

Republic of Iraq
Federal Supreme Court
Ref 30/ federal /2024



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The Federal Supreme Court (F S C) has been convened on 17/3/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Khalid Taha Ahmed, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: Basim Khazal Khashan and Laith Mustafa Hamoud.

The Defendant: Speaker of the Council of Representatives/ being in this capacity -his two agents, the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiffs claimed that the Head of the Council of Representatives, being in this capacity, issued the parliamentary order No. (323) on 30/11/2023, which includes considering the membership of the Representative (Laith Mustafa Hamoud Al-Dulaimi) terminated from the date of the issuance of the Federal Supreme Court's decision No. (9/Federal/2023), which included the ruling to terminate it on 14/11/2023, after ruling that the parliamentary order No. (5) of 2023 was null and void, and that the membership of the aforementioned MP was considered expired as of this date, it means the continuation of his membership during the period preceding the date of its termination, and therefore the membership of the deputy (Ahmed Ismail Al-Mashhadani) who replaced him is invalid based on the parliamentary order number (5), as well as taking the constitutional oath on 18/1/2023, instead of MP (Laith Al-Dulaimi), whose membership did not expire until 14/11/2023, according to the court's decision and the

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aforementioned parliamentary order (323), which is evidence of the defendant's knowledge of the invalidity of the membership of the Representative (Ahmed Ismail Al-Mashhadani), in addition to the termination of the membership of the Representative (Laith Al-Dulaimi), the court's decision included a ruling to terminate the membership of the Representative (Muhammad Rikan Al-Halbousi), so the defendant adhered to the decision and issued his parliamentary order issue (308) on 24/11/2023, which includes considering the membership of the Representative (Muhammad Rikan Al-Halbousi) expired on 14/11/2023, the Board of Commissioners opened the letter (13083) on 20/11/2023 to determine his replacement deputy, the Judicial Commission for Elections indicated in its decision No. (57/Judicial Commission for Elections/2023) that the replacement must be carried out in accordance with item (first) of article (14) of the law on elections to the Council of Representatives, governorate councils and districts No. (12) of 2018, which may not be applied any provision contrary to its provisions in accordance with article (52) thereof, which states (If a member of the Council of Representatives or a member of the provincial council loses his seat for any reason, he shall be replaced by the next candidate in the number of votes obtained in his list), Accordingly, the Board of Commissioners issued its resolution No. (2) for the extraordinary minutes No. (6), which included the replacement of the candidate (Burhan Nasser Mohammed) in place of the outgoing the Representative (Muhammad Rikan Al-Halbousi) because he obtained the highest votes in his list in the same governorate, the defendant was informed of this decision and he may not violate it, but he failed to issue a parliamentary order to terminate the membership of the Representative (Ahmed Ismail Al-Mashhadani) in implementation of the court's decision that canceled the parliamentary order No. (5) of

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2023, on which the replacement of the deputy was based (Laith Mustafa Hammoud) with the losing candidate (Ahmed Ismail Al-Mashhadani), and his failure to stop the payment of salaries and allowances to the Representative (Ahmed Ismail) and to terminate the contracts of his protection personnel, and to approach the Independent High Electoral Commission to find out the name of the replacement the Representative to enable him to take the constitutional oath, and he also enabled the outgoing the Representative (Ahmed Ismail) to attend the session to elect the Head of the Council of Representatives and influence the result of the vote despite its invalidity and its end by the court's decision that informed him and part of it was implemented, so they asked this court to rule not to the validity of parliamentary order No. (323) and obliging the defendant / being in this capacity to issue a parliamentary order implementing the court's decision No. (9/Federal/2023) and this reveals the invalidity of the membership of the Representative (Ahmed Ismail Al-Mashhadani) and corrects the violations that resulted from his membership, it is necessary to stop the payment of salaries and allowances, recover the funds disbursed in violation of the constitution and the law, and issue a state order obliging the defendant to prevent (Ahmed Ismail Al-Mashhadani) from attending the sessions of the Council to participate in the election of the Head of the Council until the lawsuit is resolved, and after registering the case with this court No. (30/Federal/2024), collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with article (21/first and second) of the rules of procedure of the Federal Supreme Court No. (1) of 2022, the defendant's agent responded to the reply dated 7/2/2024 in conclusion: the lack of interest condition for the plaintiffs from filing the lawsuit,also, the parliamentary seat of the former the Representative (Laith Mustafa Al-

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Dulaimi) was vacated on 7/5/2022 and the seat was filled in accordance with the elections and replacement law in force when it became vacant by the Representative (Ahmed Al-Mashhadani), and the ruling to terminate the membership of the referred to at a later date, is the termination of my judgment, as his membership actually ended on a previous date, and the Constitution of the Republic of Iraq for the year 2005 has drawn the only mechanism to challenge the validity of the membership of members of the Council of Representatives, and this is represented in article (52) of the Constitution, perhaps the reason behind this is that his seat is correct and stable based on the law in force when he occupied the parliamentary seat, as well as the rule of legal stability and not prejudice to the acquired rights, so the defendant's agent requested to reject the plaintiffs' lawsuit, and to charge them judicial fees, expenses and attorneyship fees, and after completing the procedures required by the court's internal regulations, set a date to plead in accordance with article (21/3rd) thereof, and the parties shall be informed of it, and the court shall be formed, and the first and second plaintiffs attended, and the defendant's agents attended and initiate hearing the case and after the court heard the statements of the parties, there is nothing 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 and after reviewing the statement of claim and the requests contained therein and the defenses of the defendant's agent / being in this capacity fixed in his highlighted list, it became clear that the plaintiffs filed the lawsuit before this court against the defendant Head of the Council of Representatives / being in this capacity to demand ((ruling the

