

Republic of Iraq  
Federal Supreme Court  
Ref. 126 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 3/11/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghalib Amir Shunayen, Hayder Jabir Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Diyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Requestor of suspending the procedures and canceling the mandate of the Ministry of Oil by administrating the National Oil Company: Haybat Al-Halboosi/ the Head of Oil, Energy, and Natural Resources Committee.

The Body that requested to cease procedures against: the Ministry of Oil.

### **First: the Abstract of the Request**

The Federal Supreme Court had received the request of the Head of the Oil, Energy and Natural Resources Committee, Haybat Al-Halboosi, under the Letter of the Council of Representativess/Committee on Oil, Energy and Natural Resources number (75) on 5 September 2021 to demand that the Ministry of Oil's actions regarding the continuation of any activity involving the National Oil Company be suspended until the passage of the First Amendment Law of the National Oil Company Law to prevent any violations due to changes that will obtain many articles of the original law and the abolition of the assignment of the current Oil Minister to run the company, the requeste has been registered to the Federal Supreme Court in the number (126/federal/2021), which included: The

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 126 / federal /2021



Kurdish text

Prime Minister was previously addressed under the letter numbered (60) on 22 August 2021 and the Ministry of Oil by the numbered letter (54) on 4/7/2021, to object to the Ministry of Oil in its progress in forming the Iraqi National Oil Company and transferring the return of public companies to it, whereas the objections to the FSC included a substantial articles in the law No. (4) for 2018 which obliged the Ministry of Oil to present a request to the Cabinet (the proposed draft of the first amendment for the law) which was sent by the letter of the General Secretariat of the Cabinet/ the Cabinet's affairs and committees department by the number (15206) on 9/9/2020. A committee has been formed from the Representativess to study the proposal, in addition, to revising all the law articles and the amendment proposal has been prepared to cover several controversial articles. The proposal hasn't been voted on yet, and the amendment sent by the General Secretariat of the Council of Ministers and what has been amended by the committee formed in the Council of Representativess has made fundamental amendments in key articles affecting the structure and management of the company financially and administratively and the change of public companies under the management of the company by deleting some companies and adding other companies and changing the vision and tasks of the company and waiting to be presented in the next sessions of the Council of Representativess for discussion or vote on it and to be active. While the activity of the company currently has several violations that lie in: first:- the Council of Ministers has assigned the current Minister of Oil

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 126 / federal /2021



Kurdish text

to run the National Oil Company in acting, although it does not apply to the minister of oil in charge of the standards mentioned in the origin of the law, which determines that he has 25 years of experience. Second:- It is not permissible to combine the position of minister of oil and the Head of the Iraqi National Oil Company because the basis of the national oil company law is the division and separation of activity and responsibility in the oil sector between the ministry and the company. Third:- The National Oil Company Law stipulates in Article (5/1<sup>st</sup>), the company's capital in paragraph (1) (the value of the fixed assets of the owned companies, which determines the value of an advisory office chosen by the Board and with the approval of the Council of Ministers) and that this determination must be made before these companies own the National Oil Company, but the minister in charge has issued his decision without specifying the office and initiating the work of determining the value of these companies. Based on the above, the activity that is taking place now in this company is against the law and causes a significant waste of public funds, and therefore the Head of the Oil, Energy and Natural Resources Committee of the Council of Representatives requests that the procedures of the Ministry of Oil be suspended concerning the continuation of any activity related to the National Oil Company until the passage of the First Amendment Law of the National Oil Company Law to prevent violations due to changes that will get many articles of the original law and to cancel the mandate of the current Oil Minister to manage Company).

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 126 / federal /2021



Kurdish text

## **Second-The decision:**

In the scrutiny and deliberation of the Federal Supreme Court, it was found that what was contained in the letter of the Council of Representatives/Committee of Oil, Energy and Natural Resources number (75) on 5/9/2021, addressed to this court, lies in the request of the Head of the Oil, Energy and Natural Resources Committee of the Council of Representatives to suspend the procedures of the Ministry of Oil regarding the continuation of any activity related to the National Oil Company until the passage of the First Amendment Law of the National Oil Company Law to prevent violations due to changes that will get many articles of the original law and the abolition of the mandate of the current Minister of Oil to run the company for the reasons detailed in the request. The FSC finds that its powers and jurisdictions are determined by the articles (52 and 93) of the Republic of Iraq Constitution for 2005 and the article (4) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021 and the articles were listed in the other private laws, not among it the suspension of the procedures which made by any Ministry of the Ministries concerning the continuation of a specific activity or its mandating by taking any other action, especially that these issues considered an administrative decision which could be challenged before the administrative judiciary Courts. Therefore, what has been listed in the letter of the Council of Representatives/ the committee of Oil, Energy, and Natural Resources is fall out the requests that could be tried by the FSC and its jurisdictions which determined by the Constitution and the laws in effect. The FSC has no jurisdiction to interfere with what is considered as a core of the administrative

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Republic of Iraq  
Federal Supreme Court  
Ref. 126 / federal /2021



Kurdish text

judiciary work according to the principle of Judiciary Independence which is stipulated constitutionally in the articles (19,87,88,89,90,91,92/1<sup>st</sup> and 93) of the Republic of Iraq Constitution for 2005, and also the Court has no jurisdiction to make a decision in the requests listed in the Council of Representatives/ the committee of Oil, Energy, and Natural Resources by the number (75) on 5/9/2021 which summarized (the demand of suspending the Ministry of Oil procedures that concerning the continuation of any activity related to the National Oil Company until approving the first amendment law of the National Oil Company to prevent any violations because of the changes might be made on many articles of the original law and to cancel the mandate of the current Minister of Oil to manage the Company). Accordingly, the FSC decided to reject these requests in form and to notify the committee of Oil, Energy, and Natural Resources in the ICR with this decision. The decision has been issued unanimously, decisive, and binding for all powers according to the provisions of the articles (93,94) of the Republic of Iraq Constitution for 2005 and the articles (4,5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) for 2005 which was amended by the Law No. (25) for 2021 on 27/Rabea'a Al-Awal/1443 Hijri which coinciding 3/November/2021 AD.

**Signature of  
The president**

**Jasem Mohammad  
Abbood**

**Signature of  
The member**

**Sameer Abbas  
Mohammed**

**Signature of  
The member**

**Haidar Jaber Abed**

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Republic of Iraq  
Federal Supreme Court  
Ref. 126 / federal /2021



Kurdish text

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**Signature of  
The member**

**Haider Ali Noory**

**Signature of  
The member**

**Khalaf Ahmad Rajab**

**Signature of  
The member**

**Abdul Rahman  
Suleiman Ali**

**Signature of  
The member**

**Diyar Muhammad  
Ali**

**Signature of  
The member**

**Ghalib Amir  
Shunayen**

**Signature of  
The member**

**Ayoob Abbas Salah**