

Republic of Iraq  
Federal Supreme Court  
Ref 86/ federal/2024



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The Federal Supreme Court (F S C) has been convened on 6/5/2024 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:

Plaintiff: Bassem Khazal Khashan / Member of the Council of Representatives – His agent the barrister Ahmed Saeed Moussa.

Defendant: Speaker of the Council of Representatives / being in this capacity - His two agents the human rights employees Saman Mohsen Ibrahim and Aseel Samir Rahman.

**The Claim:**

The plaintiff claimed in the petition that the Council of Representatives, in its second session held on 27/1/2024 - after the session it allocated to elect its president on 13/1/2024 - took a decision to postpone the election of the Speaker of the Council of Representatives until the decision on the cases pending before the judiciary (Federal Supreme Court), and this is contrary to the provisions of the Constitution and the rules of procedure of the Council, as the Federal Supreme Court distanced itself from the decisions taken by the Council of Representatives regarding the election of its president after the vacancy of the position of President after the termination of the membership of the representative (Muhammad Rikan Al-Halbousi) on the basis of the principle of separation of powers, and the court's commitment to the powers set for it by the Constitution the court expressed this by rejecting the requests of state orders to oblige the Council of Representatives not to complete the procedures of the Council to elect a president, which

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were requested by the plaintiffs in the lawsuits invoked by the Council, because it held that the functioning of the Council on the path drawn by the court's decision No. (322/Federal/2023) on 24/12/2023, it will not affect the rights in dispute before it, and it will not have an effect that cannot be canceled or removed, and the President of the Federal Supreme Court explained this in an interview with the Iraqi News Agency, and that the decision of the Council of Representatives to postpone the procedures for electing a president violates the aforementioned court decision in an explicit violation, as the text of this decision stated that ((the opening of the nomination door must be limited to that session) the first session of the election of the President (in order to resolve the issue of the election of the Speaker of the Council in a timely manner and not to prolong it, and no new nomination may be accepted after the start of the voting procedures)) the decision - the subject of the challenge - has no legal or constitutional justification as it was issued for the purpose of prolonging the election of the president and maintaining the status quo in the Council of Representatives for as long as possible, noting that the session to elect the president held on 13/1/2024 has passed for a period without completing the procedures for electing the president, and it is not permissible to disrupt the election of the Speaker of the Council due to lawsuits, the date of which is unknown, because the origin is in permissible things, and the Council of Representatives cannot assume that the court will rule that a session held in the presence of more than two-thirds of the members of the Council is invalid simply because two or three members of the Council of Representatives object to its absolute validity, this shall be based on a decision that contradicts the Constitution, which obliges the election of a Speaker of the Council of Representatives, especially since the court ruled to reject requests for

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state orders, because it did not see in the continuation of the procedures for electing the president a constitutional or legal defect that requires its intervention in its decision No. (322/Federal/2023) the constitutional rules that Article (12) of the Rules of Procedure of the Council of Representatives failed to refer to, including the start of voting after the candidacy door closes and does not open it until the president is elected in order not to prolong the procedures for electing its president, and this is what was done by electing the Speaker of the Council in the first session of each electoral cycle in accordance with article (7/2<sup>nd</sup>) of the rules of procedure, and the Council of Representatives did not fail to elect a Speaker in the first session according to this rule, except once in 2010, when the then President decided to leave the session open until consensus between the political blocs, the Court addressed this unjustified delay and delay that plunged the country into a dangerous constitutional vacuum and disrupted the interests of the people and the State, it issued its decision, which returned the Council of Representatives to the seriousness of the constitution and was elected the Speaker of the Council and his deputies after its issuance, and the effects of this decision - subject to appeal - contrary to the Constitution exceeded the limits of the decision itself has opened the door to political bargaining wide and moved the Council from invoking lawsuits to search for unconstitutional and illegal means to keep the situation as it is so that the Council can remain without a president, one of these means is to amend the rules of procedure of the Council of Representatives by returning the proceedings to their beginning after each session in which the Council is unable to elect a Speaker, rather, it back fires on the election of the president in the first session of the Council of Representatives, which must be elected a replacement according to the procedures for his election and not according to new rules that detail the

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narrow partisan interests, and the above proves that the decision of the Council of Representatives to postpone the election of its president is contrary to Article (55) of the Constitution, which obligated the Council of Representatives to elect a president in the first session, and not to elect any of his deputies before his election, and also proves his violation of article (12/3<sup>rd</sup>) of the rules of procedure to the Council of Representatives, therefore, the plaintiff asked the court to rule on the invalidity of the contested decision and to cancel it, as well as to issue a state order to cancel its effects, including not completing the procedures for electing the Speaker of the Council of Representatives, prolonging and suspending them, contrary to what was stipulated in the court's decision No. (322/Federal/2023) contrary to the provisions of the Constitution and the rules of procedure of the Council of Representatives. After registering the case with this court No. (86/Federal/2024) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with the provisions of Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Court's Rules of Procedure No. (1) of 2022, his agent replied with the response list dated 31/3/2024, its conclusion: The plaintiff's lack of interest in filing the lawsuit, and that the decision of the Council of Representatives in session (2) on 27/1/2024 to postpone the election is an organizational decision that the Council of Representatives tended to take in a way that ensures the election of a Speaker of the Council of Representatives who meets it and in the session in which his election is the constitutional and legal conditions, and that the efforts made by the Council to elect a president will not be subject to annulment later, especially since the session of electing the president has become the candidate who received the highest votes in the presidential election is subject to challenge for membership and in his candidacy for placer, the decision of the Federal

