

Republic of Iraq
Federal Supreme Court
Ref 327/ federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 26/3/2024 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 Munther Ibrahim Husain, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Basim Khazal Khashan Member of the Council of Representatives.

The Defendant: Head 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 plaintiff claimed in his petition that before the date of dissolution of the Council of Representatives on 7/10/2021, the Presidency for the fourth electoral cycle, consisting of (Muhammad Rikan Hadid Al-Halbousi) and his deputies (Hassan Karim Al-Kaabi) and (Bashir Haddad), Office Order No. (185) on 6/10/2021, which includes the appointment of the representative (Muhammad Ali Hussein Al-Ghazi) as a legal advisor to the Council at the rank of (higher / Alif) during the period of his assumption of membership duties in the Council, and thus he has combined membership in the Council of Representatives with the position of advisor in it, and this is contrary to Article (49/6th) of the Constitution, which states (It is not permissible to combine between membership of the Council of Representatives and any other official work or position), it also violates Article (8/1st) of the Law of the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 327/ federal /2023



Kurdish text

Council of Representatives and its Formations No. (13) of 2018, and Article (19/1st) of the Rules of Procedure of the Council of Representatives, which confirmed the same constitutional text, where the members of the Presidency agreed to appoint him as a legal adviser to the Council of Representatives without his appointment having the slightest need, as this decision was issued a few hours before the date of dissolving the Council of Representatives on 7/10/2021, and this position was not vacant originally, but was occupied by Counselor (Muhammad Youssef Mahdi), who was appointed as a legal advisor in the office of the First Deputy Head of the Council of Representatives by parliamentary order No. (184) on 6/10/2021, in order to vacate the position for the representative (Muhammad Al-Ghazi), who started his job after the end of its membership in the Council of Representatives, The purpose of his appointment was to compensate him for being prevented from running in the 2021 Council of Representatives elections by the political party to which he belonged, the agreement of the members of the Presidency on this is a perjury of the constitutional oath, because they violated the provisions of the legislation that they swore to commit to applying honestly and impartially, as his appointment to this position entailed financial burdens on the Council, and these burdens include salaries, allocations, privileges and protections, and that his appointment is a crime of intentional damage to the interests and funds of the Council of Representatives, so the plaintiff initiated an appeal before the court in accordance with what his membership in the Council of Representatives obliges him to, and what Article (27) of the Constitution obliges him to do from the duty to protect public funds, he requested a ruling that Parliamentary Order No. (185) on 6/10/2021 is invalid and canceled in accordance with Article (93/3rd) of the Constitution. After registering the case with this

Zainab

Republic of Iraq
Federal Supreme Court
Ref 327/ federal /2023



Kurdish text

court No. (327/Federal/2023) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) for the year 2022, his agent replied with the reply list dated 31/12/2023, its conclusion: The appointment of the respondent is not tainted by any violation of the Constitution. Where many members of the Council of Representatives have already been appointed to various advisory and executive positions in state institutions on a routine basis, and the text of Article (12) of the Law of the Council of Representatives and its formations No. (13) of 2018, stipulated the reasons for the termination of membership in the Council of Representatives, which are (fourth: The deputy holds a position in the Presidency of the Republic, the Council of Ministers, or any other official position), so the appointment of members of the Council of Representatives to various positions in any of the state institutions is one of the legitimate matters that do not Impeccable. The respondent was appointed in accordance with the authority of the Head of the Council of Representatives and his deputies as the legal adviser of the Council of Representatives, as he was a member of the Council of Representatives and later assumed his function, and the plaintiff did not show any conflict between the appointment of the respondent and the provisions of the Constitution. After completing the procedures required by the Court's Rules of Procedure, a date shall be set for the pleading in accordance with Article (21/3rd) thereof. The parties are informed of it, and the court was formed, so the plaintiff attended in particular and attended the defendant's agent and began to conduct the public presence pleading, and after the court heard the statements of each party, it noticed that the third person, Muhammad Yusuf Mahdi Al-Saadi, submitted a request through his agent, lawyer Ali Kamel

