



---

The Federal Supreme Court (F.S.C.) has been convened on 16/12/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The plaintiffs: the Representatives:

1. Reboar Taha Mustafa.
2. Jamal Muhamad Shakor.
3. Beston Adel Wais.
4. Delan Gafor Saleh.
5. Almas Fadhel Kamal.
6. Mrewan Nader Nser Aldeen.

Their agents the  
attorneys Ziad  
Mohamed Ahmed  
Alabady and Ahmed  
Mohamed Alabady

The defendant: the governor of Kirkuk/ being in this post -his  
agent the legal advisor Mejbek Yassin Mohsen.

**The claim:**

The agent of the plaintiffs claimed in the case petition that the defendant/ being in this post instructed the security forces to break in to the headquarters of the Patriotic Union of Kurdistan and lower

Republic of Iraq  
Federal Supreme Court  
Ref. 7/federal/2019



Kurdish text

---

the Kurdish flag, which was raised alongside the Iraqi flag, over the party building in the city of (Kirkuk) and that is violation for article (20/1<sup>st</sup>) of the political parties law No.(36) for 2015 which stipulates that (the headquarters of the party or political organization are all protected, they may not be entered or searched except by a judicial decision), the raising of the Kurdistan flag over the party headquarters building in (Kirkuk) is among the rights and freedoms guaranteed by the constitution in article (15) of it and each party has its own slogan and flag and that doesn't violates the in force laws, also any procedure or decision issue from the executive authority must be based on a law or decision of the judicial authority, and that the flag is raised over the party headquarter building and not over public places or governments institutions, and that is a constitutional right that is based on in force laws, as the interring into the party headquarter and lowering the flag is a crime punishable by law, the building of the party in Kirkuk is a privet property and not of the buildings that belongs to the governorate or the federal authority, article (15) of the Iraqi constitution stipulated that (all powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region, with regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute) as (Kirkuk) is a disputed region and not



---

decided yet, as stipulated in the constitution in article (140) of it, therefore the plaintiffs' agent requested the F.S.C. to (judge the unconstitutionality of the defendant's decision the governor of Kirkuk/ being in this post, regard instructing the security forces to lower the Kurdish flag off the headquarters of the Patriotic Union of Kurdistan). After informing the defendant decision the governor of Kirkuk/ being in this post with the case petition, his agent responded with the draft dated on 18/3/2019 that included the following:

1. no security order or decision was issued by his client to break in to the party's headquarters, and to lower the Kurdish flag, which was raised alongside the Iraqi flag over the party's building, and the plaintiffs did not provide evidence that an order or decision was issued.
2. The text of clause (2) of the letter of the council of ministers general secretariat/ the legal office No.(qaf/2/1/45/014716 on 11/5/2017) - directed to the council of Kirkuk and to Kirkuk governorate/ the governor office (article (12) of the constitution stipulated that the Iraqi flag, his national anthem, and emblem shall be regulated by law in a way that symbolizes the components of the Iraqi people, as the law No.(9) for 2008 that is regard amending the Iraqi flag law No.(33) for 1986 didn't grant the governorates the power to raise its own flag, and that the law of governorates that are not incorporated into a region No.(21) for 2008 didn't mentioned



---

granting the governorates that power therefore raising the flag of Kurdistan in the governorate has no constitutional substantiation.

3. The flag of the Patriotic Union of Kurdistan party is what meant in article (20/1<sup>st</sup>) of the political parties law No.(36) for 2015, and it is not the flag the subject of the lawsuit, the plaintiff didn't mentioned lowering it from the headquarters of the party as the flag of Patriotic Union of Kurdistan is protected and raised above the party building in Kirkuk city as implementation to the provision of the mentioned article, therefore there is no interest for the plaintiffs in the lawsuit, and deciding the lack of court jurisdiction and the litigation is not directed is an issues related to the general regulation and processed by the estimated court. For all the listed reasons with the reasons will be shown to the court, the agent of the defendant requested to reject the case.

After completing the required procedures according to the F.S.C. Bylaw the date 16/12/2019 was scheduled for the argument, the court convened, the agent of the defendant attended and the agents of the plaintiffs didn't attended or submitting legal excuse for their failure to attend. During scrutiny the court found that the case is completed for reasons of judgment and decided to close the argument, and issued the following decision publicly in the session.

Republic of Iraq  
Federal Supreme Court  
Ref. 7/federal/2019



Kurdish text

---

**The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the plaintiffs claimed that the defendant the governor of Kirkuk/ being in this post has instructed the security forces to break in to the headquarters of the Patriotic Union of Kurdistan and lower the Kurdish flag, which was raised alongside the Iraqi flag, and that is violation to article (20) of the political parties law No.(36) for 2015 therefore they requested to judge the unconstitutionality of the defendant's decision to lower the Kurdish flag off the headquarters of the Patriotic Union of Kurdistan, the defendant answers that no security order or decision was issued from him to break in to the party's headquarters, and to lower the Kurdish flag, and the plaintiffs did not provide evidence that an order or decision was issued. The F.S.C. finds that the decision the subject of challenge, in case of affirming it issuance, then it is an administrative decisions which the F.S.C. is not competent to consider the challenges submitted against it. Accordingly the court decided to reject the plaintiffs' lawsuit from the aspect of jurisdiction and to burden them the expenses and advocacy fees for the defendant' agent amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) of 2005 and issued publicly on 16/12/2019.