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Supreme Court No. (322/Federal/2023) was subject to following the Council of Representatives, where the candidacy for the position of Speaker of the Council of Representatives was opened, and the election of the latter was not a justification for the suspension of the Council, as for the move to amend Article (12) of the rules of procedure of the Council of Representatives, this is based on the right of the Council to amend its rules of procedure whenever the provisions contained therein are difficult to find a solution to the problems faced by the Council due to the lack of texts, and this is not within the competence of the Federal Supreme Court, therefore, so the defendant's agent requested to reject the plaintiff's lawsuit and charging him with fees, expenses and attorneyship fees. After completing the procedures required by the Court's Rules of Procedure, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, in which the court was formed, and the plaintiff and his agent attended, and the defendant's agent attended, and the public presence pleadings began, and after the court heard the statements and requests of each party and completed its scrutinies, 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, the court noted that the summary of the lawsuit of the plaintiff MP Bassem Khazal Khashan is a request to rule the invalidity of the decision of the Council of Representatives taken on 27/1/2024, paragraph (2) thereof, in which it was stated (the vote was approved to postpone the election of the Speaker of the Council of Representatives until the cases pending a decision before the judiciary) due to its violation of the Constitution of the Republic of Iraq in Article (55) thereof, which stipulates that (the

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Council of Representatives elects in its first session a president, then a first deputy and a second deputy, by an absolute majority of the number of members of the Council, by direct secret election) and Article (12/3<sup>rd</sup>) of the Rules of Procedure of the Council of Representatives, which stipulates (if the position of the Speaker of the Council or any of his deputies becomes vacant for any reason, the Council shall be elected by an absolute majority as his successor in the first session held to fill the vacancy in accordance with the controls of political balances between the blocs) also violating the decision of the Federal Supreme Court No. (322/Federal/2023) on 24/12/2023 in accordance with the details contained in the plaintiff's list referred to in the foregoing preamble to this decision, after the public presence pleading and the court's review of the contested decision contained in the letter of the Council of Representatives / Parliamentary Affairs Department / Sessions Organization Section No. (1/9/7 on 28/1/2024), the court also reviewed its decision No. (86/Federal/State Order/2024) on 16/4/2024, which included the rejection of the request to issue the state order submitted by the plaintiff, in which he requested the cancellation of the effects of the challenged decision, including the failure to complete the procedures for electing the Speaker of the Council of Representatives, and the court also reviewed the response list of the defendant's attorney. dated 31/3/2024, in which he requested to reject of the plaintiff's lawsuit for the reasons stated in the regulation, the most important of which is the lack of interest condition in the plaintiff, the contested decision is also an organizational decision to ensure that the President of the Council is elected in accordance with the constitutional and legal conditions and that the Council of Representatives followed the decision of this court No. (322/Federal/2023), where it opened the door for nomination for the position of Speaker of the Council of Representatives, and after

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contemplating the proposals of the parties to the lawsuit and the requests and defenses it contained, the court concluded that the principle is that all constitutional institutions must carry out their constitutional and legal duties and tasks in accordance with what is decreed for them to achieve the principle of legitimacy in their work, including the Council of Representatives, which must accomplish the tasks entrusted to it under the provisions of the Constitution, Law No. (13) of 2018 (the Law of the Council of Representatives and its formations) and other laws governing its work, and the Rules of Procedure of the Council of Representatives issued in 2022 based on Article (51) of the Constitution of the Republic of Iraq for the year 2005, where Article (12/3<sup>rd</sup>) of this system requires the election of the Speaker of the Council if his position becomes vacant for any reason, and in this the Council of Representatives may not comment on any pretext, because exercising the right of Litigation does not suspend the rights and duties that can be exercised by any constitutional or legal body or institution unless the law so provides or a judicial decision is issued by a competent authority based on Article (151) of the Civil Procedure Law or Article (39) of the Rules of Procedure of this Court No. (1) of 2022, there is no duty or restriction on the Council of Representatives to guess what decisions will be issued by the judiciary in cases related to its work and duties, and to try to harmonize with these decisions before they are issued, therefore, for the above reasons found by the court, the contested decision has no basis in the Constitution or the law in order for this Court to determine its incorrectness, the Federal Supreme Court has decided as follows:

First: The invalidity of paragraph (2) of the decision of the Council of Representatives adopted in the second session on 27/1/2024 approving the postponement of the election of the Speaker of the Council of Representatives until the judicial cases are decided.

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Second: Charging the defendant the Speaker of the Council of Representatives, in addition to his job, expenses, fees and advocacy fees the plaintiff's agent is an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding on the basis of the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq of 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, and it has been made clear on 27/Shawwal/1445 A.H. corresponding to 6/5/2024 AD.

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

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