

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 48/federal/media/2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 9.12.2018 headed by the 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, Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision:

Plaintiff:

1. (ra. feh. ain. mim.) President of Kirkuk Governorate Council
 2. D. (nun. dal. ain. kaf.) Governor of Kirkuk
 3. (mim. kaf. sad.) Member of the Governorate Council
 4. (dal. beh. ain.) Member of the Governorate Council
 5. (feh. ha. kaf.) Member of the Governorate Council
 6. (beh. mim. alif.) Member of the Governorate Council
 7. (ra. mim. dal.) Member of the Governorate Council
- } being
in this
capacity
their
agent
(ain. alif. ain.)

Defendant: Prime Minister/ being in this capacity his legal counsel
(ha. sad.).

Claim:

The plaintiff claimed before the FSC in the case No.(48/federal/2018) that the article (140) of the Constitution which is an extension of the article (58) of the Iraqi Transitional Administration Law which states that all its requirements must be implemented within two years on 31/12/2007, The three stages in Kirkuk and other disputed areas of

normalization, census and referendum to determine the administration of its citizens to choose their integration into the Kurdistan region or the survival of the province and other areas within the authority of the federal government, the term "Kirkuk" has been intended as part of the text of this article so that it does not accept any interpretation or interpretation regarding its inclusion in the text of this article. The implementation of this article has been entrusted to the executive authority represented by the President of the Republic and the Prime Minister of the Federal Government, unfortunately, however, the executive authority has delayed its implementation of the letter and spirit according to its stages and schedule, despite its formulation. Under the words chosen in its codification, it granted mandatory power to the executive authorities, and when unconformity to them bear the constitutional responsibility and requires the question of constitutional constitution, as the evasion of this led to delay the resolution of this article and its survival is stuck between the Kurdistan Regional Government and the federal government led to: 1- The failure of the Higher Committee for article (140) of the Constitution to follow up its work. 2- Not to approve the draft submitted by the former President (Jalal Talabani), the former President of Iraq to parliament to expedite the implementation of this article. 3- Failure to form the competent committee of parliament to follow up the implementation of this article in its current session (2014-2018). 4- Non-follow-up of the ministries and relevant bodies in the federal government of the decisions issued on the cancellation of unfair decisions issued by the Revolution Command Council dissolved and the decisions of the Committee on the North and related to the subject of article (140) of the Constitution. 5- Creating a state of anxiety and instability about the future of this province, which has caused its social, political and national fabric to be damaged by a disruption of its peaceful coexistence ... etc. The defendant then took a decision to storm the city and all the disputed areas by using excessive military force in the Iraqi army and popular mobilization factions

operating under his command. He did so on 16/10/2017 without consultation with the governorate administration and its elected council without its approval. These forces stormed the governorate building and its council and seized it by its members as well as the entire governorate and committed crimes against civilians and their property and led to the displacement of a large proportion of the components of the Kurds and Arabs and Turkmen to the provinces in the Kurdistan region for fear of their lives and the lives of their families or persecution because of their ethnic affiliations and their views policy. This procedure is a violation and constitutional violation for the articles (9,15,37,122,140) of the constitution and violates article (140) of the constitution. For the reasons above, the two agents of the plaintiffs requested from the FSC to judge on the following: 1- unconstitutional the decision taken by him to use Iraqi Armed Forces, Popular Mass Forces and Military Operations carried out by him throughout the governorate (Kirkuk) and elimination of its consequences which led to fueling the security and political situation and disrupting its legitimate civil authority and implementing the article (140) of the constitution and the obligation to restore the situation to what it was before 16/10/2017 and allow them to exercise their normal work to manage the province as it was before this date and hand over the file to the local police. 2- obligation to implement the state of article (140) of the constitution in letter and spirit and the need to implement it in accordance with the stages provided for and complete the procedures from the point it stopped and activate the committee formed to implement this article and the allocation of financial dues required from the general budget to continue its work until the completion of the implementation of the referendum and end the referendum in order to determine its future according to manage its citizens all within a reasonable period of time and to prevent him / being in this capacity any action or decision in the future that would lead to the disruption of the judge of this article.

3- Issued custodian order to stop the holding of parliamentary elections in the province of Kirkuk and its environs and is supposed to be conducted in all of Iraq on 15/5/2018 due to its exceptional circumstances until the restoration of normalcy. The defendant's agent responded to the applicant by a reply order dated 16/5/2018 requesting the response of the case with the plaintiff charging the fees and attorney fees for the following reasons: **First:** In terms of jurisdiction, it is not the jurisdiction of the FSC to enforce powers to implement a constitutional article in accordance with the powers specified in article (93) of the Constitution, which did not give the Court the power to oblige the government a specific action or prevent his client from taking any decision or action, especially if the decision or action in accordance with constitutional powers Especially the implementation of the defendant's constitutional powers to achieve security and stability and the imposition of the Constitution and the law and maintain the unity of the country and not to cut part of its territory to form an independent state or entity independent of the Federal Republic of Iraq according to the article (93) of constitution and (78 & 80/1st & 109 & 110/2nd) of it , this is a violation of the powers of his client and that the subject of the case is to accusing his client not to apply a constitutional text and not a dispute that occurs between the federal government and the provinces so the issue is outside the jurisdiction of the Supreme Court according to the article (93) of constitution, the FSC has no jurisdiction to suspend and disrupt a constitutional provision, namely article (49/1st), which includes the election and formation of the legislature in a particular province, especially as the date of election for the House of Representatives is specified in article (56) of the Constitution as to the subject matter, article (140/1st) of the Constitution which state on (the executive branch shall take the necessary steps to complete the implementation of the requirements of article (58) of the Iraqi State Administration of the transition in all its paragraphs). And that his client has fulfilled all its requirements. He formed the Real Estate Dispute Resolution

