

Republic of Iraq  
Federal Supreme Court  
Ref. 87/ federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13/6/2023 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: Udai Awad Khadhim – his agent, the barrister Ayad Abdul Qadir Mohammed.

The Defendants: 1- The Prime Minister/ being in this capacity – his agent, the legal counselor Hayder Ali Jaber.

2- Mayor of the Central Bank/ being in this capacity – his agent, the official jurist Ahmed Fawzi Hussein.

3- Minister of Oil/ being in this capacity – his agents, the official jurists Firas Sarteeb Shaheed and Safa'a Hussein Lafta.

4- The Prime Minister of Kurdistan Region/ being in this capacity.

### **The Claim**

The plaintiff claimed through his agent that letter No. (5- 9-3004) dated 27/4/2023 issued by the Central Bank of Iraq / Department of Investments and Foreign Remittances / Oil Section, which included the approval to deposit the region's oil sales in the account (Citi Bank) and since the Central Bank of Iraq will not be the beneficiary, and thus this matter is contrary to the Constitution in the following articles: 1. Article (14) which emphasized the principle of equality

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because all oil-producing provinces deliver their production to the Iraqi Oil Marketing Company which sells it, and deposits its revenues in an account that is at the disposal of the Central Bank, while Kurdistan's oil will be at the disposal of the Central Bank, 2. Article (27/1<sup>st</sup> and 2<sup>nd</sup>) affirmed the sanctity of public funds, and inalienable them because the oil revenues in the governorates and the region are public funds that the region is not entitled to dispose of, and the first defendant is not entitled to give them up, 3. Article (111) affirmed that oil and gas belong to all the people and since the Council of Representatives is the legitimate representative of the people, therefore, the political agreements made by the first defendant require that they be submitted to the Council for approval, 4. Article (112), which entrusted the management of extracted oil and gas to the federal government, leaving the first defendant to manage the oil and gas extracted in the region violates the above article, 5. Article (115), which clarifies the competence of the regions and governorates, not including the exclusive competencies of the federal authorities stipulated in the Constitution, including those related to the management of extracted oil and gas and no diligence in the source of the text, therefore, the plaintiff asked this court to rule that the revenues from the export of the region's oil are unconstitutional in an account outside the control of the Central Bank of Iraq and that the defendants be charged fees and expenses. The case was registered with this court in the number (87/Federal/2023), and the legal fee was collected for it, and the defendants are informed of its petition and documents in accordance with Article (21 /1<sup>st</sup> and 2<sup>nd</sup>) of the internal regulations of the Federal Supreme Court No. (1) of 2022, the first defendant's agent replied in the reply dated 4/6/2023, concluding that the plaintiff's request is outside the jurisdiction of the

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court specified under Article 93 of the Constitution and Article 4 of the Federal Supreme Court Law No. 30 of 2005, in addition to the lack of interest condition for filing this lawsuit as a deputy in the Council of Representatives, especially after the issuance of the court's decision No. (140 and its units 141/federal/2018) on the unconstitutionality of article (6/2<sup>nd</sup>) of the Council of Representatives Law and its formations No. (13) of 2018, which granted the deputy the right to litigate before judicial bodies as a representative of one hundred thousand people, and that all oil revenues derived from oil fields in the Kurdistan Region are duly deposited in the account of the Ministry of Finance, so he requested the dismissal of the lawsuit. The second defendant's agent replied with the reply list dated 21/5/2023, which included the same as what was stated in the first defendant's attorney's regulation regarding the interest, and that his client's department has nothing to do with the subject matter of the lawsuit and was not a party to the aforementioned agreement, in addition to that the process of opening and maintaining government accounts is among the tasks stipulated in the Central Bank of Iraq Law No. (56) of 2004, and the actions of his client's department do not conflict with the law or the Constitution. For the lapse of the period stipulated in Article (21/3<sup>rd</sup>) of the Rules of Procedure of the Court, a date was set for the pleading, and the parties shall be notified of it, and on the appointed day the court was formed, and the plaintiff's agent and the agents of the first, second and third defendants attended, the fourth defendant (Prime Minister of the Kurdistan Region / in addition to his job) or his agent did not attend despite the notification in accordance with the law and began to conduct the public presence pleading, the plaintiff's agent repeated what was stated in the lawsuit petition and requested a judgment

