

Republic of Iraq
Federal supreme court
Ref. 21/federal/media /2014



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18.12.2014 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff : (ain. nun. jim.) his agent (jim. kaf. ain.)

The Defendant : Speaker of House of Representatives/ being in this capacity- his Jurists (sin. ta. yeh.) and (ha. mim. sin.).

The Claim :

The plaintiff's agent claimed before the FSC in case No. (21/federal/2014) that on 22/8/2014, the House of Representatives issued a law to ratify the agreement on the regulation of navigation between Iraq and Kuwait in Khor Abdullah, and since the law of the agreement that came (humiliating to the Iraqi people) which entitled him to defend his interests included violations of the provisions of the Constitution and the bylaw of the House of Representatives and the provisions of international public law, including the following: (1- the article (1) of the Constitution state that ((The Republic of Iraq is a single federal, independent and fully sovereign state in which the

system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.)) This agreement included the waiver of the maritime borders of our country to a neighboring country, (the State of Kuwait), and turned Iraq into a closed country by sea, where Kuwait had no presence on the isolated water section adjacent to FAO and adjacent to the port of Umm Qasr and the ratification of this agreement granted Kuwait the extension of the border towards our coasts, which led it to confiscate the last sea surfaces and cranes fishing and navigation, and with this treaty parliament approved the sovereignty of Kuwait over Abdullah and the resulting loss of oil platforms, this waiver is unsubstantiated by lawlessness, as it constitutes a clear violation of the Constitution and is a waiver of Iraq's maritime sovereignty. (2) Article (61) of the Constitution specified the exclusive jurisdictions of the House of Representatives, where the (4th) paragraph came up with (the regulation of the process of ratification of treaties and the International Convention by a law enacted by a two-thirds majority of the members of the House of Representatives) and article (51) of the Constitution stipulates that (the House of Representatives shall establish its bylaws to regulate its work.), this article obliges the House of Representatives to establish bylaw that regulates all its work and the articles of the system must be applied with high professionalism and transparency and not selective and impartial as stipulated in article (127) of the rules of procedure of the House of Representatives, which stated in it (organizing the process of ratifying international treaties and conventions by a law enacted by a two-thirds majority of the members of the House of Representatives that has been obtained, (124) deputies voted in favor of the agreement, while (84) deputies voted against the agreement, which means that the two-thirds required to pass the agreement will not be voted on, a clear violation of the Constitution and the bylaw of the House of Representatives. (3) The agreement to regulate navigation in Khor Abdullah was challenged before the

Presidency of the House of Representatives by (17) deputies who did not receive this appeal if heard by the Speaker of the Council / being in this capacity and attached the signatures of the deputies who appealed the agreement. (4) Article (8) of the 1982 Convention on the Sea defined inland waters as "waters on the sea-facing side of the territorial sea baseline (inland waters include seaports, bays, lakes, closed and semi-enclosed seas - seaports are intended for state-owned facilities in certain locations of its shores to guide and receive ships, and these facilities are part of the territory of the State). The internal waters are subject to the sovereignty of the state and exercise the powers exercised on it on its land territory). Article (11) of the International Convention on the Law of the Sea (is considered part of the coast, the most remote permanent port facility that forms an original part of the port system). This applies to the floating platforms in Khor Abdullah, which are an integral part of the territory of the state, which means that the part waived under the agreement is located within the territorial waters, which are higher than the constitution and the rules of procedure and any internal law project full sovereignty over the internal waters, so the Iraqi Parliament approves an agreement in which it waives what is the right of the Iraqi people, not to mention that Iraq has owned this creek since 1964 and this is called a custom of the right. Historical for use, in the end, I can only put in your hands annex (1), which contains a brief summary of Khor Abdullah, which was built in 1964 with Iraqi hands and arms. It also contains details of the agreement, which gives the right of sovereignty over our waters by the State of Kuwait, and that the Iraqi people do not need such an agreement, which clearly harms them and does not serve their interests, but serves the interests of the State of Kuwait, which is day after day part of the land and waters of the Iraqi state, taking advantage of the weakness of the Iraqi state and its institutions. As well as Annex (2), which shows the reaction of Iraqis and all their segments of the world, politicians, notables, experts and opinion makers, who agreed that this agreement is not in the interest of

Iraq and the Iraqi people and called for it not to be passed. Therefore, he asked the FSC after the necessary procedure to rule on the repeal of the law on ratification of the convention referred to above for violating the articles of the Constitution such as Article (1), Article (61) and Article (51), and violating the articles of the rules of procedure of the people of the case, such as Article (127) and violating the articles of international law (represented by international treaties) and we hope that the right will be shown by the judiciary, which is the safety valve for the Iraqi people and their historical rights. The defendant was charged fees, expenses and fees for lawyers. The defendant's attorneys responded to the petition with their answering draft on 3/3/2014, requesting that the case be dismissed for the reasons contained in it. The court invited the parties to argue, and the plaintiff's attorney and the defendant's attorneys were present under the agencies linked to the case and initiated argument immanence and public. The plaintiff's attorney repeated the petition and requested the judgment, with the defendant charging all expenses and the fees of the lawyers, and the defendant's agents reiterated what was contained in their answer list on 3/3/2014 and requested that the case be dismissed, with the plaintiff charging the costs of the lawsuit and the fees of the lawyers, and therefore there is nothing left to be said the end of argument has been made clearly and the decision had made clear public.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff's agent requested in his petition from the FSC uling to repeal the law ratifying the agreement on the regulation of navigation between Iraq and Kuwait in Khor Abdullah, which was issued by the Iraqi Parliament on 22/8/2013, this is due to the damage done to Iraq and the parliament's decision under the agreement to sovereignty Over Khor Abdullah and the resulting loss of Iraq's floating oil platforms, in

addition to the agreement violating the articles (1) , (51) and (61/4th) of the Constitution of the Republic of Iraq of 2005 and the article (127) of the Bylaw of House of Representatives referring to Article (61/4th) of the Constitution, it was found that it provided for (Regulating the ratification process of international treaties and agreements by a law, to be enacted by a two-thirds majority of the members of the Council of Representatives). It is clear from this that there is a difference between the legislation of the law on how to ratify international treaties and conventions, which is enacted by a two-thirds majority, and the ratification of the treaty by a simple majority, since the said text is a two-thirds majority to pass the law of ratifying the treaties and agreements concluded between Iraq and other countries of the world and not to pass the ratification of the law of international special agreements between Iraq and other countries, this requires a simple majority of the members of the House of Representatives present on the basis of Article (59/2nd) of the Constitution, not Article (61/4th) of the Constitution, which stipulates that the constitution regulates the process of ratifying treaties and conventions under a law that shall be approved by a two-thirds majority of the members of the House of Representatives) which has not yet been enacted and since the law in question has fulfilled the legal formality stipulated in the Constitution in the House of Representatives by approving it by a simple majority of the members of the Council present. Therefore, the plaintiff's case from this body is not based on the Constitution or the law, as for the challenge to the convention that it harmed the Iraqi side for the reasons given in the introduction of the decision, the consideration of the appeal raised in this regard does not fall within the jurisdiction of the FSC stipulated in article (93) of the Constitution and article (4) of the FSC's law. For the reasons of the advanced reasons, the plaintiff's case is due to be rejected by these two parties, and the court decided to reject the plaintiff's claim, charging the lawyers for the lawyers for the defendant (sin. ta. yeh.) and (heh. mim.sin.) a sum of 100,000 dinars between

them and the decision was issued by agreement and decisively and made clear public on 18/12/2014.