

Republic of Iraq  
Federal Supreme Court  
Ref 4/ federal /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/2/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

Plaintiff: Waad Abdul Razak Husain – His agent the barrister Ali Muhammed Sajit .

Defendant: The Prime Minister/being in this capacity – His agent the legal advisor Qasim Suhaib Shakur.

**The Claim:**

The plaintiff claimed through his agent that the defendant / being in this capacity had previously issued through one of his formations (the General Secretariat of the Council of Ministers) a letter with the number (Qaf/2/1/16/40862 on 29/8/2023 - Mim / circular opinion), and included the attendance of representatives of the public sector to the meetings of the public bodies of mixed joint stock companies held to elect representatives of the private sector in the company's board of directors to achieve the quorum for the meeting only without participating in the vote, if the amount of the contribution of the state sector is less than (50%) of the company's capital, but if the amount of the state sector's contribution is (50%) or more, their attendance shall be to achieve a quorum and vote to elect representatives of the private sector to the extent that the government entity to which they are affiliated deems appropriate, Because his client is a shareholder and

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shareholder in the mixed sector and has been harmed by the circular, and because the circular violates the Constitution and the decision of the Federal Supreme Court No. (134/Federal/Cassation/2012), and the Companies Law, and the issuance of a circular by a non-competent authority, the plaintiff therefore asked this court to rule it unconstitutional. After registering the case with this court No. (4/Federal/2024) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with Article (21/I and II) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, his agent responded with the reply list dated 23/1/2024, he requested the dismissal of the lawsuit due to the lack of jurisdiction of the court to hear it, and the lack of interest in filing it in accordance with the requirements of Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, His agent replied with the reply dated 23/1/2024, And he requested the dismissal of the lawsuit due to the lack of jurisdiction of the court to hear it, and the lack of interest in filing it in accordance with the requirements of Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and Article (6) of the Civil Procedure Law No. (83) for the year 1969 as amended, whereas interest is a prerequisite for the constitutional lawsuit and is its intended purpose, In addition to the previous adjudication of lack of jurisdiction under Resolution (172/Federal/2023), and after completing the procedures required by the Court's Rules of Procedure, a date was set for the consideration of the case without pleading in accordance with Article (21/3<sup>rd</sup>) of the Court's Rules of Procedure in which the court was formed and the case was considered, the court scrutinized the plaintiff's requests, his grounds and the defenses of the defendant's agent and after completing

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its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

**The Decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff (Waad Abdul Razzaq Hussein) filed this lawsuit against the Prime Minister/ being in this capacity, claiming that he had previously issued, through one of his formations (the General Secretariat of the Council of Ministers) and according to its letter No. (Qaf/2/1/16/40862) on 29/8/2023, an opinion that included the attendance of representatives of the public sector to the meetings of the general assemblies of mixed joint stock companies held to elect representatives of the private sector in the company's board of directors to achieve the quorum for the meeting only without participating in the vote, If the amount of the state sector's contribution is less than (50%) of the company's capital, but if the amount of the state sector's contribution is (50%) or more, their attendance shall be to achieve a quorum and vote to elect representatives of the private sector to the extent that the government entity to which they are affiliated deems appropriate, being a partner and shareholder in the mixed sector, he was affected by the aforementioned circular, and for the violation of the circular - subject to the challenge - of Articles (47, 78, 80 and 94) of the Constitution of the Republic of Iraq for the year 2005, and the decision of the Federal Supreme Court No. (134 / Federal / Cassation / 2012) and Articles (102 and 103) of the Companies Law requesting the invitation of the defendant in addition to his position to plead and rule on the unconstitutionality of the said circular and to charge the defendant fees, expenses and attorney's fees, the defendant's agent replied in addition to his job under his regulation dated 23/1/2024,

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requesting the dismissal of the lawsuit because there is no influential interest of the plaintiff in his legal, financial or social status, and that he did not provide evidence. However, factual damage has been caused to him as a result, as this court had previously issued its decision No. (172/Federal/2023) on the same subject, which included the dismissal of the lawsuit for lack of jurisdiction, so this lawsuit is subject to dismissal because it has already been adjudicated based on the provisions of Articles (105 and 106) of the Evidence Law No. (107) of 1979, as amended. The Federal Supreme Court finds that the plaintiff requested a ruling on the unconstitutionality of the circular issued by the General Secretariat of the Council of Ministers, and since the jurisdiction of the Federal Supreme Court in constitutional control extends to the laws and regulations in force only, and does not exceed the instructions and procedures, whether issued by the federal authorities or others, so the plaintiff's lawsuit in accordance with the form filed therein is subject to dismissal due to the lack of jurisdiction of the Court to consider it, for all of the above and the request, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit (Waad Abdul Razzaq Hussein) for lack of jurisdiction over the court, and to charge him the fees, expenses and attorney fees of the defendant's agent, the Prime Minister, in addition to his position as the legal advisor (Qasim Suhaib Shakour) an amount of one hundred thousand dinars. The decision has been issued unanimously, final and binding for all authorities according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and Articles (4 and 5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021. The decision has been made clear on 30/Rajab/1445 Hijri corresponding to 11/February/2024 AD.

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**Judge**  
**Jasem Mohammad Abboud**  
**President of the Federal Supreme Court**

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