

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.66 and its unified 71, 157
and 224 /federal/media/2018



Kurdish text

The Federal Supreme Court has been convened on 23/1/2019 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-Nagshabndi, Abood Salih AL-Tememi, 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: head of Misan governorate/being in this capacity- his agents the legal officials, (Alif.Mim.Kha) (Sin.Ra.Ghain)

The plaintiffs:

1. oil industry expert (Feh.Qaf.Mim.Ha)
- 2.(Mim.Ain.Mim.Sad.Ain)

Their agents the barristers:

- 1.(Zin.Dad)
- 2.(Sin.Zin.Dha)

The plaintiff: finance minister/being in this capacity- his legal official (Jim.Mim.Sin).

The plaintiff: governor of the central bank/being in this capacity- his legal official Mim. General manager (Mim.Ghain.Mim)

The defendant: ICR speaker/being in this capacity his legal officials, the manager (Sin.Ta.Yeh) and the assistant legal counselor (Heh.Mim.Sin)

Federal Supreme Court - Iraq - Baghdad

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The third party:

1. head of the federal council of ministers/being in this capacity his legal counselor (Ha.Sad)
- 2.the federal oil industry minister/being in this capacity- his agent the legal official (Heh.Ghain.Ain)

The Claim:

The agents of the plaintiff (head of Misan governorate/being in this capacity) claimed in the case No.(66/federal/2018) that the ICR has already issued the Iraqi national oil company law No.(4) for 2018, he initiated to challenge it because of its violation for the Constitution and for the following reasons:

- 1.the law stipulated in the articles (3,4 and 8) of it to limit the validity of managing and setting the oil political strategy only for national oil company, this contrary to the article (112) of the Constitution which stipulated (First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields. Second: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth.)
2. The article (6) of the law gave a part to represent the producing regions for oil in its board of directors and hid the representation of the producing governorates for oil one of them is Misan governorate, contrary for the article (112) of the Constitution. For the above, the plaintiff agents requested from the court the decisions to annul the article (3,4,6,8) of the law because of its violation for the article (112) and (115) of the Constitution.

After notifying the defendant by the case petition his agent answered on it by a draft dated on 9/5/2018, requesting to reject the case and to burden the plaintiff all the expenses and fees of the advocacy for the following reasons :

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1. all the challenges that listed in the case are just on the determination of the company targets, work facilities, the board of directors tasks.

2. the article (6) subject of the challenge has stipulated in the item (6th) of it, the membership of the heads of the owned companies boards of directors, the last are the oil companies in all producing governorates included (Misan oil company) according to the article (7/2nd/2/Heh) of the law. Also, the plaintiff agent didn't show the point of violation of the articles the subject of the challenge for the article (115) of the Constitution.

- the plaintiff agents answered by a draft dated on 5/9/2018 that the targets are the purpose so the articles (3,4,8) of the law contrary to the article (112/ 1st and 2nd) of the Constitution. The article (7/6th) of the law stipulated (3) members from the nine owned companies mentioned in the article (7/2nd/2). The article (7/1st/4) of the law stipulated that the two heads of the boards of directors shall be from AL-Basra oil company and oil marketing company among the three members, the third member shall be from the extraction companies and according to the production, this is a serious injustice for the producing governorates representation and against the article (112) of the Constitution. The point of violation for the article (115) of the Constitution is that the subject of managing and formulating the strategic policy that related to the gas and oil is one of the shared authorities between the federal powers, governments of regions, producing governorates.

- after completing the procedures according to the court bylaw No.(1) for 2005 the court appointed the day 9/9/2018 as a date for the argument, the court had been convened, the agents of the parties attended. The plaintiff agents repeated what listed in the case petition and requested the decision according to it. The defendant agent repeated what listed in the answering draft and requested to reject the case for the reasons listed in the draft. The court checked what listed in the case petition and the exchanged drafts between the two parties, it found that its subject touches the council of ministers and oil ministry so it decided to introduce them in the case as the third party to have a clarification from them to what re-

quired to decide in the case. On 2/10/2018, the third party the council of ministers agent presented a draft was summarized as follows:

First: the draft law that sent by the government to the ICR, it gave in the article (5) of it to the national oil company the right to invest in all gas and oil areas in all lands of Iraq republic and regional water and continental shelf.

Second: the article (4/3rd,4th,6th) of the law included giving to the company competences that didn't mention in the governmental project which determine the tasks and competences of the company to invest in all country lands, thereby it is not its tasks to market and to operate the main Oil pipeline Network and Export terminals because that is the competence and task of the oil marketing company Somo.

Third: his client according to the article (80/1st) is competent in planning and execute the public policy of the government and the public plans and to supervise on the ministries work and according to the article (78) of the Constitution he is the direct executive officer about the public policy of the government, according to the article (110/1st) of the Constitution he is competent in formulating the seigniori economic policy, according to the article (111) of the Constitution stipulated that the gas and oil owned by Iraqi people, according to the article (76/4th, 78 and 80/1st and 3rd) of the Constitution he can make contracts of licenses tours in discovering and developing and oil-producing according to the Constitution that gave him all authorities in this subject and the ICR gave this authority to a public company to review these contracts and edit it, giving authorities to a public company which doesn't have any constitutional status in front his client competences, in addition, it is not possible to edit the authorities according to the rule of law (pacta sunt servanda) the company is not a contracting party to edit the authorities.

Fourth: for hiding the representation of the governorates that produce oil, the article (112/1st) of the Constitution granted the federal government the competence of management the gas and oil and to formulate the stra-

tegic policies to develop the gas and oil with regions governments and the governorates but it this competence shall be organized by a law, whereas the ICR doesn't enact the gas and oil law yet which the cabinet referenced its draft to legislate it while the ICR granted the regions the right of representation in the company board of directors which is against the government project and without government approval.

Fifth: the government project didn't include the content of the article (8) of the law – the subject of the challenge- to ratify what listed of details in it according to a regulation sets by the company and the ICR ratifies it according to the article (80/1st) of the Constitution, his client has no obligation about the clauses (1,4,5,9 and 13) of the article (8) of the law of the company calculations and checking it by financial supervision office and the ratification of ICR on it, for the clauses (2 and 3) of the article (8/1st) for setting the company budget and its right to formulate the extraction and developing plans, the ICR didn't take the government opinion about it also the article (8/1st/5,6,7,8,9,10,11 and 12) and (8/2nd/5) of the law didn't get the approval of the government about it, whereas it including a public policy for the government and public plans the cabinet competent in formulating it, planning it and executing it according to the article (78) of the Constitution, about the article (8/1st/14) of the law, invalidity of authorization of the Board of directors head because that doesn't grant the government right. The article (8/2nd/5) of the law the ICR added it without the approval of his client, and the membership of the ICR and the governorates make more suspicions, the principle of transparency shall be achieved and the board of directors invitation will cost the treasury more charges without any benefit. Also, the agents of the two plaintiffs (Feh.Qaf.Mim.Ha and Mim.Ain.Mim.Sad.Ain) claimed in the case No.(71/federal/2018) that the ICR issued the national oil company law No.(4) for 2018 included articles that contrary with number of Constitution articles, it is : (5), (13/2nd), (14), (16), (18/2nd), (23/2nd), (27/1st and 2nd), (44/1st), (78), (106/1st), (109), (110) and (111), for the subject of the case is important for the plaintiffs they challenged it for the following reasons: the article (12) with all of its clauses contrary to the Constitution as

follows: Alif. clauses (1st and 2nd) of the aforementioned article restricted all income and profits earned on the sale of oil and gas and other products to the national oil Company(public company), contrary to the text of the article (111 of) the Constitution (Oil and gas are owned by all the people of Iraq in all the regions and governorates.). forgotten that the company is just a public company while the Constitutional text of the article (111) made the revenues of the oil sovereign for all Iraq and all Iraqi people without exceptions, this has disaster results as follows: lost the sovereign protection of oil sources under the international law - the law made the national oil company as custodian of Iraq above the government, received Iraq revenues which earned from oil and gas exports which are owned by the company instead the government through the financial ministry.

- The word (all) listed In the article (111) of the Constitution mean mass sharing for all oil treasures by Iraqi people in all regions and governorates not to restrict it by a public company.

- the law didn't comply by the regulations of the federal budget which stipulated that all income in the government shall be delivered to the finance ministry.

