

Republic of Iraq
Federal Supreme Court
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The Federal Supreme Court (F S C) has been convened on 13/2/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jabir Abid, Khalef Ahmed Rajab, Ayooob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff in the case number (59/federal/2012): the federal Minister of Oil/ being in this capacity – his agents the official jurists Emad Habeeb Hamoud, Hashim Abdul Ridha Qasim, Hadeel Ghazi Abdul Razzak, Aziz Abdul Aziz Sadiq, and Ph.D. Ali Abdul Razzak Ali.

The Plaintiff in the case number (110/federal/2019): Ali Shaddad Faris (member of Basra Governorate Council) his agents the Barristers Mohammed Majeed Risan Al-Saidi and Ahmed Mazin Makkiya.

The Defendants: 1. The Minister of Natural Resources in Kurdistan Region/ being in this capacity – his agents the Barrister Rushdi Khalis Mohammed and the official Jurists Mahdi Salih Abdul Rahman and Lawand Delawar Ahmed.
2. The Speaker of Kurdistan Region Council of Representatives/ being in this capacity – his agent the Legal counselors Warya Saadi Ahmed and Ph.D. Waadi Suleiman Al-Mazoori.

The Third-Party for Inquiry: 1. The Federal Prime Minister/ being in Capacity – his agent the legal counselor Hayder Al-Sofi.

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2. The Federal Minister of Finance/ being in This capacity – his agents the official jurists Khulood Hussein Abbas and Yahya Salih Mahdi.
3. The Prime Minister of Kurdistan Region/ Being in this capacity – his agents the Barrister Rushdi Khalis Mohammed and The official jurist Salih Mahdi Abdul Rahman.

The Claim

In the numbered case (59/Federal/2012) by his agents, the plaintiff claimed that the defendant (Minister of Natural Resources of the Kurdistan Region/ being in this capacity) refrained from delivering crude oil produced from the Region to the Federal Government in addition to exporting crude oil produced outside Iraq without the approval of the central government, in violation of the provisions of the Constitution and the relevant laws and legislation as follows: 1. Article (111) of the Constitution stipulates that oil and gas belong to all Iraqi people in all regions and governorates, and the export of oil by decision of the region without reference to the federal government is contrary to the provisions of this article, as this has led to the region's exclusivity of oil revenues produced there and the denial of the rest of the regions. 2. Article (112/1st) of the Constitution stipulates that "the federal government manages oil and gas extracted from existing fields with the governments of the producing regions and governorates, with their imports distributed equitably in proportion to the population distribution throughout the country, with a fixed-term quota for the affected territories, which

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were unfairly denied by the previous regime, which were subsequently damaged, ensuring the balanced development of different regions of the country and regulating it by law" and since this provision did not grant the Region the right to the Oil and Gas Administration has entrusted the Federal Government exclusively with the task of distributing imports, as stipulated in the joint administration issue to regulate this by law, which was confirmed by the Federal Supreme Court under the numbered decision (8/federal/2012), which indicated that the joint administration requirement was currently suspended until the law on that was enacted. 3. Article (112/ 2nd) of the Constitution stipulates that "the federal government and the governments of the regions and governorates produced together draw up the strategic policies necessary to develop the wealth of oil and gas, in order to benefit the highest benefit to the Iraqi people, adopting the latest technologies of market principles and encouraging investment", which means that the region should share with the federal government strategic policies necessary to develop oil and gas wealth exclusively and this matter was confirmed by the Court in its aforementioned decision. 4. Paragraph (Beh/1st) of Article (1) of the Federal Budget Law of the Republic of Iraq No. (22 for 2012) provided for revenues resulting from the export of crude oil and the determination of the quantities issued daily of (2,600,000) million barrels per day, including (175,000) barrels per day of crude oil produced in the Kurdistan Region," the article mentioned. Economic, political, and social life is permanent, so the defendant's abstention is contrary to the text of the law and detrimental to the national economy. 5. Article (5/1st) of the Law regulating the Ministry of Oil No. (101 of 1976) which is in

