

Republic of Iraq
Federal Supreme Court
Ref. 147 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/9/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob 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: Muayed Hasan Yaseen – his agent the barrister Shawkat Sami Fadhil.

The Defendant: the Speaker of the ICR/ being in this capacity – his agents the legal counselor Hytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Third Party beside the Defendant: Minister of Transportation/ being in this capacity – his agent the official jurist Iman Mohammed Abdul Ridha.

The Claim

The plaintiff claimed through his agent that the defendant issued a decision by an absolute majority to grant confidence to the ministerial platform of the government of the Prime Minister (Mustafa Al-Kadhimi) according to the text of Article (76) of the Constitution, and the majority vote was taken to grant confidence to his cabinet individually for each ministerial portfolio, including the current Minister of Transport (Nasser Hussein Bandar Hamad) under the minutes of the session of the Council of Representatives numbered (1) on Thursday 7/5/2020 Fourth Electoral Cycle / Second Legislative Year / Second Legislative Chapter and with the number of attendees (255) Deputy, and considering that he meets the conditions for appointment as a minister contained in Article (77/2nd)

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of the Iraqi Constitution of 2005 in force, which stipulated that whoever is nominated for the post of Minister must have a preliminary university degree by virtue of his CV submitted to the Council of Representatives by the Office of the Prime Minister, and was adopted as a basis for voting on him and granting him confidence in the Council of Representatives, while the university degree of the Minister of Transport was not a duly academic university degree but a professional training certificate IR CPLI pilot license (not fundamentally equivalent) which made the decision of the Council of Representatives to grant him confidence and appoint him contrary to the provisions of the Constitution, and it is subject to annulment and invalidity for violating the provisions of Articles (77/2nd) and (13) of the Constitution, and considers that his client has an interest in bringing proceedings because of his exposure to arbitrary and illegal legal procedures by withdrawing his hand by a decision approved by the Minister of Transport despite the absence of the constitutional conditions for him to occupy the post of Minister, and for the damage he suffered from these arbitrary measures, and for the damage that will be caused to public funds and the public interest as a result of his continued occupation of the current ministerial portfolio, he requested the Federal Supreme Court to rule on the unconstitutionality of the decision of the Council of Representatives that granted confidence to the Minister of Transport (Nasser Hussein Bandar Hamad) to occupy the portfolio of the Ministry of Transport, documented in the minutes of the session of the Council of Representatives numbered (1) on Thursday 7/5/2020 Fourth Election Cycle / Second Legislative Year / Second Legislative Term and to annul and cancel all its implications for the reasons and reasons detailed in his petition, and to charge the defendant fees, expenses and advocacy fees. The case was registered with this court in the number (147/federal/2022)

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and the legal fee for it was met in accordance with Article (21/1st) of the Bylaw of the Federal Supreme Court No. (1) of 2022 and informs the defendant of its petition and documents in accordance with Article (21/2nd) of the same Bylaw above, and his agents replied with the answer regulation dated 18/7/2022 to which he attached a scanned copy of the letter of the Prime Minister's Office No. (3011/2210345) dated 20/6/2022 received by the Council of Representatives with all the priorities attached to it, which shows that The certificate of the Minister of Transport in Commercial Aviation from the American Federal Academy was duly equalized by the Ministry of Transportation and with the approval of the Ministry of Higher Education and Scientific Research and the decision was issued to equalize the certificate of commercial aviation with a bachelor's degree, as for the arbitrary legal procedures to which the plaintiff claimed to have been subjected, the Ministry of Transport indicated that the plaintiff had requested the announcement of the project of the residential complex for the employees of the Ministry without reference to his superior boss, noting that the project is intended to be built on land owned by the Ministry with an area of sixty dunums in (Baghdad/Palestine Street) without following the legal contexts and continuing to communicate with the National Investment Authority and refer the project by the Authority to a company without the knowledge of the Ministry, worthy to mention that the assignee company was not among the companies that submitted an offer to the Ministry, and an investigative committee was formed in the number (16049) dated 8/6/2022 to investigate the matter, and for the purpose of enabling the committee to reach all the required priorities and ensure the smooth conduct of the investigation, the committee requested the withdrawal of the plaintiff's hand from the job based on the provisions of the Law on Discipline of State and Public Sector