- the oil resources are owned by the people according to what stipulated by the article (111) of the Constitution which mean it owned by the government, the government is the custodian on the people and their resources, this contrary with the text of the aforementioned clauses that guaranteed the ownership of those resources to the national oil company (public company) instead of the finance ministry, it is a seignior ministry within the government and custodian on the people and their resources.

Beh. The clause (3rd) of the article (12) of the national oil company law included the profits distribution percentages achieved by the company by the gas and oil income, the company take the place of the government which is represented by the finance ministry, it is seignior ministry for example when it determined within the clause (3rd/1) the government treasury share by a percentage which not exceed (90%) of the company profits,

this means that the percentage can be reduced to (60%) or (50%) according to what considered by the board of directors on the time that oil resources are (90%) of the federal budget amount, thereby the company and its board of directors became more powerful than the government (it is a public company), which contrary to the text of the article (110) of the Constitution which determined the exclusive competences of the federal power within the clauses (1st) and (2nd) to formulate the economic policies and Sovereign fiscal policies, also this text contrary the article (106/1st) of the Constitution which stipulates to form a public commission to oversight the allocation of the federal imports That hasn't been formed yet.

Jim. The text of the clause (Jim) of the item (2) from (3rd) of the article (13) which determined the profits distribution percentages (A percentage of the profits to the citizen's Fund, where it is distributed in equal shares to all citizens residing in Iraq and according to the priority of the segments of society and may not sell, buy and distribute shares and extinguish on death). This text contrary to many Constitutional articles by depriving the Iraqis residing abroad of their equal right with the right of Iraqi citizens residing inside Iraq. Contrary to the article (14) of the Constitution which stipulates that Iraqis are equal and the article (16) of the Constitution that stipulates that Equal opportunities shall be guaranteed to all Iraqis, and the article (18/2nd) of the Constitution which stipulated (Anyone who is born to an Iraqi father or to an Iraqi mother shall be considered an Iraqi. This shall be regulated by law.) and the article (44/1st) of the Constitution which stipulated (Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq.). the clause (Jim) of the item (2) of the article (12) it is a real serious danger for the unity of Iraq and economic, the clause stipulated and within the citizen fund resources to deduct the shares of Iraqis residing in the regions and governorates that not organized in a region that doesn't deliver the revenues of produced gas and oil to the company, it is deprived from the profits and its accrual is added to the other shareholders. The danger which will happen from this text that means providing the ability for the regions and the governorates to not pay the realized resources that came from oil selling, and providing the le-

gal cover in selling its gas and oil out of the national oil company boundary because of this behavior. This contrary to the articles (111), (110/1st) and (109) of the Constitution which enforces the federal power to preserve Iraq unity.

Heh. Cut a percentage of the profits according to the article (11) of the law and didn't determine the spending methods, the legality of its spending only came from the board of directors decisions so this means this huge amounts of money will be a target for wasting and corruption. This contrary to the article (27) of the Constitution which stipulated Public assets are sacrosanct, and their protection is the duty of each citizen. The article (4) of the law obliges the company to review all the service contracts that had been made during the licenses tours without reference to the sharing contracts which had been made by the province government, it means:

1.the law is valid on the producing governorates that out of the province, the law doesn't have any power on the province which means an enacted federal law valid on all Iraq government land, this is waste of territory unity which contrary the text of the article (109) of the Constitution.

2.this formula that targets reviewing the service contracts without references to a similar review for illegal sharing contracts which had been made by the province government, it declares that there is no objection on it, in addition to that the representation of the province in the company board of directors (Article 6/5th) this opens the door to grant the legality for the sharing contracts in oil operations which contrary with the text of the article (111) of the Constitution. These contracts made the contracted companies a partner in oil ownership.

Zin. Linking Somo the oil marketing company with the company (the article 7-2nd-Ha) it is a general company. This contrary to the article (111/1st) of the Constitution which made the foreign trade exclusively a competence for the FSC whereas oil forms the backbone of this seignior trading.

Heh. The article (13/2nd) excepted the incentives of the company workers from the provisions of the law of salaries of government officers and pub-

lic sector, this is clear discrimination between Iraqis people and contrary to the text and core of the article (14) of the Constitution which stipulated that Iraqis are equal before the law and the article (1[^]) which stipulated Equal opportunities.

Ta. The article (16) of the law included an exception for the company from a number of laws which posing violation for the article (5) of the Constitution which stipulated (sovereign and law) it is not acceptable to deactivate a law by a regulation that is contained in another law.

Yeh. The article (17) of law stipulates that the company have the right to own what it needs of states to dot their matters, this text will allow for a general company to take a government land without compensation which contrary to the clause (2nd) of the article (13) of the Constitution which stipulated (Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law.). the word ownership came absolute, it covers the public and private ownership. For the availability of the required conditions according to the article (6) of the FSC bylaw No.(1) for 2005 the plaintiffs' agents listed the following:

First: the plaintiffs' have a real, direct and effective interest in their legal and financial position as Iraqis citizen, whereas the oil resources forms (90%) of the federal budget which forms the basic of the commercial activity in Iraq, also the text of the article (111) of the Constitution included that the gas and oil owned by all Iraq people in all regions and governorates, the article (93/3rd) of the Constitution allow who concern to go to the court to appeal laws Constitutionality, so and according to the aforementioned texts the Plaintiffs who have the listed conditions in the clause (1st) above.

Second: the case petition included many shreds of evidence that legislation of the national oil company law that valid damaged all Iraqis including the plaintiffs' in this case.

Third: the damage that will touch the plaintiffs' as individuals of Iraq people is real and happen to them because of the expedition of the national company for gas and oil law for the reasons we listed in the case petition. Certainly, the damage will be removed when a decision issued by your respected court for the Unconstitutionality of the challenged articles in our case.

Fourth: the damage that will touch our clients because of legislation of this law as individuals of Iraq people is material-damage, immediate, specific, not theoretical damage or futuristic or unknown.

Fifth: the Plaintiffs' who are affected by the entire draft law and they don't exclude any part of the law.

Sixth: the law of the national company for gas and oil was published in the official gazette and became valid which mean applying it as an example on the plaintiffs. For all the reasons listed, they requested from the FSC to decide the unconstitutionality of the article (12,16,17) of the national oil company law according to the provisions of the article (13)(1st) of the constitution of Iraq republic that No law that contradicts this Constitution shall be enacted.

- after notifying the defendant by the case petition his agent answered in the draft dated on 20/5/2018 requesting to reject the case and to burden the plaintiffs; the expenses and fees of the advocacy for the following reasons:

1.it is clear that the interest conditions are not available in this case either the damage from the law that is challenged.

2. the article (111) of the Constitution decided a principle in total that had been explained and general principle had been allocated in the other Constitutional articles including the article (112/1st and 2nd) of the Constitution which obliged to regulate the distribution of the imports by a law and the methods of achieving the highest benefit for the people by sharing between the federal government and province and governorates govern-

ments by formulating the strategic policies. That is what explained in the law texts including the article (7/2nd/2) to link the oil companies in the producing governorates by the national oil company and made three of them represented in the company board of directors according to the article (6/6th) of it.

3. (Alif) the company competences didn't make it as an alternative for the finance ministry, its work is distinct according to their laws.

(Beh) there is no evidence that the company board of directors is over the government, it is one of the company formations and has organizational administrative competences which determined legally.

(Jim) the article (111/1st) of the Constitution has stipulated to formulate the economic and foreign trade policy, it didn't intersect with the company tasks, there is a big difference between policy-formulating and implementing it. As for the article (13), it didn't include an item has the No.(3rd/2/Jim).

5.what was stipulated by the clause (Jim) of the item (2) from (3rd) of the article (12) it didn't make it legal to not delivery the selling profits by the provinces and governorates but to determine the legal sanction that will be imposed on the abstention of receipt the compensation of gas and oil selling. It is a purely financial measure that does not affect other State measures regarding the accountability of those who refrain from transferring oil and gas sales to the Treasury, including what is contained in the Federal Budget Act.

