

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



The Federal Supreme Court (F.S.C.) convened on 30.3.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

**The plaintiff:**

Ali Saleh Hussein al-Jubouri / head of the Iraqi University - his two attorneys are lawyer Safad Nouri Ahmed and lawyer Ihab Saleh Hassoun.

**The defendant:**

The Prime Minister / In addition to his position - his deputy, the legal advisor Haider Ali Al-Sufi.

**The claim:**

The plaintiff claimed, through his attorney, that the Council of Ministers had previously issued its Resolution No. (378) dated (24/10/2019), including a recommendation to the Council of Representatives to approve his appointment as President of the Iraqi University, and that the Council of Ministers' mission has stopped at these limits, so the decision on that remains from the Council of Representatives according to its constitutional competences, but the current Council of Ministers issued (in an emergency presentation of the matter) its Resolution No. (251) dated 7/25/2021 (that is, two

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



years after the nomination), rejecting that nomination, which conflict with the legal framework that was born according to the constitutional and legal foundations and data in force, which has many legal and administrative implications, especially as it relates to the pillars of the educational and research process, and since Article (61 / 5<sup>th</sup> / B) of the constitution of the Republic of the Republic of Iraq of 2005 stated the competence of the Parliament to appoint the holder of special degree based on a proposal from the Council of Ministers, and this competence cannot be contested in the matter of appointing those with special degrees. The text of Article (80/ fifth) of the Constitution was consistent with what was stated in the aforementioned article, where it emphasized that the role of the Council of Ministers with regard to assigning people with special degrees is limited to a recommendation and nothing more, as it stipulates that the following: (the recommendation to the Council of Representatives, approving the appointment of deputy ministers, ambassadors, and people with special degrees), which indicates that the role of the Council of Ministers does not go beyond the limits of the recommendation, especially since the current government came in a phase with an undefined, transitional period, formed for specified and defined political purposes procedure including conducting an early election, and other priority that was included in the ministerial curriculum. By that the current government is not with full comprehensive powers that enable it to cancel the legitimate administrative decisions taken by the previous Government, also an article (47) of the constitution stated constitutional principles that govern the constitutional competencies and powers entrusted to the federal authorities (Legislative, Executive and Judicial), which is the

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



principle of separation of powers, that consider as the main feature of the democratic regime stated by the constitution, this decision violates the principle of separation of powers, and in fulfillment of an unconstitutional precedent whose content exceeding the executive authority the constitutional powers which were mentioned specifically. The constitution didn't state the powers of the council of ministers to practice any role or jurisdiction in the topics entered into the competences of the Council of Representatives, therefore the act of the council of ministers of canceling his nomination without the council of representatives deciding the subject is void constitutionally, as it affects the competences of the legislator and administrative activity which makes it a void administrative decision that is binding to be suspended immediately, where it contains the flaw of a gross usurpation of power, and that the constitutional legislator assigning the competence to approve the appointment of those with special degrees (including the position of President of the University) to the Council of Representatives, came as an expression of a legitimate legislative philosophy, the truth of which is to protect the main rights granted by the constitution with its articles, especially article. (34/First and Third) which affirmed the right to education and encouraged the perpetuation of the scientific research process. Therefore, it is evident that violating the ruling constitutional principles in appointing the university president which constitutes a clear obstruction and a grave violation of the right to education and the right of scientific research. the decision of the Council of Ministers on the subject of challenge is missing a major corner which is the cause, making it due to challenge and cancellation. As the council of ministers under the provision of clause (third) of article

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



(80) of the constitution is competent to issue regulations, instructions and orders to implement the laws, it also did not take into account the controls of competence and the hierarchy required for the validity of the procedures and decisions , that decision should have been based on legal reasons of the ministry of higher education and scientific research which affirmed in many occasions that it support the nomination of the president of the Iraqi university, as well as it was issued in the most important period of school year, perform the final exams under the exceptional epidemic circumstances in which the Ministry of Education confirms that there are no administrative changes within the basic configurations in order to preserve the stability of academic university work environment, and the emergency needed to be summoned, and that the arrangement of that emergency necessity is over the importance of providing proper examination in the circumstances already stated, so for what the Council of Ministers decision caused him material and moral damage, as well as a clear confusion in the university center in the most important period of the academic year (period of final exams) and under the conditions of the global podium. Therefore, the plaintiff asked the Federal Supreme court to issue a state decision to suspend the implementation of Cabinet Resolution No. (251) for the year 2021 until the issue of the case is resolved, and then to cancel it and all the consequences arising from it due to its unconstitutionality, and to charge the defendant all fees, attorneys' fees. The case was registered with this court in No. (97/Federal/2021), the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's Bylaw No. (1) of 2005, and informs the defendant of its petition and documents in accordance with the