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force under the provisions of Article (130) of the Constitution stipulates (the Ministry of Oil, the administration of the oil sector, and expressed in the sector for this law, It is responsible for the exploration, drilling, and extraction of oil and gas, liquidations and the gas industry, as well as the transport and marketing of crude oil and gas and their products, the construction of oil projects and the import of specialized supplies in the sector) and therefore the defendant's conduct is contrary to the provisions and text of the article above. When he submitted, in accordance with the provisions of article (93) of the Constitution, the plaintiff/ being in this capacity requested from the Federal Supreme Court to call upon the defendant to plead and rule by obliging him to implement and apply the provisions of the Constitution and the relevant applicable laws, and to hand over the entire oil production produced in the region to the Federal Ministry of Oil and to charge him all fees, expenses, and the advocacy fees. The case was registered with this court in the number (59/Federal/2012) and the legal fee for it was met in accordance with the provisions of article (1/3rd) of the Bylaw above and informs the defendant in addition to his job with its petition and documents and his agents replied in the answer list dated 9/4/2018 that the plaintiff's claim is unsubstantiated by the Constitution for the following reasons: first: The Oil and Gas Administration is no longer one of the exclusive jurisdictions of the federal authorities as it was previously the central government under previous regimes, nor is it under the State Administration of Transitional Law 2004, which considered (natural wealth management) to be one of the exclusive jurisdictions of the Iraqi Transitional Government under Article (25th/ Heh), where Article 25 of the State Administration Law became the historical

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source of article (110) of the Constitution outlining the exclusive jurisdictions of the federal authorities after That (paragraph/Heh) where the terms of reference in (Article 25) mentioned in article (110) of the Constitution were removed in form and subject. Second: Article (111) of the Constitution is intended to be more of a political concept than a legal one and was not a regulatory article for the management of oil and gas affairs, and it is intended not to capture the oil and gas resources of government authorities in the interest of the people of Iraq. Any further explanation would contradict the clearness of constitutional articles (110), (112), and (115) which dealt with the distribution of jurisdictions between federal authorities, regions, and governorates not incorporated into a region. Third: At the time of the constitution's entry into force and establishment, the Region did not have any fields of the so-called current fields, and the fields produced in the region were several years after the founding of the Constitution, but the plaintiff in the form of his handling of the article (112) of the Constitution as one of the constitutional foundations on which his claim was based ignored the distinction and sorting between the current and future fields, their equality in governance, antiquities and outcome. He considered that the designation of fields as (current) includes all fields, including future fields that existed after the date of the establishment of the Constitution, and that the fields (current) are the fields where extraction reached the stage of commercial production on the date of the entry into force of the Constitution on (20 May 2006) to be covered by article (112/1st) and its management is joint, falls within the common jurisdictions and governed by the inability of the article (115) of the Constitution and its text: (...With regard to other powers

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shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute) Since the Kurdistan region, with the date of the constitution's entry into force on 20 May 2006, did not have any oil and gas fields produced and the existing extraction fields reached the production stage several years after the constitution's effective date, which means that they are not covered by article (112) of the article (112) of the Constitution and are considered future fields and governed by article (115) of the Constitution. Fourth: The Regulation Of the Ministry of Oil Law No. (101 of 1976) is not implemented against the territory for the following reasons: 1. It's a regulatory law for ministry affairs that was enacted based on a centralized system that is contrary to the principles of federalism introduced by the Constitution and cannot be invoked towards the territory. 2. What is addressed in the aforementioned Law (Oil and Gas Affairs) is not an exclusive jurisdiction in the article (110) of the Constitution and did not take into account the provisions of the Constitution of 2005 regarding the distribution of jurisdictions under it for its legislation before the establishment of the Constitution. 3. The Region has a ministry similar to the Ministry of Oil, the Ministry of Natural Resources, established by the Law numbered (21) of 2007 in accordance with the authority granted to its legislative authorities in the article (121) of the Constitution and constitutionally recognized under articles (117/1) and (121/ 1st). 4. Under article (115) of the Constitution, the region's authority is entitled in the event of a decrease or conflict between federal and regional law on an issue that does not fall within the exclusive jurisdictions of federal authorities to amend the