6.the article (11) surrounded by strict procedures to protect the state funds, the article is decisive in its meaning that the cut appropriated for covering all the investment and operational costs, it shall not be less than the cost of all fields that are invested, and the determination of that is done unanimously between the national oil company and the ministries of finance, oil, planning and it is being ratified by the cabinet, and the cut is reviewed each three years. Also, the article (11/2nd) stipulated to settle the accounts between the company and the finance ministry after the end

of the company fiscal year and the office of the financial supervision ratified on these accounts. Amounts cutting is not something general at all or not regulated, it surrounded by strict measures proceeded by three seigniority ministries, and the cabinet ratified on the cutting, the company accounts are under the oversight and ratified by the office of financial supervision. In addition to many Constitution articles that are included by the law –the subject of the challenging- which grant the protection of controlling company procedures and its decisions and protecting it to deviate from the law and the considered regulations of rational work such as the articles (3,4,10/1st,14/2nd/4 and 5 and 6).

7. Alif. the article (4/4th) didn't stipulate any exception from the reviewing for any service contract but the text was general covering all contracts that were made.

7.Beh. representation of Kurdistan province in the company board of directors is consistent with the provisions of the article (112) of the Constitution.

8.the article (110) of the Constitution stipulated the exclusive competences of the federal powers, not the federal government, and the challenged law issued by one of these federal powers as an expression of its will in regulating the foreign trade policy, from other hand making the company (Somo) within the national oil company formations is something common-sense and its regulating reasons are clear and indicated, it didn't touch the plaintiffs' interest with any damage or it harms them.

9. equality is between those who have similar conditions and it does not defect if some groups of people have special provisions if they are in legal situations that differentiate them from others, the inequality is to equal those who have different conditions in one provision. This was the basis of exception the incentives of officers who work in the national oil company from the law of salaries of government and public sector officers.

10. the sovereign is still for the law and excepting the company from some law has done according to the law and it's known that the legislator may

he resorts for excepting a specific formations from some laws for the interest he knows and he is competent in considering it with what he has of Constitutional competence in legislating laws, it is something doesn't touch the sovereign of law in anything.

11. the article (17) of the law doesn't contrary to the constitutional text which the plaintiffs' agents listed it because it looks for the expropriation, so it can not be correct for the government to expropriate its ownership for its self, and the legal text its judgment limited for the public funds.

-the plaintiffs' agents answered on the draft of the defendant agent a draft dated on (4/6/2018) they confirmed that the conditions are available to initiate the case according to the article (6) of the FSC bylaw, and they repeated what listed in the case petition. They listed that the article (12) wasn't existing in the state enterprise that sent by the government according to the article (60) of the Constitution and violating the article (47 and 130) of the Constitution and for the Court decision (21/federal/2015), (19/34/2015) and (59/2015). The article (112/1st) of the Constitution didn't oblige to regulate the distribution of federal gas and oil imports by law and the expression that listed in it (and this shall be regulated by law) it goes to the law of federal gas and oil, not the company law. The defendant's agent citing by this article is strengthening for their challenge. Also, the defendant explanation for the text of the article (112/2nd) of the Constitution is not right by considering the sharing work is a method to achieve the highest benefit for the people while this article considered that the target of the strategic policies for developing the gas and oil is the achievement of the highest benefits for the people, also considering oil companies as replacement for the local governments is not right and it is dangerous, and the expression of provinces government and the producing governorates in the Constitution came comprehensive for all, not limited to three of it, also not linking any party with it, means that the law wasted achieving the highest interest, also the company may be sold or be privatized or something else. There is a contradiction in the defendant's answer, he listed that the company is an independent entity, from another hand, he listed that its competences don't make her a replacement for the

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finance ministry, considering (dealing with the country treasury and the board of directors tasks and determining its profits) as regulation administrative issues are not very accurate, also the defendant changes for the government enterprise about depositing the tasks of oil imports distribution to the company is contrary to the article (47) and (130) of the Constitution. About what the defendant listed that the article (13) didn't have item have the No.(3rd/2/Jim), the plaintiffs' agents has clarified that there is a misprint, the meant is the article (12/3rd/2/Jim) whereas the law imposed a legal sanction on the citizens of producing governorates such as AL-Basra amount of 2% of the oil profits of the other producing governorates while it quieten about the acquisition of the same governorates for 100% of the oil which produced in the governorate.

-after completing the procedures according to the bylaw of the FSC, the day 9/9/2018 had been appointed as a date for the argument. The court had been convened and the agents of the two parties intended, the argument had been started publicly and presently. The plaintiffs' agent repeated what listed in the case petition and requested the decision according to it, also the defendant agents repeated the answering draft and requested to reject the case. The court checked the case petition and the articles which challenged by its unconstitutionality, it noticed that this challenge touch the cabinet and the oil ministry so it decided to enter them as third parties in the case to clarify by them what it needs to decide the case.

-on 2/10/2018 the third party agent (prime minister/being in this capacity) a draft summarized as follows:

1. the defendant added the article (12) of the law without taking the approval of the government, despite it charges the treasury a big finance burdens also it didn't include the spending obligations which make the text defected with ambiguity and opacity even if it includes a settlement for the accounts at the end of the fiscal year, it is still contrary to the public policy of the government because the company spent according to the public budget allocations for the government which being decided by the

board of the directors in the budget also this leads to a difficulty in proceeding the settlements accounts at the end of the fiscal year especially if what spends is largely more than the budget allocations and cannot be covered at the end of the fiscal year.

2.the defendant added the text of the article (4) of the law without enquiry from the government, whereas the text charges the treasury big finance burdens.

3.the law granted a public company the right to review contracts of the licenses tours in oil discovering, developing and producing without the approval of the government.

4.about the article (7/2nd) of the law, it determined the companies associated with the company, the defendant has amended the government enterprise which was more efficient which stipulated (the company forms from the following formations ... companies of gas and oil discovering, extraction and producing) it violates the public policy of the government which stands on the membership of the oil producing companies for the national oil company. (4/3rd, 4th, and 6th) of the law included granting competences for the company.

5.the ICR changes the association party of Somo oil marketing company.

6. the defendant amended the government enterprise whereas the article (13/2nd) of the law included excepting of the incentives of the company officers from the law of salaries of the governments and public sector officers without inquiry from the government and charges the treasury with financial burdens.

7.the defendant excepted the company and companies owned by it from many law without taking approval from the government.

8.the defendant added the article (17) of the law and grant the company the right to own the real estates that belong to the government without taking the government opinion. Also, the plaintiff agent (finance minister/being in this capacity) claimed that the case No.(57/federal/2018) con-

sidering that the defendant the ICR speaker being in this capacity had legislated national oil company law No.(4) for 20018, the law added financial burdens to the public treasury without the approval of the cabinet and contrary to the public policy of the government and as follows:

1. the article (2/1st): the defendant added the aforementioned article by making the association of the national oil company by the cabinet without enquiry from the government or taking its approval, he violates what listed in the draft of the government enterprise, this violates the financial, administrative and technical independence that the company should have also, he granted the company the authority to open branches in the governorates and offices inside and outside Iraq which leads to add big financial burdens and violates the public policy of the government that represented by reducing the institutions structures to limit the spending for not increasing the public budget shortfall.

2.the article (5/3rd): the defendant added the text of the aforementioned article to the law (the company can open one independent account or more at the Iraq central bank by domestic or foreign currency and it can deal with all banks inside Iraq, it can an open account in the foreign banks outside Iraq through Iraq central bank) without enquiry from the government or taking its approval, this leads to charges the treasury big financial burdens also, he violates the public policy of the government which stands on applying the text of the article (111) of the Constitution which stipulated (Oil and gas are owned by all the people of Iraq) and the article (112) which have stipulated (the federal government shall undertake the management of the gas and oil and formulating the strategic policy to develop the oil wealth) nun-commitment for what formulated by the financial management and public debt law No.(95) for 2004 section (5) of it, and what have listed in your respected court decision No.(8) federal for 2012.

3. the article (6/4th): the defendant has added the text of the above article from the law to make the undersecretary for oil extraction of the oil ministry in the membership of the board of directors without taking the government opinion or inquiring it also, he has violated the public policy of

the government whereas it has listed in the government enterprise draft that the board of directors head shall be at special level and the committee members shall be represented in the ministries so it would have been flexibility in the meetings of the board of directors in case of representative absence, doesn't have a time or his presence if he was determined personally.

