

# KRG' Contracts, Laws and Oil Exports are Unconstitutional and Nullified, Federal Supreme Court Decides

Ahmed Mousa Jiyad  
Development Consultancy & Research  
Norway

Federal Supreme Court-FSC in Iraq issued, after ten years of debate and deliberate procrastination tactics, a long-awaited constitutional verdict; a sweeping unprecedented verdict that could surely have very serious long lasting ramifications on the legality of upstream petroleum contracts and agreements concluded by Kurdistan Region Government-KRG and, consequently on the entire upstream petroleum sub-sector in the country. The nine men judges took a majority, of seven, decision; all signed the verdict without specifying who the dissented are. The Chief Justice, Chairman of the Court signed every of the 15 page verdict. FSC decisions, according to the 2005 Constitution are final, should be uphold, implemented and adhered to by all parties of the case and all other authorities in the country from now on.

The 15 page document, dated and publically announced on 15 February 2022, elaborated the case at length, which goes back to 2012, though, actually, the root of the case goes much earlier than that. Many, including myself, argued for years that KRG actions, laws, contracts and agreements contravene both the 2005 Constitution and earlier legal governing modalities, and thus, inflicting serious damages to the interests of the Iraqi people.

This is a quick brief intervention from me, as this verdict introduces substantive impacting game-changing rulings that eradicate the fate-a-comply, probably create a new normal in Iraq's upstream petroleum and causing seismic uncertainty for IOCs in Kurdistan; there will be much more attention to and writings about the verdict, its pros and cons, and its ramifications in the weeks rather than months ahead.

## What the Verdict Says

The following are my translation, wording and highlights of the specific components of the verdict:

- 1- KRG Oil and Gas Law number 22 of 2007 is **unconstitutional and thus nullified** for contravening articles 110, 111, 112, 115, 121 and 130 of the 2005 Constitution.
- 2- KRG is obliged to **deliver** all oil produced from oil fields in **KR and other areas** where the KRG' Ministry of Natural Resources-KRGMNR **had** extracted oil from, and deliver all such oil to the federal government represented by the Federal Ministry of Oil-FMO and **enabling FMO to exercise its constitutional authorities with regards to exploration, extraction and exporting oil.**
- 3- FMO have the right to pursue and follow-up the **illegality** of oil contracts and agreements concluded by KRGMNR with all external parties, **states and companies, regarding exploration, extraction, exporting and selling oil.**
- 4- **Obligate** KRG to enable FMO and the Federal Board of Supreme Audit -FBSA to **review all oil contracts concluded by KRG regarding export and sell of oil and gas to audit** these contracts and determine the federal financial **dues that KRG**

**should re-pay back.** And to **determine KR share in the state budget** to insure the delivery of the rights/ entitlements of KR' citizens and governorates from the federal state budget without delay, **after KRG implement all contents of this verdict** and inform that to federal government and FBSA.

In addition to the above four basic items of the verdict, FSC made further important assertions throughout the document.

- The federal authorities are constitutionally mandated regarding sovereign economic and trade external policy; therefore, it is not permissible that governorates and regions in all of Iraq exercise this exclusive role instead of the federal authorities; as such exercise by governorates and regions contravenes the constitution.
- The Iraqi people have the rights to and should know all about oil and gas revenues and how such revenues are distributed since they are the owner of oil and gas.
- KRG' noncompliance with the federal authorities exclusive mandates regarding oil and gas had caused complications between the federal government and KRG and that in turn prevented the delivery of KR people share in the annual state budgets.
- KRG should comply with and adhere to the constitutional exclusive mandates of the federal authorities including exclusive mandates regarding oil and gas exploration, extraction and export; such compliance enables KR people receiving their due entitlements from the annual state budgets.

And in a follow-up statement, FSC asserts that during the deliberations of a legal case before US courts in September 2015, KRG representative had, after losing the case, requested re-routing the oil shipment from US to delivery in Israel; the US court refused even that request. The ruling of that case was in line with and substantiates current FSC verdict.

### **What Next**

The urgency of the matter and the scope of the FSC decision require taking promptly serious specific steps and actions to comply with and implement the said decision. For this purpose I proposed, on 15 February 2022, to the authorities, particularly the Federal Ministry of Oil forming a special team comprising well qualified experienced staff members and tasked with the following:

- 1- Receiving copies of all contracts signed by KRG for each oil/gas field and exploration block and all amendments to those contracts;
- 2- Receiving all documents, accounts, development plans and data relating to the development, production, export, cost and revenues relating to those fields to date;
- 3- In light of assessing the contracts and documents mentioned in the two paragraphs above, an "alternative model service contract-AMSC" is prepared to replace the current production sharing contracts/agreements- PSCs/As, and any other upstream contracts enforced by KRG; the proposed AMSC is guided by and premised on the experience of Al-Ahdab oilfield contract, which was converted from a production sharing contract to a service contract, and

the service contracts signed by the Ministry resulting from the first four licensing rounds only;

4- Preparing alternatives and options to be presented to the IOCs contracted with KRG, including accepting the AMSC and then negotiating to determine the specifics and numerical values of the basic variables in it, such as remuneration fees, capital cost recovery ratio, ... etc., in light of the specificity of the field concerned; or to relinquish IOC participation interest in the contracts signed with KRG; or any other feasible alternatives.

