

Republic of Iraq
Federal Supreme Court
Ref. 109/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 7. 12 .2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad 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: Burhan Al-Din Ishaq Ibrahim - his attorney, Dr. Mohammed Karim Al-Taei.

The Defendants: 1- Speaker of the Iraqi Council of Representatives /being in his capacity his agents are legal advisor Haitham Majed Salem and human rights officer Saman Mohsen Ibrahim.

2- Yonadam Youssef Kanna - his attorneys are Muhammad Jassim Al-Jubouri and Amal Fadel Abbas.

The Claim:

The plaintiff, through his attorney, claimed that on 17/4/2021, the FSC issued its decision No. (214/federal/2018), which revoked the decision of the Iraqi Council of Representatives No. (154) on 7/11/2018 held in session No. (10) on 6 11/11/2018, which includes a response to the plaintiff's objection (Yonadam Youssef Kanna) to the validity of the membership of Representative (Burhan El-Din Ishaq) due to its

unconstitutionality, and since this decision is considered one of the invalid decisions because it has lost an important component of its composition, as well as for the following reasons: 1- The aforementioned decision was issued with the signature of Judge (Mohammed Rajab Al-Kubaisi), who is considered to have lost his judicial capacity, as he was referred to retirement by the Federal Court of Cassation, as he had acquired a new legal status (retired), and therefore he may not be appointed as an original member at first, which makes the court quorum incomplete. This contradicts the text of Article (5) of the FSC Law No. (30) of 2005, which requires the attendance of all court members, including a president and eight members, and the court's convening is not valid otherwise. 2- Circulars of the Supreme Judicial Council No. (83/office/2020) on January 23, 2020 addressed to the presidencies (the Federal Court of Cassation, the Presidency of the Public Prosecution, the Judicial Oversight Authority, the Presidency of all Federal Courts of Appeal), which decided in its session held on the occasion of the Iraqi Judiciary Day On 23/1/2020, the quorum for the convening of the Federal Court is legally incomplete to refer the member of the court, Judge (Farouq Al-Sami) to retirement, and because there is no text in the constitution or the law that defines the mechanism for nominating and appointing an alternative due to the court's president canceling the only text that was in force, which is Article (3) of Ordinance No. (30) for the year 2005 pursuant to Resolution No. (38) of 21/5/2019, and because the parliament did not legislate an alternative text to this article, therefore, any appointment of a member of the court is considered unsupported by the constitution and the law, and that what is issued by the court is with the participation of The retired judge, Mr. (Mohammed Rajab Al-Kubaisi) is considered legally impotent. 3. As for Mr. Judge (Mohammed Rajab Al-Kubaisi) taking the legal oath as a new reserve member of the court under Republican Decree No. (118) for the year 2014, it violates the provisions of (Article Seven) of its law, which requires taking this oath before (the Presidency Council), which was present In 2014, as he alone has the authority to appoint any member

of the FSC, and therefore this makes his membership invalid and has no basis in the law and does not complete the quorum of the court, which makes the decision subject to appeal (a decision void by law) and since the decisions of the court are issued final and binding on all, there is no obligation or decisiveness of a null judgment. For the foregoing reasons, the plaintiff requested the FSC to invite the two defendants to plead and sentence the aforementioned decision to be executed and obligate the first defendant to invalidate the membership of the second defendant and return him to his previous position. The lawsuit was registered with this court in No. (109/federal/2021) and the legal fee was paid for it in accordance with Article (1/3rd) of the FSC's Law No. (1) of 2005, and the defendants were informed of the lawsuit petition and its documents based on the provisions of Article (2/1st) From the same bylaw as above, then the attorney for the first defendant/ being in his capacity, responded to the answer list dated 7/9/2021, which included the following: Judge (Mohammed Rajab al-Kubaisi) was one of the reserve members of the FSC, and his presence as a reserve member was on behalf of Judge (Farouq al-Sami), who was enjoying a sick leave and was not retired at the time (Judge Muhammad Rajab al-Kubaisi), so the decision under appeal was issued According to the law and the constitution, as the reserve member was at the time continuing in his position, as well as Judge (Farouq Al-Sami), may God have mercy on him, continuing as a member of the court on the date of signing the decision and beyond. And that the content of the circulars of the Supreme Judicial Council referred to in the lawsuit petition has nothing to do with the judgment decision because the contents of the circulars follow the decision of the judgment in question. Also, what was stated by the prosecutor's attorney in paragraph (3) of the lawsuit is not true, as the provisions relating to the President of the Republic are reinstated, after one session following the entry into force of this Constitution in accordance with Article (138) thereof, and that the prosecutor's representative refers to the year 2014 and the Presidency Council does not exist on this date. Based on the provisions of Article

