

Republic of Iraq
Federal Supreme Court
Ref. 89 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 19.6.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebraheem Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiffs:

1. Mustafa Jabbar Sanad (Member of Parliament).
2. Basem Khazal Khashan (Member of Parliament).

Their attorneys are Ahmed Saeed Moussa and Hussein Hamid Abdel Wahed.

The defendant:

The Prime Minister/ In addition to his position – his agent is the legal counsel Haider Ali Jaber.

The claim:

The plaintiffs claimed through their attorney that on November 18, 2014, the defendant issued its decision No. (90) for the year 2014, which included authorizing the Commander-in-Chief of the Armed Forces to grant those covered by the resolution the privileges mentioned in Cabinet Resolution No. (168) for the year 2014, and they initiated an appeal against it before this court Based on Article (93/Third) of the Constitution for the following reasons:

1. Violation of Article (80) of the Constitution, which limits the powers of the Council of Ministers exclusively, and does not include

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authorizing the Prime Minister or anyone else with any of these powers.

2. Assigning the powers of the Council of Ministers, in whole or in part, without stipulating this in the constitution to the Speaker of the Council, enshrines the exclusive authority of the Speaker of the Council and nullifies the purpose intended by the legislator in determining the powers of the Council of Ministers in Article (80) and the powers of the Prime Minister specified in Article (78) of the constitution, and the Council of Ministers may not delegate its powers to its president without a provision in the constitution that permits that, and accordingly all Iraqi legislation regulating the assignment of some of its powers to councils went into effect, including Article (4) of the Supreme Judicial Council Law No. 45 of 2017, Which stipulated that (the council may delegate some of its duties to the president of the council). Based on the foregoing, the plaintiffs requested the Federal Supreme Court to rule over the contested decision, the case was registered with this court in No. (89/Federal/2022), and the legal fee was collected for it based on the provisions of Article (1/Third) of the Court's bylaw No. (1) For the year 2005 and informs the defendant of its petition and documents in accordance with Article (2/First) of the same bylaw above, his attorney responded with the answer list dated 8/5/2022, its summary is that the plaintiffs' request deviates from the jurisdiction of the Federal Supreme Court specified under Article (93) of the Constitution and Article (4) of its Law No. (30) of 2005, and that consideration of it shall be by the Administrative Court based on the provisions of Article (7/Fourth) of State Council Law No. (65) of 1979 (amended), and this is what has been settled by the Federal

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Court's judiciary The Supreme Court in its decisions numbered (10, 74, 95/Federal/2019) and others, in addition to the lack of a condition of interest for the plaintiffs to file a case before the Federal Supreme Court in order not to violate their constitutional rights in a way that directly harms them since they had no immediate, direct and influential interest in their legal, financial or social status, nor did they provide evidence that actual harm had been caused to them by the decision of the Council of Ministers, and therefore they lost one of the conditions for filing a lawsuit based on the provisions of Article (6/first and second) of the Federal Court Bylaw No. (1) of 2005, as well as the text of Article (4) of Court Law No. 30 of 2005. The decision under appeal did not violate the provisions of Article (80) of the Constitution but rather was in accordance with the provisions of the Constitution. Approved by the Council of Ministers the internal system of the Council of Ministers No. (2) of 2019 published in the Iraqi Gazette was issued in issue (4533) dated 25/3/2019, which stated in Article (13) of it that (The Council may authorize its Chairman or the committees formed under Article (12) of This system has some of its tasks stipulated in this system in accordance with the law), and therefore the Council of Ministers may delegate some of its tasks to the Prime Minister based on the provisions of Article (13) of the above-mentioned internal system, which came in implementation of the provisions of Article (85) of the Constitution and does not contradict the decision of the Council of Ministers in question. The appeal is under the provisions of the constitution, so the ruling requested that the appeal be dismissed from the formal and substantive point of view and that the plaintiffs be charged with expenses, fees, and attorneys' fees. After completing

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the procedures stipulated in the aforementioned internal system of the court, a date for the pleading was set in accordance with Article (2/Second) thereof, and the parties were informed of it. On the appointed day, the court was formed. The second plaintiff, in the name of Khazal Khashan, and the attorneys of the two plaintiffs, lawyers Ahmed Saeed Musa and Hussein Hamid, attended Abdul Wahed, and his attorney, Legal Counsel Haider Ali Jaber, attended on behalf of the defendant. 8/5/2022 The attorneys of the two parties repeated their previous statements and requests, and as there was nothing left to be said, the court decided on the conclusion of the pleading and issued the following ruling:

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiffs' lawsuit included a request for a ruling to cancel Resolution No. (90) for the year (2014) issued by the defendant in addition to his job, which includes authorizing the Commander-in-Chief of the Armed Forces to grant those covered by the privileges contained in Resolution No. (168) for the year 2014 Issued by the Council of Ministers for violating the provisions of Article (80) of the Constitution of the Republic of Iraq for the year 2005, and after reviewing the lawsuit petition and the list of the defendant's attorney in addition to his job and listening to the statements and defenses of the two parties, and upon further consideration of its subject matter, the Court concluded that one of the accepted principles for establishing the lawsuit And its acceptance by the court is that the plaintiff has an interest in its establishment, as there is no claim without interest, which is the

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legitimate practical benefit that the plaintiff obtains from his resort to the judiciary, and it is required that it be known, conditional, possible and verified according to what was stipulated in Article (6) of the Civil Procedures Law No. (83) for the year (1969) amended. The plaintiff in the subject matter of the case must have a direct, immediate, and influential interest in his legal, financial or social position, as it is not sufficient that the contested text is contrary to the constitution, but rather that its application to the plaintiff must have harmed one of his constitutional rights in a way that caused him direct harm. The plaintiffs did not provide evidence that actual harm had been inflicted on them, so the interest, as stipulated in Article (6) of the Federal Supreme Court's internal system No. (1) of 2005, is not realized in their claim and therefore it is free to respond from this authority, and for the foregoing, The Federal Supreme Court decided to dismiss the lawsuit of the plaintiffs, Mustafa Jabbar Sanad and Bassem Khazal Khashan, and charge them all judicial expenses, including attorney fees for the defendant's attorney, legal advisor Haider Ali Jaber, an amount of one hundred thousand dinars distributed in accordance with the law. The Constitution of the Republic of Iraq of 2005 and Article 5 /Second) From the Federal Supreme Court Law No. (30) for the year 2005 amended by Law (25) for the year 2021 and publicly understood on 19 / Dhu al-Qa'dah / 1443 AH corresponding to 6/19/2022 AD.

Signature of
The president

Jasem Mohammad Abboud

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