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



provisions of Article (2/First) of the same bylaw above, his representative responded with the answering regulation dated 9/20/2021, summarizing that the subject of the appeal is outside the jurisdiction of the Federal Supreme Court based on the provisions of Article (7/Fourth) of the State Council Law No. (65) for the year 1979 as amended, as it is an administrative decision and that is what has been settled by the court's judiciary by its decisions numbered (10, 74, 95, 96, 118, 119 / Federal / 2019). the decision of the Council of Ministers under appeal is in fact nothing but the withdrawal of the recommendation from the Council of Representatives regarding the nomination of the plaintiff as president of the Iraqi University and assigning him the tasks of the advisor of the Ministry of Higher Education and Scientific Research, as long as the Council of Representatives did not issue its approval of this appointment and did not arrange its constitutional and legal effects represented by the approval of the Council of Representatives appoint a plaintiff. Also, the decision of the Council of Ministers above to withdraw a recommendation from the Council of Representatives falls within the discretionary authority of the Council of Ministers in accordance with the requirements of the public interest and the proper functioning of the public facility. His previous recommendation withdrew the nomination. In addition to the fact that the recommendation or the proposal is a purely material act before the issuance of the appointment decision, and both of them are not able to produce legal effects, and the Council of Representatives has the right to take them or leave them without entailing any responsibility, so the defendant's attorney requested that the plaintiff's lawsuit be dismissed in terms of formality and objectivity

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



and charging him the costs of the case and the court's fees. After completing the procedures required by the court's bylaw, a date was set for the pleading, in accordance with the provisions of Article (2/Second) thereof, and on the appointed day the court was formed. The plaintiff's attorney stated what was stated in the lawsuit petition and requested the judgment according to what was stated in it. The defendant's attorney responded, requesting that the lawsuit be dismissed for the reasons stated in his answer list dated 9/20/2021. Upon auditing, the court noted that there is a need to include the Minister of Higher Education and Scientific Research a third person in the lawsuit for clarification from him about what is necessary to resolve it, so his agent, the legal employee, Ahmed Jaafar Shawi, attended on his behalf, and he answered that Article (17/3) of the Law of the Ministry of Higher Education and Scientific Research No. (40) for the year 1988, as amended, required that the tenure of the university president's position be five years, renewable once, the plaintiff replied that his occupancy of the aforementioned position is not original, but rather he was assigned to do so by acting, so the five-year period does not apply to whoever occupies the position as a proxy, the defendant's representative answered repeating what was stated in the answer regulations submitted by him and requested that the case be dismissed for the reasons stated therein, and after the court completed its clarification from the third person, it decided to remove him from the case, and each party's attorney repeated his previous statements and requests, and where there was nothing left to be said, the court decided the conclusion of the pleading and issued the following ruling:

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*Athraa*



Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



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### **The decision:**

Upon review and deliberation by the Federal Supreme Court to the plaintiff's lawsuit, which included his request to rule to cancel Cabinet Resolution No. (251 of 2021) issued on 24.7.2021, and the defendant's attorney's defenses under the submitted draft and during the pleading, the court reached the following conclusions:

First: the university is the most important basic institution that contributes to building and progressing society, as it plays a major role in rehabilitating the people of society and providing them with scientific, practical and social expertise and skills, contributes to the process of achieving creativity and patriotic feeling among students to serve the country, as the goal of education must be to bring about quantitative and qualitative changes in the scientific, technical and cultural movement and to guide educational and research institutions in a manner that achieves continuous interaction between thought and practice towards achieving scientific sobriety and interaction with human experiences and expertise and adopting international scientific quality standards and higher levels of educational development in order to build a younger generation education contributes to meeting the needs of development plans and finding real ways to develop society through its contribution to economic and social growth and industrial progress through research and development carried out by universities of different departments and degrees and through the development of relations scientific, cultural and artistic work with the countries of the world to achieve harmony and integration in the fields of science and knowledge in order to achieve scientific progress. The level of work and creative practice and linking goals to fruitful results, and that the future of the country depends on the

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



extent of the maturity of human and scientific thought, providing the requirements for that maturity and qualifying it to build the next stage to change the country's conditions for the better and redouble efforts to build it and intensify the contribution of its children to the global human march and openness to others with awareness and confidence in order to the country has a position and a role in the civilization modern through the need to stand contemplatively in front of the intellectual and cognitive constants of the people, and through all of this, the members of society can have a real and fruitful civilized revival through which the people of society possess the foundations of understanding the present and looking forward to building a better future, and that this requires review and treatment of the mistakes that occurred in the previous period and elicit the positives on the cultural, scientific, political and social level, for the purpose of bringing about reform and change and removing all obstacles that stand in the way of the development and progress of society and keeping pace with the global cultural and scientific renaissance. Based on that, Article (34/First) of the Constitution stipulates (First - Education is an essential factor for the progress of society and a right guaranteed by the state, which is compulsory in the primary stage, and the state guarantees the fight against illiteracy) according to the aforementioned article, education at all levels is a fundamental factor for the progress of society, and without it, this progress cannot be achieved, as education contributes to understanding the duties of citizenship and encourages it. The improvement of the living reality and the increase in economic growth, and no civilization can be built without having the world it is not one of its pillars because it is the main pillar upon which