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application of federal law on the basis of the provision of the article (121/2nd), and that the plaintiff's basis in Paragraph (5) of the petition is contrary to the Law of the Ministry of Natural Resources of the region No. (21) of 2007, the Oil and Gas Law of region No. (22) of 2007, and both laws contain a non-employment provision By any law or decision contrary to them, the region has the right to have priority laws over the Law regulating the Ministry of Oil in the event of disagreement with it or differences between their laws, based on the inability of the article (115) of the Constitution, and what applies to the region has been done by Federal Law No. (19) of 2013. (Second Amendment Law of the Law of governorates not incorporated into a region Law No. 21 of 2008) for governorates not incorporated into a region where article (2) amended the following: ((fifth: Local governments exercise their powers in the Constitution and federal laws in local affairs except for the exclusive jurisdictions of federal authorities provided for in article (110) of the Constitution, sixth: The joint terms of reference provided for in articles (112, 113 and 114) of the Constitution are administered in coordination and cooperation between the federal and local governments and the priority is the law of governorates not incorporated into a region in the event of disagreement between them in accordance with the provisions of article (115) of the Constitution). Fifth: What is stated in the budget is an estimate of the resources of oil produced and exported by the Ministry of Oil and the Ministry of Natural Resources in the region and the export process is continuing and the federal government stands on the most accurate information of the territory's oil, exported in terms of quantity and revenue, and the export was with the knowledge and approval of the federal

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government, which came more than once, the most recent of which was its decision in March 2018 to supply the territory's exported oil resources with amounts to pay the salaries of employees and avoid the deficit in its resources, although the territory did not start exporting oil Immediately after the Federal Government has refrained from paying the Territory's budget benefits since February 2014, causing the Territory to financial hardship and difficult economic conditions that have negatively affected the living conditions of its citizens, the Territory has its constitutional rights and jurisdictions under articles 112, (113), (114) and (115) as the holder of inherent jurisdiction, and the failure to resolve the problem between the Ministry of Oil and the regional authorities on oil production and export is due to the plaintiff's position in refraining from taking the necessary steps to legislate the federal oil and gas bill agreed between the two parties in 2007 as representing the strategic policy of oil and gas for the federal government and the territorial government in accordance with article (112/2nd) of the Constitution. (10/2nd/Alif) of the Federal Budget Law No. (9) of 2018, which stipulated ((second: Alif- the Kurdistan region Government shall be obliged to export not less than (250.000) two-hundred-fifty thousand barrels of the crude Oil in the day from its fields)). The dispute is on the means of marketing and not the right to export, therefore, responding to the request of the plaintiff to hand over the resulting oil in the territory to the Ministry of Oil while the financial problems between the two parties remain without consensual solutions and the federal government resorted to the imposition of financial and economic sanctions as a means of imposing its point of view even if it is contrary to the constitution will lead to a disaster affecting the

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region. Therefore, the plaintiff's claim that the region has deprived the provinces of its share of the territory's oil imports contradicts the reality that has become known to all inside and outside Iraq, as the region's oil imports and other domestic imports do not even reach the coverage of the percentage owed to the region under the annual budget laws and the Federal Authority has deprived the region of its share of Iraq's resources since February 2014, which is scheduled for public budgets. The defendant's agent, therefore, requested that the plaintiff's case be dismissed and to burden him with its fees and expenses. . After completing the procedures stipulated in the Bylaw of the Federal Supreme Court No. (1) of 2005, a date for the case was set in accordance with the provisions of article (2/2nd) of it, and both parties were notified, on the set day the Court has been convened. The agent of the plaintiff the official jurist Emad Hammoud has attended and the agents of the defendant both Barrister Rushdi Khalis and the jurist Mahdi Salih have attended. The public in the presence of argument proceeded, the agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it. The agent of the defendant answered by requesting to reject the case against his client for the reasons listed in the answering draft which he presented as an answer on the petition of the case (above-mentioned). The court scrutinized the petition and found that the case was one side by side with regard to government policy and one side related to state funds, as well as another side related to the policy of the Ministry of the Regional Government, which decided to introduce the Federal Prime Minister, the Federal Minister of Finance and the Prime Minister of the Kurdistan Region as a third person in the case to clarify from them what was necessary to resolve the case.

