

Republic of Iraq
Federal Supreme Court
Ref. 172 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 14/11/2023 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: Dawood Abid Zayer - Shareholder and Chairman of the Board of Directors of the Iraqi Land Transport Company / being in this capacity.

The Defendant: Secretary-General of the Cabinet/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiff claimed that the Federal Supreme Court had previously issued its decision No. (134/Federal/Cssation/2012), which included the non-participation of representatives of the public sector (state) after their appointment in electing private sector representatives in mixed sector companies, and that this ruling was consistent with the provisions of Article (103/First) of the Companies Law No. (21) of 1997 as amended, and since the defendant issued his circular No. (Qaf/2/1/27) dated 2/5/2023 enclosed in the letter of the State Council No. (268) and dated 1/25/2023 Attached is Resolution No. (9) of 2023 issued by the State Council, which refers to the contribution of public sector representatives in the election of boards of directors in mixed sector companies, contrary to the court's decision above, and since Article (94) of the Constitution stipulates that: (The decisions of the Federal Supreme Court are final and binding on all authorities. The judicial authority is independent and is assumed by courts of all types and degrees, and their rulings are issued in accordance with the law based on the provisions of Article (87) of the Constitution, since the decisions of the courts are final, they are evidence against all people regarding the rights they have ruled

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based on the provisions of Articles (105 and 106) of the Evidence Law, and Article (8) of the State Council Law No. (65) of 1979, as amended, stipulates: “The Council shall refrain from giving Opinion and legal advice in cases brought before the judiciary and in decisions that have a legal reference for appeal), and because of the aforementioned constitutional and legal violations that constitute a constitutional and legal violation that affects his rights and the rights of shareholders in mixed sector companies, so the plaintiff asked this court to issue a state order to stop work on the general secretariat circular. The Council of Ministers (Resolution 2/1/27 on 2/5/2023) and State Council Resolution No. (9) of 2023 until the case is resolved and a request is made to cancel them for violating the provisions of the Constitution. The case was registered with this court under the number (172/Federal/2023), and the legal fee was paid for it, and the defendant was notified of its petition and documents under Article (21/First and Second) of the Federal Supreme Court’s internal regulations No. (1) of 2022, and after the expiry of the period specified for the answer, a date was set for the pleading. Under Clause (Third) of the above article, which shall be notified to both parties, on the appointed day, the court was formed, and the plaintiff appeared, the defendant’s agent attended, and the public in-person pleading began. The plaintiff repeated what was stated in the lawsuit petition and requested a ruling according to it. The defendant’s agent responded, requesting that the lawsuit be dismissed for the reasons stated in his regulations dated 9/10 and 11/2023 ((their summary: Considering the plaintiff’s request to cancel a circular from the General Secretariat of the Council of Ministers regarding the participation of public sector representatives in voting to elect representatives from other than the state sector to represent shareholders in the board of directors of authorized companies is outside the court’s jurisdiction specified under Article (93) of the Constitution, in addition to the lack of interest condition to file a lawsuit, and there is no basis in the Constitution or the law for his claim since it was circulated by the General Secretariat of the Council of Ministers in its letter numbered (Qaf/2/1/16/40862) dated 8/29/2023, what includes ((public sector representatives attending meetings of the general bodies of mixed joint-stock companies held to elect private sector representatives on the company’s board of directors to achieve a quorum for the meeting only without participating in voting if the amount of the state sector’s

