

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/5/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, 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: Basim Khaza'al Khashan (Member of the ICR)/ his agent the Barrister Ahmed Saeed Mousa.

The Defendants: 1. The Speaker of the ICR/ being in this capacity – his agents, each of the Director-General of the legal department of the ICR Ph.D. Sabah Juma'a Al-Bawi, the legal counselor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim

2. The President of the Republic/ being in this capacity – his agent the Head of legal experts Ghazi Al-Janabi.

The Claim

The plaintiff claimed through his agent that after the Council of Representatives was unable to hold the election of the President of the Republic, which was set for 7 February 2022, the defendant refrained from inviting the Council to convene to elect a President of the Republic, and considers that this is a negative decision subject to appeal to the Federal Supreme Court following article (93/3rd) of the Constitution, and therefore initiated an appeal before this court for the following reasons: article (72/2nd/Beh) specified an inevitable

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period for the election of the President of the Republic, which may not be exceeded at all, from the date of the first meeting of the Council of Representatives to 30 days from that date, and therefore, after the session of 7 February 2022, which was not completed, the Council of Representatives was to convene on 8 February 2022, because it is the last day of this inevitable period, which results in early elections being held within a maximum of 60 days starting the day after they are over. However, the presidency refrained from inviting the Council to convene on the last day of this period and did not invite the Council to convene after the expiry of the constitutional period and the presidency of the Council of Representatives was given its inaction and abstention from that call for the decision of the Federal Supreme Court No. (51/Federal/2010), which was issued in exceptional circumstances, to the supreme interest of the country, even at the expense of the Constitution and the principles of democracy, as this decision allowed the outgoing President to continue to exercise his duties until the election of a new president without setting a time limit, this means that one third of the members of the Council, if they agree to break the quorum of the election of the new President, can remain the outgoing President for another four years, so the Government continues with him to carry out daily business functions until the end of the electoral cycle and that the reason for the tendency of the parliamentary blocs to boycott the president's election session is that the aforementioned decision ensured that the "constitutional sanction" resulting from exceeding the constitutional term of election of the President, is that the aforementioned decision has ensured that it does not impose the "constitutional penalty" that entails exceeding the constitutional term of the election of the President, which is the procedure of Early

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elections if this period is exceeded as a result of its deliberate absence from the presidential election sessions, as the decision (51/Federal/2010) has blocked the imposition of this constitutional sanctions and it became a reason and justification for violating the Constitution, and the imposition of the constitutional sanction listed in article (72/2nd/Beh) guarantees the commitment of the blocs not to violate the Constitution. Since the defendant's negative decision is contrary to the article (72/2nd/Beh) of the Constitution, and since the parliamentary blocs that boycotted the Council's sessions were based on the decision (51/federal/2010) binding on all authorities, which abolished the "constitutional penalty" as outlined earlier, the plaintiff requested from the Federal Supreme Court to overturn the challenged negative decision, obliging the first defendant to invite the Council to convene and elect a President of the Republic within 30 days of the date of the decision of the Federal Supreme Court, and if the Council fails to do so, it is dissolving, and the second defendant, the President of the Republic/ being in this capacity is obliged to call for general elections in the country within 60 days of the council's consideration of dissolving. The case was registered with this court on the number (22/Federal /2022) and the legal fee for it was met in accordance with the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and informs the defendants of its petition and documents in accordance with the provisions of article (2/1st) of the same Bylaw, the first defendant's agent (Speaker of the Council of Representatives/being in this capacity) replied in the answering draft of 20 February 2022 that the plaintiff's statement in his case was not accurate, as the text of article (72/2nd/Beh) referred to (a new President of the Republic shall be elected within 30 days of the first meeting of the Council), since the date of the first meeting of the

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Council was on 9 January 2022, and since January is composed of (31) days, the last day in the 30-day period the Constitution is on 7 February 2022, the day he committed himself to holding the session of the Council of Representatives to elect the President of the Republic, as set out in the agenda of the meeting, and the plaintiff did not provide evidence of his claim regarding the expiry of article (72/2nd/Beh) of the Constitution. His argument here is not productive, and the assessments of the reasons for refraining from attending the presidential election hearing are not concerned with the Federal Supreme Court's consideration or discussion of it. Perhaps the failure to hold the presidential election session was due to the lack of a quorum, which proved that what the prosecutor called the "negative decision" of the Council of Representatives when it was not convened was based on the wrong basis. His mistake earlier, knowing that the Federal Supreme Court does not have jurisdiction over what the plaintiff called the cancellation of the negative decision, moreover, the negative decisions are not annulled as is well known, but the judge builds on the specific results described under the law, as in the case of the employee's request to resign is rejected when a legal period passes after the administration has not answered his acceptance or express rejection, so he requested the dismissal of the case and the plaintiff's filing of all judicial expenses. The second defendant (President of the Republic/being in this capacity) replied to the answering draft of 20 February 2022, concluding that the plaintiff had no immediate, direct and influential interest in the legal status of the proceedings following article 6 of the Bylaw and did not provide clear evidence that immediate and direct harm had been caused by the failure of the Presidency Committee of the Council of Representatives to convene the Council of Representatives, and his

