

Republic of Iraq  
Federal Supreme Court  
Ref. 15 /federal /2020



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 26/1/2020 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohamed Rajab Al-Kubaisy who are authorized in the name of the people to judge and they made the following decision:

### **Session obligations:**

In order to deliberate the affairs of the F.S.C., in light of the matters that was issued from parties not related to the F.S.C. affairs, and have no substantiation on that from the constitution or the law, after the issuance of the republic decree No.(4) on 20.1.2020 to appoint the judge Mr. Mohamed Rajab Baker Al-Kubaisy the auxiliary member on the court as authentic member in it, who has practiced his functions in it since he was appointed as auxiliary member by the republic decree No.(118) for 2014, he has practiced his functions before and after his retire from the membership of the Federal Cassation Court according to article (6/3<sup>rd</sup>) of the Federal Supreme Court Law No.(30) valid on 17.3.2005, which stipulates that ((the president and members of the Federal Supreme Court shall continue in service without specifying maximum limit of age, unless he desire to leave the service.)), the F.S.C. finds that the

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appointment of the auxiliary member as authentic member according to the constitutional contexts, its juristic frame was just a settlement to the membership of that member of the court, because this appointment doesn't change his legal personality, or the functions that he practiced as auxiliary member from the functions that he practice as authentic member. Otherwise, interpretations and jurisprudence aroused suspicion of constitutional legitimacy without constitutional or legal substantiation, that doesn't change the fact above mentioned, because interpretation of the constitution and its implications and resolving disagreements and disputes are exclusive jurisdictions of the Federal Supreme Court under article (4) of it law, which its rulings has enshrined by article (93) of the constitution. any party practice this jurisdiction consider as violation to the court law and to the constitutional provision, any decision issued from that party outside it jurisdictions, consider as violation to the constitution and to be void, therefore the F.S.C. finds that appointing the judge Mohamed Rajab Baker Al-Kubaisy from auxiliary member on the court to authentic member according to the constitutional contexts, is an constitutional procedure that may not be affected, as there is no text in the constitution or the law prevent it as long as the auxiliary member enjoys all the constitutional and legal conditions of the authentic court member. According to that the F.S.C. quorum of authentic and auxiliary members is achieved in order to practice its functions that are stipulated in the

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constitution. no party is allowed to interfere in this matter after the F.S.C. has ruled in two final and decisive judgments according to article (94) of the constitution, that article (3/3<sup>rd</sup>) of the Supreme Judicial Council Law No.(45) for 2017 is unconstitutional, on the lawsuit filed by the Supreme Judicial Council' president Ref.(19/ federal/2017) dated on 11.4.2017, also ruled the unconstitutionality of article (3) of the F.S.C. law on the lawsuit Ref.(38/federal/2019) dated on 21.5.2019, because these articles has violated the provisions of articles (61/5<sup>th</sup>/A) and (91/2<sup>nd</sup>) of the constitution. accordingly, any interfering about nominating and appointing the judges of the F.S.C., consider as interfering with it independence, and violation to the provision of article (92/1<sup>st</sup>) of the constitution which states ((the Federal Supreme Court is an independent judicial body, financially and administratively.)), this matter will be under the provision of the F.S.C. law which it law bill was presented from the Council of Ministers, the F.S.C. has placed it notes on it, and it is currently under consideration on the Council of Representatives. Regard this context, the F.S.C. discussed in it session the subject that the court member the judge (Mohamed Rajab Baker Al-Kubaisy) taking the oath stipulated in article (7) of the F.S.C. law again, as he was settled as authentic member, noting that he had toke the oath on it due process when he was appointed as auxiliary member on the court and practiced his functions before and after referring him to retire from the post of president of the Appellation

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Committee in the Federal Cassation Court. As historical demonstration for article (7) with its implementation, under its provision the president and members of the F.S.C. when they were appointed, have taken the oath before (the Presidency Council) formed under article (36) of Iraqi State Administration Law for the transitional phase which became valid on 8.3.2004, which differs in its triple components and its jurisdictions from the jurisdiction of the (President of the Republic) that are stipulated in article (73) of the Iraqi constitution which became valid on 28.12.2005. (the Presidency Council) was canceled by article (138/1<sup>st</sup>) of the constitution, the jurisdiction that the president and members of the Federal Supreme Court taking the oath before the President of the Republic was not stated in article (73) of the constitution, therefore the party before which the legal oath to be taken which is stipulated in article (7) of the F.S.C. became unidentified constitutionally or legally when appointing new judges on the court. A deliberation has been held with the presidency of the republic in that time regarding that, and decided that the new member in the court shall take the oath in the court before the president and members of the Federal Supreme Court, until enacting new law for the court according to article (92) of the constitution, and that what has been done when appointing new members on the court whether it is authentic or auxiliary member. The F.S.C. finds that the judge Mr. Mohamed Rajab Baker Al-Kubaisy when appointed as auxiliary

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member according to the constitutional contexts, has taken the oath on it due process before the president and members of the F.S.C., and practiced his functions after that and still on, appointing him as authentic member by the juristic assignment was just settlement and continuance to his membership on the court. Therefore the F.S.C. finds that there is no need to re-take the oath stipulated in article (7) of the F.S.C. law. The decision has been issued unanimously on 26/1/2020.