

Republic of Iraq
Federal supreme court
Ref. 124 Unified 148/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 22. 12 .2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Munther Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff in the case (124/federal/2021): President of the Bar / being in his capacity, his attorneys are Yahya Abdul-Mohsen Wajid, Bassem Khazal Khashan, Sadiq Rasul Al-Muhanna, Bushra Abdul-Hassan Al-Zaidi, and Adel Al-Zubaidi.

The Plaintiffs in the case (148/federal/2021):

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| 1- Basem Khazaal Khashan - in his personal capacity and as the agent of the plaintiffs | } Their agent, lawyer Ahmed Saeed Musa |
| 2- Head of the National Movement / being in his capacity - Basem Khalil Ibrahim. | |
| 3- Riyadh Abbas Abdullah. | |
| 4- Khaled Miteb Yassin. | |

The Defendants:

- 1- Speaker of Council of Representation/ being in his capacity his deputy, legal advisor, Haitham Majed Salem, and jurist Saman Mohsen Ibrahim.
- 2- President of the Republic/ being in his capacity– his agent head of the legal experts Ghazi Ibrahim Al Janabi.

The Claim:

The plaintiff in the lawsuit (124/federal/2021) claimed through his attorneys that the Council of Representatives, in its 46th session on 3/31/2021, issued its decision to dissolve itself on 7/10/2021, provided that elections are held on 10/10/2021. He challenges the constitutionality of this decision for the following reasons: **First** - There is no basis in the constitution for a solution suspended on a standing condition, as Article (64/1st) of the Constitution stipulates that (The Council of Representatives may be dissolved by an absolute majority of the number of its members, or upon the request of one-third of its members by the Prime Minister with the consent of the President of the Republic. The Council shall not be dissolved during the period in which the Prime Minister is being questioned), if the conditions of this article are fulfilled, and the required quorum is achieved. The council is dissolved after voting on the dissolution, and the council has no right to vote on dissolving itself in the long term, because it may expose the country to great dangers. The country may be exposed to war or a catastrophe occurs that requires the parliament to continue its work, and it is impossible to achieve a sufficient quorum to cancel the dissolution decision while emphasizing that the constitution did not grant the parliament the power to cancel the dissolution decision, because it is an irreversible decision. The Council of Representatives may not vote on a solution pending on a standing condition before the date of the dissolution. For example, the Council of Representatives does not have

the right to vote on dissolving itself on the first day of the tenth month if a condition is fulfilled on the first day of the ninth month, as the Council of Representatives does not have the right to pledge The fate of the country is unseen that may not be achieved, and there is no way to correctly estimate its effects and results if it does happen. The council, which is anticipating a great event, must wait for its occurrence and study its results, so it decides to continue or resolve according to what it reaches after the expected event occurs. **Second** - There is no basis in the constitution for the return of the dissolved parliament. According to the decision whose constitutionality is challenged, the Council of Representatives will be dissolved on 10/10/2021. If elections cannot be held on 10/10/2021, the dissolved parliament will return in accordance with this decision. The decision challenging its constitutionality included that it was issued based on Article (64/1st) of the constitution, which granted the Council of Representatives the power to dissolve itself by an absolute majority of its members, and did not give it the power to repeat itself after the dissolution decision, and there was no text in the constitution allowing the return of the dissolved parliament, Therefore, the contested decision is inconsistent with the provisions of the Constitution. Based on the foregoing, the plaintiff requested the FSC to invite the defendant to plead and rule the unconstitutionality of the Council of Representatives' decision issued in No. (46) session on 31/3/2021, which includes the dissolution of the Council of Representatives on 7/10/2021 and the return of the dissolved parliament if it is not possible to conduct Elections on 10/10/2021. The case was registered with this court in No. (124 / federal / 2021) and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the bylaw of the FSC No. (1) of 2005, and the defendant (the Speaker of the Council of Representatives / being in his capacity) is informed of its petition and its documents in accordance with the provisions of Article (2/1st) of the same bylaw above, and his two attorneys responded with the answer draft dated 9/21/2021, which included the following:

