

Republic of Iraq
Federal Supreme Court
Ref. 30 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 15/5/2022 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 Plaintiffs: 1- Ali Akram Zain Al-Abideen
2- Zaidan Khalaf Obaid

Their agents
The Barristers Mohammed
Majeed Al-Saidi and Ahmed
Mazin Makkiya

The Defendants: 1- the Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.
2- the Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Al-Sofi.

The Claim

The plaintiffs claimed through their agents that, in addition to his post, the first defendant had already issued book No. (281) on 25/7/2021 entitled to the High Commission for Human Rights, and it is content the demand of the Commission to cease exercising administrative and financial functions by the Board of Commissioners as of 20 July 2021, explaining the end of the board's term on that date, and to form a committee to manage the Commission temporarily to manage the daily financial and administrative matters until the formation of a new board of commissioners fundamentally. Accordingly, the President of the Commission implemented the demand of the Council of

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Representatives by discontinuing any financial, administrative, and legal role, including (payment of salaries of employees), despite the request of the Board of Commissioners to continue to perform their duties as the Commission is an independent institution based on the decision of the Federal Supreme Court in the number (43/federal/2019) which confirmed the financial and administrative independence of the High Commission for Human Rights, noting that the Council of Representatives did not vote to terminate the council of commissioners according to the context established by The Commission Act No. (53) of 2008 in the article (15) of it, as a result of which no new Board of Commissioners was formed. Leaving the Commission in this way affects the performance of this institution and the objectives for which it was formed, and in this case the Council of Representatives violated the court's aforementioned decision, and violated the Constitution in article (47) of it, which emphasized the principle of separation of powers through its intervention in the work of the Commission, while its role in this regard is no more supervisory and may not interfere with the work of the Commission, and it had to vote on the termination of the Board of Commissioners as well as the end of the previous session of the Council, In accordance with the above-mentioned commission law and to avoid such irregularities, the Council of Representatives has commissioned the Director-General of Engineering to temporarily manage the Commission and pay the salaries of employees, also contrary to the mechanism stipulated in the Commission's law, and as a result of these irregularities and confusions, the assignment of the Director-General of Engineering was abolished by the Secretary-General of the Council of Representatives, in light of this, the department directors of the Commission submitted a request to the

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Office of the Prime Minister and without the knowledge of the Board of Commissioners on the subject, which in turn took decision No. (362) dated 6/10/2021, which included the formation of a committee of the Financial, Administrative, Legal and Planning Department for the purpose of draining from the operational budget for the disbursement of salaries, rents and daily matters, and that this action taken by the second defendant in addition to his function is a clear violation of the Law of the Commission and its administrative and financial independence and the decision of the Federal Court mentioned earlier in the day. Public administrations and according to the Commission's administrative structure, and members of the Board of Commissioners are only Director-General titles. The committee that was effectively formed are department directors, contrary to the aforementioned Cabinet decision, and through the interference of the defendants in the work of the Commission, which is an independent body under the definition of the Constitution in the text of the article (102), as stipulated in the court's request to the Federal Supreme Court to rule that the actions taken by the defendants are unconstitutional and that the Work of the Board of Commissioners will continue until a new Board of Commissioners is elected, as the Court has ruled on the continuity of the proceedings taken by the defendants. The President of the Republic in his post until the election of a new president, in order to avoid the administrative vacuum in proportion to the maintenance of the public interest. The defendants shall burden all fees, expenses, and advocacy fees. The case was registered with this court in the number (30/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

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documents in accordance with the provisions of article (2/1st) From the same Bylaw above, the first defendant's deputy, the Speaker of the Council of Representatives/ in addition to his post, replied in the answer list dated 6 March 2022, the conclusion of which is that the plaintiffs' request is outside the jurisdiction of the Federal Supreme Court under article (93) of the Constitution As it relates to administrative procedures in accordance with the provisions of the High Commission for Human Rights Act in article (8/6th) of it by the expiry of the term of the former Board of Commissioners (four years) and that the committee authorized by the Council of Ministers to the work of the High Commission for Human Rights under resolution No. (362) of 2021 has been authorized to exchange the operational budget and pay other financial obligations and carry out its functions in accordance with the said decision and there is no authenticity of what the agent of the plaintiffs stated. Therefore, he requested to reject the case of the plaintiff and to burden him with all judicial expenses and the advocacy fees. Therefore, they requested to reject the plaintiff's case and to burden them with all judicial fees, expenses, and advocacy fees, the second defendant's agent, the Prime Minister/ being in this capacity answered in the answering draft dated 15 March 2022, the conclusion of which was that the plaintiffs' appeal, which was focused on challenging an administrative decision, came out Consideration of the jurisdiction of the Federal Supreme Court defined by article (93) of the Constitution and Article (4) of its Law No. (30) of 2005 amended by Law No. (25) of 2021, and that this appeal is before other parties based on the provisions of article (7/4th) of the State Council Act No. (65) of 1979 (amended), this is what this court has settled on in many of its rulings, including (59/federal/2018, 118/federal/2019, 119/federal/2019 and