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client did not fit as a litigant in this case, where the plaintiff requested that he be obliged to take action on the failure of the Council of Representatives to convene, since the President's authority to call the Council of Representatives has been defined by article (54) of the Constitution of the Republic of Iraq of 2005, which stipulates that (the President of the Republic shall call upon the Council of Representatives to convene by a presidential decree within fifteen days from the date of the ratification of the general election results. Its eldest member shall chair the first session to elect the speaker of the Council and his two deputies. This period may not be extended by more than the aforementioned period) and the President of the Republic had performed his constitutional commitment, whereas he called upon the Council of Representatives to be convened on 9/1/2022 and after electing the Speaker of the ICR and his two deputies in the first session, this means that convening the ICR is a power of the Council's Speaker and his client can not intervene the constitutional powers which determined by the Constitution for the ICR. Moreover, the plaintiff's request was limited to the President of the Republic calling general elections in the country within 60 days of the dissolution of the Council, which is premature and is not currently achieved because the decision to dissolve the Council of Representatives is the prerogative of the Council of Representatives by an absolute majority of its members, as stated in the text of item (1st) of the article (64) of the Constitution, which stipulated that (the Council of Representatives may be dissolved by an absolute majority of the number of its members or upon the request of one-third of its members by the Prime Minister with the consent of the President of the Republic. The Council shall not be dissolved during the period in which the Prime Minister is being questioned). In addition, the period

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specified in item (2nd/Beh) of the article (72) of the Constitution of (30 days) for the election of a new President of the Republic is an organizational period and does not amount to a period of fall, but continues until the Parliament is convened, and the president of the Republic is elected, because there is no provision requiring the Council of Representatives to convene and the country cannot be left without a president, so the President of the Republic remains in office and implements his powers until the election of a new president, and because there is no constitutional and legal support in the plaintiff's request and for lack of the liability is directed at the second defendant's agent's request to dismiss the plaintiff's case and to burden him with fees, expenses, and advocacy fees. After completing the procedures required by the court's Bylaw, mentioned above, a date was set for the argument based on the provisions of article (2/2nd) of it, and the parties were informed, and on the appointed day the court was formed and the plaintiff (Bassem Khazal Khashan) and his attorney Ahmed Said Musa attended, and the first defendant, the Speaker of the Council of Representatives/ being in this capacity, was present with his agent, Legal Counsel Haitham Majid Salem, and the second defendant, the President of the Republic/ being in this capacity agent, the head of legal experts Ghazi Ibrahim Al-Janabi attended as well. The public in the presence argument proceeded, and the plaintiff and his agent repeated what was listed in the petition of the case and requested to judge according to it, while the agents of the defendant answered and each one of them requested to reject the case against his client for the reasons listed in their drafts. Each agent of each party repeated his previous requests and sayings, whereas nothing is left to be said. The end of

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the argument has been made clear, and the Court issued its following decision publicly:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff brought the case before this court to challenge (the negative decision not to invite the first defendant, the Speaker of the Council of Representatives/ being in this capacity, the Council of Representatives to convene to elect the President of the Republic and requested that the first defendant be obliged to invite the Council to convene and elect a president within 30 days of the date of the court's decision). This Court finds that its jurisdiction is defined by the Constitution of the Republic of Iraq 2005 in articles (52/2nd) and (93) of it, as well as article (4) of the Federal Supreme Court Act No. (30) of 2005 amended by Law No. (25) of 2021 and it was not included in the consideration of what the plaintiff requested in his petition, the Federal Supreme Court decided to dismiss the plaintiff's case because of lack of jurisdiction and to burden him with fees, expenses, and advocacy fees for the agents of the defendants both legal counsel Haitham Majid Salem and the head of legal expert Ghazi Ibrahim Al Janabi an amount of 100 thousand dinars distributed between them in accordance with the law. The decision has been issued unanimously, decisive, and binding for all powers according to the provisions of the 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 16/Shawal/1443 Hijri coinciding 18/May/2022 AD.

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Signature of
The president
Jasem Mohammad Abboud