1. Article (6) of the Bylaw of the FSC has stipulated that the alleged harm must be actual, direct, and independent of its elements and that it must not be theoretical, future, or unknown, that the alleged occurrence and the existence of evidence in the case are known, and The plaintiff has the word (may) that indicates the possibility, as well as evidence of his possible future personal perceptions of harm that does not really exist, but the plaintiff's agent sees it without evidence or presumption, so the lawsuit lacks some formal conditions for its establishment and it is obligatory to respond in this respect. 2. The plaintiff's representative did not base his case on a text of the constitution that prevents the council from dissolving itself, on a condition that he sees in the public interest. To prevent him from that, just as the constitution did not prevent the Council of Representatives from suspending the decision to dissolve itself on a condition, and it is known that (everything in which there is no evidence of prevention remains on the principle of dissolution), as the jurisprudential rule stipulates, and since the constitution did not prevent that, it remains for the parliament to suspend His decisions are subject to whatever conditions he wishes, as long as the constitution has been silent about preventing them. 3. The original is the continuation of the Council of Representatives to work until the expiry of the period of its electoral term stipulated in Article (56/1st) of the Constitution, which is four calendar years. The Council resolved the elections on the schedule above, the condition of the requirement will be made to the exception and return to the Council to the asset provided for in Article (56/1st) of the Constitution, in the sense that the Constitutional Text is the constitutional bond for the continuation of the Council and not solve when the condition is not achieved for himself Especially since the decision to dissolve it is subject to a probabilistic condition that represents a clear exception to the original. For these reasons and the reasons that the court deems appropriate, the defendant's attorney requested that the plaintiff's suit be rejected in form and substance and that he be charged with all judicial fees, expenses, and attorney fees.

After completing the required procedures in accordance with the provisions of the aforementioned rules of procedure of the court, a date was set for the pleading in accordance with the provisions of Article (2/2nd) of the same aforementioned bylaw, and the two parties were informed of it. The plaintiff's attorneys repeated what was stated in the lawsuit pleading and requested a ruling according to which the defendant's attorneys replied that they were repeating what was stated in the answer draft dated 21/9/2021 and requested that the lawsuit be dismissed on behalf of their client for the reasons stated therein. The court noted that the lawsuit (148/federal/2021) filed before it by the plaintiffs (Basem Khazal Khashan and the head of the National Movement /being in his capacity- Basem Khalil Ibrahim, Riyadh Abbas Abdullah, and Khaled Miteb Yassin) against the two defendants (the Speaker of Council of Representatives and the President of the Republic / being in their capacity) and its subject matter is the same as the subject matter of the lawsuit (124/federal/2021), and based on the provisions of Article (76/2) of the amended Civil Procedure Law No. (83) of 1969, the court decided to unify them and consider them together and consider the lawsuit (124/federal/2021) as the original, so, the lawyer, Basem Khazal Khashan, as being the first plaintiff in person and as an attorney for the rest of the plaintiffs, and the attorneys of the two defendants attended, and the immanence public pleading commenced. The second, by repeating what was stated in the list of each of them and asking each of them to dismiss the case on behalf of his client, the second defendant's attorney (the President of the Republic/ being in his capacity) clarified that the authority of the President of the Republic and under Article (64/2nd) of the Constitution is to specify a day during the period mentioned in Paragraph (2nd) of the above article, The Prime Minister, in accordance with the agreement between him and the Independent High Electoral Commission, based on the provisions of the Iraqi Parliament Elections Law No. (9) of 2020, set a date for holding the elections in accordance with what the President of the Republic called for under the

