



The Federal Supreme Court (F.S.C.) convened on 2.12.2021 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 Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

The Appellant:

Kamel Rashad Falih/ Deputy Prosecutor before the Oil Compensation Committee in Dhi Qar.

The contested article:

Article (2) of the dissolved Revolutionary Command Council Resolution No. (1018) on 30/8/1982, published in the Iraqi Gazette No. 2899 on 30/8/1982.

The claim:

The appeal submitted by the Deputy Prosecutor General, Judge Kamel Rashad Falih / in the Public Prosecution Office before the Oil Compensation Committee in Dhi Qar, was received, by its regulations dated 9/14/2021 received by this court, accompanied by the letter of the presidency of the Dhi Qar Federal Appeal Court, No. (389 on 14/ 10/2021), on the occasion of his review of the lawsuit filed before the Oil Compensation Committee in the Dhi Qar Federal Court of Appeal No. (2/T/2021) by the plaintiff, Hassan Ajbeer Mohsen, against the defendant, Director General of Dhi Qar Oil Company, in addition to his post (the subject matter of which is the

Athraa



claim for compensation for damages), so he challenged before this court the constitutionality of Article (2) of the dissolved Revolutionary Command Council Decision No. Headed by a judge of the second category and membership of a representative from each of the Ministry of Oil, the Ministry of Agriculture and Agrarian Reform, the Baghdad Governorate, and the Federation of Farmers' Societies, chosen by the party it represents), for violating the provisions of the Constitution of the Republic of Iraq for the year 2005 for the following reasons:

1. The Committee included in its membership members who were not judges and they are representatives of their departments, the Ministry of Oil, the Ministry of Agriculture and Agrarian Reform, the Baghdad Governorate, and the Federation of Farmers' Societies. It is known that this committee considers disputes such as preventing opposition, compensation, and wages, and issues binding and appealable judicial decisions before the esteemed Federal Court of Cassation based on the provisions of Article (4) by the decision, and since the settlement of disputes is one of the exclusive competences of the judicial authority, and it is not permissible to accredit persons other than the judges to deal with the settlement of disputes and the consideration of cases, because this constitutes interference by the legislative authority in the work of judges and contradicts the provisions of Article (47) of the Constitution which states (The federal authorities consist of the legislative, executive and judicial authorities, and they exercise their powers and tasks based on the principle of separation of powers.

2. The contested text contradicts the provisions of Article (87) of the Iraqi Constitution of 2005, which states (the judicial authority

Athraa



is independent, and it is assumed by courts of all kinds and levels, and they issue their rulings by the law). Therefore, the presence of persons other than judges in the composition of this committee and the challenge of the task of judges shall be They have a voice in making decisions of a judicial nature inconsistent with the provisions of the Constitution.

3. Assuming the constitutionality of the committee formed under the contested article, it is noted that this committee includes in its membership a representative of the Ministry of Oil and that citizens' claims are brought against the Minister of Oil in addition to his post or one of the directorates in the Ministry of Oil or its subsidiaries, so how is it correct from a constitutional point of view to file a lawsuit before a committee In it a representative of the Ministry of Oil, and the opponent is the Minister of Oil, so it is unreasonable for the Minister of Oil to be the opponent and judge in the same case, which violates the constitutionality of the contested article.

4. The esteemed Federal Supreme Court issued many decisions that prevented the rest of the members belonging to the legislative and executive authorities from participating in the membership of a committee or a court and issued judicial decisions such as traffic officials, customs, and others who were given the power to impose penalties or fines and these laws were considered unconstitutional because they grant employees The right to exercise the judiciary is one of the exclusive powers of the judiciary. For the reasons mentioned above, he requests a ruling that Article (2) of the dissolved Revolutionary Command Council Resolution No. (1018) on 30/8/1982 is unconstitutional.

Athraa



The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the Deputy Public Prosecutor in the Public Prosecution Prosecution before the Oil Compensation Committee in Dhi Qar requests the unconstitutionality of Article (2) of the dissolved Revolutionary Command Council Resolution No. (1018) on 30/8/1982, published in The Iraqi Gazette, Issue No. 2899 on August 30, 1982, which stipulated that (the committee shall be formed under the chairmanship of a judge of the second class and the membership of a representative from each of the Ministry of Oil, the Ministry of Agriculture and Agrarian Reform, the Baghdad Governorate and the Federation of Agricultural Societies chosen by the party that represents it), and since the aforementioned committee It exercises original judicial jurisdiction to consider cases (preventing opposition, compensation and remuneration of the same), despite the participation of non-judges in its formation, contrary to the provisions contained in the constitution, because Chapter Three of the Constitution of the Republic of Iraq of 2005 is devoted to the judicial authority, as Article (87) stipulates From him on (the judicial authority is independent, and the courts of all kinds and degrees take charge of it, and they issue rulings According to the law), and Article (89) of it stipulates (The Federal Judicial Authority consists of the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Authority, the Judicial Oversight Authority, and other federal courts, which are organized in accordance with the law) as the branch specified The first of the third