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The court noted during the scrutiny that the proceedings that the letter of the Ministry of Oil in the number (9) on 12 January 2014 addressed to the Council of Representatives guarantee that the Kurdistan Oil Marketing Corporation exported oil from the Kurdistan region using the Iraqi-Turkish line and without the approval of the federal government, and the court asked the Deputy Minister of Oil (the plaintiff) what actions the Ministry of Oil has taken in this regard, and the plaintiff replied that there is an agreement between the Iraqi government and the Turkish government, including this agreement not to use the above-mentioned pipeline until after the approval of the federal government and the Ministry of Oil in 2014 filed a lawsuit against the Turkish government, namely the Turkish company (Butash) in France for the purpose of compensating the Iraqi government for the damage caused by the use of the aforementioned line. Moreover, the Kurdistan Regional Government continues to use the aforementioned tanker line to export oil, and the case in question has not yet been resolved, as for the Kurdistan Region Oil and Gas Law No. 22 of 2007, on which the Kurdistan Regional Government is based on the export of oil, the central government has not taken any action on the aforementioned law and the National Oil Marketing Company (SOMO) has not interfered with the monitoring of oil exported from the Kurdistan Region. The agent of the third person, the Prime Minister, replied to the Federal Government that there is no agreement between the two governments on the issue of oil exports from the Kurdistan region, that what the region is doing in this regard violates the provisions of a section of the articles listed in the budget laws each year and that the regional government has not implemented the provisions mentioned, and the

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agent of the Federal Minister of Finance explained that the amounts of shares sold from Kurdistan oil were not deposited within the share of the central government and the region's share of oil sold from the Kurdistan region was not deducted and that the central government annually supplies the region with its share of the annual budget according to the budget law for each year and the agent of the regional prime minister, Chancellor Iyad Ismail Mohammed, explained that the Kurdistan region continues to export oil from the region. In its session of 9 February 2022, the Court noted that the case initiated before it in the number (110/federal/2019) by the plaintiff Ali Shaddad Fares (member of the Basra Governorate Council) against the defendant (Speaker of the Kurdistan Regional Parliament / being in this capacity) requesting (to judge that the Kurdistan Region Oil and Gas Law No. (22) for the year 2007 is entirely unconstitutional because of its violations to the Constitution., and to judge by unconstitutionality of the decision of Kurdistan Region which related to contracting with the foreign companies out of the central government authorities and to oblige the defendant by producing and exporting through the Federal Government without causing any damage to the federal government's commitments with (OPEC) and not to force the government to reduce production in Basra province, which applies the constitution and abides by the law through production and marketing within the constitution and the laws in force and is matched by increased production and marketing contrary to the Constitution and laws by the Kurdistan Regional Government, and the issuance of a state order to stop all productive or marketing oil contracts contrary to the Constitution and laws in force by the Kurdistan Regional Government and hand them over to

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the federal central government). For the untiy of the subject, the court decided to unify the case (110/federal/2019) with the numbered lawsuit (59/federal/2012) and consider the case (59/federal/2012) as the origin of its pre-establishment based on the provisions of article (76/2) of the Civil Procedures Law No. (83) for the amended year 1969 did not attend the plaintiff's deputies in the case (110/federal/2019) and the defendant attended the speaker of the Kurdistan Regional Parliament in addition to his job as deputy legal counsel and Riia Saadi Ahmed and Boucher with public fundamentalist argument answered the deputy prime minister of the province Kurdistan highlighted an answer list, and the deputy speaker of the Kurdistan Regional Parliament answered, highlighting an answer list, the court was briefed on the two lists containing the request to dismiss the case for each other's client and linked within the proceedings papers, and the agents of the parties repeated their statements and previous requests and where there is nothing left to be said, the Court has made the end of the argument clear and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff, the Federal Minister of Oil/ being in this capacity, filed this case on 1 August 2012 requesting that the defendant call upon the Minister of Natural Resources of the Kurdistan Region/ being in this capacity to hand over the entire oil production produced in the region to the Federal Ministry of Oil, and when the court scrutinized what was stated in the plaintiff's case and requests during the proceedings and what was stated in the

