

Republic of Iraq
Federal Supreme Court
Ref. 16 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/3/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: The Representative Dr. Raid Hamdan Al-Maliki/ member of the parliamentary legal committee – his agent the barrister Raad Jabbar Al-Kinani.

The Defendant: The Prime Minister/ being in this capacity – his agent the legal counselor Qasi Suhaib Shakoor.

The Claim

The plaintiff claimed through his agent that the defendant issued the internal regulations of the High Authority for Coordination between Governorates and published them in Gazette No. (4700) on 19/12/2022, and it included constitutional violations in Article (1/First and Sixth) and Article (14) thereof, so he took the initiative to challenge it before this court, as Article (1) of it stipulated (First: The Authority: The High Authority for Coordination between Governorates, which is an executive coordinating body headed by the Chairman of the Ministers and the membership of ministers (construction, housing, and public municipalities, labor and social affairs, education, health, planning, agriculture, finance, youth, and sports), governors and heads of provincial councils, and it shall have a general secretariat to manage its affairs following what will be stated in this system, sixth: The Secretary-General - Secretary General of Governorates Affairs, an employee with

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the rank of minister who holds at least an initial university degree and has experience, competence and competence, to be selected by the Chairman of the Commission)), Article (14) thereof stipulates the creation of formations at the level of sub-public departments and since the defendant exceeded his constitutional powers and interfered in an order that is the prerogative of the Council of Representatives and established an executive formation at the level of a ministry and appointed a secretary with the rank of minister and amended the nature of the work of the body made by the legislator (coordination) While the internal system added to it the description (executive) and this is one of the powers of the Council of Representatives and not the powers of the Prime Minister in his capacity as head of the High Authority for Coordination between the governorates and it is not his powers to create positions with the rank of minister under an internal system, but this is done under the law and the context in force in the state that any job grade is not created except under a law, as it is customary to do so based on the budget and staffing law, the creation of formations at the level of sub-public departments gave an executive character to the authority, and this is contrary to the direction of the legislator, as he wanted that body to have its tasks within the limits of the functions of (coordination) when he approved legal amendments to transfer powers, and that the creation of these formations creates a parallel entity that overlaps with the formation of the General Secretariat of the Council of Ministers, It also goes beyond the provisions for the establishment of independent bodies stipulated in Article (108) of the Constitution, where the establishment of independent bodies must regulate their provisions by law and the law set by the legislative authority represented by the Council of Representatives and based on the provisions of Article (6 / Second) of the Law of the Council of Representatives and its formations

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No. (13) of 2018, which stipulates that the deputy is a representative of the public interest in all its aspects and has as a representative of one hundred thousand people the right to litigate before all judicial bodies. Therefore, the plaintiff asked this court to cancel Articles (1/1/ 1st and 6th) and (14) of the Bylaw of the High Authority for Coordination between Governorates No. (1) of 2022 for unconstitutionality and violation of the provisions of Articles (47 and 108) of the Constitution and charging him with expenses and advocacy fees. The lawsuit was registered with this court with the number (16/federal/2023), and the legal fee for it was collected based on the provisions of Article (21/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the defendant was informed of its petition and documents based on paragraph (2nd) of the same article, and the defendant's agent replied with the reply list dated 6/3/2023, which included formal and substantive defenses, the conclusion of which was the lack of interest in filing the lawsuit, and article (6/2nd) on which the plaintiff relied was ruled unconstitutional by the court by decision (140/federal/2018), and the Secretariat of the Supreme Authority for Coordination between Governorates replaced the Ministry of State for Governorate Affairs and appointed its head under Diwani Order No. (434) of 2015 and settled work to merge its budget with the budget of the General Secretariat of the Council of Ministers, and it was specified that the head of the Secretariat of the Commission shall be at the rank of a minister, and the General Secretariat of the Council of Ministers referred the budget of the Secretariat to the Ministry of Finance, which it responded to this and ensured the budget of the Secretariat with its various job grades, including the head of the Secretariat, according to its letter numbered (5898) on 17/3/2019, and the Bylaw of the Commission were issued based on Article (45 / 1st / 7) of the Law of Governorates Not Organized

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in Region No. (21) of 2008 (as amended), and the creation of sub-public departments was based on the Law of Creation, Merger, and Amendment of their Association No. (12) of 2011, Article (1) stipulates (the departments shall be created without the general directorates and merged by a decision of the Prime Minister on the recommendation of the competent minister or the body not associated with a Ministry), therefore, he requested that the lawsuit be dismissed and that the plaintiff be charged the fees and expenses. After completing the procedures required by the rules of procedure of the court, a date was set for the pleading based on Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the agents of the parties attended, the plaintiff's agent repeated what was stated in the lawsuit petition and requested a judgment in accordance with what was stated therein, the defendant's attorney replied requesting the dismissal of the lawsuit for the reasons stated in the reply list linked to the case papers, and the attorney of each party repeated his previous statements and requests, and where there was nothing left to say, the end of the argument has been made clear, and the court issued the following decision:

The decision:

Upon scrutiny and deliberation, it was noted that the plaintiff Raed Hamdan Al-Maliki, a member of the Legal Committee in the Council of Representatives, is challenging articles (1/1st, 6th) and (14) of the internal system of the Supreme Authority for Coordination between Governorates No. (1) of 2022 for the reasons stated in the lawsuit petition referred to above, as Article (1/1st) of the internal regulations subject to the challenge stipulated that the Supreme Authority for Coordination between Governorates is an executive coordinating body,

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while paragraph (6th) of the same article stipulated that the Secretary-General is a trustee General of Governorate Affairs Employee with the rank of Minister, article (14) dealt with the formations of the General Secretariat of the Authority, the formations of its departments, and the qualifications of those who manage the formations stipulated in item (first) of this article, the court reviewed the response regulation of the defendant's agent in addition to his job No. (Qaf/2/2/68/10820) dated 6/3/2023, who requested the dismissal of the lawsuit for the reasons stated in the regulation, including that the plaintiff does not have a case, direct or influential interest in his legal, financial, or social status, the court also reviewed the response list of the plaintiff's agent submitted in the session of 8/3/2023, and the court noted from the above that one of the conditions for the constitutional lawsuit that must be met for the purpose of accepting this lawsuit is the availability of the interest condition for the plaintiff in application of the provisions of article 6 of the Civil Procedure Law No. 83 of 1969, as amended, and article 20/I of the Rules of Procedure of the Federal Supreme Court No. 1 of 2022, so that the plaintiff has a case, direct and influential interest in his legal status or Financial or social, and since the subject matter of the lawsuit does not affect the plaintiff's personal interest and does not affect the aforementioned centers, so the plaintiff's lawsuit is due to be dismissed in terms of the lack of interest in its establishment, for the foregoing, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit Raed Hamdan Al-Maliki due to the lack of interest and to charge him with the judicial expenses, including attorney's fees, the defendant's agent, legal counsel Qassim Suhaib Al-Sharifi, an amount of one hundred thousand dinars. The decision has been issued unanimously, final, and binding according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the FSC's law No.

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(30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 15/Shaabab/1444 Hijri coinciding 8/March/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court