

Republic of Iraq  
Federal Supreme Court  
Ref. 122 / federal /2022



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 29/5/2022 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 Applicant: the President of the Republic/ Barham Salih.

Its Subject: to clarify the mechanism to be followed when withdrawing confidence from independent commission officials.

### **The Request**

The President of the Republic (Barham Saleh) requested an inquiry from the Federal Supreme Court in his application to this Court on 12 May 2022, which is the text:

((Mr. Respected President of the Federal Supreme Court.

Subject/ inquiry request

Best regards

The implementation of the text of the article (61/8<sup>th</sup>/Heh) of the Constitution has sparked debate on the procedures to be followed to dismiss the heads of independent commissions.

Please indicate the mechanism to be followed to withdraw confidence from them under the provisions of article (61/8<sup>th</sup>/Heh) of the Constitution, which states that (the Council of Representatives has the right to question officials of independent commissions in

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accordance with the procedures relating to ministers and may relieve them by an absolute majority. With appreciation...)).

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court of the President's request contained (to indicate the mechanism to be followed to withdraw confidence from the heads of independent commissions under the provisions of article (61/8<sup>th</sup>/Heh) of the Constitution of the Republic of Iraq 2005), the Court reached the following conclusions:

First: The Constitution of the Republic of Iraq 2005 consists of six chapters, Chapter one (Basic Principles), Chapter two (Rights and Freedoms) with two parts, the first (rights) and the second (freedoms) Chapter three (Federal Authorities), with four parts, the first (Legislative Authority), the second (Executive Power), the third part (Judicial Power), the fourth part (Independent Commission), Chapter Four (Jurisdictions of Federal Authorities), Chapter Five (Provincial Authorities) with four parts, the first part (Provinces), the second part (the Governorates not Incorporated into a Region), the third part (Capital), the fourth part (Local Administrations). Chapter six came with the title "Final and Transitional Provisions", the first part (final provisions) and the second part (transitional provisions). The independent commissions are therefore mentioned in their chapter (Chapter four) of part three (federal authorities) and thus acquire their federal status as enshrined in the Constitution within the section of the federal authorities and organized articles of (102-108) of the Constitution, within chapter four mentioned above, Independent commissions, as article (102) stipulates (The High Commission for Human Rights, the Independent Electoral Commission, and the

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Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law.) and article (103/first) stipulates (The Central Bank of Iraq, the Board of Supreme Audit, the Communication and Media Commission, and the Endowment Commissions are financially and administratively independent institutions, and the work of each of these institutions shall be regulated by law), and in item 2nd of the same article stipulated (The Central Bank of Iraq is responsible before the Council of Representatives. The Board of Supreme Audit and the Communication and Media Commission shall be attached to the Council of Representatives). As well, item 3<sup>rd</sup> of the same article stipulated (The Endowment Commissions shall be attached to the Council of Ministers).

Second: Although the Constitution stipulated in articles (102 and 103) that the commissions mentioned in them are independent, the Constitution subjected them to the control of the Council of Representatives, and at the same time linked (the Financial Oversight Office and the Media and Communications Authority) to the Council of Representatives on the one hand, and linked the Endowment Divans to the Council of Ministers on the other, while the Central Bank of Iraq made it accountable to the Council of Representatives as stated in item (2<sup>nd</sup>) of the article (103) of the Constitution, while (the High Commission for Human Rights, the Independent High Commission of Elections and the Commission for Integrity) the Constitution did not make it linked to a particular body but subjected it to the control of the Council of Representatives as stated in article (102) of the Constitution, despite that the Constitution has linked one section of the independent commissions of the Council of

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Representatives and the other to the Council of Ministers, but this does not at all violate its independence as a federal authority, it is at the same time subject to the control of the Council of Representatives under the provisions of article (61/8<sup>th</sup>/Heh) of the Constitution, which stipulates (The Council of Representatives may question independent commission heads in accordance with the same procedures related to the Ministers. The Council shall have the right to relieve them by absolute majority) as well as by articles (102 and 103) of the Constitution referred to above.

