

Republic of Iraq
Federal Supreme Court
Ref. 206 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 10.10.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Galeb Amer Shneen, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abed Alrahman Sulaiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

The plaintiff: Ali Hussein Abdel Qader Al-Moayad - his attorney, Jalil Ibrahim Majid.

The defendants: 1. The Prime Minister/ In addition to his position - his deputy, the legal advisor Haider Ali Jaber.
2. Head of the Executive Authority of the Media and Communications Authority/ in addition to his post.
3. Chairman of the Board of Commissioners of the Media and Communications Authority/ In addition to his post.
and their agent, the legal employee, Qassem Muhammad Sukkar.

The claim:

The plaintiff claimed that the Board of Commissioners of the Media and Communications Commission issued Resolution No. (2022/qaf/49) on 04/24/2022 regard releasing him from the presidency of the Commission and

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assigning the second defendant the tasks of running the business of the head of the executive body for a period of 6 months, and for violating this decision of the constitution and laws In force, he has initiated an appeal before this court based on Article (93/Third) of the constitution for the following reasons: 1. He had previously been assigned to chair the commission (acting) by virtue of the Diwani Order No. (128) on 5/16/2021, then he was originally appointed on the basis of the Council of Commissioners Decision No. (96) adopted unanimously, in the 17th session held on 5/9/2021, and according to its powers in accordance with Section (4), Item (2/A) of Legislative Order No. (65) for the year 2004, and Administrative Order No. (1643) was issued on 9/8/2021 and that he complained about the aforementioned exemption decision before the Prime Minister on 04/26/2022 as the chief executive officer of the state's general policy in accordance with the provisions of Article (78) of the Constitution. 2. The Board of Commissioners usurped the power and assigned the second defendant, despite not having this authority, and violating Article (61/eighth/e) of the Constitution, which states (the Council of Representatives has the right to interrogate officials of independent bodies in accordance with the procedures related to the ministers, and it has the right to exempt them by an absolute majority), which was confirmed by the court's decision No. (122/Federal/2022) dated 29/5/2022, which stated: ((The mechanism for questioning the officials of independent bodies shall be in the same mechanism in which ministers are questioned based on the provisions of Article

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(61/eighth/e) of the constitution and as a result of Interrogation The Council of Representatives has the power to exempt them by an absolute majority without withdrawing confidence from them because confidence is granted by it to the ministers...)).3 Section (4) of Legislative Order No. (65) of 2004 grants the Council of Commissioners the power to appoint without the authority to assign, dismiss or exempt the Council of Ministers and the Council of Representatives in accordance with the Constitution and Section (6) of the above order, and for all of the foregoing and other reasons It was stated in the lawsuit petition, that the plaintiff requested this court to issue a royal order to suspend the Board of Commissioners Decision No. (2022 /qaf./49) on 04/24/2022 until the case is resolved and it is ruled unconstitutional, and the defendants are charged with fees and expenses. The case was registered with this court in No. (206/Federal/2022), and the legal fee was collected for it in accordance with Article (21/first) of the Court's bylaw No. (1) of 2022, and it informs the defendants of its petition and documents in accordance with Paragraph (Second) of the same article above. The first defendant's attorney responded with the answer statement dated 9/26/2022, which included formal and substantive defenses, including that the plaintiff's request deviates from the jurisdiction of the court specified under Article (93) of the Constitution and Article (4) of its amended Law No. (30) of 2005, This was confirmed by the court by virtue of its decision No. (175/Federal/2022), which included that the court's control is focused on the constitutionality of the laws and regulations in

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force and not the decisions issued by independent bodies, so the ruling was requested to dismiss the case against his client and to charge the plaintiff with expenses, fees and attorney's fees. The second defendant responded with the answer statement dated 9/8/2022, which included detailed formal and substantive defenses, a request to dismiss the case, and to charge the plaintiff with fees and expenses, since the consideration of them is outside the jurisdiction of the court. After completing the procedures required by the aforementioned rules of procedure of the court, a date for the pleading was set in accordance with Article (21/Third) of it and the parties were informed of it. On the appointed day, the court was formed, so the plaintiff and his attorney attended, and the defendants' attorneys attended and proceeded to conduct the public pleading, the plaintiff and his attorney repeated What was stated in the lawsuit pleading and requested the judgment in accordance with what was stated in it, the defendants' attorneys responded, requesting that the lawsuit be dismissed for the reasons stated in the lists attached to the lawsuit papers. The court noted that the plaintiff requested in his lawsuit to issue a procurator's order to suspend the decision of the Board of Commissioners No. (2022 / qaf. / 49) until This case was resolved, and because there was no legal requirement for that, the court decided to reject the request. The second defendant's attorney replied that the third defendant does not have a legal personality. Each party repeated its previous statements and requests, and where there was

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nothing left to say, the court decided the conclusion of the pleading and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was noted that the conclusion of the claim of the plaintiff, Ali Hussein Abdul Qadir Al-Moayad, is the ruling unconstitutional of the decision of the Board of Commissioners of the Media and Communications Commission No. (2022 / qaf. / / 49) on 04/24/2022, which included the exemption of the plaintiff from the presidency of the authority and the assignment The second defendant, with the tasks of conducting the work of the head of the executive body, for a period of six months, as it is in violation of the Constitution of the Republic of Iraq for the year 2005 and the laws in force, and requested the issuance of a state order to stop the above decision. Submitted by the defendants' attorneys. This court finds that its constitutionally defined jurisdictions under Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005 are multiple, and each of its jurisdictions has a certain specificity in terms of conditions and procedures. of conditions and limitations, and since the plaintiff instituted his case based on Article (93/ Third) which assigned this court the powers to adjudicate cases that arise from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority. However, he requested ((ruling the unconstitutionality of the decision of the Board of Commissioners of the Media and Communications Commission No.

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(2022/qaf/49) on 24/4/2022), while paragraph (First) of Article (93) of the Constitution relates to challenging the constitutionality of laws and regulations in force exclusively and does not go beyond the ranks of subsidiary legislation and, the decisions issued by the Board of Commissioners. The lawsuit shall be in the form filed by the plaintiff outside the jurisdiction of this court, and it is free to dismissed to this entity. Therefore, the court decided to dismiss the lawsuit of the plaintiff (Ali Hussain Abdul Qader Al-Moayad) and charge him with judicial expenses, including attorney fees for the first and second defendants, in addition to their positions, legal advisor Haider Ali Jaber and the employee. Jurist Qassem Muhammad Sukkar, an amount of one hundred thousand dinars, distributed between them equally and according to the legal ratios. The decision was issued under the provisions of articles (93/1st) of the constitution of 2005 and articles (4 and 5) of the federal supreme court' law No. (30) for the year 2005 amended by Law No. (25) for the year 2021, final and binding on all authorities and publicly understood on the 13th of Rabi' al-Awwal 1444 AH corresponding to 10/10/2022 AD.

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