

Republic of Iraq  
Federal Supreme Court  
Ref. 267 / federal /2023



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The Federal Supreme Court (F S C) has been convened on 12/12/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Bassim Khazaal Khashan – a member of the ICR.

The Defendant: the Prime Minister/ being in this capacity – his agent, the legal counselor Hayder Ali Jaber.

### **The Claim**

The plaintiff claimed in the lawsuit petition that in the year 2017, the former Prime Minister issued Instructions for the formation of the departments of the General Secretariat of the Council of Ministers and their tasks No. (4) for the year (2017). According to these instructions, the Iraqi Women's Empowerment Department was created, which consists of some departments, including the Community Development Department, which consists of two divisions: A - Development Programs Division, and B - Gender Division. The Community Development Division undertakes some tasks, including A - Coordination with gender divisions and units in government institutions and women's offices in the governorates. B - Integrating the concept of gender into government plans and policies to achieve the principles of justice and equity in the development process. D - Study the impact of the implemented social development programs and set the necessary procedures to achieve government action plans and programs with regard to gender [gender], submit periodic reports thereon, and follow up on their implementation in coordination between it and the departments of the General Secretariat of the Council of Ministers. As for the Women's Rights Department, it undertakes a number of tasks, including: It relates to the rights of women, which the Constitution is obligated to protect. Paragraph (b) deviated from the task of

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defending these rights and stipulated: following up on the implementation of approved national plans and strategies related to gender [gender]. When issuing Instructions for the formation of the General Secretariat's departments and their tasks No. (2) of 2022, the former Prime Minister did not change the text of Article (9) and its paragraphs related to gender [gender]. Rather, he kept them as they were despite their violation of the principles of Islam, and because the creation of institutions had nothing to do with secretarial work. The Council of Ministers (General Secretariat) is considered to be an excess of the powers of the Prime Minister, which violates its validity. Therefore, the plaintiff asked this court to rule that paragraphs (9/First/1/B) and (9/Second/1/Alif, Beh, Dal) are invalid. (9/Second/2/B) of the instructions for the formation of the General Secretariat's departments, their tasks, and their cancellation following Article (93/Third) of the Constitution. The case was registered with this court under the number (267/Federal/2023), the legal fee was collected, and the defendant was notified of its petition and documents based on the provisions of Article (21/First and Second) of the Bylaw of the Federal Supreme Court No. (1) of 2022. His agent responded with the answering draft dated 11/28/2023 Its conclusion: The court does not have jurisdiction to hear the case and the plaintiff does not meet the condition of interest in filing it, and the General Secretariat of the Council of Ministers sent Circular No. (34498) on 7/27/2023, to all ministries and agencies not affiliated with a ministry and all governorates to clarify that the use of The term (gender) refers to the socially defined roles between women and men, The meaning and significance of this term, which was adopted by Iraq and expressed in international forums through the Ministry of Foreign Affairs, includes both sexes (men and women) and their roles in society are linked, as explained in Appendix Four of the Beijing Declaration of 1995, and does not indicate any other meaning that conflicts with the Constitution, the religious and moral values of our society reject it. According to this concept, "gender" was dealt with in Arab and Islamic countries, including Iraq, as human development reports issued by the Central Bureau of Statistics/Ministry of Planning used the term following this concept while confirming the clarity of the significance of the official use of this. The concept is devoid of any other meanings that are rejected by religious and moral values and prohibited and punished by laws (such as perversion and homosexuality). The

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generals include mentioning state institutions when using the term by referring after each use to men and women and placing them in parentheses, so that the meaning of the unexplained term is not understood, the General Secretariat of the Council of Ministers also directed Circular No. (56016) on 11/9/2023, based on the approval of the Prime Minister issued No. (2303232) on 11/13/2023 to all state institutions to adopt the term (Gender justice) instead of the term (gender) wherever it appears to preserve the government effort and proceed with the implementation of approved national policies, strategies, and plans concerned with the issue of women and their issues, in a manner consistent with the highest values of society. Thus, the lawsuit has lost its constitutional and legal support. Article (85) of the Constitution stipulates that (the Council of Ministers shall establish internal regulations to regulate the conduct of its work), as well as Cabinet Law No. (20) of 1991, which is still in effect based on Article (130) of the Constitution, which included the powers of the Council of Ministers and the General Secretariat of the Council of Ministers in Articles (27, 26, 25, 24, 23, and 22) thereof. Based on the above-mentioned constitutional and legal articles, the Council of Ministers issued Internal Regulation No. (2) of 2019, according to which it determined the powers of the Prime Minister, and Article (32) thereof stipulated that “the formations of the General Secretariat shall be determined following instructions issued by the President.” Accordingly, the instructions were issued - the subject of the appeal. (The term gender) was not mentioned in the internal regulations, and the phrase (gender) means, according to the United Nations definition, that it is (the social role of the individual, regardless of whether he is male or female). Official communications in the state have also settled on strengthening this concept and promoting its work, which is It represents the social role of males and females together in responsibility and building society and the country without excluding any party from it, and in a way that does not exceed the nature that God Almighty has assigned to each party, and departing from the usual social role of the lady of the Council of Prophethood, Zeinab (peace be upon him), does not mean rebellion against the correct values, but rather creative awareness of her multiple roles, as evidenced by the mention of Islamic history, the Qur’an, and the Sunnah of the Prophet, of the actions of many women, such as women ( Khadija, Asiya, Zainab, peace be upon them) and others, and that the use of the term should

