

Republic of Iraq
Federal Supreme Court
Ref 63/federal/2024



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The Federal Supreme Court (F S C) has been convened on 15/4/2024 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: Uday Awad Kazem Al-Hussein / his agent the barrister Abdul Kazem Karim Jalil.

The Defendants:

1. The President of the Republic of Iraq / being in this capacity - his general agent Ghazi Ibrahim Al-Janabi.
2. Chairman of the Basra Governorate Council/ being in this capacity - his agent, the legal advisor, Khaled Hitler Ghaban.

The Claim:

The plaintiff claimed through his agent that the President of the Republic issued Republican Decree No. (4) on 13/2/ 2024 based on the provisions of Clause (Seventh) of Article (73) of the Constitution, and Clause (First) of Article (26) of the Governorate Law, irregular in region No. (21) of 2008 as amended, which includes the appointment of (Asaad Abdul Amir Abdul Ghaffar Al-Eidani) to the position of Governor of Basra, basing its issuance on what was presented by the Basra Governorate Council, and the issuance of the aforementioned Republican Decree in violation of the rules of the Constitution and the relevant legal articles and not paying attention to the violations the legal procedures that preceded the first meeting of the Basra Provincial

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Council and the election of the governor that accompanied it, which required a rejection of the issuance of the republican decree whose validity is being challenged, whereas the first session of the Basra Governorate Council was held with clear legal violations of what must be followed when sending an invitation to the meeting, as the Governor of Basra sent a notification to the council members to attend on Tuesday, 30/1/ 2024, at three o'clock in the afternoon, in the Basra Government Building, to hold the first session according to the letter issued by the Governor's Office, No. (Mim Mim/Alif/759) on 28/1/ 2024, however the session was not held and none of the members attended, and accordingly the Governor of Basra issued a letter the next day with the number (Mim Mim/Alif/869) on 31/1/2024 announcing postponing the session until 3/2/ 2024 under the pretext (members of the Basra Governorate Council requested to postpone the date of the first session for today) this postponement is considered invalid in violation of the law an abuse of powers and a clear manipulation of the outcomes of what took place in the session of 30/1/2024, whereas, if none of the winning council members attend the specified meeting on the day, hour, and place specified for it, the governor should have decided, when a quorum is not achieved for the meeting, to decide to cancel the session in accordance with the provisions of Article (20) of the internal regulations of the Basra Governorate Council and to prepare a record of that in the same session, it is absolutely not permissible to organize minutes of the sessions after the session, while the governor issued the letter (Mim Mim/Alif/869) on the second day dated 31/1/2024, deciding to postpone the date to 3/2/2024, and the reliance on postponing the session date is in the aforementioned format incorrect and based on the existence of postponement requests does not invalidate the invalidity that affected the procedures of the session, which was the first canceling

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the session and not postponing it under surprising pretexts, and despite that, the session was not held on 3/2/2024, none of the council members attended, and no minutes were prepared (which makes the first session fall into a legal vacuum) and the Basra Governorate Council did not follow the correct legal procedures when setting a date for the session to be held on 5/2/2024, the observer Article (5/6th) of the internal regulations of the Basra Governorate Council requires that the members of the Council be informed of the session and its topics at least 48 hours in advance, and that it be called for legally by the head of the council by specifying the hour, place and date of its meeting, but what happened was different from that, as a message was sent through an intermediary the administration official for the governorate, through the application (WhatsApp) to the council members on 4/2/2024 at 11:29 at night (i.e. ten hours and 31 minutes before), which challenges the validity of the session's date and its violation of the provisions of the internal regulations of the Basra Governorate Council in terms of who called for it and who, as for its timing and location, which missed the opportunity for a large number of Council members of those attending the session to vote, participate, and run for office, which indicates the existence of a prior agreement to set a session urgently, in violation of the law, to pass the election of those who were elected away from the will of a large number of Council members ((with reference the Iraqi law does not accept electronic notifications on social media, and it is not an approved notification)), on the other hand, the session took place without specifying an agenda for its work, in addition to the method of voting by raising white hands it was not a secret election paper stamped by the council's administration or the administrative secretary, and there was no prior vote by the members using the public method of voting by raising white hands despite the aforementioned violations, on 5/2/2024,