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invalidity of the Representative Ahmed Ismail Al-Mashhadani's membership in the Council of Representatives and obliging the defendant / being in this capacity to issue a parliamentary order to implement the decision of the Federal Supreme Court No. (9/Federal/2023) reveals Invalidity and corrects the violations resulting from the invalid membership of MP Ahmed Al-Mashhadani, stopping the payment of salaries and allowances, recovering the funds that were disbursed to him in violation of the Constitution and the law, preventing him from attending parliamentary sessions, and issuing a state order to that effect to prevent his participation in the election of the Head of the Council and influence the result until the lawsuit is resolved because his membership is invalid according to the aforementioned Federal Court decision, and the Commission did not specify who is the replacement deputy to the Representative Laith Al-Dulaimi and charge him fees, expenses and attorneyship fees)) the plaintiffs base the lawsuit on the provisions of article (93/3rd) of the Constitution of the Republic of Iraq for the year 2005, and the Federal Supreme Court finds regarding the plaintiffs' request (issuance of the urgent state order), that it decided to reject the request based on the decision issued by it No. (30/Federal/State Order/2024) on 11/2/2024, due to the lack of conditions stipulated in articles (151 and 152) of the civil procedure law No. (83).of 1969, as amended, in accordance with the details referred to therein, and upon consideration of the merits of the case, it was found that it must be rejected because it was no longer in place, due to the lack of conditions for the application of the provisions of article 52 of the Constitution of the Republic of Iraq for the year 2005, which stipulates: (First: The Council of Representatives shall decide on the validity of the membership of its members within thirty days from the date of registration of the objection, by a two-

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thirds majority of its members. Second: The decision of the Council may be challenged before the Federal Supreme Court, within thirty days from the date of its issuance), and article (4/9th) of the Federal Supreme Court law No. (30) of 2005 as amended by Law No. (25) of 2021, which stipulates that ((The Federal Supreme Court shall have the following competencies: Ninth: Consider appealing the decision of the Council of Representatives issued in accordance with its authority stipulated in Article (52) of the Constitution of the Republic of Iraq for the year 2005, within (30) thirty days from the date of its issuance)) in accordance with article (31) of the rules of procedure of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/3/2022, which stipulates that ((The Court shall decide on the appeal against the decision of the Council of Representatives issued as a result of the objection to the validity of the membership of its members in accordance with the following conditions and procedures: First: The objector shall submit a request to the Council of Representatives to object to the validity of the membership of one of its members. Second: The Council of Representatives shall decide on the objection request within thirty days from the date of its registration by a two-thirds majority of its members. Third: In the event that the application is not decided within the period mentioned in paragraph (second) of this article, this shall be considered a rejection, unless it is submitted during the legislative recess, such period shall be calculated from the date on which the Council commences its work after its completion. Fourth: The appeal shall be submitted to the court by the objector or contested membership within thirty days from the date of the decision on the objection by the Council of Representatives or within thirty days from the date of the expiry of the period referred to in paragraph (third) of this article. Fifth: The application shall be

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registered, copies of it shall be provided to the President and members of the Court with all its priorities, and a date shall be set for consideration without pleading. Sixth: The Court to summon the objector or contested membership to hear either or both of them in a non-public session. Seventh: The Court shall set a date for the issuance of the decision after the completion of its proceedings and deliberation among its members)), and for not objecting to the validity of the membership of the Representative Ahmed Ismail Al-Mashhadani before the Council of Representatives, and for the absence of a decision by the Council of Representatives regarding this because there was no objection in the first place, which means that the plaintiffs' lawsuit to challenge the validity of the membership of MP Ahmed Ismail Al-Mashhadani in the Iraqi Council of Representatives has become irrelevant, and therefore it is obligatory to respond because it is out of place, in view of the foregoing, the Federal Supreme Court decided as follows:

First: Reject the plaintiffs' claim (Basim Khazal Khashan and Laith Mustafa Hamoud Al-Dulaimi) for lack of a place in it this is due to the lack of conditions for the application of article 52 of the Constitution of the Republic of Iraq of 2005.

Second: Charging the plaintiffs (Basim Khazal Khashan and Laith Mustafa Hamoud Al-Dulaimi) fees and expenses and the advocacy fees of the defendant's agents, the Head of the Council of Representatives, being in this capacity - human rights employees Saman Mohsen Ibrahim and Aseel Samir Rahman an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (52, 93 and 94) of the Constitution of the Republic of Iraq of 2005, articles (4/9th and 5/2nd) of

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the Federal Supreme Court Law No. (30) of 2005 as amended by law No. (25) of 2021. The decision has been made clear on 7/Ramadan/ 1445 A.H. corresponding to 17/3/2024 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

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