

Republic of Iraq
Federal Supreme Court
Ref. 81 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 19/6/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, Ayoub Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Basim Khaza'al Khashan (member of the Iraqi Council of Representatives)/ his agents the barristers Ahmed Saeed Mousa and Hayder Saeed Mousa.

The Defendants: 1. Speaker of the Iraqi Council of Representatives/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

2. Speaker of Kurdistan Region Parliament/ being in this capacity – his agents each of the legal counselor Warya Saady Ahmed and the legal counselor Ph.D. Waadi Suleiman Al-Muzoori, and the official jurist Sharmeen Bahjat Khudir.

3. President of the Republic/ being in this capacity – his agents are the Head of legal experts Ghazi Ibrahim Al-Janabi and the legal counselor Salah Lazim Shamkhi.

4. President of Kurdistan region/ being in this capacity – his agent the legal counselor Ayad Ismaeel Mohammed.

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The Claim

The plaintiff claimed through his agent that Article (120) of the Constitution of the Republic of Iraq of 2005 obliges the Kurdistan Region to draw up a constitution for it, specifying the structure of the powers of the region, its powers, and the mechanisms for exercising those powers, provided that it does not conflict with this constitution. The elaboration of a constitution to be voted on by the people of Kurdistan would enshrine the rights guaranteed by the Constitution to all the Iraqi people, including the people of the region in all their spectrums and components, and regulate the powers of the region and their relationship with the federal government, and the rights of the Iraqi people of all spectrums, especially concerning the exclusive competencies of the region and what determines the powers of the federal government and the rights of the region guaranteed by the constitution, and its duties. The elaboration of a constitution for the region that does not contradict the constitution of the country will necessarily regulate the relationship between the authorities of the region and the federal authorities, stabilize the state, and promote joint action to achieve the supreme interest of the country and all components of the people, and this is what the Iraqi constitutional legislator sought through the article (120) of the constitution. However, seventeen years after the date of entry into force of the Constitution of the Republic of Iraq, the Kurdistan Region still does not have a constitution that regulates the structure of its powers and powers and the mechanisms for exercising those powers, and this contradicts the Constitution of the Republic of Iraq, which is the supreme law in the country and is null and void. Accordingly, the plaintiff requested the Federal Supreme Court to oblige the

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defendants and all the relevant authorities to implement the provisions of Article (120) of the Constitution and to draw up a constitution for the territory that does not contradict the Constitution of the Republic of Iraq within a short period. The case was registered with this court in the number (81/federal/2022) and the legal fee for it was met in accordance with Article (1/3rd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2005, and informs the defendants of its petition and documents in accordance with Article (2/1st) of the same rules of the procedure above, and the first defendant's agents replied with the Reply Regulation dated (10/4/2022) concluding that Article (120) of the Constitution of the Republic of Iraq stipulates that "the region shall draw up a constitution for it... etc) Therefore, the litigation of the Council of Representatives, in this case, is not directed in accordance with the provisions of Article (4) of the Civil Procedures Law which provided that the defender should be a litigant on the declaration of whom a judgment is released, supposing that a declaration is released by him. He should be sentenced or obliged to something, supposing that the case is approved. Moreover, the case of the plaintiff is concentrating on obliging the authorities to execute the provisions of article (120) of the Constitution, therefore, the request of the plaintiff is out of the FSC's jurisdictions which had been clarified in article (93) of the Constitution. He shall request the dismissal of the plaintiff's case and charge him all judicial fees, expenses, and attorneys' fees. The agents of the second defendant replied with the Reply Regulation dated 19/6/2022 to conclude that Article (93) of the Constitution defined the competencies of the Federal Supreme Court and did not include the adjudication of matters related to obliging the Territories to draw up their constitutions, and what is supported by its decision No.

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(47/Federal/2022 on 22/5/2022) according to which the plaintiff's claim for lack of jurisdiction was dismissed and among his requests was the ruling on the implementation of Article (120) of the Constitution. The plaintiff, in this case, has no interest in bringing it in accordance with the requirements of Article (6) of the Code of Procedure and Article (6/2nd) of Bylaw of the Court in addition to the absence of damage, and the rights of the people are regulated by the Iraqi Constitution and the Constitution of the Region has nothing to do with that, and the same applies to the competencies of the federal authorities and the Regional Government, and the region is free to promulgate its constitution as required by the nature of its political circumstances, since article 120 of the Constitution does not specify the necessary period through which the Constitution should be drawn up and the intentional determination of this period stems from the fact that the Constitution is a political document before it is legal, which means that the political parties should agree on its mechanisms, content and time of adoption through the legal channels in force in the region and under the umbrella of the Federal Constitution and in a way that ensures the inclusion of all spectrums in the drafting of its articles in order to reflect the needs and requirements of the Kurdish society, with reference to the many attempts of the Parliament of the region to draft the constitution of the region, including the issuance of resolution No. (5) on 8/9/2005 and after which the draft was approved on 24/6/2009, but the Independent High Electoral Commission apologized for holding the referendum on time on 25/7/2009 and there was another legislative attempt to write the constitution of the region under Law No. (4) of 2005 Law Preparing the Draft Constitution of Iraqi Kurdistan for a referendum, but the draft was not completed due to political events