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*Athraa*



Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



civilizations are built and that this can only be done by creating a generation that knows science and appreciates its importance in building society and civilizations. Through education, scientific achievement can be reached through which all areas of economic, commercial, and agricultural life are controlled. The state becomes satisfied with the members of the society who live in it. Therefore, item (Second) of Article (34) aforementioned obligated that free education is a right for all Iraqis in its various stages and that this represents a constitutional obligation that falls on the shoulders of the relevant authorities, especially the executive authority, to abide by it and implement it by providing the real ingredients for free education in all its stages for the advancement of the individual and society and the development of educational strategies that through it, all the negatives are overcome, and the positives are diagnosed, to find a real educational system in order to create a generation capable of advancing society.

Second: According to the provisions of Article (9) of the Law of the Ministry of Higher Education and Scientific Research No. (40) for the year 1988, the university is a safe campus and a center of civilizational, intellectual and technical radiation in the community where the mind flourishes and the ability of creativity and innovation to shape life is elevated and it bears direct responsibility in achieving its objectives, and it conducts ongoing studies and research in various aspects of human knowledge and studies related to the scientific situation and the reality of new needs that guarantee solid and high levels to suit the age and its requirements and in a way that leads to reaching scientific and technical levels that put Iraq in the ranks of developed countries, and this requires the development of strategies

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



to confront the scientific obstacles it faces higher education in the country and providing the base required for the development of scientific centers and laboratories and finding the research centers necessary to achieve the goals of universities.

Third: Article (93/Third) of the Constitution of the Republic of Iraq for the year 2005 defines the jurisdiction of the Federal Supreme Court, which is to decide on cases that arise from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law guarantees the right of the Council of Ministers and concerned individuals and others, the right to directly appeal to the court, and since Article (80) of the Constitution defines the powers of the Council of Ministers to exercise the powers contained in its provisions, including what is included in item (Fifth) thereof, which stated (recommendation to the Council of Representatives, to approve the appointment of the acting ministers, ambassadors and holders of special degrees, forces, the chief of staff of the army and his assistants, those who hold the position of division commander and above, the head of the National Intelligence Service, and the heads of the security services), thus what is issued by the Council of Ministers as federal authorities in accordance with the provisions of Article (47) of the Constitution of the Republic of Iraq for the year 2005 in terms of Article (66) of it, the consideration of the appeal falls within the jurisdiction of the Federal Supreme Court in application of the text of Article (93/Third) of the aforementioned constitution, and since the Council of Ministers had previously decided to recommend to the Council of Representatives to appoint the plaintiff as the President of the Iraqi University in accordance with the decision number (378 of 2019),

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



then issued his decision number (251) of 2021, in which the text was stated ((based on what the Prime Minister presented an emergency presentation during the cabinet meeting and what was stated in the letter of the Ministry of Higher Education and scientific research (secret) numbered (mim. Waw. Dal./kha./sin./189 of 6/4/2021), the Council of Ministers decided, in its twenty-eighth regular session held on 24.7.2021, to approve the following:

1. Withdrawing the recommendation from the Council of Representatives regarding the nomination of Dr. Ali Saleh Hussein Saleh as President of the Iraqi University issued pursuant to Council of Ministers Resolution (378 of 2019) sequence (40) linked to the letter of the General Secretariat of the Council of Ministers No. (shin. Zin. Lam./10/1/3/10/36446) dated 10.24.2019.

2. Assigning Dr. Yassin Saad Muhammad Ali to the tasks of the Vice President of the Iraqi University.)) Upon reviewing the letter of the General Secretariat of the Council of Ministers No. (shin. Zin. Lam./10/1/3/10/36446) on 10/24/2019, addressed to the General Secretariat of the Council of Representatives, which includes, the Cabinet Resolution No. (378 of 2019) issued in the (41) regular session held on October 22, 2019. The aforementioned Cabinet decision included a recommendation to the Council of Representatives to appoint those listed in the decision in the positions indicated beside each of them, including the plaintiff, Ali Saleh Hussein Saleh, President of the Iraqi University, and upon reviewing the letter issued by the Ministry of Higher Education and Scientific Research/ Division of Special Degrees the number (Mim. Waw. Dal./Kha/Sin/347 on 15.7.2021), addressed to the Secretariat of the General Council of Ministers / Legal Department, which includes in