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Employees No. (14) of 1991 as amended)), Therefore, the defendant's agents requested a judge to dismiss the plaintiff's claim and charge him judicial fees, expenses, and advocacy fees. After completing the procedures required by the rules of procedure of the Court, mentioned above, an appointment was set for the pleadings in accordance with Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day the Court was formed, and the plaintiff in particular and his attorney, Shawkat Sami Fadel, attended on behalf of the defendant and his two agents, Haitham Majed Salem and the human rights officer Saman Mohsen Ibrahim, and proceeded with the public present pleading, the plaintiff and his agent repeated what was stated in the petition and requested the judgment thereunder, the defendant's agents replied and requested a response to the lawsuit for the reasons stated in their answering draft linked to the case papers, the Court noticed that the official jurist (Iman Mohammed Abdul Ridha) had submitted a request on behalf of her client (Minister of Transportation/ being in this capacity) dated on 4/8/2022, and she requests according to it to introduce him as a third party according to the provisions of the article (69) of the Civil Porcedure Law No. (83) for 1969 (amended), for the legitimacy of the request, the Court decided to accept his joining and his agent paid the legal fee and requested to reject the case for the reasons listed in her answering draft dated 7/8/2022 because there is no legal substantiation for initiating the case. The agents of all parties repeated their previous sayings and requests, 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 of what was stated in the plaintiff's lawsuit and the mutual regulations between the parties and what their agents stated in the pleading session, it was found that the plaintiff's agent is requesting a ruling on the unconstitutionality of the decision of the Council of Representatives issued on 7/5/2020 in session No. (1) the fourth electoral cycle of the second legislative year of the second legislative term, which ordered the granting of confidence to the current Minister of Transport Nasser Hussein Bandar, claiming that he lost the constitutional conditions for filling the position of the minister which is stipulated in Article (77/2nd) of the Constitution of the Republic of Iraq for the year 2005, This court finds that the plaintiff's claim is admissible in terms of litigation because the plaintiff and the defendant in addition to his job are legal opponents who meet the conditions of litigation and possess the legal capacity to litigate, while in terms of interest, article (20) of the rules of procedure of the Federal Supreme Court No. (1) of 2022 stipulates that the plaintiff in the lawsuit filed before this court, in addition to the conditions stipulated in the Code of Civil Procedure No. (83) of 1969 as amended, stipulates that the plaintiff must have a status, direct and influential interest in his position. Legal, financial, or social, and that the impugned text or decision has already been applied to it and that it has not benefited from that provision or decision in whole or in part, that is, a constitutional action is not admissible from persons other than persons who are harmed by the validity of the challenged text or decision, and such damage must always be separate from the mere violation of the Constitution by the impugned text or decision assuming that such a

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violation exists, and that such damage is independent of its elements and can be determined, returning in its source to that decision, if the impugned text or decision has not actually been applied to the person who claimed to have violated the Constitution or was a breach of the rights that the Court found that the plaintiff works as Director General of Financial and Administrative Affairs in the Iraqi Scientific Complex and is not affiliated with the Ministry that he challenges the decision to grant confidence to its minister, that the impugned decision has not been applied to him and that the lawsuit does not benefit him or alter his legal, financial or social status, so the condition of interest is negated in his claim, which requires its dismissal from this part. Accordingly, the FSC decided to reject the case of the plaintiff Muayed Hasan Yaseen and to burden him with the fees, expenses, and advocacy fees for the agents of the defendant, the Speaker of the ICR/ being in this capacity, each of the legal counselor Haytham Majid Salim and the official jurist Iman Mohammed Abdul Ridha amount of one hundred thousand Iraqi dinars, to be divided in accordance with the law. The decision has been issued unanimously, according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and article (4) 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 dated 15/Sufur/1444 Hijri coinciding 12/September/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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