

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/8/2022 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 Plaintiff: Ahmed Suham Al-Deen Khairi – his agents the barristers Yasir Falah Hasan, Ahmed Mazin Makkiya, and Mohammed Majeed Rasan.

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

The Claim

The plaintiff claimed through his agents that the defendant issued decision No. (133) of 2021 during the fifteenth ordinary session held on 13/4/2021, which recommended to the Council of Representatives to appoint Engineer (Mohammed Saheb Al-Daraji) to the post of Chairman of the Military Industrialization Commission based on the provisions of Articles (61/5th and 80/5th) of the Constitution, and that this decision came in contravention of the provisions of the Law of the Military Industrialization Commission No. (25) of 2019 according to Article (1/2nd) thereof, which stated that "The Authority shall be headed by an employee of a grade, In particular, he holds a preliminary university degree at least in science or engineering and has experience in the work of the Authority and has a job service of not less than 15 years and is

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2022



Kurdish text

appointed with the approval of the Council of Ministers and the approval of the Council of Representatives) while these conditions do not apply to the nominee which is a clear violation of both the provisions of the Law of the Military Industrialization Commission, the powers granted to the Prime Minister provided for in Article (80/5th) of the Constitution, which defined his competence as (recommending to the Council of Representatives to approve the appointment of undersecretaries of ministries, ambassadors, holders of special ranks, the Chief of Staff of the Army and his assistants, those in the position of division commander and above, the head of the National Intelligence Service and the heads of the security services), while the above-mentioned resolution stipulates in the second paragraph of the Constitution that "2- The aforementioned assignment of the tasks of the head of the Military Industrialization Commission as an acting until his appointment is authentic", in addition to that the defendant had committed serious administrative and financial violations and caused significant damage to public funds and to the institution, Therefore, the plaintiff asked the Federal Supreme Court to rule on the annulment of the decision of the Council of Ministers No. (133) of 2021 issued on 13/4/2021 and to charge the defendant fees, expenses, and advocacy fees. The case was registered with this court in the number (157/federal/2022) and the legal fee was met based on the provisions of Article (21/I) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and the defendant is informed of its petition and documents following the provisions of Article (21/2nd) of the same Bylaw, mentioned above, and his agent replied with the Reply Regulation dated 27/7/2022 concluding that the plaintiff's request to issue a state order to stop the procedures of the Council of Ministers Resolution No. (133) of 2021 has no basis in the law for the absence of urgency. In addition to

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2022



Kurdish text

the fact that the court's response to his request means entering into the original right and giving a prior opinion on the decision of the Council of Ministers subject to appeal based on the case filed before this court, This is what the court's judgment has settled on in its decision No. (11/Federal/State Order/2022), and the plaintiff's application does not meet the condition of interest to file this lawsuit because the decision in question does not prejudice his constitutional rights in a way that directly harms him, as he did not have an interest in the subject matter of the lawsuit following the provisions of Article (20/1st) of the Bylaw of the Court, and Article (6) of the Code of Civil Procedure, he has missed the distinction between the powers granted to the Prime Minister in Article 78 of the Constitution and the powers of the Council of Ministers in Article 80 of the Constitution, and that the decision in question is issued by the Council of Ministers and not by the Prime Minister, and did not contravene Article (80/5th) of the Constitution but came as an application thereof, and is considered an application of the provisions of Article (1/2nd) of the Law of the Military Industrialization Commission and Article (80/5th) of the Constitution, and the assignment of the Entrusted to him until his appointment Asala is necessary to conduct matters of the commission and the performance of its tasks, especially since the establishment of the Military Industrialization Commission came because of the importance of military industries, achieving national security, supporting the national economy, benefiting from national expertise, contributing to securing the war work of the security and national ministries, or contributing to the achievement of national sovereignty in order to achieve its objectives stipulated in article (2) of the aforementioned Military Industrialization Commission, so the ruling requested the dismissal of the appeal from the formal and substantive aspects, and the rejection of the request to issue the state

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2022



Kurdish text

order, with the plaintiff charging expenses, fees and attorneys' fees. After completing the procedures provided for in the Bylaw of the Court, mentioned above, an appointment was set for the pleadings in accordance with Article (21/3rd) thereof, and the parties shall be informed of it, and on the appointed day the Court was formed and the lawyers Mohamed Majeed Rassen and Ahmed Mazin Makiya were present as an agent for the plaintiff. On behalf of the defendant (Prime Minister/being in this capacity), his agent, Legal Counsel Haider Ali Jaber, attended and proceeded to conduct the public present pleading, the plaintiff's two agents repeated what was stated in the petition and requested to judge according to what it stated, the defendant's agent replied requesting that the case be dismissed for the reasons mentioned in the answering draft attached to the case papers, the court noted that the deputy head of the Military Industrialization Commission (Ali Fakhri Abdul Hamza) submitted an application to this court requesting to include him as a third party (adversarial) besides the plaintiff, because his application is unproductive in this case, the court decided to reject his application and he can file an independent suit on the same subject, and the agents of the parties repeated their previous statements and requests, and where there is nothing left to be said, the end of the pleading has been made clear, and the court issued the following judgment decision:

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2022



Kurdish text

The decision:

Upon scrutiny and deliberation from the Federal Supreme Court, it was found that the plaintiff's lawsuit included a request to annul the decision of the Council of Ministers No. (133 of 2021) issued on 13/4/2021 recommending to the Iraqi Council of Representatives to appoint Engineer (Mohammed Saheb Al-Daraji) to the post of Chairman of the Military Industrialization Authority for violating the provisions of the Law of the Military Industrialization Authority No. (25) of 2019 and Article (80/5th) of the Constitution of the Republic of Iraq of 2005 and after reviewing the defenses of the parties to the lawsuit through the regulations submitted by their agents and during the pleadings you find This Court states that the plaintiff's claim has been devoid of the requirement of interest as it is a recognized principle of suit and its acceptance by the court and the plaintiff shall have an interest in its initiating, which is the practical benefit obtained by the plaintiff when ruling following his requests contained in the petition and the condition of interest from the conditions established for the acceptance of the constitutional lawsuit following Article (20) of the Bylaw of the Federal Supreme Court No. (1) of 2022, as the said article requires that the plaintiff in the subject matter of the lawsuit have a current, direct, and influential interest in his legal, financial or social status, provided that it is available from the time of filing the lawsuit until, In addition, the challenged provision must have already been applied to the plaintiff, the plaintiff must not have benefited from the contested text in whole or in part, and the absence of interest in the suit strips it of legal protection. Accordingly, the FSC decided to reject the case of the plaintiff Ahmed Suham Al-Deen Khairi and to burden him with the judicial expenses, including the advocacy fees for the agent of the defendant/ being in this

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2022



Kurdish text

capacity the legal counselor Hayder Ali Jaber amount of one hundred thousand Iraqi dinars, to be divided in accordance with the law. The decision has been issued unanimously and final according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2nd) 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 1/Sufur/1444 Hijri coinciding 29/August/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

saady