

Republic of Iraq
Federal Supreme Court
Ref. 175 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 31/8/2022 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: Saad Hameed Kambash/ Former Head of Sunni Endowment Divan – his agents the barristers Imad Hamad Nattah, Lawrence Imad Hamad, and Rasha Faik Dhahir.

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

The Claim

The plaintiff claimed through his two agents that on 7/10/2021 the Iraqi Council of Representatives was dissolved and since Article (64/2nd) of the Constitution stipulates that "the President of the Republic, upon the dissolution of the Council of Representatives, shall call for general elections in the country within a maximum period of sixty days from the date of dissolution, and the Council of Ministers, in this case, shall be considered resigned, and shall continue to conduct daily affairs." Article (42) of the Bylaw of the Council of Ministers No. (2) of 2019 stipulates that "First, the Council of Ministers shall continue to conduct matters Daily state until the formation of the new government ... Secondly, day-to-day

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management means: the adoption of decisions and actions that cannot be postponed that will continue the regular and steady functioning of state institutions and public utilities, it does not include, for example, the proposal of draft laws, the contract of loans, appointment to an exemption from senior positions in the State or the restructuring of ministries and departments, but the defendant in addition to his job issued the Diwani Order No. (513) dated 25/7/2022 contained in paragraph (1) thereof ((Repeal paragraph (1) of the Diwani Order No. (450) of 2022 issued in our letter No. (S/2/5/50/42/982) dated 6/3/2022 which includes the assignment of Mr. (Saad Hamid Kambish) as acting Deputy Chief of the Bureau for Affairs. Religious and Cultural in the Diwan of the Sunni Endowment) and in paragraph (2) thereof ((Assignment of Mr. (Dr. Othman Ibrahim Mahmoud) as acting Deputy Chief of the Bureau for Religious and Cultural Affairs in the Diwan of the Sunni Endowment)), whereas, the government of the defendant is a government of day-to-day care, and the decisions of the Federal Supreme Court (121/Federal/2022) and (122/Federal/2022) containing the interpretation of the government of the conduct of daily affairs and the affirmation that it is not the prerogative of the resigned government to appoint, assign or exempt for senior positions or special degrees, and since the position of deputy head of the Sunni Endowment Bureau is at the level of deputy minister based on the provisions of Article (5/1st) of the Law of the Sunni Endowment Bureau No. (56) of 2012, which stipulates (The Diwan shall have two agents, each with the rank of Undersecretary and Minister, one for religious and cultural affairs and the other for administrative and financial affairs), whereas, the decision of the Federal Supreme Court No. (50/Federal/2022) issued on 26/7/2022 in the case filed by him (i.e. the plaintiff), confirmed

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that paragraph (1) of the Diwani Order No. (450) of 6/3/2022 containing (termination of the assignment of Mr. Saad Hamid Kambash from the tasks of running the affairs of the Office of the Sunni Endowment Agency and returning him to his previous work as Deputy Chief of the Bureau for Religious and Cultural Affairs and Agency in the Diwan of the Sunni Endowment) is valid and following the law, and the plaintiff considers through the decision of the Federal Supreme Court that His occupation of the position of Deputy Head of the Office of the Sunni Endowment for Religious and Cultural Affairs is valid and following the law, and that the Diwani Order No. (513) dated 25/7/2022 was issued before the date of issuance of the decision of the Federal Supreme Court referred to above, also, the agent of the third person in that case (the head of the Sunni Endowment Bureau / being in this capacity) highlighted in a hearing on 26/7/2022 a copy of the Diwani Order (513) and stressed that "the defendant in addition to his job canceled the assignment of Saad Hamid Kambash to the duties of Deputy Head of the Sunni Endowment Office for Religious and Cultural Affairs, and assigned Mr. Othman Ibrahim Mahmoud to the duties of the Deputy Head of the Sunni Endowment Office for Religious and Cultural Affairs" and since the challenged Diwani Order was within the scrutiny and discussions of the Federal Supreme Court In the lawsuit No. (50/Federal/2022), the court did not take into account what was stated in it, which considers the Diwani order in question to be contrary to the Constitution. Therefore, the plaintiff asked the Federal Supreme Court to rule on the unconstitutionality of Diwani Order No. (513) dated 25/7/2022 and to cancel it, and issue a state order to suspend the legal proceedings by implementing it until the case is resolved, and charge the defendant fees, expenses, and advocacy

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fees. The case was registered with this court in the number (175/federal/2022) and the legal fee for it was met based on the provisions of Article (21/1st) of the Bylaw of the Federal Supreme Court No. (1) of 2022 and the defendant shall be informed of its petition and documents following paragraph (2nd) of the same article above, His agent replied to the answering draft dated 25/8/2022 to conclude that the plaintiff's claim is due to be answered because the matter has already been decided by the Federal Court with its decision issued in the number (50/Federal/2022), which stated in its reasons that the third person's agent along with the defendant (the head of the Sunni Endowment Diwan / in addition to his job) the court replied that on 5/7/2022 the Diwani Order No. (513) was issued in the question above, which included the cancellation of the plaintiff's assignment to the duties of the Deputy Chief of the Court for Religious and Cultural Affairs mentioned in the Diwani Order and therefore The plaintiff's case is subject to be rejected because it has already been decided following the provisions of Article (105) of the Evidence Law No. (107) of 1979. As for the plaintiff's request to issue a state order, there is no basis in the law for the absence of the urgency required to be achieved under article (151) of the Civil Procedure Law No. (83) of 1969 as amended, in addition to the fact that the court's response to his request means entering into the origin of the right and giving a prior opinion on the subject matter of the appeal, and that the Diwani order in question did not include a violation of the powers granted to the caretaker government of daily work, in addition to the clear difference between appointment and assignment in the public service, and that the reliance on the provisions of article (42/ 2nd) A misplaced basis because the Diwani Order came in accordance with the requirements of the public