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



paragraph (1) of it ((Table No. (1) which begins in sequence (1- Prof. Dr. Hamid Fadel Hassan Al-Tamimi and ends in sequence 14- Prof. Dr. Abdul-Aziz Ahmed Abdul-Aziz) includes the names of the special grades, category (A), who were previously recommended to the Council of Representatives for appointment to their positions according to Cabinet Resolution No. (378 of 2019) and we recommend their appointment to their positions)), the name of the plaintiff was included in the mentioned list, and upon reviewing the letter issued by the same authority with the number (Mim.Waw.Dal /ha./Sin./ 68 on 17/2/2021), addressed to the General Secretariat of the Council of Ministers, containing (approval of obtaining fundamental approvals to withdraw the recommendation to the Council of Representatives to appoint Prof. Dr. Ali Saleh Hussein Saleh to the position of President of the Iraqi University and to appoint him as an advisor to the Ministry of Higher Education and Scientific Research, and assigning Professor Dr. Yassin Saad Muhammad Ali Al-Azzawi, a lecturer at the College of Political Science/Al-Nahrain University with the duties of the president of the Iraqi University), and upon reviewing the summary of the service for the plaintiff, which included his appointment to the permanent staff as an assistant teacher according to the university order No. (7/9/3298 on 10/5/1992) and obtaining a doctorate in biology in 1998 from the University of Baghdad and granted him the scientific title as a teacher in accordance with the university order numbered (7/10/1725 on 1/6/1998), and his appointment as Dean of the College of Education on 1/6/2003 and assigning him the tasks of the President of Tikrit University under the university order numbered (7/29/10958 on 9/15/2009) and assigning him the tasks of the

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*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



president of the Iraqi University on February 10, 2014 according to the letter of the Ministry of Higher Education and Scientific Research in the number (mim. waw. Dal/ Kha. / Sin. / 347 on 15/7/2021), which includes the request to confirm the appointment of the plaintiff to his position, subsequent to the letter of the Ministry of Higher Education and Scientific Research in the number (Mim . Waw. Dal / Ha./ 68 on 17/2/2021), which indicates that the Ministry of Higher Education and Scientific Research confirms the appointment of the plaintiff as president of the Iraqi University, and no matter has occurred that necessitates withdrawing the recommendation related to this, as his carrying out the duties of the president of the Iraqi university throughout the previous period and the evaluation obtained by the Ministry of Higher Education and Scientific Research, the supervisory and scientific evaluation body / Department of Quality Assurance and Academic Accreditation / Department of Performance Evaluation in the number (Jim. Dal/Teh/sin/1330) on 21.11.2021, which includes (that the degree of evaluation of the performance of Prof. Dr. Ali Saleh Hussein is (92.3%) for the academic year 2019/2020 which makes the ministry of higher education and scientific research to ratify his appointment, on the other hand, the stability of the policy followed by each university represents an important part of the success of its educational process, and that this policy must derive its strength from the capabilities and skills possessed by the academic and administrative leaders of the faculties within the same university. Article (17/3) of the law of the Ministry of Education and Scientific Research No. (40) for the year 1988 is linked the heads of the universities to the Minister of Higher Education and Scientific Research, so the selection of administrative

*Athraa*

Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



leaders (university presidents and deans of colleges) must be based on authentic basis, in particular the ministry's evaluation of them, as the positive results of the work of university presidents or college deans in their scientific, administrative and educational career must produce its positive effects, including leading to the development of the educational reality, and that this selection must adopt standards of scientific and intellectual excellence, organizational efficiency, leadership skills and positive interaction in the context of preserving the higher interest of the country away from political quotas and in light of the capabilities that owned by those who occupy these sites, including the ability to strategic planning and facing crises of all kinds, knowledge of the financial aspects necessary to manage university affairs and its contribution to the development of the institution academically by introducing new programs and establishing colleges and departments that society needs in addition to other personal qualifications and that this can only come through experience the long-term and continuous monitoring by the concerned ministry, therefore, the withdrawal of the appointing of the plaintiff as president of the Iraqi University was not based on legitimate justifications and the correct foundations required by the administration of the said university. for all of the foregoing, the Federal Supreme Court decided the following:

1. The inaccuracy of the Cabinet Resolution No. (251 of 2021) issued on 24/7/2021.

2. Charge the defendant with fees, expenses, and attorney fees for the plaintiff's attorneys, an amount of one hundred thousand dinars, distributed in accordance with the law, and the majority was issued final and binding on all authorities in accordance with the

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*Athraa*



Republic of Iraq  
Federal Supreme Court  
Ref. 97 / Federal / 2021



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provisions of Articles (93/Third and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/Third and 5/Second) of Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and publicly understood on / Shaaban 26 / 1443 AH corresponding to 30.3.2022 AD.

Signature of  
The president

***Jasem Mohammad Abboud***

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*Athraa*