4. the article (6/5th): the defendant has added the text of the aforementioned article and has made the undersecretary of the natural resources ministry in the province in the council membership without inquiring from the government or its approval, this violates the public policy of the government to reduce the spending for reducing the fiscal deficit in the public budget of the government also, the mentioned company is one of the federal government competences according to the article (112) from the Constitution. The government of Kurdistan province has a private company for oil producing in the province and there wasn't anyone represent the federal government. Also, the defendant has replaced the membership of (finance ministry, planning ministry, the central bank) that exists in the project draft with what has listed in the clauses (4th) and (5th) of the article (6) above, he has violated the public policy of the government that the cabinet is competent to formulate it according to the article (80/1st) from the Constitution because of the importance of absence the representative of the above ministries for its competence according to the laws (finance ministry law, planning ministry law, the central bank law) in the work and activity of the aforementioned company and relating of its work and competence with the company work to proceed the public policy of the government for oil operation of producing, marketing, selling and paying its imports for the public treasury of the government.

5. the article (7/1st/1) the defendant has amended the text of the government enterprise, he made the company heading by an employee who is at minister degree without inquiring from the government or taking its approval. This increases the financial charges for the government treasury which represented by his rights, minister privileges, and his spendings according to the law. Also, he has violated the public policy of the govern-

ment that the cabinet is competent to formulate it to reduce the spending for reducing the fiscal deficit of the budget and according to the article (80/1st) from the Constitution which leads to increase in the government structure. It is possible to manage the company by an employee who is at a private degree as the government enterprise stipulated, this fits with the public policy of the government.

6. the article (7/1st/2): the government enterprise has stipulated to be one vice for the head and at (general director) degree while the text of the above article made two vices for the head, one at undersecretary degree and the second at a private degree without inquiring from the government or its approval. This increases the financial charges for the government treasury because of the privileges, rights, the spendings for the agent and the private degree that is more than that for general director degree and one vice, this violates the public policy of the government which the cabinet is competent to formulate it to reduce the spending for reducing the financial fiscal and simplifying the government foundations structure to not increase the spending and leading to droop in its structure.

7. the article (7/1st/3): the defendant has added the text of the aforementioned article that included (the first and second representatives shall be nominated by a suggestion from the company head and the cabinet ratifying) without inquiring from the government which is related to what has listed in the article (7/1st/2) which we challenged its unconstitutionality.

8. the article (7/1st/4): the defendant has added the text of the aforementioned article without inquiring from the government or its approval which included (three heads of boards of directors for the owned companies which mentioned in the article (7/2nd/2) shall be selected in the board of directors) it violates the public policy of the government for the oil-producing management which the membership shall be for all mentioned national oil companies for its competence in oil producing and marketing and relation of its work with the national oil company work for work's

complementarity in oil producing and complementarity of planning and order to improve the performance

9. the article (7/1st/5): the defendant has amended the text of the government enterprise without inquiring from the government or its approval whereas the government enterprise stipulated the membership of (two competent experts in gas and oil affairs nominated by the oil minister) in the company management filed and made the text of the above article (three experts at private levels shall be nominated by the company head). It violates the government enterprise and the public policy of the government which the cabinet formulates it, by reducing the levels in the foundations' structures and to reduce the spending and do not increase the financial charges especially the three experts at private levels in addition to that, the ministry of oil is the most knowledgeable and competent in oil industry and experts, especially it included many experts and the public policy of the government stands on the ministry competence to nominate people who are competences and efficiencies.

10. the article (7/2nd): the defendant has amended the text of the government enterprise whereas the government enterprise included (the company forms from the following formations ... companies of discovering, extraction and producing gas and oil) the text above has listed in general for the registered companies and what will be registered from companies that will be established in future. It is practical text more efficient whereas the above article included the -subject of the challenging- that the company shall be formed from the formations that clarified in the item (2nd/2) from it. It violates the public policy of the government which stands on the membership of the national oil companies considering it works on the full national level of the membership of the companies which were established or that will be established in the future because of the relation of its work and competence and asks with the works and competence of the company and the national oil company, and to make the board of directors –subject of the challenging- more efficient and career and controlling the matters of oil producing and marketing.

11. the article (7/3rd): the defendant has added the text of the above article from the law –the subject of the challenge- that (the stipulated companies by the item (3rd/2) of this article is managed by a general director) it's a text not obligatory to be mentioned because laws of these companies have stipulated the functional capacity of the management and this what makes flexibility in work in case of amending its law in way fits with the importance of the company and the reality of oil producing. Also, it charges the government treasury big financial burdens represented by the rights and privileges of the general director without the government approval and inquiring from it.

12. the article (7/5th/2): the defendant has added the text of the aforementioned article which stipulated (all rights and commitments that related to the licenses tours in discovering, developing and producing are transferred to the company.) without inquiring from the government or its approval, it violates the public policy of the government which the cabinet is competent to formulate it which stands on that the licenses tours from oil-producing are ruled by the legal rule (Pacta Sunt Servanda). Licenses tours are contracts that had been done between the oil ministry and the foreign companies that are competent in oil-producing, rights and commitments between both parties had been arranged and what listed in it, can not be changed or changing the contracting party.

13. the article (8): the defendant has added the text of the above article from the law –the subject of the challenge- which included competences and authorities of the board of directors, its meetings procedures, quorum completing and taking the decision without inquiring from the government or taking its approval, this violates the public policy of the governments that the cabinet is competent to formulate it which stands on that the tasks and competences and meetings procedures and the quorum for the board of directors council shall be according to a bylaw that made by the company and the cabinet ratified it for the flexibility in changing its texts when it is necessary, and the science reality when something obligatory shows for good performance and the obligation of cabinet ratifying on it considering that the prime minister according to the article (78) from

the Constitution is the direct executive responsible for the public policy of the government and the public plans and to supervise on ministries' work and the parties that unrelated to any ministry according to the article (80/3rd) (To issue rules, instructions, and decisions for the purpose of implementing the law.) particularly the immensely importance of the rules, instructions and the private decisions which target to implement the the private laws of oil-producing operations, marketing and paying its income to the government public treasury according to the article (80/6th) from the Constitution which according to it the cabinet is competent to negotiate for the treaties and the international conventions and to signs it particularly the immensely importance of these tasks and competences of the cabinet when it negotiates for the treaties and international conventions of oil-producing, marketing and for the flexibility in working when fulfilling the needs.

14. the article (11): the defendant has added the text of the above article from the law which has stipulated (the company shall cuts off an amount that covers all the operational and investment costs. It shall be not less than the average cost in all investment fields for each barrel of produced gas and crude oil, added to it a specific percentage in the profit. It is being determined unanimously between the company and finance ministry and planning ministry and being ratified by the cabinet. It shall be reviewed every 3 years and being cut off directly from the finance ministry account at the central bank of gas and oil refunds) without inquiring from the government or its approval, whereas the above text charges the treasury big financial burdens which represented by cutting off an amount that covers the producing costs for each oil barrel adding to it a percentage from the profit and it is being cut off directly from financial ministry account a the central bank from gas and oil refunds, it is a big amount and it violates the public policy of the government that the cabinet is competent to formulate it which stands on what formulate by the article (111) and (112) from the Constitution which included that Oil and gas are owned by all the people of Iraq in all the regions and governorates and the federal governments competence to manage the oil and the gas, and for your respected

court decision No.(8/federal/2012) which stipulates the competences of the federal governments and the oil ministry to manage the oil-producing operation, and the provisions of the section (5) from the financial management and the public dept law No.(95) for 2004 which stipulates that all oil refunds from selling oil are shall be for the public budget.

