

Republic of Iraq
Federal Supreme Court
Ref. 201 / Federal / 2021



The Federal Supreme Court (F.S.C.) convened on 14.3.2022 headed by Judge Jasem Mohammad Abbood 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 plaintiffs:

1. Basem Khazal Khashan.
2. Head of the Patriots Movement/in addition to his post.
3. Riyadh Abbas Abed Khalaf.
4. Kamran Fakher Ahmed / Deputy Secretary-General of the Iraqi National Congress Party, in addition to his post.
5. Haitham Ramadan Abd Ali / Secretary-General of the Competencies and Masses Gathering, in addition to his post.
6. Salman Ali Hussain.
7. Iyad Abdul-Jabbar Karim
8. Qassem Muhammad Abed Hammadi.
9. Qutaiba Ibrahim Turki.

Their agent, lawyer Ahmed Saeed Musa.

The defendants:

1. The Speaker of the Council of Representatives / in addition to his position - his two deputies are Legal Counsel Haitham

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Majed Salem and Human Rights Officer Saman Mohsen Ibrahim.

2. The President of the Republic / in addition to his position - his deputy, the chief legal expert, Ghazi Ibrahim Al-Janabi.

The claim:

The plaintiffs claimed, through their attorney, that they are challenging before this court the constitutionality of Article (7/Second) of the Iraqi Parliament Elections Law No. (9) of 2020 for violating Articles (56/Second) and (64/Second) of the Constitution, because it stipulated that (determining the date of the elections is by a decision of the Council of Ministers and in coordination with the Independent High Electoral Commission...), contrary to Article (56/Second) which stipulates (the election of the new Council of Representatives shall take place forty-five days before the end of the previous electoral cycle), the Council of Ministers is not authorized to make this date earlier than what is set by a constitutional text nether to postponed it at all. Calling for early general elections in the country is one of the exclusive prerogatives of the President of the Republic, and this power was mentioned in Article (64/second) of the Constitution, and it is exercised by the President after the Council of Representatives is dissolved. Under Article (13/2nd) of the constitution every law that grants the Council of Ministers or any other authority the power to set a date for holding elections shall be considered void because it contradicts Articles (56/second) and (64/second) of the constitution. Under the text of this article that violates the constitution the council of ministers set the date 6/6/2021 for holding elections before the Council of Representatives thought

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of dissolving itself, then the Council of Ministers postponed this date to 10/10/2021, and on this date, which is contrary to the constitution, the Council of Representatives issued its resolution No. (32) on 3/31/2021, which includes the dissolving of the Council on 7/10/2021 on the condition that elections be held on the date set by the Council of Ministers, as the Council of Representatives, by virtue of its decision, imposed on the President of the Republic to call for general elections in the country on the date set by the Council of Ministers, contrary to Article (64/second) of the constitution that granted the President of the Republic has the power to set the date for the election within sixty days from the date of dissolving the council. since the constitution has set the date for holding periodic elections in Article (56/second) thereof, and since calling for early general elections in the country is one of the exclusive competences of the President of the Republic under Article (64/second) of the Constitution, the article whose constitutionality is challenged is void under Article (13/Second) of the Constitution because it created competencies for the Council of Ministers that was not mentioned in the Constitution and overstepped the exclusive powers of the President of the Republic, thus violating those two articles. The case was registered with this court in No. (201/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, it informs the defendants of its petition and documents in accordance with the provisions of Article (2/First) of the same bylaw, the first defendant's attorney, the Speaker of the Council of Representatives / in addition to his position, answered with the answer list dated 28/12/2021, which included the following:

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1. The constitution entrusted legislating a law regulating elections and everything related to it to the Council of Representatives in accordance with the provisions of Article (49/Third) from it.

2. The President of the Republic calls for holding elections after dissolving the Council of Representatives, whether at the end of its four-year term or by dissolving itself to hold early elections. on the invitation of the President of the Republic, the Council of Ministers, in coordination with the Independent Electoral Commission, sets the date for these elections, as determining the date is one of the organizational and executive procedures stipulated in the I.C.R elections law the text of article under challenge, and the appeal against it has no basis in the law or the constitution. Therefore, they requested that the plaintiffs' case be dismissed and that they be charged with all judicial fees, expenses, and attorney's fees. The second defendant's attorney the President of the Republic/in addition to his post responded with his answer sheet dated 12/21/2021, which included the following:

1. It was not clear that there was a direct and immediate interest of the plaintiffs in filing this case and that no direct harm they might receive in the future was found in determining the date of the elections.

2. Article (56) of the Constitution stipulates the term of the regular election cycle for the Council of Representatives, it did not clarify it in exceptional cases, such as the dissolving of the Council of Representatives and others, and that is what was stated in the provisions of the Iraqi Parliament Elections Law No. (9) for the year 2020 in clauses (first and second) of Article (7) thereof that

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organized and translated the provisions of the constitutional text of Article (56) and brought them into existence in the legal organization within the system of legislation and according to the legislative will of the Council of Representatives.

3. The elections for the Council of Representatives for the fifth term that were held on 10/10/2021 were conducted in accordance with the provisions of Article (64) of the Constitution and were not in accordance with the provisions of Article (56) of the Constitution.

4. In order to implement the provisions of clause (Second) of Article (64) of the Constitution, which stipulates (the President of the Republic shall call upon the dissolution of the Council of Representatives to general elections in the country within a maximum period of sixty days from the date of the dissolution), and this is what the President of the Republic has done by issuing Republican Decree No. (18) of 2021 calling for early elections to the Council of Representatives for its fifth session on 10/10/2021, which is the right application of the constitutional text and within the prescribed period.