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123/federal/2021) Thus, the plaintiff's case is due to restitution for lack of jurisdiction, in addition to the lack of a requirement of interest to bring the case before this court because the letter of the Council of Representatives and the decision of the Council of Ministers challenged do not violate either of the plaintiff's constitutional rights in a manner that directly harms him, as the plaintiff has not provided evidence that the damage is realistic. He was subsequently aggrieved and therefore lost a condition for bringing the case before this court based on the text of the article (6/2nd and 3rd) of the FSC Bylaw. The decision of the Council of Ministers No. (362) for the year 2021 was based on the book of the High Commission for Human Rights in the number (291) on 31 August 2021 to commission a committee headed by the Director of the Financial Department and the membership of directors (Legal Department and Department Planning and statistics) at the High Commissioner for Human Rights the power to exchange from the operational budget of the Said Commission, including (payment of rental allowances to offices and buildings whose rents are delayed, payment of electricity and water wage lists, Internet and fuel wages and repair of stalled wheels requiring maintenance due to the expiry of the term of membership of the Board of Commissioners of the High Commission for Human Rights (President and Members) is original and reserve based on the provisions of article (8) of the High Commission Law No. (53) of 2008 as of 20 July 2021 with a view to continuing the Commission functions, conducting its administrative and financial affairs regularly, paying staff salaries and staff wages and conducting the necessary administrative affairs in the Commission without interfering with technical matters and procedures until the Board of Commissioners is originally formed and conducted, in particular, the

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above-mentioned office of the High Commissioner for Human Rights has indicated that the Commission suffers from an administrative, financial and technical vacuum and that the Commission 605 staff were not paid because of the lack of an order to dispensal. The cabinet's decision was based on its powers under article (80) of the Constitution, particularly since this court has already issued its decision in the number (88/federal/2010), which states that the association of independent bodies in the Council of Representatives does not prevent the Council of Ministers from supervising its activity in accordance with article (80) of the Constitution, so the decision of the Council of Ministers is not an interference with the work and independence of the Commission, and all that has been submitted is the request of the second defendant's agent to dismiss the challenge formally and objectively and to burden the plaintiffs with the expenses, fees, and advocacy fees. After completing the procedures required by the court's rules of procedure, a date was set for the case, and the parties were informed, and on the appointed day the court was formed, and the first prosecutor, Ali Akram Zain al-Abidin, attended, and lawyer Mohamed Majid al-Saadi, deputy of the plaintiffs, attended the first defendant, the Speaker of the Council of Representatives, the human rights officer Saman Mohsen Ibrahim, and the second defendant, the Prime Minister, attended in addition to his post, his agent, legal counsel Haidar al-Sufi, and the plaintiff and his agent repeated what was stated in the petition and asked for a verdict. The defendants' agents responded and requested a dismissal of the case for the reasons on the drafts of each of them, and the plaintiff, his agents, and the defendants' agents reiterated their previous statements and requests, and where there was nothing left to

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say, the Court has made the end of the argument clear and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs brought the case before this court against the defendants, the Speaker of the Council of Representatives and the Prime Minister, in addition to their functions to demand that the actions were taken by them concerning the Independent High Commission for Human Rights be unconstitutional, and the continuity of the work of the Council of Commissioners until the election of a new Board of Commissioners, to avoid the administrative vacuum in proportion to the maintenance of the public interest, based on violation of the defendants in addition to their functions in those proceedings according to the decision of the Federal Supreme Court in number (43/Federal/2019) which emphasized the financial and administrative independence of the High Commission for Human Rights, the Independent High Commission for Human Rights Law No. (53) of 2008 in article (15) of it, and article (47) of the Constitution of the Republic of Iraq 2005, which affirmed the principle of separation of powers, for interfering with Commission work. The Court finds that the plaintiffs' case is due to a lack of jurisdiction, as the powers and jurisdictions of the Federal Supreme Court are provided exclusively for articles (52 and 93) of the Constitution of the Republic of Iraq 2005 and article (4) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and some other special laws. These powers and jurisdictions are not the requests listed in the plaintiffs' petition (ruling that the actions taken by the defendants are unconstitutional

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in addition to their functions relating to the Independent High Commission for Human Rights, and the continuity of the Work of the Board of Commissioners of the Independent High Commission for Human Rights until the election of a new Board of Commissioners, to avoid the administrative vacuum commensurate with the maintenance of the public interest), particularly since the jurisdiction of this court under article (93/1st) of the Constitution and article (4/1st) of the Federal Supreme Court Law (amended) aforementioned is going to the constitutional monitory on laws and regulations in effect ad this monitory does not exceed to decide about the constitutionality of the procedures taken by the defendant/ being in their capacity or to judge by the continuity of the Board of Commissioners in the Higher Independent Commission for Human Rights until electing a new Board of Commissioners. Accordingly, the Federal Supreme Court decided to reject the case of the plaintiffs formally for incompetence and to burden them with the expenses, fees, and the advocacy fees for the agents of the defendants/ being in their capacity amount of one-hundred thousand Iraqi Dinars, and to be divided between them according to the law. The decision has been issued unanimously 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 dated 13/Shawal/1443 Hijri coinciding 15/May/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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