Third: Concerning the mechanism to be followed to relive officials of independent commissions, this shall be in the same mechanism as in article (61/8<sup>th</sup>/Alif, Beh, Jim) of the Constitution and no confidence shall be withdrawn from them in accordance with article (8<sup>th</sup>/Alif) of the article (61) of the Constitution, as in the case of ministers, where the item (7<sup>th</sup>/Alif) of the same article (member of the Council of Representatives may direct questions to the Prime Minister and the Ministers on any subject within their specialty and each of them shall answer the members' questions. Only the member who has asked the question shall have the right to comment on the answer), and item (8<sup>th</sup>/Alif) of the same article (The Council of Representatives may withdraw confidence from one of the Ministers by an absolute majority and he shall be considered resigned from the date of the decision of withdrawal of confidence. A vote of no confidence in a Minister may not be held except upon his request or based on a request signed by fifty members after the Minister has appeared for questioning before the Council. The Council shall not issue its decision regarding the request except after at least seven days from the date of its submission), whereas the Minister is a part of the executive power and the Council of Representatives exercising its

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overseeing of the executive power according to its jurisdictions listed in the article (61/2<sup>nd</sup>) of the Constitution which stipulated (The Council of Representatives shall be competent in the following: Monitoring the performance of the executive authority) Considering that it is the Council of Representatives that gives confidence to the government in accordance with article (76/4<sup>th</sup>) of the Constitution, which stipulates (The Prime Minister-designate shall present the names of his members of the Council of Ministers and the ministerial program to the Council of Representatives. He is deemed to have gained its confidence upon the approval, by an absolute majority of the Council of Representatives, of the individual Ministers and the ministerial program) Confidence is granted by the House of Representatives to the government by granting it to each minister individually and to the ministerial curriculum by an absolute majority, and therefore the Council of Representatives has the constitutional power to withdraw that confidence from the minister, while the heads of independent bodies, although the mechanism of questioning them is the same as the minister's interrogation, the House of Representatives has the power to exempt them by an absolute majority according to the text of the article (61/8<sup>th</sup>/Heh) where its last part stipulated (to relieve them with the absolute majority) but it does not have the jurisdiction of withdrawing the confidence from them, whereas the concept of confidence withdrawal is a subject, and relieving concept is another subject.

Fourth: The power of the Council of Representatives to relieve officials of independent commissions in accordance with article (61/8<sup>th</sup>/Heh) of the Constitution, that authority comes from the constitutional source of the text of the aforementioned article, that it should not be measured and that this does not apply to the career

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degrees that need the approval of the Council of Representatives for the appointment, but the Constitution has not granted the Council of Representatives the authority granted to it to officials of independent commissions. Accordingly, the Federal Supreme Court finds:

The mechanism for questioning officials of independent commissions is the same as the one in which ministers are questioned based on an article (61/8<sup>th</sup>/Heh) of the Constitution and as a result of interrogation, the Council of Representatives has the power to exempt them by an absolute majority without a recall because confidence is granted by it to ministers if they are appointed with the approval of the House of Representatives or any authority or other entity based on the provisions of articles (61/5<sup>th</sup>/Beh) and (80/5<sup>th</sup>) of the Constitution of the Republic of Iraq in 2005 or based on the provisions of the laws of all laws of the Republic of Iraq in 2005 or based on the provisions of the laws of all laws of the Republic of Iraq in 2005. A body of bodies who, as a result of the interrogation, are exempted without having to apply to the questioned or 50 members from the Council of Representatives which conditions this matter to withdraw confidence from them if they were not presented to the Council of Representatives to approve their appointment, but they have been assigned by the Council of Ministers. Therefore, they will be relieved by the Council of Representatives and by the same mechanism aforementioned, also their assignment could be terminated by the Council of Ministers if there were legal rationales according to the law, and does not conflict with the Constitution. The decision has been issued unanimously, according to the provisions of the articles (93/2<sup>nd</sup> and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/2<sup>nd</sup> and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has

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been edited in the session dated 27/Shawal/1443 Hijri coinciding  
29/May/2022 AD.

**Signature of**  
**The president**  
**Jasem Mohammad Abbood**