5. As for the preliminary dates issued in coordination between the government and the Electoral Commission to set the date for the parliamentary elections, they fall within the preparatory work that the commission must prepare for, as the electoral operations schedule requires a period not less than (180) days, to prepare all the requirements of the electoral process in order to reach polling day. Therefore, he requested that the plaintiffs' lawsuit be dismissed and they be charged with fees, expenses, and attorney's fees. After completing the procedures required by the aforementioned bylaw, a date was set for the pleading, in accordance with the provisions of

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Article (2/Second) of it, and the two parties were informed of it. On that date, the court convened the first plaintiff attended and the agent of the plaintiffs the attorney (Ahmed Saeed Musa) attended, on behalf of the first defendant (the Speaker of the Council of Representatives / in addition to his post) his two attorneys, the legal advisor (Haitham Majed Salem) and the legal employee (Saman Mohsen Ibrahim) and attended on behalf of the second defendant (the President of the Republic/ in addition to his post) his representative, the chief of legal experts (Ghazi Ibrahim Al-Janabi), the attorney for the plaintiffs and the first plaintiff repeated what was stated in the case petition and requested the judgment according to what was stated in it. Since there is nothing left to say, the court decided on the conclusion of the pleading, and issued the following ruling:

The decision:

Upon scrutiny of the deliberations by the Federal Supreme Court, it was found that the plaintiff, Basem Khazal Khashan, and the plaintiffs are the head of the Patriots Movement / in addition to his post, Riad Abbas Abdel Khalaf, and Kamiran Fakher Ahmed / Deputy Secretary-General of the Iraqi National Congress Party in addition to his post, and Haitham Ramadan Abdul Ali, Secretary-General of the Competencies Assembly And the masses, in addition to his post, and Salman Ali Hussein, Iyad Abdul-Jabbar Karim, Qassem Muhammad Abd Hammadi, and Qutaiba Ibrahim Turki, asked through their attorney, Ahmed Saeed Musa, to rule the unconstitutionality of Article (7/Second) of the Council of Representatives Elections Law No. (9) of 2020 for violating articles (56/Second) and (64/Second) of the Constitution of the Republic of

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Iraq for the year 2005, by examining the plaintiffs' lawsuit, requests and defenses of the two parties' attorneys, the court reached the following conclusions:

1. Article (7/First) of the Iraqi Parliament Elections Law No. (9) for the year 2020 on (the elections for the Iraqi Council of Representatives for the new parliamentary session must be held 45 days before the end of the parliamentary session that preceded it), as for paragraph (second) it stated that (the election is determined by decision of the council of ministers in accordance with the independent high electoral committee and are announced in all media outlets no less than (90) ninety days prior to the date set for their holding), it become clear from the text of paragraph (first) above that the election date must be before (45) day from the date of ending the regular parliamentary term, as for what was stated in Paragraph (Second) that the electoral process requires preparatory and executive procedures that require a sufficient period of time to complete those procedures before the polling day, this procedure is at the heart of the work of the executive authority in coordination with the Independent High Electoral Commission.
2. Article (56/Second) of the Constitution of the Republic of Iraq for the year 2005 stipulates (Second - The election of the new Council of Representatives shall take place 45 days before the date of the end of the previous electoral cycle) and the text is clear and what is meant is the regular parliamentary session.
3. Article (64/Second) of the Constitution stipulates that (Second: the President of the Republic, upon dissolving the Council of Representatives, calls for general elections in the country within a maximum period of (60) days from the date of the dissolution, and

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the Council of Ministers, in this case, to be considered resigned and continues to conduct daily affairs), as for Article (64/First), it stipulates that (First: Parliament is dissolved by an absolute majority of its members, at the request of one-third of its members or a request from the Prime Minister and with the approval of the President of the Republic, and Parliament may not be dissolved during the period of questioning the Prime Minister), the aforementioned article talks about exceptional cases of dissolving the parliament, as happened in the fifth session of the Iraqi parliament, in which the prime minister is often an opponent of the parliament. Therefore, the legislator prevented the prime minister or others from requesting the dissolution of the parliament during the interrogation period of this prime minister, on the other hand, the Council of Ministers is considered resigned when the Council of Representatives is dissolved in exceptional cases, and therefore the President of the Republic must be the one who calls for elections. Through the foregoing, the court finds that the plaintiff's claim is obligatory to be dismissed due to the absence of a constitutional violation, and that Article (7/Second) of the Iraqi Parliament Elections Law No. (9) of 2020 came in implementation of the provisions of Articles (56/second) and (64/second) of the Constitution of the Republic of Iraq for the year 2005 in the event that elections are held at the end of the regular parliamentary session and in the event that Parliament is dissolved in exceptional circumstances and cases at the request of a third of the members of the Council of Representatives or at the request of the Prime Minister and the approval of the President of the Republic and for the foregoing and for the absence of a constitutional violation, The Federal Supreme Court decided to reject the plaintiffs' suit and

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charged them with fees, expenses and the defendants' attorneys' fees, in addition to their posts, an amount of one hundred thousand dinars, to be distributed between them in accordance with the law. The decision was issued in agreement final and binding on all authorities according to the provisions of articles 93 and 94 of the constitution of 2005, and articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and publicly understood on Sha'ban 11/1443 AH corresponding to 3/14/2022 AD.

Signature of
The president

Jasem Mohammad Abbood

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