Zainab

Republic of Iraq
Federal Supreme Court
Ref 327/ federal /2023



Kurdish text

Rasul, requesting his entry - a third person - along with the plaintiff adversarial to the defendant, linking the request within the papers of this lawsuit, and since the lawsuit is ready to be resolved, he decided to reject the request the third person can file an independent claim on the same subject matter, and after the court has completed its scrutinies, the end of the argument has been made clear and issued the following judgment:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the summary of the plaintiff's lawsuit is a request to rule on the invalidity of Parliamentary Order No. (185) on 6/10/2021 and its cancellation for the reasons detailed by the plaintiff in the lawsuit petition referred to in the preamble of the decision, and after the public presence pleading and informing the court of the answer of the defendant's agent, the Head of the Council of Representatives, being in this capacity on 31/12/2023, in which he requested to reject of the lawsuit, because the appointment of (Muhammad Ali Hussein) as a legal adviser to the Council of Representatives within the limits of the plaintiff's objection is not tainted by any violation of the Constitution, as for the lawsuit of his violation of the Council of Representatives Law No. (13) of 2018, the court also reviewed its regulation dated 19/2/2024, in which Parliamentary Order No. (185) on 6/10/2021 was attached, which included the appointment of (Muhammad Ali Hussein) as a legal adviser to the Council of Representatives (with a higher special degree -a-), as well as Office Order No. (4331) on 1/11/2021 containing the date of commencement of the referred to, as well as the parliamentary decision No. (50) of 2023, as well as the letter of the Presidency of the Republic / President's Office No.

Zainab

Republic of Iraq
Federal Supreme Court
Ref 327/ federal /2023



Kurdish text

(Mim.Ra.Jim/1/5/3106) on 24/10/2023, and its annex is the Presidential Decree No. (88) in 2023, and a letter issued by the Bar Association No. (649) on 17/1/2024, the decision of this court taken on 26/3/2024 session, which includes the refusal of entry to the applicant, Muhammad Yusuf Mahdi, is a third person - joined the plaintiff in the jurisdiction of the defendant, because the lawsuit is ready for resolution and the applicant can file an independent lawsuit if necessary, and after the court has finished listening to the statements of the parties to the lawsuit, their agents and their requests whereas one of the conditions for accepting a constitutional lawsuit, like all civil lawsuits, is the availability of a known, case, possible and realized interest for the plaintiff in filing the lawsuit in accordance with the provisions of Article 6 of the Civil Procedure Law No. 83 of 1969, as amended, and the interest is summarized by the benefit that accrues to the plaintiff and which he hopes to obtain from filing the lawsuit, the constitutional lawsuit is not an abstract field for putting forward opinions or proving an abstract idea of any benefit that the plaintiff can achieve, and since the plaintiff was not directly affected by the parliamentary order No. (185) issued on 6/10/2021, it is the subject of the plaintiff's request, so this lawsuit is with the reason for its lack of interest condition that must be answered, in view of the foregoing, the Federal Supreme Court decided as follows:

First: Reject the plaintiff's lawsuit Basim Khazal Khashan, due to the absence of the interest condition necessary for its establishment.

Second: The plaintiff shall charge the fees, expenses and advocacy fees of the defendant's agents, the Head of the Council of Representatives, in addition to his job, an amount of one hundred thousand dinars distributed in accordance with the law.

Zainab

Republic of Iraq
Federal Supreme Court
Ref 327/ federal /2023



Kurdish text

The decision has been issued unanimously, final and binding according to the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq of 2005, and articles (4 and 5/Second) of the Federal Supreme Court Law No. 30 of 2005, as amended by Law No. 25. for the year 2021. The decision has been made clear on 15/Ramadan/1445 A.H. corresponding to 26/3/2024 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

Zainab