Commission in 2005 after the promulgation of the effective Constitution and took all measures to remove the injustice caused by the deportation and exile of people from places and deprivation of the population from work and the return of the client within a short period of time to their homes and properties. It carried out its duties throughout the country and returned its client to settle the individuals who were transferred to areas and lands other than their areas of residence in the province of Kirkuk according to article (10) of the law of the Royal Property Disputes they compensated them fairly and took the other measures that the defendant had described in his draft, and thus his client carried out the requirements of article (140) of the Constitution in the terms of article (58) of the Law of the Iraqi State Administration for the transitional period of normalization of conditions in the governorate of Kirkuk or the second page of the requirements. The mentioned article is the census phase to finalize the referendum process to determine the will of its citizens and then complete the implementation of article (140) of the Constitution requires the adoption of administrative, legal, executive and legislative actions ending with a referendum in Kirkuk and other regions to determine the will of its citizens until the full implementation of article (140) of the Constitution, without which the referendum process cannot take place, which means that the presidency and the House of Representatives should carry out the actions required for the implementation of the said article, as clarified by the defendant's agent in the his draft, the terms of reference of the Prosecutor in paragraphs (2,3,4) of the challenge draft are the prerogative of the House of Representatives and not of the Council of Ministers and what is stated in paragraph (5) of the draft, the situation of anxiety and instability in the province is due to terrorism and the terrorist gangs of ISIS that have spread in the city. His client seeks to achieve security and stability in it through the deployment of the Armed Forces and the Popular Mas Forces and to engage in many battles and security operations and that the arrival of the security forces to the province is for the purpose of

enforcing the law and stabilizing the situation in the implementation of the powers conferred by the Constitution to his client in the articles (78,80/1st,109,110/2nd) of the Constitution so he request to reject the case with the plaintiffs charging the charges and the attorneys ' fees, the court appointed a date for the argument and attended the plaintiffs their agent under his agency attached to the case file and came from the defendant under the Legal counsel (ha. sad.) the immanence and public argument began. The agent of the plaintiffs repeated the petition and requested the judgment, and the agent of the defendant reiterated the answering draft in the reply to the petition and requested to judgment the case by reject. The Court was informed of the answering draft to the Court by the agent of the plaintiffs on 2/12/2018, in response to the answering draft for the defendant's agent requesting to reject what is in it and the judgment according to the petition and where nothing remains to be said , the end of argument has been made clear, and the decision had made clear in public on 9/12/2018

The Decision:

When scrutiny and deliberation the FSC fond that the agents of plaintiffs requested in their petition from the FSC judgment :

First : unconstitutional the decision of the defendant/ being in this capacity to use the Iraqi armed forces, the Popular Mas forces and the military operations carried out by him in the whole governorate of Kirkuk, and to eliminate the consequences thereof and implement article (140) of the Constitution and oblige him to return the situation to what it was before the day 16/10/2017 and to allow them to practice the usual work of the administration of the province as they requested.

Second: Judgment on the obligation of the defendant to implement article (140) of the Constitution, the letter and the spirit, and the need to implement it from a dome in accordance with the prescribed stages and to complete the procedures from the activities that have ceased and to activate the Committee formed to implement this article and allocate the necessary financial dues from the general budget to continue until the

completion of the actual implementation, which ends with the holding of the referendum to determine its future according to will of its citizens, all of this within a reasonable time and prevent him (the defendant/ being in this capacity) from taking any decision or future result that would lead to the disruption of the rule of this article as they requested.

Third: Judgment to issue a custodian order to stop the holding of the parliamentary elections in Kirkuk to be held in 12/5/2018 until security and stability are re-established and the FSC finds that the first request concerns an administrative decision taken by the defendant/being in this capacity to restore security and stability to the province of Kirkuk. This decision is outside the jurisdiction of the FSC as set out in article (93) of the Constitution and article (4) of its Law No. (30) of 2005, which requires to reject the case from incompetence. The second application in the petition of the FSC finds that it is not one of its mentioned competencies, in the above-mentioned article of the Constitution and in accordance with article (4) of its law, which stated that the defendant must be obliged to perform certain work or refrain from conducting a particular work, including what was contained in the request by obliging it to implement the text of article (140) of the Constitution and what is contained in the request. Therefore, this request is outside the jurisdiction of the FSC, which requires that it be rejected by the jurisdiction as well. The third request is that the FSC finds that its consideration has become irrelevant in view of the holding of parliamentary elections throughout Iraq, including Kirkuk province, so for the advanced reasons The Federal Supreme Court decided to reject the plaintiffs' claim from the jurisdiction, charging them with all the costs of the lawsuit and the attorney's fees for the agent of defendant / being in this capacity, as well as legal advisor (ha. sad.), a sum of 100,000 dinars. The decision of judgment was issued in the presence and decisively and majoritarian, based on article (94) of the Constitution and article (5/1st) of law of the FSC and made clear and publicly on 9/12/2018.