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interest and based on the powers granted to the Prime Minister under Article 78 of the Constitution, in the capacity of the direct executive responsible for the general policy of the State, especially since the plaintiff is entrusted with the tasks of the deputy head of the Sunni Endowment Office for Religious Affairs, and the body that assigned him has every right to terminate his mandate, In line with the principle of the operation of the public facility, because it has the discretion to assign or exempt whomever he deems appropriate as required by the public interest and the proper functioning and continuation of the work of the Sunni Endowment Bureau, with no legal obligation obliging the Prime Minister to maintain the assignment of the plaintiff, and did not come when the court interpreted the caretaker government under the two decisions based on the inadmissibility of assigning the public office or terminating the assignment of the aforementioned tasks, and the Diwani order in question came in accordance with the customs of the plaintiff with cases of financial and administrative corruption pending before the Federal Integrity Commission according to the priorities that will be provided to the Federal Supreme Court upon arrival from the Sunni Endowment Bureau. Especially since the preservation of public funds requires that the holders of senior positions in the state enjoy integrity and integrity, so the ruling requested the dismissal of the appeal from the formal and substantive point of view, the rejection of the request to issue a state order, and the plaintiff to be charged expenses, fees, and advocacy fees. After completing the procedures stipulated in the Bylaw of the Court, mentioned above, an appointment was set for the pleading following Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day the Court was formed, and his attorney, Rasha Faiq Zahir, attended

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on behalf of the plaintiff (Prime Minister / being in this capacity) his agent Legal Counsel Haider Ali Jaber and began to conduct the public argument in the public presence, on behalf of the legal department of Sunni Endowment Diwan, their legal representative Shareef Hasan Shareef attended and requested to introduce him into the case as a third party besides the defendant, whereas the case is prepared to decide it, the Court decided to reject the request. The agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it, the agent of the defendant replied and requested to reject the case for the reasons listed in his answering draft which is attached to the case's papers. The Court decided to reject the issuance of the state order within the plaintiff's requests in the petition of the case because there is no legal reason to issue it according to what was listed in the plaintiff's request, each party repeated his 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:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Saad Hamid Kambash is challenging through his attorney Imad Hamad Natah the unconstitutionality of the Diwani Order No. (531) dated 25/7/2022, which includes two paragraphs (1) paragraph (1) thereof, which included the repeal of paragraph (1) of the Diwani Order No. (450) of 2022 issued by the number (S/2/5/50/42/982) on 6/3/2022 containing (assigning Mr. Saad Hamid Kambash to the duties of the Deputy Chief of the Bureau for Religious and Cultural Affairs in the Sunni Endowment Bureau)

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Paragraph (2) of it included "the assignment of Mr. Osman Ibrahim Mahmoud to the duties of the acting Deputy Chief of the Bureau for Religious and Cultural Affairs in the Sunni Endowment Office." claiming that the defendant's government is the government of day-to-day affairs and that the decisions of this court No. (121/Federal/2022) and No. (122/Federal/2022) containing the interpretation of the caretaker government and stressing that it is not the prerogative of the resigned government to appoint, assign, or exempt senior positions or special grades as the position of deputy head of the Sunni Endowment Bureau is at the level of deputy minister based on the provisions of Article (5/1st) of the Law of the Sunni Endowment Bureau No. (56) of 2012, which stipulates that " The Diwan has two agents, each with the rank of acting minister, one for religious and cultural affairs and the other for administrative and financial affairs) and the plaintiff requested this court to rule on the unconstitutionality of Diwani Order No. (513) dated 25/7/2022 issued by the Prime Minister/ being in this capacity and cancel it and issue a state order to stop the legal proceedings to implement the Diwani order in question until the case is resolved and for the decision of this court in the pleading session of 31/8/2022 to refuse to issue the state order contained in the plaintiff's requests in the petition because there is no legal justification for issuing it as stated in the plaintiff's requests, upon closer consideration of the origin of the lawsuit, it was found that it focused on the request to rule on the unconstitutionality of the Diwani Order No. (513) dated 25/7/2022 issued by the Prime Minister and annulling it, and since the control of this court is focused on the constitutionality of the laws and regulations in force and not the Diwani orders on it, the plaintiff's case lacks its legal and constitutional basis, which requires its

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dismissal. Accordingly, the FSC decided to reject the case of the plaintiff Saad Hameed Kambash and to burden him with all the judicial expenses, including the advocacy fees for the agent of the defendant/ being in this 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, final and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 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 3/Sufur/1444 Hijri coinciding 31/August/2022 AD.

**Signature of
The president
Jasem Mohammad Abbood**

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