputy Speaker of Parliament for the Kurdistan Region, in addition to his post as Legal Adviser Wryya Saadi Ahmed, an amount of one hundred thousand dinars is distributed. The decision was issued by agreement based on 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) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) for the year 2021. Conclusively and binding on all authorities and understand publicly on Shawwal 20, 1443 AH corresponding to 5/22/2022 AD.

Signature of
The president

Jasem Mohammad Abbood

Athraa