

Republic of Iraq
Federal Supreme Court
Ref. 252 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 19/12/2022 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, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Azhar Abdul Razzaq Mohammed Jawad – his agent the barrister Rafid Hameed Faraj.

The Defendants: 1- Secretary-General of the Cabinet/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.
2- Minister of Trade/ being in this capacity.
3- Head of Iraqi Commercial Chambers Federation/ being in this capacity – his agent the barrister Karrar Sabbar Salman.
4- Head of Karbala Commerce Chamber/ being in this capacity

The Claim

The plaintiff claimed through his agent that the electoral cycle of the Council of the Federation of Chambers of Commerce and the Board of Directors of the Iraqi Chambers of Commerce ends on 8/11/2022, which was previously held in (2018) in accordance with the provisions of the internal regulations of the Federation of Iraqi Chambers of Commerce, and since the period specified for the electoral cycle has ended, and therefore the third and fourth

saady

Republic of Iraq
Federal Supreme Court
Ref. 252 / federal /2022



Kurdish text

defendants had to call for elections at least two months in advance in accordance with Article (30) of the aforementioned rules of procedure, so their stay in their positions is considered null and void from Legal aspect, when the plaintiff requested this court to issue a state order until the resolution of this lawsuit, it was necessary to assign a committee by the General Secretariat of the Council of Ministers to manage the Federation of Iraqi Chambers of Commerce and the Iraqi Chambers of Commerce administratively and financially until the elections are held, and to oblige the third and fourth defendants to call for the elections and set a date for them based on the provisions of the internal regulations of the Federation of Iraqi Chambers of Commerce in force and to charge the defendants fees, expenses and attorney's fees. The lawsuit was registered with this court with the number (252/federal/2022), and the legal fee was collected for it based on Article (21/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and it informs the defendants of its petition and documents based on item (2nd) of the same article, and the agent of the first defendant responded with the reply list dated 8/12/2022, requesting the dismissal of the lawsuit and charging the plaintiff its expenses because his request is outside the jurisdiction of the Federal Supreme Court specified in the Constitution and its law, as well as not directing Litigation and lack of urgency to issue the state order. For the lapse of the period stipulated in item (2nd) of Article (21) thereof, a date was set for the pleading based on the item (3rd) of the same article, and the parties were informed of it, and in which the court was formed, and the plaintiff attended in particular and his agent and the agent of the first defendant attended the Secretary-General of the Council of Ministers / being in this capacity, and the third defendant

saady



attended the head of the Federation of Iraqi Chambers of Commerce in addition to his job, lawyer Karrar Sabbar Salman, and the defendants did not attend (the third Minister of Commerce / being in this capacity) and (the fourth is the head of the Chamber of Commerce Karbala/being in this capacity). The plaintiff and his attorney repeated what was stated in the petition and requested a judgment according to which the agent of the first defendant replied repeating what was stated in the answering draft attached to the case papers and added that his client had nothing to do with the subject matter of this lawsuit and that he believed that the reason for considering his client as a litigant in this lawsuit alongside the defendants in order for the case to be accepted before this court is that it is not within the jurisdiction of the court and therefore this is not permissible, the third defendant's agent responded requesting the dismissal of the lawsuit for the reasons stated in its regulations dated 19/12/2022, and the plaintiff, his attorney and the agents of the first and third defendants repeated their previous statements and requests, and where there was nothing left to say, I understand the conclusion of the pleading, and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff filed the lawsuit before this court to demand the issuance of an urgent state order assigning a committee by the General Secretariat of the Council of Ministers to manage the Federation of Iraqi Chambers of Commerce and the Iraqi Chambers of Commerce administratively and financially until the elections are held, and until this lawsuit is resolved, and obliging the third and

saady



fourth defendants, being in their capacity, to call for elections and set a date for them based on the provisions of the internal regulations of the Federation of Iraqi Chambers of Commerce in force and to hold the defendants accountable. Fees, expenses, and advocacy fees, and the Federal Supreme Court finds regarding the plaintiff's request to issue an urgent state order to assign a committee by the General Secretariat of the Council of Ministers to manage the Federation of Iraqi Chambers of Commerce and the Iraqi Chambers of Commerce administratively and financially until the elections are held, and until this lawsuit is resolved. The issuance of an urgent state order based on an independent request or implicit in the constitutional cases filed before it has not been addressed, nor has it been addressed in the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, nor the Internal Regulations of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, and thus it is subject to the provisions referred to in Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969. amended, and to the extent commensurate with the nature and specificity of the constitutional case, based on the provisions of Article (39) of the Rules of Procedure of the Federal Supreme Court referred to above which stipulated that (the court may consider requests for summary judgment and orders on petitions in accordance with the provisions stipulated in the Civil Procedure Law No. (83) of 1969 as amended or any other law that replaces it) and in accordance with Article (36) thereof, which stipulates that (court decisions are final and binding on all authorities and persons and do not accept an appeal by any means of appeal ...). Based on the foregoing, the issuance of an urgent state order by the Federal Supreme Court is governed only by the controls and conditions that must be met for its

saady

Republic of Iraq
Federal Supreme Court
Ref. 252 / federal /2022



Kurdish text

issuance referred to in the Civil Procedure Law, because the decisions issued by this court are finality and are not subject to the methods of appeal, which consist in submitting an application in two copies that includes the facts, grounds, and documents, and the availability of urgency, and not to enter into the origin of the right and decide on it, and since the scrutiny of the request for issuing a state order by this court has proven that there is no urgency in it and If necessary to issue it, in addition to the foregoing, responding to its content means entering the origin of the right and giving a prior opinion on the pending case, and that this contradicts the established judicial customs in the constitutional districts of Arab and foreign countries and with what the Iraqi judiciary has settled on in both its constitutional and ordinary parts and what was included in the well-established judicial applications in this area based on the provisions of the Constitution and the laws in force, based on the realization of the right and the achievement of justice and fairness away from tendencies, whims, arbitrariness and flattery, so there is no blame for what was really issued in word or deed, thus, the request for issuing a state order is obligatory to refuse. As for the plaintiff's lawsuit under which the judgment is required to call for elections and set a date for them based on the provisions of the internal regulations of the Federation of Iraqi Chambers of Commerce in force, it must be dismissed in form of lack of jurisdiction, as the jurisdiction and powers of this court are limited by what is stated in Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021 and some other special laws, and did not include those Competences and powers, the jurisdiction of the Federal Supreme Court, according to which the judgment is

saady



obligatory to call for elections and set a date for them based on the provisions of the internal regulations of the Federation of Iraqi Chambers of Commerce in force, and for the foregoing, the Federal Supreme Court decided to rule as follows:

- 1- The plaintiff's request Azhar Abdul Razzaq Muhammad Jawad to issue an urgent state order to assign a committee by the General Secretariat of the Council of Ministers to manage the Federation of Iraqi Chambers of Commerce and the Iraqi Chambers of Commerce administratively and financially until the elections are held, and until this lawsuit is resolved.
- 2- Dismissal of the plaintiff's claim in form of lack of jurisdiction.
- 3- To burden the plaintiff with the expenses, fees, and advocacy fees, being in their capacity, the legal counsel Haidar Ali Jaber and lawyer Karrar Sabbar Salman, an amount of one hundred thousand dinars, distributed following the law.

The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 24/Jamada Al-Akhira/1444 Hijri coinciding with 19/December/2022 AD.

Judge

Jasem Mohammad Abbood
President of the Federal Supreme Court

saady