15. the article (12): the defendant has added the text of the above article from the above law which included (the financial incomes for the company and profits distribution) without inquiring from the government or its approval despite charging the government treasury big financial burdens which included a violation for the Constitution and the government public policy because the financial burdens that had been added to the government public treasury without the government approval are the spendings that were stipulated in the clause (2nd) from this article and the profits that distribute according to the clause (3rd) from this article –the subject of challenge-, because it didn't include spending obligations it causes ambiguity and transparency also, that what was named in the clause (3rd/2/Beh) for the challenging subject text (citizens' fund, generations' fund, construction fund) it is funds that had not been established and had not been legislated any law for it and it doesn't exist in the government public policy which the cabinet is competent to formulate it, planning of it. Also , this text violates the government public policy which stand on the text of the article (111) from the Constitution (Oil and gas are owned by all the people of Iraq in all the regions and governorates.) and the article (112) from the Constitution which stipulates the federal government competence which headed by the cabinet according to the article (78) from the constitution which according to it the prime minister is competent as considered the direct responsibility for the public policy of the government, and the article (80/1st) from the constitution that the competence of the cabinet to implement and plans the government public policy and supervising of the parties that unrelated to any ministry, according to the article (80/3rd) from the Constitution that its competence to issue the rules and the instructions to implement the laws, and the section (5) from the financial management and public debt law No/(95) for 2004 which

stipulates (all oil refunds shall be for the public budget) and what listed in your respected court decision No.(8/federal/2012) and what listed in the clause (3rd/2/Waw) that (the council shall be issued the instructions for what listed in the clause (3rd) from this article, according to the Bylaw). What listed in the above clause –the subject of the challenge- is very important and represented the first income for the government treasury, and according to what we have listed of details the defendant have been violated the Constitution te article (80/1st/3rd) he encroached on the cabinet competence and authorities. For the clause (4th) from the above article that included (the cut is done for those who deserved in the clause (3rd) from the company account at the central bank and based on the consideration that decided by the council in the annual budget...) which mean that the allocations cutting that was determined according to the above is being cut directly from the company account in the central bank basing on the consideration that the company board of directors decided it in the budget, not on the basis of the company allocations in the public budget which decided by the cabinet even if there is a settlement for the accounts at the end of the fiscal year, that violates the government public policy to spend according to the allocations for the government public budget which decided by the cabinet based on consideration decided by the company board of directors in the budget, especially if what was spent is more than the budget allocations largely that cannot be covered or settled at the end of the fiscal year. This violates the government public policy which stands on that the spending is being according to the law (95) for 2004 so it had been violated the articles (78) and (80/1st) from the Constitution.

16.the article (13/2nd): the defendant has amended the government enterprise text which the above article included (the incentives of the company workers shall be excepted from the provision of the law of salaries government officers and public sector No.(22) for 2008. It shall be determined by a regulation issued by the cabinet) without inquiring from the government or its approval which charges the public treasury big financial burdens represented by excepting the company workers incentives who are in large numbers from the provision of the aforementioned law which

according to it a maximum limit for the incentives and allocations had been determined and encroaching on him leads to big financial burdens the government treasury cannot provide.

17. the article (13/3rd): the defendant has added the text of the above article which included (the company is allowed to use Iraqis and foreigners experts with private contracts made by the company directly) without returning to the government or inquiring from it and this charges the treasury big financial burdens added to the government public treasury by using experts especially the foreigners with fees, privileges, spendings and attendance insurance expenses, it charges it the amount of the contracting with them especially that the subject of contracting with them according to the above text is without approval or consulting from the government also, it violates the public policy for the government to reduce the spending for reducing the fiscal deficit and the obligations to depend on Iraqis experts form oil ministry and other oil companies.

18. the article (14): the defendant has added the text of the above article which included (first: the companies that were stipulated in the clause (2nd/2) from the article (7) from this law shall be working according to its bylaws in a way that doesn't contrary to the provisions of this law) without inquiring from the government or its approval which included violation for the government public policy that the cabinet is the competent to formulate it according to the article (80/1st) which stand on the companies works by procedures according to the bylaw that it made and the cabinet ratified it according to its authorities according to the article (80/3rd) from the Constitution and to not restrict the national oil producing companies by with procedures that were stipulated in the law to make flexibility in its work and changing its procedures in necessary and the work reality to develop oil producing and developing the marketing to reach the biggest incomes and to achieve the highest benefit for the people, and to not be any restricts for the national companies procedures when managing oil producing and marketting.

19. the article (16): the defendant has added the text of the above article from the aforementioned law which included (first: the company and companies owned by it, shall be excepted from the following laws(financial management law, companies law, customs law, foreigners residence law, law of government contracts and instruction of law of selling and lease government money and its instructions) without inquiring from the government or its approval which violates the government public policy that the cabinet is competent to formulate it which stands on proceeding the oil producing operations and its marketing and paying off its incomes to the public treasury according to what the mentioned laws have stipulated by the text –subject of the challenge- which the defendant excepted the works of the national oil company from its texts especially it is laws that formulate everything related to the oil producing operation and marketing which considered as platform for action and public policy of government from oil-producing also, what listed in the clause (2nd) from this article where the defendant replaced working by these laws with a system replaced the laws, this violates the public policy of the government to rely on laws system not a system tthat the higher level is less than the laws and adopting the legislative system.

20. the articles(17) and 18/2nd) the defendant has added the text of the above article (17) which included (the company and the companies that owned by the company have the right to own all of it need from real-estate that belong to the government to do its matters without compensation) and the article (18/2nd) has stipulated (the company may own lands and real-estate for its private matters and distributed them on its workers in accordance with instructions issued by the council) without inquiring from the government or taking its approval which violates the text of the article (23/2nd) from the Constitution that the Expropriation is not permissible but with fair compensation and the article (27/1st) from the Constitution that The provisions related to the preservation of State properties, their management, the conditions for their disposal, and the limits for these assets not to be relinquished shall all be regulated by law. Especially the valid laws including law of selling and lease of the government

funds No.(21) for 2013 (amended) and its instructions included the work procedures by this Constitutional text which according to it, maintain the public funds. Also, the defendant has violated the public policy of the government that the cabinet is competent to formulate it according to the article (80/1st) and the article (78) from the constitution considering that the prime minister is the direct main responsible for the public policy of the government and the competent to implement that policy which the Constitution formulated it by the above articles according to the law of selling and lease the government funds, and what the defendant has listed in the text of the article (18/2nd) that owning lands and real-estate and its distribution according to instructions issued by the council boards of directors is violating the text of the article (80/3rd) from the Constitution which makes it competence of the cabinet. Also, violates the public policy of the government which stands on that owning lands and real-estate for any reason it was distributed on the workers shall not be by instructions issued by a foundation, thereby

First: it contrary to the laws especially the valid law of selling and lease of government funds...

Second: the instructions don't reach the Law level in superiority, it makes it easy to implement the laws and for not violate it. Also, the instructions that are issued from any public institution are can't be adopted to organize matters included by the constitution, this is what listed in the articles (23/2nd) and (27/1st) from it... as well the instructions don't achieve the transparency principle which achieved by the valid laws.

21. the article (18/5th): the defendant has added the text of the above article which included (the company shall be committed that all forbidden of lands that at the company disposal are productive whether for the company matter that related to the sector or it is allocated to agricultural enterprise, industry enterprise, transformation enterprise... or service, touring or entertainment enterprise) without inquiring from the government or its approval, it violates the public policy of the government which stand on what formulate by the valid laws in this matter which stipulate to pro-

tect the government lands which within the forbidden, to achieve the general interest that represented by providing the protection and isolation from the facilities with what stipulated by the article – the subject of the challenge- to establish industry project of agricultural , transformation industry or touring entertainment service. The defendant violates the article (27) from the Constitution.

22. the article (18/6th): the defendant has added the text of the above article of the law which included (the company can contribute to developing the agricultural sector, industry sector, and the service sector but its activities shall cover all Iraq) without inquiring from the government or its approval, this violates the public policy of the government which the cabinet formulate it and stands on competences of each ministry or a commission that unrelated to ministry in activities and tasks according to its competence, whereas this competence that the article –the subject of the challenge- granted it to the national oil company in the subject of developing the industry sector, agricultural sector, and service sector is considered as a violation for the competences of agricultural ministry, industry ministry, ministry of housing and reconstruction and ministry of municipalities and public works. It is the competent ministries to develop these sectors and it had been allocated for it a financial allocation according to the public budget of the government to do that, thereby what the company spends in this framework as an implementation of the article –the subject of the challenge- is being a misplaced spending and forms an increasing in the financial burdens for the public treasury of the government and have no obligation as long as the above competent ministries in these sectors.

