



The Federal Supreme Court (F.S.C.) convened on 29.12.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiffs:

1. Basem Khazal Khashan - on his own behalf and on behalf of the rest of the plaintiffs
2. Head of the National Movement / In addition to his post - Basem Khalil Ibrahim
3. Riyadh Abbas Abdullah
4. Khaled Miteb Yassin

Their attorney, Ahmed Saeed Moussa.

The defendant:

The President of the Republic / in addition to his position - his deputy, the head of legal experts Ghazi Ibrahim Al-Janabi.

The claim:

The plaintiffs claimed, through their attorney, that they are challenging before this court the constitutionality of Republican Decree No. (18) of 2021, dated 12/4/2021, for violating Article (64/ Second) of the Constitution and the impossibility of its application,

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according to which the President of the Republic calls for general elections when the Parliament is dissolved and that any call that precedes the dissolution of the Council is considered null and void, and is not relied upon because it violates the aforementioned article, and since the Council of Representatives, according to its Resolution No. (32) for the year 2021, has stipulated to dissolve itself on October 7, 2021 that elections be held on 10/10 /2021, the President of the Republic may not call for general elections before this date, because the Council is not considered dissolved until after the elections are held, and that any call prior to this date violates the provisions of the aforementioned article of the Constitution, and therefore the plaintiffs requested the Federal Supreme Court to rule the republican decree unconstitutional, and the ruling invalidating all the procedures that were based on it, including the elections for the Council of Representatives and all their results. The case was registered with this court in the number (150 / federal / 2021) and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and informs the defendant of its petition and documents in accordance with the provisions of Article (2/First). From the same bylaw mentioned above, his attorney responded with the answer list dated 12/1/2021 and requested that the plaintiff's claim be dismissed for the following reasons:

1. In view of the scheduling of the elections, the completion and implementation of the elections, and the appearance of the results, therefore, the appeal submitted has become irrelevant.

2. The Federal Supreme Court is not competent to hear the case because the republican decree is an administrative decision that is

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challenged before the Administrative Court and is outside the jurisdiction of the constitutional judiciary.

3. The request did not include any reference to the existence of a direct, immediate, apparent, and influencing interest in the legal, financial or social status of the plaintiffs, and the plaintiffs did not provide evidence that there was harm to their constituent party as a result of the appeal.

4. Clause (First) of Article (64) of the Constitution stipulates the right of the Council of Representatives to dissolve itself for reasons that the Council deems to be ruling, and that the existence of the Council may threaten societal peace and security, or for the Council to lose its legitimacy for political, social, or economic reasons, or to address a crisis and severe political blockage in the country. What happened as a result of the October demonstrations and the resignation of the government was a sufficient justification for the Council of Representatives to assume its responsibility and dissolve itself and issue a dissolution decision in order to hold early elections. by an absolute majority of its members, at the request of one-third of its members, or a request from the Prime Minister and with the approval of the President of the Republic, and the Council may not be dissolved during the period of questioning the Prime Minister). At the request of more than one-third of its members and a majority vote, the dissolution decision was issued.

5. As for setting the date of the elections, this was indicated in the Iraqi Parliament Elections Law No. (9) for the year 2020, as Article (7/Second) of it stipulates (Second - the election date is determined by a decision of the Council of Ministers and in coordination with the Independent High Electoral Commission, It is

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announced in all media outlets no less than (90) ninety days prior to the date set for holding them. As setting the date for the elections was carried out according to the aforementioned mechanism, as consultations took place between the Commission and the Council of Ministers, and 10/10/2021 was set as the date for holding the elections and as a result, The republican decree was issued.

6. The decree issued by the President of the Republic was issued based on the provisions of Clause (Second) of Article (64) of the Constitution, which states: “The President of the Republic, upon dissolving the Council of Representatives, shall call for general elections in the country within a maximum period of sixty days from the date of the dissolution. In this case, the Council of Ministers is considered resigned and continues to manage daily affairs. And that (the right of the president to issue the decree within a maximum period of sixty days), and this phrase refers to the right of the president to issue the decree, and it is not intended that the election process should not exceed sixty days, because it is known that the electoral operations schedule needs no less than (180) days, i.e. by six He was famous for completing the stages of the electoral process represented in preparing the voter register and presenting it to the public and the deadlines for contesting it, as well as opening the door for candidacy, auditing and contesting candidacies, and the electoral campaign periods, all the way to polling day. Second: The election of the new Council of Representatives shall take place forty-five days before the end of the previous electoral cycle. The aforementioned text required that elections be held and the Council of Representatives is in session and present so that there is no vacuum in one of the authorities, especially since Iraq is a parliamentary

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system that cannot be dispensed with for a long time in light of the challenges surrounding the country.