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defendant's agent's arguments / being in this capacity and what came in the unified suit with this case in the number (110/ Federal / 2019) and included the request to judge that the Kurdistan Region Oil and Gas Law No. (22) of 2007 is unconstitutional, the Court reached the following conclusions: first: Based on the provisions of article (116) of the Constitution, the federal system in the Republic of Iraq consists of the capital, territories, decentralized governorates and local administrations that do not violate the unity of Iraq, and when the Constitution enters into force the Kurdistan Region and its existing powers a federal territory based on the provisions of article (117/1st) of the Constitution, and the regions authorities have the right to exercise legislative, executive and judicial powers in accordance with the provisions of the Constitution, although this does not include the exclusive jurisdictions of the federal authorities, which may not be Exceed it on the basis of article (121/1st) of the Constitution. Second: The exclusive jurisdictions of the federal authorities are defined by the provisions of article (110/1st) of the Constitution, which stipulates (federal authorities have the following exclusive jurisdictions: first: foreign policy drawing and diplomatic representation, negotiation and negotiation of international treaties and conventions, borrowing policies, signature and conclusion of sovereign foreign economic and trade policy) and therefore federal authorities are constitutionally competent to develop sovereign foreign economic and trade policy so that provinces may not be Regular in the territory and territories throughout Iraq to exercise this exclusive jurisdiction instead of federal authorities and otherwise the exercise of those jurisdictions by irregular provinces in a region or territories is unconstitutional. Third: The regulation of trade policy

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across the borders of the territories and governorates of Iraq, the development of the general budget of the State, and the development of monetary, financial, and customs policy are exclusive jurisdictions of the federal authorities based on the provisions of article (110/3rd) of the Constitution on it, and for any reason contrary to the provisions of the Constitution, the territories and irregular provinces of the territory may regulate trade policy across their borders, and any province or territory regulates trade relations with its neighboring countries or any other state and for any reason contrary to the provisions of the Constitution. Fourth: Article (111) of the Constitution stipulates that "oil and gas belong to all Iraqi people in all governorates and regions" and therefore the expression of the Iraqi people includes all Iraqis without exception from north to south and east to west regardless of nationality or religion, and oil and gas throughout Iraq belong to the Iraqi people, which no federal authority or local authorities of the provinces or provinces may go beyond, and this is positive for the distribution of oil and gas revenues to all oil and gas revenues. The Iraqi people are equally and fairly regardless of the areas of production of this wealth so that the people of the provinces that are not produced are not deprived of them, and this requires informing the Iraqi people of the amount of oil and gas revenues as the owner of them to see how they are distributed, it is not possible for the owner not to know the proceeds of his property and how it is distributed. Fifth: Based on article (112/1st) of the Constitution, the federal government manages oil and gas extracted from existing fields with the governments of the producing governorates and region, so the oil and gas administration belongs to the federal government in cooperation with the governments of the

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producing governorates and regions, ensuring the distribution of their imports in proportion to the distribution of population throughout Iraq to achieve balanced development of different regions. Sixth: Based on the provisions of Article (112/2nd) of the Constitution, the federal government, in cooperation with the governments of the governorates and regions producing together, is drawing up strategic policies necessary to develop oil and gas wealth in the highest benefit to the Iraqi people, relying on the federal government to do so on the latest technologies of market principles and encouraging investment, and the development of such policies by the federal government depends on the economic, commercial, international and regional situation of Iraq in line with Iraq's international obligations with other countries and organizations. International, including OPEC Oil. Seventh: The powers of regions and governorates not incorporated into a region are determined in accordance with article (115) of the Constitution, which stipulates that (all that is not provided for in the exclusive jurisdictions of the federal authorities, it is the prerogative of the regions and governorates not incorporated into a region). Eighth: The Federal Oil and Gas Government Administration, represented by the Federal Ministry of Oil, is subject to the provisions of the laws in force, which are still in force on the basis of the article (130) of the Constitution, which stipulates that (the legislation in force shall remain in force, unless repealed or amended, in accordance with the provisions of this Constitution), including the Regulation of the Ministry of Oil No. (101) of 1976 and the Hydrocarbon Wealth Preservation Act No. (84) of 1985, and the Ministry also operates in accordance with laws initiated by the Council of Representatives. These include the Iraqi National Oil