republican decree in addition to the dissolution decision issued by the Council of Representatives. The court inquired from the first plaintiff and the attorney of the rest of the plaintiffs about what interest he and the rest of the plaintiffs have in filing the case, and he replied that dissolving the council results in the termination of its work before the end of the constitutional period specified for its work and that his interest is embodied in the termination of his membership in the council as a member of it, but he did not take the constitutional oath to abstain from the presidency of the council Regarding the implementation of the decision of the FSC, and because the elections are illegitimate because they were based on a decision contrary to the constitution and a republican decree that is contrary to the constitution, and despite the fact that he won them, the country's interest requires challenging the constitutionality of the decision, and that the national interest calls for that. As for the interest of the rest of the plaintiffs in the case (148/federal/ 2021) as it is considered part of the public interest in which each person can be realized, and the attorney of each party repeated his previous statements and requests, and where nothing remains to be said, the end of pleading has been made clear by the court issued the following ruling:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff in the lawsuit (124 / federal / 2021) the President of the Bar/ being in his capacity requested to invite the defendant (the Speaker of the Council of Representatives / being in his capacity) to plead and judge the unconstitutionality of the decision of the Council of Representatives issued in its session numbered (46) on 31/3/2021, which includes dissolution The Council of Representatives on 7/10/2021 and the return of the dissolved parliament if the elections procedures were not possible on 10/10/2021. The plaintiffs in the lawsuit (148/federal/2021) requested the same request and upon this court's review of what was stated in the

plaintiffs' lawsuit in the aforementioned lawsuits and the defenses of the plaintiff's attorneys the court reached the following conclusions:

First: The President of the Bar represents the Bar before the judicial and administrative authorities and implements the decisions of the General Assembly in accordance with the provisions of Article (89/1) of the Law No. (173) of 1965 as amended, which stipulates that (The President of the Bar represents the Bar before the judicial and administrative authorities and implements the decisions of the General Assembly and the Board of Directors). He shall have the right to sue in the name of the union and to intervene himself or through whomever he delegates from the members of the union in every case that concerns him and to take the capacity of a plaintiff in every case related to matters affecting the dignity of the union or the dignity of one of its members thus, the aforementioned text grants the President of the Bar the right to litigate in the name of the Syndicate and to intervene himself or through whomever he delegates from among the members of the Syndicate in every case of interest to the Syndicate. The President of the Bar, in accordance with the provisions of Article (87) of the aforementioned law, undertakes, in addition to the competencies stipulated in the Advocacy Law, the management of the affairs of the Syndicate and considers everything related to the legal profession and secures the rights of lawyers and preserves their dignity in accordance with his powers mentioned in the aforementioned article. Therefore, the request of the President of the Bar, in addition to his position, to challenge the constitutionality of the Council of Representatives' decision issued in its session numbered (46) on 3/31/2021 regarding the dissolution of the Council of Representatives on 10/7/2021 deviates from the right to sue in the name of the Bar granted to him under Article (89/1) from the Law No. (173) of 1965 amended because that decision is not related to any of the issues related to the Bar, which the President of the Bar can use the right to sue in the name of the Bar to challenge it, as every legal person

has a representative of his will according to the provisions of Article (48/1) from Civil Law No. (40) for the year 1951 amended, and that the will of the Bar Association does not devote itself to matters related to the Bar, in accordance with what was stated in the Law of Advocacy. Therefore, the lawsuit of the plaintiff, the President of the Bar/ being in his capacity is obligatory to respond from this aspect.

Second: The plaintiffs based their lawsuit No. (148/federal/2021) by requesting a ruling of unconstitutionality of the Council of Representative's decision issued in its session numbered (46) on 31/3/2021 for violating the provisions of Article (64/2nd) of the Constitution. This court finds that the aforementioned article was granted The President of the Republic has the power to call for general elections in the country within a maximum period of sixty days from the date of dissolving Parliament, and since the contested decision of the Council of Representatives was issued to meet a special situation the country is going through, and Article (64/2nd) of the Constitution does not prevent the dissolution of Parliament if such These circumstances, and it is natural that the result of dissolving Parliament is to hold general elections, and that this requires calling for them, and in fact, the elections took place in the light of all of that. Accordingly, the plaintiffs' suit will be without its constitutional basis because there is no conflict between the contested decision and the constitution, and for all of the foregoing, the FSC decided to dismiss the plaintiffs' suit and to charge them fees, expenses, and attorney's fees for both the attorneys of the first defendant and the attorney of the second defendant, an amount of one hundred thousand dinars It is divided equally between them and the decision was issued by agreement conclusive and binding on all authorities based on 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 FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and

the decision had made clear public on 17/ Jumada al-Ula/ 1443
coinciding with 22/December/2021.