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not be limited to the interpretations and interpretations that go on in the minds of some people regarding what their interpretations touched upon due to mistrust by using this term. Therefore, he requested that the lawsuit must be dismissed and that the plaintiff be charged its expenses and advocacy fees. After completing the procedures required by the court's bylaws, a date for the pleading was set in accordance with Article (21/Third) thereof, and both parties were notified of it. The court was formed and the plaintiff attended and his representative attended on behalf of the defendant. The public argument in presence proceeded after the court heard the statements of each party and nothing remained to be said, the end of the argument has been made clear and the court issued the following ruling:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's claim boils down to the fact that the defendant, the Prime Minister, in addition to his position, had issued, in 2017, instructions for the formation of the departments of the General Secretariat of the Council of Ministers and their tasks No. (4) of 2017, and Article (9) was introduced. Among these instructions is the Iraqi Women's Empowerment Department, which consists of several departments, including the Community Development Department, which consists of two divisions: (a) the Development Programs Division, (b) the Gender Division and the Community Development Division undertakes several tasks, including ( A) Coordination with gender divisions and units in government institutions and women's offices in the governorates, (B) Integrating the concept of gender into government plans and policies to achieve the principles of justice and equity in the development process, (d) Study the impact of the implemented social development programs and set procedures to achieve the plans and government work programs related to gender, submitting periodic reports thereon, and following up on their implementation, in addition to the Women's Rights Department, which undertakes several tasks, including those related to women's rights. Paragraph (b) deviated from the mission of defending women's rights, as it stipulated following up on the implementation of approved national plans and strategies related to gender. Social (gender). When the defendant, being in this capacity, issued instructions for the formations of the departments of the General Secretariat of the Council of

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Ministers and their tasks No. (2) of 2022, he did not cancel or amend the text of Article (9) and its paragraphs related to gender (gender), and in violation of paragraphs (First/1/B) and (Second / 1 / A, B, D) and (Second / 2 / B) of Article (9) of the instructions for the formations of the departments of the General Secretariat of the Council of Ministers and their tasks No. (4) of 2017, which contains the phrase “gender” for the constants of Islam, because it is not permissible to enact a law that contradicts the principles of Islam based on the provisions of Article (2) of the Constitution of the Republic of Iraq for the year 2005, and because the introduction of social types does not exist in the fabric of Iraqi society and has no relationship to the work of the Secretariat of the Council of Ministers (General Secretariat), which would prejudice its validity, therefore the plaintiff requested a ruling. The aforementioned paragraphs of Instructions for the Formations of Departments of the General Secretariat of the Council of Ministers and their Tasks No. (4) of 2017 are invalid, and their cancellation is based on the provisions of Article (93/Third) of the Constitution of the Republic of Iraq for the year 2005, and through the court’s review of the case file and the defenses and requests of the two litigating parties, it was found that The plaintiff appealed the invalidity of the paragraphs - the subject of the appeal mentioned in Article (9) of Instructions No. (4) of 2017, even though the paragraphs - the subject of the appeal are not effective on the date of filing the lawsuit on 10/31/2023; Because Instructions No. (4) of 2017, it has become completely invalid in accordance with Instructions No. (2) of 2022, regarding the formations of departments of the General Secretariat of the Council of Ministers and their tasks, and the last Instructions No. (2) of 2022 were ruled invalid pursuant to the ruling decision issued by this court No. (235/Federal/2023). ) On 11/19/2023; This is because it was issued by the Prime Minister during the daily management period on 10/17/2022, and thus the plaintiff’s lawsuit must be responded to. Because it is not valid due to the lack of enforcement of the challenged texts on the date of filing the lawsuit, and based on the above, the Federal Supreme Court decided the following ruling:

First: The claim of the plaintiff in the name of Khazal Khashan was rejected as having no merit due to the lack of enforcement of the texts whose validity is being challenged on the date of filing the lawsuit on 10/31/2023.

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Second: The plaintiff shall be charged the fees, expenses, and advocacy fees of the defendant's agent, the Prime Minister, in addition to his position as the legal advisor, Haider Ali Jaber, an amount of one hundred thousand dinars, to be distributed in accordance with the law.

The decision has been issued unanimously, final, and binding for all authorities 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 FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 27/Jamada Al-Oula/1445 Hijri coinciding with 12/December/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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