(2/2nd) of the internal system of this court, a date for pleading has been set and the two parties are informed of it in accordance with the provisions of Article (2/2nd) thereof. On the day appointed for the pleading, the court was formed, so the plaintiff in person and his attorney, Muhammad Karim Al-Taie, attended. The first defendant/ being in his capacity attended and his two attorneys, the legal advisor Haitham Majid Salem, and the legal employee Saman Mohsen Ibrahim. The second defendant, the lawyer Muhammad Jassem Al-Jubouri, attended and proceeded to plead in the presence and publicly. The plaintiff's attorneys repeated what was stated in the lawsuit petition and requested the judgment in accordance with what was stated in it, the attorneys of the first defendant/ being in his capacity responded and requested that the lawsuit be dismissed for the reasons stated in the answer draft dated 7/9/2021, and they added that the Council of Representatives dissolved itself on 7/10/2021. Consequently, this lawsuit loses its place. The second defendant's attorney responded, requesting that the lawsuit be dismissed on behalf of his client for the reasons stated in the reply list submitted by him in the session dated 26/10/2021, and it concludes that the current parliament has ended its legislative tasks as a result of the elections that took place on 10/10/2021. Most of the deputies were deposited, including the second defendant, who did not originally participate in this session and was not present in the parliament, and the parties' attorneys repeated their previous statements and requests, and where there was nothing left to be said, the end of the pleading has been made clear and the court issued the following ruling:

The Decision:

After scrutiny and deliberation by this court, it was found that the plaintiff requested to invite the two defendants to plead and sentence to death the decision issued by this court No. (214/federal/2018) on 17/4/2019 he also

requested that the first defendant, the Speaker of the Council of Representatives/ being in his capacity be obligated to annul the membership of the second defendant, Yonadam Yousef, we were in the Council of Representatives and replace him with the aforementioned deputy as a member of the Council of Representatives. Article (94) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that (Decisions of the Federal Supreme Court are final and binding for all authorities) and Article (5/2nd) of the FSC Law No. (30) of 2005, as amended by Law No. (25) of 2021, which stipulates: (Judgments and decisions issued by the Federal Supreme Court are final). Therefore, the plaintiff's request to execute the decision issued by this court contradicts the provisions of the aforementioned articles, which requires a ruling to dismiss the plaintiff's lawsuit from this aspect. Its jurisdiction takes place when the requirements of the provisions of Article (52/1st and 2nd) of the Constitution are fulfilled since these obligations were not fulfilled in the plaintiff's request, his lawsuit from this aspect is obligatory to respond to him, and for all of the foregoing, the FSC decided to dismiss the plaintiff's lawsuit and to charge him the fees, expenses and attorney's fees for the defendants' attorneys, an amount of one hundred thousand dinars distributed according to the law, and the judgment was issued in agreement final and binding on all authorities based on the provisions of Articles (94) of the Constitution of the Republic of Iraq for the year 2005 and (5/2nd) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and the decision had made clear public on 2/Jumada Al-Ula/1443 coinciding with 7/ December /2021.