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contribution is less than (50%) of the company's capital, but if the amount The state sector's contribution is (50%) or more, and their presence is required to achieve a quorum and vote to elect representatives of the private sector to the extent that the government entity to which they belong deems appropriate). Whereas Article (102/Second) of the Companies Law stipulates that: (The General Assembly is the highest body in the company and is responsible for deciding everything that is in its interest, and it has the right in particular to do the following: Second: Elect persons from other than the state sector to represent shareholders on the mixed company's board of directors....), therefore, representatives of the Tourism Authority have the right to participate in the election of members of the boards of directors of mixed sector companies. The State Council issued Resolution No. (9/2010) dated 6/8/2010 - according to the regulations - which include (Representatives of the Tourism Authority shall attend the meeting of the General Authority of the mixed joint-stock company to complete quorum and the election of representatives of the private sector to its board of directors), and thus the failure of shareholders from the state sector to participate in voting according to what was stated in the decision of the Administrative Court above violates the description of the body above, and Article (85) of the Companies Law stipulates (the general body shall consist of all members of the company) From this it is clear that the failure of public sector shareholders to participate in voting to elect representatives from other than the state sector to represent shareholders on the board of directors of the mixed company violates the description of the aforementioned general body, It also violates the text of Article (102/Second) of the Companies Law, which obliges the election of the Board of Directors of the Mixed Joint Stock Company from the aforementioned body, even if the General Secretariat of the Council of Ministers relies on requesting an opinion from the State Council in accordance with the provisions of Article (6/First) of the State Shura Council Law. Which is binding on the party requesting the opinion. Article (114/Second) of the Companies Law stipulates that for the implementation of the decisions of the Board of Directors of a mixed joint-stock company that at least two representatives of the state sector have voted for it, and Article (103) of the same law stipulates that the number of members The board of directors of the public sector company (3) members out of

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(7) members if the state's contribution percentage exceeds (50%) of the company's capital and two members if the percentage does not exceed the above, accordingly, the state sector does not have a majority in the board of directors of the mixed joint-stock company, even if its shareholding percentage reached (99%) of the mixed joint-stock company's capital. Thus, there is no fear and there is no basis for doubting the harm to the rights of the private sector. Accordingly, it is clear that what the legislator wanted was to involve representatives of the state sector by electing the representatives of the private sector on the Board of Directors of the mixed joint-stock company is a counterweight to organizing the issue of decision-making within the Board of Directors in a way that ensures the lack of control and exclusivity in decision-making within the Board of Directors). After the court completed its examinations and there was nothing left to say, the conclusion of the pleading was understood and it issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the claim of the plaintiff (Daoud Abd Zayer - shareholder and Chairman of the Board of Directors of the Iraqi Land Transport Company / in addition to his position) is focused on demanding a ruling to cancel the blindfold of the defendant (Secretary General of the Council of Ministers - in addition to his position) No. (Qaf/2/1/27 on 2/5/2023) and State Council Resolution No. (9) of 2023 for violating the provisions of the Constitution. The plaintiff also requested the issuance of a state order to suspend the work of turbans and the aforementioned decision until the case is resolved. The court had previously refused to issue the state order. It is requested to be issued by its decision No. (172/Federal/State Order/2023 on 1/8/2023), as for the subject matter of the case, upon closer examination of the plaintiff's requests contained therein, the court finds that considering them falls outside the jurisdiction of the court, whose judiciary has established that its jurisdiction referred to in Article (93/Third) of the Constitution of the Republic of Iraq applies exclusively to what is issued by the federal authorities, including independent bodies, not including the General Secretariat of the Council of Ministers, which is not considered a federal authority in its own

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right, but rather part of the Council of Ministers. Moreover, it is not within the jurisdiction of this court to cancel the decisions of the State Council regarding expressing an opinion within the scope of its legally defined powers. For all of the above and due to the court's lack of jurisdiction, the ruling decided to dismiss the claim of the plaintiff (Daoud Abd Zayer - shareholder and chairman of the board of directors of the Iraqi Land Transport Company / being in this capacity) and charge him the expenses and fees of the defendant's agent being in this capacity in the amount of one hundred thousand dinars. The decision has been issued unanimously, final, and binding 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 edited in the session dated 29/Rabea Al-Akhir/1445 Hijri coinciding with 14/November/2023 AD.

Judge

Jassim Mohammed Abboud
President of the Federal Supreme Court

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