

Republic of Iraq  
Federal Supreme Court  
Ref. 226 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 31/10/2022 headed by Judge Sameer Abbas Mohammed and membership of Judges, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Musadiq Adil Talib – his agent the Barrister Saif Kareem Jassim.

The Defendants: 1- The Prime Minister/ being in this capacity – his agent the legal counselor Hyader Ali Jaber.

2- The Executive President of Media and Communications Commission/ being in this capacity – his agent the official jurist Mohammed Rasheed Ibrahim.

3- Head of the Board of Commissioners of Media and Communications Commission/ being in this capacity.

### **The Claim**

The plaintiff claimed through his agent that the Board of Commissioners of the Media and Communications Commission issued decision No. (2022/S49) on (24/4/2022) which included the assignment of the second defendant to the position of Chairman of the Executive Body of the Media and Communications Commission for (6) months, as well as the exemption of the former head of the executive body without meeting the constitutional and legal procedures stipulated; and given that the decision to assign it came in violation of the Constitution and the laws in force, so he took the initiative to appeal it to the Federal Supreme Court following Article (93/3<sup>rd</sup>) of the Constitution requesting

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a ruling not to its constitutionality because it is flawed by the defect of usurping power and the defect of the elements of form and procedures, the Board of Commissioners does not have the authority to exempt or dismiss the former head of the executive branch, This is because it violates the provisions of Article (61/8<sup>th</sup>/Heh) of the Iraqi Constitution, which stipulates that "the Council of Representatives, has the right to question the officials of independent bodies in accordance with the procedures related to ministers, and may exempt them by an absolute majority", in addition to the fact that the latter mandate violates the decision of the Federal Supreme Court No. (122/Federal/2022) issued on 29/5/2022, which specified the authority to dismiss and exempt from the Council of Representatives, and since the Federal Supreme Court is the holder of the general jurisdiction, and the reason for the assignment of the second defendant is to renew the contract of Korek Telecommunications Company, which expired on 28/8/2022, and what proves this is the failure of the nominee to collect the amounts of debts accumulated by the company owed to the Iraqi state of more than (400) (four hundred million US dollars), and his continuation to allow the company to conduct its business despite the termination of the contract, and when the plaintiff's request from this court was submitted to rule the unconstitutionality of the decision of the Board of Commissioners to assign the second defendant to the post of head of the executive body and to charge the plaintiff with the advocacy fees and fees. The case was registered with this court in the number (226/federal/2022), and the legal fee for it was met based on the provisions of Article (21/1<sup>st</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the defendants are informed of its petition and documents in accordance with the provisions of item (2<sup>nd</sup>) of the same article, and the agent of the first defendant replied to the answer regulation dated 23/10/2022, and

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the second defendant replied to the answer regulation dated 12/10/2022 and the two regulations included detailed formal and substantive defenses, the conclusion of which was the request of each of them to dismiss the lawsuit and the matter have already been decided and the Court has no jurisdiction to hear it by virtue of the judgment issued by this Court No. (206/Federal/2022) on 10/10/2022, and after completing the procedures required by the Rules of Procedure of the Court, mentioned above, an appointment was set for the pleading in accordance with the provisions of Article (21/3<sup>rd</sup>) thereof and the parties were informed of it, and on the appointed day the court was formed, so the plaintiff in particular and his attorney Saif Karim Jassim and his first defendant, his agent the legal counsel Haider Ali Jaber, and the second defendant's agent, the official jurist, Mohammed Rashid Ibrahim, attended for the second defendant. The plaintiff and his agent repeated what was stated in the petition and requested the judgment thereunder, the agent of the first defendant replied to what was stated in his answering draft linked to the case papers and requested the dismissal of the case for the reasons contained therein, and the agent of the second defendant responded to what was stated in the answering draft linked within the case papers and requested the dismissal of the case for the reasons contained therein, and the agents of the parties repeated their previous statements and requests, and where there was nothing left to be said. The end of the argument has been made clear and the court issued the following judgment decision:

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### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, and what was stated in the plaintiff's lawsuit and the mutual regulations between the parties and what their agents stated in the hearing of the pleading, it was found that the plaintiff's agent is requesting the ruling on the unconstitutionality of the decision of the Board of Commissioners of the Media and Communications Commission No. (2022/S 49 on 24/4/2022) which included the assignment of the second defendant to the head of the executive organ of the Media and Communications Commission to the post of head of the Authority for 6 months as well as the exemption of the former head of the executive body without meeting the constitutional and legal procedures, for the reasons stated In his petition. This Court finds that its constitutionally defined jurisdiction under Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005 is multiple, and each of its competencies has a certain specificity in terms of conditions and procedures, and the filing of the lawsuit based on any of those paragraphs requires adherence to the operative part of the paragraph and the conditions and determinants it requires, and since the plaintiff filed his claim based on Article (93/3<sup>rd</sup>) of the Constitution, which assigned this court the power to adjudicate cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the Federal Authority, but he requested the ruling of the unconstitutionality of the decision of the Board of Commissioners in the Media and Communications Commission No. (2022/S 49 on 24/4/2022) while paragraph (First) Article (93) of the Constitution relates to the challenge of the constitutionality of the laws and regulations in force exclusively and does not exceed the ranks of other sub-legislations and from the first part does not exceed the decisions

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issued by the Board of Commissioners on which the lawsuit in the form established by the plaintiff is outside the jurisdiction of this court, which should be rejected from this aspect. Therefore, the Court decided to reject the case of the plaintiff Musadiq Adil Talib and to burden him with the judicial expenses, including the advocacy fees for the agents of the first and the second defendants/ being in their capacity, the legal counselor Hayder Ali Jaber and the official jurist Mohammed Rasheed Ibrahim amount of one hundred thousand Iraqi dinars, to be divided between them equally and according to the legal proportions. The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93/1<sup>st</sup>) of the Constitution of the Republic of Iraq for 2005 and (4, 5) 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 5/Rabee Al-Akhir/1444 Hijri which coincided with 31/October/2022 AD.

**Signature of**  
**The president**  
**Jasem Mohammad Abbood**

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