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the Basra Governorate Council meeting was held (first session), in the presence of (17) members of the Council only, which resulted in the election of the second defendant as President of the Provincial Council, and then the election of (Asaad Abdul Amir Al-Eidani) as Governor of Basra all of this took place in the same session, and since the election of the governor took place in violation of the provisions of Article (7/Seventh) of the Law for Governorates Not Organized in a Region, which requires the governor to be elected by an absolute majority within a maximum period of thirty days from the date of the first session of the Governorate Council, Which required the second defendant, after his election as Chairman of the Provincial Council, to set a date for another session within the aforementioned thirty days during which the governor would be elected, in order to allow those who wish to run for the position to announce this and submit their CVs so that they can be audited and the names of the candidates for the position who meet the required conditions to be announced the elections are held in a fundamental manner, and whoever obtains an absolute majority wins, regardless of whether from members of the Council or from outside it, as for the election of the governor in the manner that took place, it indicates an illegal agreement and a deal that violates the principles of freedoms guaranteed by the Constitution in the right of any citizen to obtain equal opportunities with his peers to work and hold positions without discrimination or bias therefore, it was necessary for the first defendant to verify the validity of the legal procedures that led to the appointment of the Governor of Basra and verify that the conditions were met before issuing the Republican Decree, especially since the elected governor is accused in lawsuits pending by the Federal Integrity Commission, No. (226/Qaf 1/2020), under the supervision of the Integrity Investigation Court judge in Al-Karkh, the report of the

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Financial Supervision Bureau, No. (14/13/1/66/191) dated 12/9/2022, indicates that he has a significant financial waste, it was sent to the Council of Representatives and the Presidency of the Basra Federal Court of Appeal / Integrity Court to take legal measures against him, in addition to referring to the Federal Integrity Commission with three candidates from the Design Alliance by the Independent High Electoral Commission (K/24/153) on 7/2/2024, for exploiting the functional influence of their electoral propaganda, therefore, the plaintiff asked this court to cancel Presidential Decree No. (4) regarding the appointment of (Asaad Abdul Amir Al-Eidani) as governor of Basra, remove all the effects of it and consider it as if it were not, and issue a state order to suspend the enforcement of the contested presidential decree until the lawsuit is resolved. After registering the case with this court No. (63/Federal/2024), 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) of 2022, the first defendant's agent responded to the reply list dated 6/3/2024, summarizing that there is no prima facie, case and direct interest of the plaintiff in filing the lawsuit, and that the court competent to consider objections and appeals against decisions issued is the Administrative Court based on the provisions of articles (20,7,6) of Law No. (21) of 2008, as amended, and article (7) of the State Council Law No. (65) of 1979, as amended, the administrative judiciary is competent to scrutinize objections and legal violations contained in the non-application of laws, instructions or regulations, and since the lawsuit is based on its legal basis for violating the internal regulations of the provincial council, it falls within the inherent jurisdiction of the administrative judiciary, and the Presidency of the Republic took all necessary measures before issuing the presidential decree to ensure that

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the legal conditions for the candidate for the position of governor are met, as it addressed the relevant departments, including: (Ministry of Interior, accountability and Justice Commission, Integrity and Illicit Gains Commission) in order to audit the procedures in terms of the candidate's non-inclusion in accountability and justice procedures, the absence of a criminal record of the issuance of a final criminal judgment, even if it includes a general or special pardon, and the verification of academic documents by obtaining the baccalaureate degree or its equivalent, the minutes of the invitation to hold the session, the minutes of the election, and the signatures of the members were linked to those minutes, and that the presidential decree was issued in accordance with the provisions of article 26 of the Law of Governorates Not Organized in a Region No. (21) of 2008 Strengthened by the Constitutional Powers stipulated in accordance with the provisions of Article (73/7th) of the Constitution, and then the constitutional and legal conditions were met in terms of form and substance in the issuance of the Republican Decree, so the court was asked to reject the plaintiff's lawsuit and charge him fees, expenses and hardship fees and the second defendant's agent replied with the reply regulation dated 12/3/2024, its conclusion: the amended Law of Governorates not organized in a region No. (21) of 2008, regulated the mechanism for convening the first session of the provincial council in article (7/1st) and did not discuss the subject of whether any postponement occurred in the date of the first session, but it is stipulated that the governor determines the date of this session and within (15) days from the date of approval of the Board of Commissioners on the election results, and the first session of the Basra Provincial Council was held during the period specified by law and in accordance with the legal contexts, what is stated in the rules of procedure, especially Article (5/6th), does not apply to the first session of