Athraa



chapter of the Supreme Judicial Council, as Article (90) of it states: “The Supreme Judicial Council manages the affairs of judicial bodies, and the law regulates the method of its formation, its competencies, and the rules of its workflow.” The following powers: First: To manage judicial affairs and supervise the federal judiciary. Second: Nominating the president and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the head of the Judicial Oversight Commission and presenting them to the House of Representatives for approval of their appointment. Third: Proposing a draft annual budget for the federal judicial authority, and presenting it to the House of Representatives for approval), and Article (88) of it stipulates (Judges are independent and there is no authority over them in their judiciary except the law, and no authority may interfere in the judiciary or in the affairs of justice) and Article (19 / first) of the constitution on (the judiciary is independent, and there is no authority over it except the law), and Article (13/first) of it stipulates (this constitution is the supreme and supreme law in Iraq, and it is binding in all parts of it, without exception), and the article deals with (47) from it to the federal authorities in the state, as it stipulated that (the federal authorities consist of the legislative, executive and judicial authorities, exercising their powers and tasks on the basis of the principle of separation of powers), and that the principle of separation of powers is the basis upon which the parliamentary system in Iraq is based. And the existence of cooperation among them, does not mean that any of the authorities interfere with the competencies and powers of other authorities established under the Constitution, and saying otherwise would violate constitutionally protected rights and freedoms, as all the actions of the authorities in

Athraa



the state and its procedures must be Subject to its provisions in application of the provisions of Article (47) thereof, and the principle of judicial independence is a realistic application of the principle of separation of powers, because the flexibility of applying that principle does not in any way mean allowing the interference of one of the elements of the legislative or executive powers in the membership of judicial formations and voting on decisions and judgments issued by it, or practicing judicial work in any way, for violating the provisions of Article (88) of the aforementioned constitution, which stipulates (...no authority may interfere in the work of the judiciary or in the affairs of justice), and based on the principle of the supremacy of the constitutional rule, All legislation must be consistent with its provisions in implementation of the provisions of Article (13) of it, which stipulates (First: This constitution is the supreme and supreme law in Iraq and is binding in all parts of it without exception. Second: It is not permissible to enact a law that contradicts this constitution, and every text contained in the constitutions of the regions or any other legal text that contradicts it shall be considered null and void. Its legislation, especially those related to the formation of courts, must be in sound legal formulation, consistent with the objective descriptions of the cases under consideration, provided that the work is entrusted to judges who are known for their specializations based on the academic and personal qualifications, experience and skills they enjoy, resulting from the correct special preparation In the scientific and practical judicial institutions designated for this purpose by the provisions of the law, and for the foregoing, Article (2) of the dissolved Revolutionary Command Council Resolution No. (1018) on

Athraa



30/8/1982 published in the Iraqi Gazette No. 2899 on 30/8/1982, It is a violation of the provisions of the Constitution, which requires a ruling of its unconstitutionality and its repeal. When examining the rest of the articles of the aforementioned dissolved Revolutionary Command Council's decision, the Federal Supreme Court finds that it has been It is an interference in the jurisdiction of the judiciary in violation of the provisions of Articles (19, 87, 88, and 90) of the Constitution, and embodies a clear violation of the principle of judicial independence and the exclusive jurisdiction of the Supreme Judicial Council in managing the affairs of judicial bodies, which requires addressing it for its violation of the provisions of the Constitution and ruling its unconstitutionality, and its abolition, as well. Especially since ruling the articles of the dissolved Revolutionary Command Council Resolution No. (1018) on 30/8/1982 in its entirety are unconstitutional, does not create a legal vacuum, for the jurisdiction to consider the lawsuits filed or against the Iraqi National Oil Company or to demand the prevention of Objection, compensation, or similar wages for the works carried out or carried out by the company in all the locations on which it exercises its oil operations and activities, as stipulated in the Law on the Allocation of Investment Areas for the Iraqi National Oil Company No. affiliated to the Supreme Judicial Council in application of the principle of the general jurisdiction of the judiciary and the rules of spatial jurisdiction stipulated in the amended Civil Procedure Law No. (83) of 1969, in order to achieve the principle of independence For the judiciary and in confirmation of the principle of separation of powers, and for the foregoing, the Federal Supreme Court decided to address Articles (1, 3, 4, 5, 6) of the dissolved

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 142 / Federal / 2021



Kurdish text

Revolutionary Command Council Resolution No. (1018) on 30/8/1982 published in the Iraqi Gazette, No. 2899 On 30/8/1982, the ruling was completely unconstitutional and with all of its articles (1, 2, 3, 4, 5 and 6) and cancelled. / First and 5 / Second) of the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021, on Rabi' Al-Akhir 26 / 1443 AH corresponding to 12/22021 AD.

**Signature of
The president**

***Jasem Mohammad
Abbood***

Athraa