
Divisions Deepen: Iraqi Federal Court's Controversial Overrulings Ignite Debate and Redefine Kurdistan's Legal Landscape

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Summary : Recently in Iraq, the Federal Court in Baghdad rejected an amendment to the Personal Status Law of the Kurdistan Region, Law No. 18 of 15 of 2008. The KRG amendment allows wives of men who have married twice in a row the right to separate

In a recent ruling, the Federal Court in Baghdad, Iraq, rejected an amendment to the Personal Status Law of the Kurdistan Region, Law No. 18 of 15 of 2008. This amendment by the Kurdistan Regional Government (KRG) had allowed wives of men who marry multiple times to seek divorce. The Iraqi Supreme Court, however, does not consider polygamy a valid reason for separation, citing Islamic law as its basis, as per the stipulation of Article 2 of the Iraqi Constitution that prohibits any legislation contradicting Sharia law.

This decision marks the latest development in an ongoing debate centered on jurisprudence and women's rights – a topic too vast to be addressed within the scope of this article. The ruling is one of five such decisions in 2022 against influential legal rulings in the Kurdistan Region, with the most notable one being the rejection of the Oil and Gas Law of the KRG, Law No. 22 of 2007, on grounds of its alleged unconstitutionality.

Other laws dismissed by the court include the Higher Education Law, specifically Article 46 of Law 10 of 2008, which prevents the administrative procedures of Kurdistan Universities from being challenged in court. In October 2022, the court dismissed the Election and Referendum Commission clause of the Kurdistan Region of Iraq (KRI), which defined the Commission as the sole authority responsible for conducting elections. Most recently, the Supreme Court overruled the KRG retirement law, which was initially issued as No. 27 of 2006 by the Iraqi Parliament before being revoked and replaced by a different law.

Currently, the Supreme Court is considering a petition to extend the mandate of Parliament. Amid debates about the content of these rejected articles and laws, another controversy has arisen about the increasingly frequent rejections of KRG laws by the Federal Court in Baghdad. This court derives its legal legitimacy from Law No. 30 of 2005, but remains transitional, pending formation as stipulated in Article 92 of the Iraqi Constitution.

The ongoing transition of the Supreme Court, spanning 17 years, is due to the constitutional condition requiring a two-thirds majority of parliamentary votes to pass Federal Court law. The controversy surrounding the authority of Sharia experts further complicates matters, with the court still waiting for its constitutional framework.

Following the October 2021 election, the Court rejected a greater number of administrative orders and decisions and conducted several analyses of constitutional texts and articles, particularly at the onset of Parliament's fifth term. Its rulings pertaining to the Kurdistan Region represent a definitive rejection and imposition of legal stipulations – a departure from the practices of supreme and constitutional courts worldwide, which typically reserve such rulings for critical moments.

A review of the judges serving on the Court reveals that among its 12 members, three are reserves. Only one specializes in constitutional law, having been a candidate for the governorate of Dohuk. The remainder have backgrounds in civil and criminal courts, with the chief justice lacking any expertise in constitutional law.

These court decisions have significant implications for the relationship between the Kurdistan Region and the federal government, due to the constitutional stipulation (Article 94) that court decisions are final and not subject to appeal. This removes any room for dialogue, negotiation, or adjustment, and frequently leads to heightened sensitivities.

The Court's current procedures permit complaints from any party directly involved in the dispute, an "opposing party", or those adversely affected by rulings against KRG laws. Thus, anyone can challenge KRG or Iraqi federal laws, and the Court will treat the case as routine, without preconditions.

A clear example is the recent final ruling on a woman's right to divorce if her husband takes a second wife. The Supreme Court made this decision, claiming that it contravenes Sharia. However, some legal experts dispute this, arguing that the issue is not universally agreed upon within Islamic principles.

Alongside the ongoing debates around judicial proceedings, there is an alternative legal perspective arguing that the Court's consistent involvement in the minutiae of laws is contrary to the spirit and letter of the Constitution. Article 121, for example, provides provinces with the right to create and implement laws, as well as to exercise judicial power outside of the federal government's exclusive authority, which primarily pertains to foreign policy, economic and trade policy, finance, customs and currency, weights and measures, budget preparation, water resource management, and census data collection.

As per the Constitution, if any dispute arises between the federal government and the provinces beyond the exclusive powers of the federal government, the provinces have the right to follow their own laws and amendments.