23. the article (19): the defendant has added the text of the above article from the law which included (the ministry shall take the actions within 6 months of publication of the law to empower the company to start organizing its office to practice its activity, including installing the company assets that owned by it...) without inquiring from the government or its approval, this violates the public policy of the government, and taking actions cannot be determined with a certain period of time, especially that allocation of amount for the company capital according to the article (5)

from the law with amount of (400000000) which cannot be covered during the fiscal year of 2018 because it didn't list in the financial allocations of the government sectors that listed in the budget law, and because of there is big fiscal deficit in the public budget and it is not fixed yet. Also the text – the subject of the challenge- has granted specifically the national oil company an exception from some valid laws. This violates the article (130) from the Constitution (Existing laws shall remain in force unless annulled or amended in accordance with the provisions of this Constitution.) whereas the instructions are less superior than the law that it cannot annul it or amended, so the listed in the article text –the subject of the challenge- has clearly violated the Constitution. According to this and all of the reasons and other reasons that presented, the plaintiff agent requested the decision of the unconstitutionality of the following articles (2/1st), (5/3rd), (6/4th), (6/5th), (7/1st/1), (7/1st/2), (7/1st/3), (7/1st/4), (7/1st/5), (7/2nd), (7/3rd), (7/5th/2), (8), (11), (12), (18/5th), (18/6th) and (19) from the law of the national oil company No.(4) for 2018 and to burden the defendant all the expenses and fees of the advocacy.

- after informing the defendant by the case petition his two agents answered by a draft dated on 30/8/2018, its summary is :

1. the challenged law didn't make the company as independence committee and its relation to the cabinet has no Constitutional violation because it is a government foundation within the cabinet financial and oversight responsibilities, and compatibility with the cabinet competences to formulate the public policy of the government

2. opening bank accounts that listed in the challenged article (5/3rd) is within the plitudes whereas the company and nature of its tasks required to open accounts according to its need and the plaintiff claim that it violated the articles (111 and 112) from the Constitution has no substantiation, especially it related to the cabinet.

3.the plaintiff basically put excuses for the member- mentioned in the challenged article (6/4th)- without returning to him, from the other side

the legislative will is heading to make the company works not far from eyes and opinion of the oil ministry, as well for the challenge of the article (6/6th) making the deputy-minister of ministry of fortunes within the membership of the company board of directors.

4.the minister level that was stipulated in the challenged article (7/1st/1) it doesn't mean by this a portfolio and the legislative will considered that because the importance and responsibility of the national oil company, especially that there are members who are actually in deputy-minister level.

5. what listed in the challenged article (7/1st/2) about the first and second vices for the company head is a legislative option for the importance and tasks that the company takes especially its head is at minister level.

6. nomination of the first and second vices according to the challenged article (7/1st/3) will couple with the cabinet ratified, it is obvious that the ratifying comes after the approval on the nomination or reject it.

7.the plaintiff agent didn't clarify how the challenged article (7/1st/4) for the public policy of the government. From the other side, the text formulates the administration structure of the company council and the legislative will see no Constitutional violation in it.

8.the objection of the plaintiff agent on the party of experts nomination according to the challenged article (7/1st/5) has no substantiation from the law.

9.the named companies in the challenged article (7/2nd) are competent companies in the oil sector. How it violated the public policy, as well there is no substantiation for what he listed.

10. the text of the challenged article (7/5th/2) came as a legislative option, the legislator has derived it from the purpose of law legislation in the article (3) from the challenged law, for the relation of the company to the cabinet he transferred the rights and commitments that related to the licenses tours to the national oil company.

11. the legislative will saw to determine the tasks of the board of directors according to the challenged article (8), this text has no Constitutional violation or intercept with the public policy of the government, it is obvious that the law determines the tasks according to legal text.

12. the costs are inevitability issue for the company operational and investment activity also, the text of the challenged article (11) has clarified that it be unanimously between the company and the financial and planning ministries then the accounts are settled, so how it violates the public policy of the government. We don't disagree that the gas and oil belong to all Iraqi people especially that the company related to the cabinet according to this law which guaranteed the protection and control of the company procedures and its decisions and protection and to not neutralize from the law and the considered controls for wise work, such as (3, 4, 10/1st, 14/1st and 2nd, 4, 5, 6) and other texts of the challenged laws.

13. the Constitutional text that the plaintiff agent claimed that the article (12) from the law has violated it, it decided an entire principle that had been detailed and the general principle that had been allocated in the other Constitutional articles, including the article (112/1st) from the Constitution which obliged to organize the distribution of oil imports by a law and the clause (2nd) from the same article which clarified the methods to achieve the highest interest for Iraqi people from these fortunes by the mutual work between the federal government and the local governments to formulate the strategic policies, this had been interpreted with the texts of the challenged laws and the challenged text (3rd/2/Beh) and the nomenclatures that listed in it (citizen's fund) its law is the same challenged law more over this text represents a legislative option.

14. the text of the challenged article (13/2nd) has charged to issue a regulation about this exception from the cabinet thereby the government concerned about this matter either approve or reject.

15. about the article (13/3rd) the law –the subject of the case- has clarified in the article (11/1st) of it, the mechanism of the operational and investment costs and what the plaintiff agent mentioned has no substantiation.

16. it had been listed in the challenged article (14/1st) phrase (in a manner that not contrary to the provisions of this law) in which disprove what mentioned by the plaintiff agent.

17.the sovereign still for the law and the exception that listed in the challenged article (16) from some laws had been done according to the law and the legislator may resort to except specific formations from some laws for interests haw sees or competent to consider it by what he has of Constitutional competence in legislation. It is a matter that doesn't touch the law in anything.

18.the text of the challenged article (17) has determined the real-estates that can be owned by the company and companies owned by it, as a real-estates that the company needs, to do its matter. The challenged law has clarified the tasks and objectives of the company, this considered a record of appropriation, whereas the national oil company is a public company and the meant real-estates in the text of the article (17) has determined the real-estates that belong to the government, it is not right to the government to expropriate its ownership for itself, so the text doesn't contrary with the Constitution Provision because the legal text it concerns only the public funds, as for the text of the article (18/2nd) the acquisition will be considering the provisions of the law that the plaintiff agent has depended on, without any violation.

19. the article (18/5th) came as a legislative option of investment of the mentioned lands in the article text and for the mentioned matters, considers the laws that related to providing protection and isolation from the facility according to what is necessary.

20.the text of the article (18/6th) came as a legislative option to support the mentioned sections by what the company has of achieved incomes

and profits to support these sections. It doesn't form burdens on the treasury otherwise.

21. about challenging of the article (19) from the law and impossibility to ensure the company capital according to the article (5) from the law, the laws are legislated to be valid and the legislator made the capital of the company to the extent that fits with its tasks and objectives. What the plaintiff depends on that there is a big fiscal deficit in the public budget contradicts with the raising of the global oil prices and the increase of the Iraqi oil limit. An exception is a legislative option that doesn't contrary to the constitutional provisions. For all these reasons the defendant agents requested to reject the case and to burden the plaintiff all the expenses and fees of the advocacy.

- after completing the required procedures in the case (157/federal/2018) according to the court bylaw a date 3/10/2018 had been appointed as a date for the argument and the court has been convened in this day, the agents of both parties intended and the court noticed there are three cases the plaintiffs challenge the law of the national oil company No.(4) for 2018 in all and some articles of it for the clarified reasons in the drafts and because of the unity of the subject and for time and effort saving and according to provision of the article (76/2) of the civil argument law, it had been decided to uniting the cases (66/federal/2018), (71/federal/2018) and (157/federal/2018) and hearing them together, the parties had been called upon and the agents of the third party so they intended and the court considered the case No.(66/federal/2018) is the origin because of it initiated earlier than other cases. The argument had been started presently and publicly against all and the court has inquired from the agent of the plaintiff the head of Misan governorate council being in this capacity about the challenge and the Constitutional substantiation so he answered that the law missed mentioning his client in the company board of directors which violates the article (112) from the Constitution, moreover that the company objectives and the means to achieve it. Also, the formation of the board of directors doesn't fit with the article 112 from the Constitution. The court has inquired from the agent of the plaintiffs in the case

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(71/federal/2018) so he answered that his client thinks that the administration and development of oil is done by the oil ministry and finance ministry not by the national oil company and the associates of the two ministries should do this task and the company shall not take these tasks and his objection on the guaranteed authorities to the company according to the challenged law which affects the role of the government in administration of gas and oil sector and development. The agent of the finance minister is in this capacity on the basis if the court inquiring that the draft law had been presented by the government and the defendant has changed some of the project articles which caused finance burdens on the government which was not considered. the represented of the third party the federal prime minister being in this capacity that the defendant has changed some articles of the project which presented by his client which caused finance burdens. The representative of the third party the oil minister/ being in this capacity answered by a draft in the case (66/federal/2018) and another one in (71/federal/2018) and has clarified its summary that the defendant has made during the ICR sessions a change in the state enterprise which caused finance burdens. After the court checked the petitions of cases and the mutual drafts between its parties. The court found that there are technical matters and finance matters which required to recourse expert to make a comparison between the draft law which presented by the government and the legislated law by the ICR, and if it causes finance burdens on the government, and the current amendment has crossed the role that was formulated for this company, so it had been decided to elect the expert (Ha.Jim) to do the task.