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the Council, as the first session was organized by Article (7/1st) of the Law of governorates not organized in region No. (21) of 2008, as amended, and that the rules of procedure regulate the sessions that follow the first session after the approval of the rules of procedure by the provincial council and that the first session of the provincial council is specific to work in accordance with the law and does not need an agenda, as the law stipulated the agenda of the first session, which is election of the Head and his deputy of the Council as stated in Article (7/1st) of the law of governorates not organized in the region No. (21) of 2008, as amended, therefore, the claim that the election of the Head of the Council, his deputy and the Governor came in one session is not valid as their election came in the first session, while the election of the Governor came in the second session and after a request was submitted by the members of the Council to hold the session of electing the Governor in accordance with the legal contexts since Article (7/7th/ Alif) of the Governorates Law irregular in the amended region No. (21) of 2008, had determined the election of the governor within thirty days from the date of the first session, where it came in an absolute manner and absolute is being launched, unless specified by text and did not specify the period to be available after the first session, whereas holding the second session after the adjournment of the first session falls within the legal period stipulated by law, so the elected governor meets the conditions that must be met in the position of governor, which are stipulated by the law in article 5 of the law on governorates not organized in a Region No. 21 of 2008, as amended, after completing the procedures required by the court's rules of procedure, a date was set for the pleading based on Article (21/3rd) thereof, and that what the plaintiff claimed has no basis in the law, therefore, he requested to reject of the plaintiff's lawsuit and charging him with fees and expenses, after

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completing the procedures required by the Court's Rules of Procedure, a date was set for the pleading in accordance with Article (21/3rd) thereof, the parties are informed of it, and the court was formed, so the agent of each party attended and began to conduct the public presence pleading, and after the court heard their statements and requests and completed its scrutinies and 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, it was found that the plaintiff, through the mediation of his agent, requested a ruling to cancel the Republican Decree No. (4) of 2024 regarding the appointment of (Asaad Abdul Amir Abdul Ghaffar Al-Eidani as Governor of Basra) and to remove all the effects of it and consider it as if it were not, and also requested the issuance of a state order to suspend the enforcement of the contested Republican Decree until the lawsuit is resolved, for the reasons stated in his lawsuit petition, and for the lack of urgency nor the state of necessity, in addition to the fact that responding to the content of the request to issue a state order means entering the origin of the right and giving prior opinion on the case, so the court decided to reject the plaintiff's agent's request regarding the request to issue a state order to suspend the entry into force of the contested Presidential Decree by virtue of the decision issued by it No. (63/Federal/State Order/2024) on 12/3/2024, as for the subject matter of the lawsuit, the court finds that the Presidency of the Republic had taken all the necessary procedures and scrutinies before issuing the presidential decree, and it was ascertained that the legal conditions were met in the candidate for the position of governor of Basra after approaching the relevant departments, and it was found that the

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governor of Basra, whose name is mentioned in the contested presidential decree, was not included in the procedures of accountability and justice, and that there was no criminal record against him, in addition to the availability of other conditions provided for in the Constitution and the law to be met by everyone who will hold the office of governor, and thus the plaintiff's claim shall be dismissable, there is nothing that prejudices the validity of the Republican Decree (the subject of the lawsuit) for the first defendant, the President of the Republic, in addition to his job, as for the second defendant, the President of the Basra Provincial Council, in addition to his job, it has nothing to do with the issuance of the contested Republican Decree, as the issuance of republican decrees is the exclusive competence of the Presidency of the Republic, thus, it is not suitable to be a litigant in this lawsuit, and the lawsuit against him shall be subject to reply, because the litigation is not directed against him, and for the foregoing, the Federal Supreme Court decided the following:

First: Reject of the plaintiff's lawsuit Uday Awad Kazem Al-Hussein against the first defendant, the President of the Republic / being in this capacity, for lack of prejudice to the validity of Presidential Decree No. (4) of 2024 issued on February 13, 2024, which includes the appointment of (Asaad Abdul Amir Abdul Ghaffar Al-Eidani as Governor of Basra).

Second: Reject the lawsuit of the plaintiff Uday Awad Kazem Al-Hussein against the second defendant, the head of the Basra Provincial Council / being in this capacity, because the litigation was not directed.

Third: Charging the plaintiff the fees, expenses and attorneyship fees of the first defendant's agent, the President of the Republic in addition to his job, Chief of the Legal Expert Ghazi Ibrahim Al-Janabi and the agent of the second defendant Chairman of the Basra Provincial Council

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/ being in this capacity the legal adviser Khaled Hitler Ghadban an amount of one hundred thousand dinars to be distributed in accordance with the law.

The decision has been issued unanimously, final and binding on all authorities in accordance with the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005, and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by law No. (25) of 2021, and it has been made clear on 6 /Shawwal /1445 A.H. corresponding to 15/4/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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