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according to what was stated in it, and added that he had previously submitted a request on 12/6/2023 that includes (amending what was stated in the lawsuit and ruling that the procedures issued by the executive authority in the subject matter of the lawsuit are invalid), the agents of the first and second defendants answered and each of them requested to dismiss the lawsuit on behalf of his client for the reasons stated in the response lists linked to the lawsuit papers, and the third defendant's agent answered and requested the dismissal of the lawsuit for the reasons stated in their answering draft dated 13/6/2023 and added that the plaintiff's attorney's request constitutes a fundamental change in the lawsuit petition, therefore the court decided to reject it, and since the court completed its scrutinies, the end of the argument has been made clear, and the court issued the following judgment decision:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Uday Awad Kazem had filed the lawsuit before this court, claiming that letter No. (5-9-3004) dated 27/4/2023 issued by the Central Bank of Iraq, Department of Investments and Foreign Remittances, Oil Section, included the approval of depositing the oil sales of the Kurdistan Region in the CitiBank account, and that the Central Bank of Iraq will not be the beneficiary, and thus the aforementioned letter is contrary to the provisions of Article (14) of the Constitution The Republic of Iraq for the year 2005, which affirmed the principle of equality, as all oil-producing provinces hand over their production to the Iraqi Oil Marketing Company, which sells it, and depositing its revenues in an account

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that is at the disposal of the Central Bank of Iraq, and contrary to the provisions of Article (27/1<sup>st</sup> and 2<sup>nd</sup>) of the Constitution, which affirmed the sanctity of public funds, and the inadmissibility of their disposal, and that oil revenues in the provinces and the region are public funds that the region is not entitled to dispose of, and the letter referred to is contrary to the provisions of Article (111) of the Constitution, which confirmed that oil and gas belong to all the people, as well as the provisions of Article (112) of the Constitution, which entrusted the management of extracted oil and gas to the federal government, and it is also contrary to the provisions of Article (115) of the Constitution, which indicated the competence of the regions and governorates, not including the exclusive competencies of the federal authorities stipulated in the Constitution, including those related to the management of extracted oil and gas, so he requested to invite the defendants Prime Minister, Governor of the Central Bank of Iraq, Minister of Oil and Prime Minister of the Kurdistan Region, in addition to their functions, to plead and rule on the unconstitutionality of depositing the region's oil export revenues in Account out of the control of the Central Bank of Iraq, the first defendant's agent, the Prime Minister, replied being in this capacity with his regulation dated 4/6/2023, requesting the dismissal of the plaintiff's lawsuit from a formal point of view, due to the court's lack of jurisdiction to consider it, and the lack of interest condition from its residence in the plaintiff, and also requested the dismissal of the lawsuit from an objective point of view, because the deposit of oil imports produced from the fields of the Kurdistan region is in the account of the Ministry of Finance in accordance with legal procedures, and the second defendant's agent, the governor of the Central Bank, being in this capacity with his draft dated 21/5/2023

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requesting the dismissal of the plaintiff's lawsuit because the interest in establishing it is not achieved by the plaintiff, and that the procedures of his client's department do not conflict with the provisions of the law or the constitution, the third defendant's agent, the Minister of Oil, also replied, being in this capacity, with his regulation dated 13/6/2023, requesting the dismissal of the plaintiff's lawsuit, as it has lost its legal basis, as the Prime Minister has directed, according to the letter of the Prime Minister's Office No. (3004/2393699 on 7/5/2023) that a special account be opened in the Central Bank of Iraq in which all oil revenues derived from the oil fields in the Kurdistan region are deposited in accordance with the provisions of the Federal Financial Management Law No. (6) for the year 2019 amended, and the fourth defendant did not attend the Prime Minister of the Kurdistan Region in addition to his job or his agent, upon checking the request submitted by the plaintiff's agent on 12/6/2023 containing (amending what was stated in the lawsuit and ruling that the procedures issued by the executive authority in the subject matter of the lawsuit are invalid), the court found that it included a fundamental change in the lawsuit petition, so the court decided to reject it in the pleading session on 13/6/2023, and the court also finds that the constitutional control prescribed for the Federal Supreme Court extends to the laws and regulations in force only in accordance with what is stated in item (1<sup>st</sup>) of Article (93) of the Constitution of the Republic of Iraq for the year 2005, and item (1<sup>st</sup>) of Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended, clause (2<sup>nd</sup>) of Article (18) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and does not extend to considering the constitutionality of decisions or procedures issued by any authority, including decisions issued by the

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Council of Ministers or independent bodies, including the Central Bank of Iraq, and this is what the judgment of this court has settled on in many of its decisions, so the plaintiff's lawsuit is obligatory to be dismissed in this regard, for all of the above, and by request, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit (Uday Awad Kazim) and charge him the fees, expenses and attorney fees of the defendants' agents, the Prime Minister, the Governor of the Central Bank of Iraq and the Minister of Oil, in addition to their functions, the legal adviser Haider Ali Jaber and the human rights staff Ahmed Fawzi Hussein, Firas Sartib Shahid and Safaa Hussein gesture an amount of (one hundred thousand) dinars distributed among them following the law. 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 made clear on 24/Dhul Qaeda/1444 Hijri coinciding with 13/June/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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