-the expert has stated in the report that dated on (1/11/2018) his notes about the law articles, its summary is: the relation of the company to the ICR according to the article (2/1st) is necessary for the company because its work expand all Iraq lands with no exception and separating it from the ministry will make it more efficient, at the same time the ministry will be able to focus on making the strategies and policies related to the inside and outside affairs. Plus that formulating the policies and strategies for the oil industry that the ministry does and what the company does is the

applying with some additions related to the operational parts with the obligation of removing the word (marketing) and (Somo company) from the law because it considers as the only party that substitute the government with its exclusive authorities according to the article (110/1st and 3rd) from the Constitution and it does the marketing. Also, Misan oil company is represented periodically in the board of directors like any other production company in the other governorates and not related to a province, through involving the director general of Misan oil company. As for the representation of governorates councils or the governor in the board of directors, it is not for all but will be through legislation of gas and oil federal council law or in the law of fair distribution for national fortune. The plaintiff is right when he objected to the representation of the province in the board of directors of the company. The text of the article (11) that is challenged is depriving all the authorities and competences of the finance ministry and make the company is who spend on the government as though the government belong to the company, not the company belong to the government and its board of directors is higher than the cabinet and the head of the company is higher than the prime minister, something like this makes a huge defect in the government system and the Constitution provisions, the right is to keep the situation as it is, which mean the company present its budget to the government and a fund from the public budget is allocated for it, and the company still exports the oil according to the contracts of Somo that belong to the oil ministry then the finance ministry receives at the end the oil revenues which forms (90%) of the government income which funds the budget. The public fund administration of the government stands on distributing these funds in a fairway on the government foundations, not the national oil company. As for the article (12) from the challenged law, it violates the Constitution and the considered laws in the country and widely opens the doors for a legislated corruption which has no end and deficits the public system of the government because gas and oil is owned by the people according to the article (111) from the Constitution and the issue of its exporting is one of the government exclusive authorities according to the article (110/1st and 3rd) from the Constitution, and the custody on these resources is for the fed-

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eral power not for a public company that produces oil in the name of the government, and it is not higher entity whereas the text of the clauses (1st) and (2nd) from the challenged article the company was assigned instead of the planning ministry, the finance ministry, the central bank and financial supervision council of the government, these are tasks of the public fund administration of the government and allocating fund in percent of 10% for matters such as citizen fund and others considered an annulling for the government in entire, it is tasks of different ministries. In addition to that what listed in (Jim) from the clause (3rd) of the article (12) to distribute the profits in strokes form on all resident Iraqis will lead to insolvency of Iraq and dividing it. On the basis of this, the article (12) from the law must be annulled and the company Somo shall belong back to the oil ministry because it is the only party that represents the government in its exclusive authorities. As for what listed in the article (18/5th) the very big and wide responsibilities of the company don't allow it to proceed with other works that considered within the responsibilities of other ministries.

- also, the plaintiff agent claimed (the governor of Iraq central bank/being in this capacity) in the case No.(224/federal/2018) that the defendant/being in this capacity has already legislated the law of the national oil company No.(4) for 2018 that was published in the official gazette No.(4486) on 9/4/2018, because of the law contrary to the private tasks and jobs of Iraq central bank that was stipulated in the Constitution and the valid laws and the international conventions, and because of the legislation issued without presenting it to the competent sectors parties such as the Iraqi central bank and what it forms of conflict to the monetary and financial policy of the government, we want to clarify for your respected court the following:

1.the clause 3rd from the article (110) from the Constitution for determining the competence of the federal powers has stipulated (Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.)

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2.the article (03) from the Constitution has stipulated (First: The Central Bank of Iraq, the Board of Supreme Audit, the Communication and Media Commission, and the Endowment Commissions are financially and administratively independent institution and the work of each of these institutions shall be regulated by law.)

3 the article (2) from the valid law of the central bank has stipulated) the central bank is independent of the endeavors it carries out to achieve its objectives and implementing its tasks) And article 3 from the same law has stipulated (the major objectives of the central bank include the achievement of stability of the local rates and working to keep a stable financial system).

4.the article (11/1st) from the law of the national oil company has stipulated (the company shall cuts off an amount that covers all the operational and investment costs. It shall be not less than the average cost in all investment fields for each barrel of produced gas and crude oil, added to it a specific percentage in the profit. It is being determined unanimously between the company and finance ministry and planning ministry and being ratified by the cabinet. It shall be reviewed every 3 years and being cut off directly from the finance ministry account at the central bank of gas and oil refunds) also, the article (12) from the same law included the financial revenues of the company and profits distribution.

5. the article (5/3rd) from the law of the national oil company included (the company can open one independent account or more at the Iraq central bank by domestic or foreign currency and it can deal with all banks inside Iraq, it can an open account in the foreign banks outside Iraq through Iraq central bank) the text is an obvious interference in the work of Iraq central bank which leads to limit its independence by obligating the central bank to open the accounts which the company observes and in the foreign banks without considering the requirements of the monetary policy.

6. the article (18/6th) from the law of the national oil company has stipulated (the company can contribute to developing the agricultural sector,

industry sector, and the service sector but its activities shall cover all Iraq) allowing the company the ability to spend on the agricultural sector, industry sector, and the social activities out of the allocation of the public budget of the government will lead to more of decreasing of the Iraq availability of foreign currency to blow the limits that had been decided to achieve the financial stability and monetary stability, this article violates the article (112) from the Constitution which has stipulated the competences of Iraq government and damages the monetary policy of the central policy.

7. the availability of the foreign currency for Iraq government is gained from what is provided for the government from revenues such as revenues which gained from oil selling in exchange for foreign currency. Here is the part of the finance ministry which feeds the government budget with national currency by selling the aforementioned currencies to the central bank that makes the national currency available to cover the budget federal because of completion of the currency and finance cycle in the government thereby the national oil company obtaining operation of the revenues that had been came from selling oil which is considered within the excellent imports of Iraq government, and in the stipulated form in the challenged law by deposit it in private accounts of the company will lead to confusion in the finance and monetary cycle operation in Iraq thereby Iraq central bank will lose his role in keeping the exchange rate also the law is not following for the rules and the texts of the monetary policy which formulated by controlling the balance between the national currency and the foreign currency which is considered as the first objective of the basic monetary policy objectives to keep the monetary stability of the government.

8.the FSC has settled in many of its decisions on the Constitutional principle that the preparation of the laws bills which its execute causes finance burdens is the competence of the executive not else, this is corresponding with the right logic and the central bank is part of the executive power but has independence that was stipulated by the Constitution and its law whereas carrying out his tasks of keeping the stability of the exchange rate

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of the currency, the national oil company draft law has been prepared and presented to the ICR then it has been issued without inquiring of the central bank and returning back to him whereas the implementation of the law causes finance burdens on the central bank and it inactivates the work of the central bank to proceed its most important objective of keeping the stability of the exchange rate of the currency. The law and according to its articles which mentioned above leads to corrode the bank reserve of foreign monetary which is considered as the major mean of the bank to keep the stability of the exchange rate whereas the law above has determined a minimum limit of 10% of the oil extraction profits for the national oil company which will lead to change the whole of the foreign monetary reserve and this reserve will accumulate at the company to amount of (34) billion dollar by 2023 and the central bank will keep the only amount in range of (7) billion dollar which will obstruct the execution of the monetary policy because it is not enough to support the association between the national currency (Dinar) and the Dollar and will cause a big deficiency in the exchange rate and the monetary policy which works on achieving the stability of the exchange rate through the basis stabilizer that is its reserve of foreign currency. On the basis of this and all the above of reasons the plaintiff agent requested the decisions of the unconstitutionality of the articles (5) (11) (12) (18) of the Iraq national oil company law No.(4) for 2014 and annulling it and to burden the defendant all the expenses and fees of the advocacy.

- the two agents of the defendant ICR speaker/ being in this capacity answered with the draft that dated on 26/12/2018 which was summarized as follows:

1. opening bank accounts are obvious for the requirements and the nature of the company tasks when it is necessary especially it is being through Iraq central bank. In addition to that this decision will associate the company with the cabinet.