7. The elections that took place on 10/10/2021 were held in light of the end of the fourth parliamentary session in accordance with the dissolution decision issued by the Council of Representatives No. (32/2021) dated 3/31/2021. Therefore, the Council does not exist as it was dissolved and the elections were held. This refutes the plaintiff's claim that the elections were held under an existing and existing council. And the period referred to in item (Second) of Article (64) of the Constitution, which states: "The President of the Republic, upon dissolving the Council of Representatives, shall call for general elections in the country within a maximum period of sixty days from the date of the dissolution, and the Council of Ministers, in this case, is considered resigned." and carry on with daily affairs). The text of the phrase (within a maximum period of sixty days from the date of the dissolution) is a period of time that can be changed, subject to being less than sixty days, meaning that the Council was dissolved on 7/10/2021 and the elections were held after the dissolution, and then there is no constitutional violation and it complies with the plaintiff's demand. That the elections be held in the shadow of a dissolved parliament and that the previous call to set the date is for organizational purposes needed by the commission. Therefore, the parliament's decision to dissolve itself was a constitutional decision and the decree was issued a decision free of suspicion of the constitutional violation. A democratic practice that the country has not witnessed before, in which the Council of Representatives dissolves itself before the end of its term and a government submits its resignation,

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and the President of the Republic contributes to strengthening this practice by issuing the republican decree, although this is a reason for the expiration of their term, they preferred the higher interest of the country over their interests. For the aforementioned reasons and for what the Federal Supreme Court sees as the reasons for the defendant's attorney's request to dismiss the plaintiffs' suit and charge them fees, expenses, and attorney's fees, and after completing the procedures required by the aforementioned bylaw, a date for pleading was set in accordance with Article (2/Second) of the same bylaw above. The two parties attended, and on the appointed day the court was formed. So, the lawyer, Basem Khazal Khashan, appeared in his capacity as the first plaintiff in person and as a representative of the rest of the plaintiffs, and on behalf of the defendant, his representative, Ghazi Ibrahim Al-Janabi, the chief legal expert, attended. The case was dismissed for the reasons stated in its regulations dated 12/1/2021, and the two parties repeated their previous statements and requests, and where there was nothing left to say, the court decided the conclusion of the pleading, and the court issued the following ruling:

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiffs requested to invite the defendant in addition to his position to plead and judge the unconstitutionality of Republican Decree No. (18) of 2021 dated 4/12/2021, which set 10/10/2021 as the date for holding early elections for the Council Representatives for its fifth session, and through what was stated in the plaintiffs' lawsuit and the defenses of

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the defendant's attorney in addition to his position, the court reached the following conclusions: 1. Based on the provisions of Article (4) of the Federal Supreme Court Law No. (30) for the year 2005 as amended by Law No. (25) for the year 2005. 2021 and Article (6) of the bylaw No. (1) of 2005, which requires in all its paragraphs that the plaintiff have a current, direct and influential interest in his legal, financial or social position, and that the plaintiff must provide evidence that real harm has been caused to him as a result of the legislation required to be repealed, and that The damage shall be direct and independent of its elements, and the damage shall not be future or unknown, and that the plaintiff has not benefited from part of the text required to be repealed, and that The text required to be repealed has been applied to the plaintiff or is intended to be applied to him, and the Federal Supreme Court finds that resorting to the constitutional judiciary should not be arbitrary for everyone who wanted it, but rather the interest in the lawsuit must be satisfied and the lawsuit is not valid from others, since the basis of the lawsuit is the need for The legal protection that is required when assaulting or threatening to attack a right or a legal position and that achieves the practical benefit of filing the lawsuit, which the plaintiff wishes to obtain to protect that right, and that the interest in the direct constitutional lawsuit should be a legal interest in the sense that the constitution guarantees its protection, because the right that it protects A constitutional lawsuit is a right guaranteed by the constitution and recognized by law in implementation of that. For the interest to be considered legal, there must be a breach of one of the constitutional rights. It is not sufficient for the direct personal interest to be considered a condition for accepting the constitutional lawsuit

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that the contested legislative text is contrary to the constitution. Rather, this text must have been applied to the plaintiff and he violated one of his rights mentioned above, as the abstract theoretical interest is not sufficient to accept the direct constitutional lawsuit as The case for the interest that aims to establish an abstract constitutional ruling on a specific subject for academic purposes or to defend ideal values to be established or a kind of expression of a personal point of view or to establish a certain concept in a particular issue that did not result in harm to the appellant, and the interest must be present and available at the time of the lawsuit And until a judgment is passed on it.2. The Republican Decree No. (18) for the year 2021, dated 4/12/2021, whose constitutionality is challenged, included setting 10/10/2021 as the date for holding early elections to the Council of Representatives for its fifth session. As a consequence of that solution is the necessity of setting a date for holding elections for a new Council of Representatives, since after the dissolution of the Council of Representatives, no elections can be held. Therefore, what was mentioned in the aforementioned republican decree does not result in harm to the plaintiffs or others, even if the protest is that the republican decree violates the provisions of Article (64/ Second) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that (the President of the Republic, upon dissolving the Council of Representatives, shall call for general elections in the country within a maximum period of sixty days from the date of the dissolution, and the Council of Ministers, in this case, is considered resigned, and continues to conduct daily affairs). It is not based on a constitutional basis, because what is contained in the contested republican decree does not conflict with the authority granted to the

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President of the Republic in accordance with what was stated in the aforementioned text, which is to call on the President of the Republic to conduct a General elections in the country within a maximum period of sixty days from the date of dissolving the Council of Representatives, as the origin is to call for general elections when the Council of Representatives is dissolved for any reason whatsoever, and for all the above, the Federal Supreme Court decided to dismiss the plaintiffs' suit and charge them fees, expenses and attorney fees for the plaintiff's attorney He owed him an amount of one hundred thousand dinars distributed according to the law, and the judgment was passed by agreement conclusive and binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) for the year 2021 and publicly understood on 24 / Jumada al-Ula / 1443 AH corresponding to December 29, 2021 AD.

**Signature of
The president**

***Jasem Mohammad
Abbood***

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