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Company Law No. (4) of 2018, the Income Tax Law on foreign oil companies contracted to work in Iraq No. (19) for 2010 and the Oil Products Import and Sale Act No. (9) of 2006. Ninth: A court in the United States of America has already issued a lawsuit from the Plaintiff of the Iraqi Ministry of Oil and the defendant, the Ministry of Natural Resources of the Kurdistan Regional Government, which included the decision (1. The plaintiff has the legal entity or the right to own the property. 2. The defendant exercised his control or dominance, took control of the property illegally and unlicensed, and marginalized the plaintiff's rights. 3. The defendant rejected the plaintiff's request to return the property at this point, as there is clear reasonableness and does not need evidence that the Iraqi Ministry of Oil has made it clear enough that the Iraqi Constitution can be interpreted by giving the address as the regulator who manages oil affairs, unlike the Kurdistan Regional Government. 4. The KRG took oil when it was exported despite its ownership of the plaintiff.). Tenth: The federal authorities are responsible for the development of the general budget of the state on the basis of article (110/3rd) of the Constitution, and the failure of the KRG to take into account the exclusive powers of the federal authorities regarding oil and gas has led to complications between the federal government and the regional government, which in turn has led to the failure to deliver the share of the people of the Kurdistan Region of the general budget, which has resulted in the failure to hand over the salaries of KRG employees completely and for several years since the general budget laws require the KRG to implement something It is included in these laws, including the issue of oil and its export, which has affected the living level of the citizens of the Kurdistan Region, and compliance

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with the provisions of the Constitution and respect for the exclusive jurisdictions of the federal authorities, including exclusive jurisdiction regarding oil and gas exploration, extraction and export. This matter would enable regional citizens to receive their benefits from the total amount of the budget in accordance with the ratios specified by law without commenting on the resolution of differences between the Federal Government and the Region, as the people of the governorates of the Region must not be affected by those differences. Therefore, the KRG's extraction and export of oil, the contracting with external parties by states, companies, and legislation of the KRG Oil and Gas Law violate the provisions of articles (110, 111, 112, 115, and 121/1st) of the Constitution on it and all of the above the Federal Supreme Court has decided:

1. Ruling that the Kurdistan Regional Government's Oil and Gas Law No. (22) of 2007 was unconstitutional and repealed for violating the provisions of articles (110, 111, 112, 115, 121, and 130) of the Constitution of the Republic of Iraq for 2005.
2. The regional government is obliged to hand over the entire oil production from oil fields in the Kurdistan Region and other areas from which the KRG Ministry of Natural Resources extracted oil and delivered it to the federal government, the Federal Ministry of Oil, and enable it to use its constitutional powers to explore, extract and export oil.
3. The plaintiff/ being in this capacity has the right to pursue the nullity of the oil contracts concluded by the Kurdistan Regional Government, which are represented by the defendant, the Minister of Natural Resources, with foreign parties, states, and

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companies regarding oil exploration, extraction, export, and sale.

4. Obliging the Kurdistan Regional Government to enable the Iraqi Ministry of Oil and the Federal Board of Supreme Audit to review all oil contracts concluded with the Kurdistan Regional Government regarding the export and sale of oil and gas for the purpose of auditing it and determining the financial rights of the Kurdistan Regional Government as a result of it and to determine the region's share of the general budget and in a way that ensures that the rights of citizens of the Kurdistan Region provinces are delivered from the federal general budget and not delayed after all paragraphs of this decision are implemented by the Kurdistan Regional Government. The Federal Government and the Federal Board of Supreme Audit have been notified.
5. To burden the defendant with fees, expenses, and advocacy fees to the plaintiffs' agents amount of 100,000 dinars distributed in accordance with the law.

The decision has been issued with the majority and objection of two members according to the provisions of the articles (93/3rd, 94, 110, 111, 112, 115, 121, 130) of the Republic of Iraq Constitution for 2005. The decision is decisive and binding for all powers and has been made clear on 13/Rajab/1443 Hijri coinciding 15/February/2022 AD.

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**Signature of
The president**

**Jasem Mohammad
Abbood**