2. the article (11) is covered with strict procedures to protect the government funds, the article is decisive in its significance that the cutting ap-

propriated to cover all the operational and investment costs and shall not be less than the cost average of all the fields that invested, determining this shall be unanimously between the company and finance ministry, oil ministry and planning ministry and the cabinet shall be ratified on that, and the cut is being reviewed each three years as the clause (2nd) stipulated from the article above to settle the accounts between the company and the finance ministry after the end of the fiscal year of the company, and the council of finance supervision shall ratify these accounts.

3. about the challenging of the article (12) from the law, the competences of the national oil company don't make it as a replacement of the finance ministry, each party has specified work which determined according to its laws and the company board of directors is one of the company forms and has administrative and regulatory competences according to the law and have no others, and the text doesn't interfere with the Constitution text in the article that the plaintiff agent has listed and the company tasks, there is a difference between formulating the policy and implementation of the policy according to the law.

4. the company associates with the cabinet according to the law and the text represents a legislation option in supporting the industry, agricultural and service sectors by what the company has of achieved incomes and profits to support the mentioned sectors, that doesn't form any damages in the monetary policy as the claim said.

They requested to reject the case and to burden the plaintiff all the expenses and fees of the advocacy. After completing the procedures of this case No.(224/federal/2018) according to the bylaw of the court, the court determined the day (23/1/2019) as a date to try it. On this day the court had been convened, the court noticed that the case No.(224/federal2018) that initiated by (the governor of Iraq central bank/being in this capacity) on the defendant the ICR speaker being in this capacity and it included the challenging in some of the national oil company articles, after checking these articles the court found it was challenged by the plaintiffs in the unified cases (66, 71 and 157/federal/2018). The agents of the plaintiffs in

the mentioned unified cases attended, the two agents of the third party (the federal prime minister and the federal oil minister/ being in their capacity) attended as well. The argument had been started publicly and presently and on the basis of that and for time and effort saving, the unifying of the case No.(224/federal/2018) with the other three cases had been decided and the plaintiff the governor of the central bank was called upon so his agent the legal official (Alif. Feh. Ha) attended according to the power of attorney that attached in the case file, and the two agents of the defendant attended and the argument had been started before publicly and present the new party and the plaintiff agents required to proceed the case. The court checked the cases petitions that unified and the answerings that listed in it and found that the case completed for the decision reasons so the end of the argument had been decided and the decision had been recited publicly in the session.

The Decision:

After scrutiny and deliberation by the FSC, the court found from studying the petitions of the four unified cases and from the attitudes of the third party the federal prime minister and the federal oil minister being in their capacities, it cleared by their answers on what listed in the cases petitions and what the defendant the ICR speaker being in this capacity has listed and what the elected expert has listed when he listed the articles of the law – the subject of the challenge- about the unconstitutionality and his technical opinion in it. The court found that the Constitutional articles which rule directly the case subject are: the article (5) from the Constitution which has stipulated (The law is sovereign. The people are the source of authority and legitimacy...) and the article (61/1st) from the Constitution which has stipulated the Competence of the ICR which is federal law legislation, and the article (62/2nd) from the Constitution that stipulated (The Council of Representatives may conduct transfers between the sections and chapters of the general budget and reduce the total of its sums, and it may suggest to the Council of Ministers that they increase the total expenses, when necessary.) and the article (78) from the Constitution that granted in the clauses (1st and 4th) to the cabinet the authority to plan and

execute the policy and the general plans of the government and to prepare the public budget proposal and the final account and the development plans, and the article (106) from the Constitution which decided the existence of public commission to oversight on allocating of the federal revenues and justice, and the article (110) from the Constitution that stipulated the exclusive competences for the federal powers included what has stipulated by clause (1st) from the article (formulating the finance policy and the sovereign foreign trade) and the clause (3rd) from the article which stipulated (Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.) and the article (111) from the Constitution that decided that the gas and oil is owned by Iraqi people in all provinces and governorates, and the article (112) from the Constitution whereas the clause (1st) from it which has stipulated that The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and the clause (2nd) from the same article which has stipulated the authorities of the federal government and the provinces governments and the productive governorates shall formulate together the strategic policies to develop the wealth of gas and oil, and the article (114) from the Constitution which is competent to clarify the mutual competences between the federal powers and the provinces powers including formulating the development policies and the general planning and formulating the policy of domestic financial resources and regulating it in way that grants a fair distribution. The FSC found that listing any text in law that leads to take a competence from the exclusive competences of the federal powers or the mutual competences between it and the provinces powers and the productive governorates of gas and

oil is considered a violation for the Constitution provisions and obligate to decide its unconstitutionality. Accordingly to what mentioned the FSC decided:

First: the decision of the unconstitutionality of the following articles:

1. the article (3) from the law because the tasks that carried by its objectives are contrary to the provisions of the articles (112) from the Constitution because the tasks that the article(3) –the subject of the appeal- has mentioned shall be from the federal government with the provinces government and the productive governorates for oil.
2. the clause (3rd and 5th) from the article (4) from the law and As far as the oil marketing process is concerned whereas this is task of oil ministry and the company that related to it. Because it contrary to the article (112) from the Constitution.
3. the article (7/1s/1) from the law which stipulated (the company headed by an officer at minister degree...). Because of it contrary to the provision of the article (62/2nd) from the Constitution where the mentioned text violates the government enterprise although it contains financial suspicion consequence.
4. the item (Ha) of the clause (2nd) of the article (7) for the law which related to making the oil company (Somo) from the formations that related to the company center, because of it contrary to the provision of the article (110/1st and 3rd) from the Constitution.
5. the article (8) from the law which stipulated the tasks of the board of directors and most of these tasks are competences of the federal government and the provinces and the productive governorates for oil together, according to the articles (78), (80) and 112) from the Constitution.
6. the article (11) from the law which stipulated (first: the company shall cuts off an amount that covers all the operational and investment costs. It shall be not less than the average cost in all investment fields for each barrel of produced gas and crude oil, added to it a specific percentage in the

profit. It is being determined unanimously between the company and finance ministry and planning ministry and being ratified by the cabinet. It shall be reviewed every 3 years and being cut off directly from the finance ministry account at the central bank of gas and oil refunds. Second: the accounts between the company and the finance ministry shall be settled after the end of the fiscal year and after completion of its final accounts and the ratifying of the finance supervision council.). because it violates the provision of the articles (78), (80), (111) and (112) from the Constitution.

7. the article (12) from the law which clarified the finance revenues of the company, its profits and the methods of its distribution, because it violates the provisions of the articles (78), (80/1st,2nd), (106), (111) and (112) from the Constitution.

8. the article (13/2nd) from the law which stipulated (the incentives of the company workers shall be excepted from the provision of the law of salaries government officers and public sector No.(22) for 2008. It shall be determined by a regulation issued by the cabinet). Because it violates the provision of the article (62/2nd) from the Constitution whereas it contained finance suspension consequence that the opinion of the cabinet in it wasn't taken.

9. the article (16) from the law which stipulated in the clause (1st) to except the company and the companies that owned for it from the law of the finance administration, the law of the public companies, customs law, foreigners residence law, the law of government contracts implementation and the instruction of its execution facility, the law of selling and leasing the state properties and the instructions of its execution facility, the clause (2nd) from it, has stipulated (the cabinet issues by proposal from the company a regulation instead of the expected laws that had been stipulated in the clause (1st) from this article individually to guarantee the rights of the public treasury.) because it violates the provision of the article (5) from the Constitution which doesn't allow to annul a law by regulation or instructions.

10.the article (18/6th) from the law that stipulated (the company can contribute to developing the agricultural sector, industry sector, and the service sector...) because it violates with the provisions of the articles (78) and (80) from the Constitution.

Second: reject the remains of challenges that listed in the mentioned unified cases because it doesn't violate with the provisions of the Constitution and the public policy of the government that had been stipulated in the article (80) from the Constitution, and because it came as a legislation option for the ICR according to its stipulated authorities in the article (61/1st) from the Constitution.

Third: burden all the parties the relative expenses and the fees of the advocacy which are hundred thousand dinars distributed according to the law. The decision had been issued unanimously, decisive according to the provision of the article (94) from the Constitution and the article (5/2nd) from the FSC law No.(30) for 2005 and had been understood publicly on 23/1/2019.