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and the end of the mandate of the Parliament and there are persistent attempts to draft the constitution during the current parliamentary session, and in conclusion, the agents of the second defendant requested to dismiss the plaintiff's claim and charge him fees and expenses. The agent of the third defendant replied to the reply regulation dated (7/April/2022) which included the same defenses contained in the aforementioned regulations regarding the lack of interest and does not achieve damage, as well as the lack of jurisdiction of the court to consider the merits of the case, adding that his client does not fit a litigant in this case in accordance with the provision of the article (4) of the civil procedures law. It ensures compliance with the Constitution of Iraq in force by preserving the independence, sovereignty, unity, and territorial integrity of Iraq, and any provision that contravenes the provisions of the Constitution of the Republic of Iraq is not implemented and is not heeded. Therefore, he requested to reject the case of the plaintiff and to burden him with fees, expenses, and advocacy fees. The agent of the fourth defendant (President of the Kurdistan Region /being in this capacity) replied to the answering draft dated 19/6/2022 containing the same defenses contained in the aforementioned drafts regarding litigation and jurisdiction and the lack of availability of the condition of interest for the plaintiff because he established it in his personal capacity as well as the failure to achieve the damage, adding that the plaintiff is not considered an opponent to his client and the rest of the defendants for the lack of a current, direct and influential interest in his legal status in accordance with the provisions of articles (4 and 6) of the Law of Civil Procedure in force and finally the request for the dismissal of the case and the charging of the plaintiff expenses and advocacy fees. After completing the procedures required by the rules of procedure of

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the Court, a date was set for the pleading in accordance with Article (2/II) thereof, and the parties were informed of it, and on the appointed day the court was formed, so the plaintiff's two attorneys, Ahmed Saeed Moussa and Haider Saeed Moussa, and the first defendant, the Speaker of the House of Representatives, in addition to his job, his two agents, Haitham Majed Salem and Saman Mohsen Ibrahim, and the second defendant, the Speaker of the Kurdistan Regional Parliament, in addition to his position, the agent Legal Counsel and Raya Saadi Ahmed, for the third defendant the President of the Republic/ being in this capacity, his agent the legal counselor Salah Lazim Shamkhi attended, the fourth defendant the President of Kurdistan region/ being in this capacity and his agent did not attend in spite of their notifying according to the law. The argument procedures proceeded in attendance and publicly, the agent of the plaintiff repeated what was listed in the petition of the case and they requested to judge according to it. The agents of the defendant, the first, the second, and the third answered, and each one of them requested to reject the case for the reasons listed in the answering draft presented as an answer on the case petition attached to the case's papers. The Court noticed that the agent of the fourth defendant had requested according to his draft dated 19/6/2022 to reject the case against his client for the reasons listed in it. The agents of each party had repeated their previous sayings and requests, and whereas nothing was left to be said, the end of the argument has been made clear and the Court issued the following decision:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff filed this lawsuit before this court and requests that the defendants and all concerned authorities be obliged to implement the provisions of Article (120) of the Constitution of the Republic of Iraq of 2005, which stipulates that "the Region shall draw up a constitution for it, specifying the structure of the powers of the Territory, its authority, and the mechanisms for exercising those powers, provided that it does not conflict with this Constitution." The request for the drafting of a constitution for the region does not contradict the Constitution of the Republic of Iraq and within a short period of time for the reasons stated in the petition, and this court finds that its powers and competencies are limited by articles (52/2nd) and (93) of the Constitution of the Republic of Iraq of 2005 as well as article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and it was not among those competencies and powers to consider the applications contained in the plaintiff's lawsuit so the consideration shall be his claim and requests are outside the jurisdiction of this aforementioned court, and his claim shall be rejected, due to lack of jurisdiction. Therefore, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit in the name of Khazal Khashan for lack of jurisdiction and to charge him fees and expenses and an amount of one hundred thousand dinars in the attorneys' fees of the defendants' agents in addition to their jobs, legal counsel Haitham Majid Salem, the official jurist Saman Mohsen Ibrahim, legal counsel, Raya Saadi Ahmed, and human rights employee Salah Lazam Shamkhi distributed among

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them according to law. The decision has been issued unanimously, decisive and binding for all powers according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the Federal Supreme Court Law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 19/Dhul Qaeda/1443 Hijri coinciding 19/June/2022 AD.

**Signature of
The president
Jasem Mohammad
Abbood**

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