5- Publically announce that the presence of every IOC currently operating in the KR and do not comply with and adhere to the Federal Supreme Court decision is considered illegal and unconstitutional, and thus that company bears the consequences of its illegal presence and operation in Iraq;

6- Assessing how to deal with oil pipelines in the region, including the pipeline invested by the Russian company Rosneft;

7- Rapid, effective and constructive cooperation between the Ministry and the Iraqi Council of Representatives-CoRs, through forming a joint committee comprising members of known professional and legal experience, to approve the AMSC that would be the base for insuring CoRs approval of the final AMSCs upon concluding them with the IOCs operating now in the KR; this provides solid legal premise for any concluded AMSCs, reduces risks and enhances certainty.

8- Preparing a plan of action at the international level, through legal, diplomatic and oil industry means, to publicise FSC decision as widely as possible, its implementation and consequence of non-compliance by IOCs currently working in KR-Iraq;

9- Cooperating with SOMO for notifying international oil buyers, oil tanker companies, and insurance companies of the legal consequences of the Federal Court's decision and consequence of non-compliance;

10 - Coordination with the Ministry of Finance regarding the implementation of FSC decision regarding articles relating to the KR share in the state budget law for the current year.

The federal authorities should act and act quickly, firmly, openly and transparently. This decision by FSC provides strong and timely support to Iraq's case of arbitration that has been before ICC- Parise for years, a resolution of which is anticipated in the coming few months.

Officially so far, the National Security Ministerial Council, chaired by the Prime Minister convened on 16 February and tasked the Ministry of Oil to coordinate with KRG, the states and oil companies regarding the implementation of this verdict.

### **Views and Reactions**

Expectedly, reaction to and views on the verdict were prompt and diverge; most are supportive but some are bewildered and very few are condemning; this is very natural and expected in the Iraqi discourse.

Reactions of Kurdish Barzani family, KRG and Kurdish Parliament in Erbil were sharp, harsh, hot-tempered and regrettable. Masoud Barzani says the verdict is “purely political and against Kurdistan”; KRG even accused the Supreme Federal Court of being “unconstitutional” and vowed to “defend” its oil and gas contracts; a statement by the Kurdish Parliament followed similar line of accusations for refusing the verdict. This type of reaction weakens further KRG stand and contravenes its repeated claim for upholding and adhering to the Constitution!!!!!!!

On the other hand, many other known Kurdish parliamentarians, politicians and parties are cautiously supportive.

But the most interesting socio-political development which could indicate a dramatic shift in the Kurdish public opinion and tendencies is a strong public statement endorsed by a big group of Kurds from inside and outside KR Iraq. The statement begins by welcoming the abrogation of KRG’ Oil and Gas Law, which it describes, “a Law through which political families monopolise all basic resources. القانون الذي بموجبه تقوم العوائل السياسية باحتكار كل الموارد الاساسية”; it is a remarkable wakeup call and collective social action.

### **Final Remarks**

FSC verdict is final; it inflicts serious blow to upstream petroleum legal foundations in Kurdistan Iraq; IOCs operating there are now put on notice and they are advised to prepare themselves for direct talks with the federal ministry of oil and, also, they should demonstrate that the sooner the better; their shares in the bourses might nosedive sharply and their Kurdistan expedition might be over. Keep watching shares movement on the bourses websites!

Also, the verdict asserts significant pro-transparency legal premise, i. e., the Iraqi people by virtue of their ownership of oil and gas, are constitutionally entitled to know all about upstream petroleum contracts, agreements, exports revenues, and how such revenues are shared and utilised for the best interests of all Iraqi people.

We all, including the members of the new parliament, should capitalise on this assertion when addressing the dubious deals and agreements concluded recently, unconstitutionally, by the care-taking government and the Ministry of Oil, particularly and precisely the agreement with the French IOC- TotalEnergies (which I addressed in three recent articles written in Arabic and circulated widely)

The 2007 proposed federal oil and gas law has been, for years, in a coma, now it is dead and buried; it is futile to revive it and so even to consider it as part of the “political deal” for forming the new “national majority” government, which some have called for!!

But, on the other hand, much is at a stake; we are, therefore, destined to witness many interesting developments and propositions, read and write about them. Stay tuned!

Norway

20 February 2022

What are the implications

Reactions ...from the kurds

My proposal

Case against Turkey

What FSC asserts in addition to its verdict