

Republic of Iraq
Federal Supreme Court
Ref. 259 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 19/3/2023 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, 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: Mohammed Abdul Sada Qabtan – his agent the barrister Saif Mahir Ibrahim.

The Defendants: 1. The Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

2. Ali Hussein Abdul Qadir Al-Muayed – Head of the Executive Office of Media and Telecommunication Commission/ being in this capacity, his agent is the President of the legal directorate, Ali Yousef Ahmed.

The Claim

The plaintiff claimed through his agent that the first defendant issued his letter No. (3051/2294541) on 14/11/2022 containing a Diwani order No. (22143) on the subject of reassigning (Ali Hussein Al-Moayyad) as head of the executive body of the Media and Communications Commission - and that this order was contrary to the Constitution and its applications, as the Media and Communications Commission is one of the independent bodies that are subject to and linked to the Council of Representatives in the matter of oversight and approval of the members of the Board of Commissioners, evaluation and exemption, it also

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violates the provisions of Section (4/2) of the Authority's Law No. (65 of 2004), and based on that, the role of the Prime Minister, in addition to his job, has been specified in the decisions and procedures for appointing and dismissing the head of the executive body and the Director General of the Authority with the powers of the Board of Commissioners, and that the latter is the one who exclusively owns the legislative and supervisory power, appointment and exemption for this position through what is drawn up by the Authority's law and the controls in force, which pertain to the aforementioned position and the criteria enjoyed by the candidate for the position of compatibility with the law and orders. issued by the General Secretariat of the Council of Ministers and the decisions of the Prime Minister, including the functional service and specific specialization in the field of communications, information technology, and journalism, accordingly, what the Board of Commissioners went to in its decision No. (49 on 24/4/2022), which included the dismissal of the second defendant from his position and assigning the plaintiff to occupy the presidency of the executive body, and what followed in decision No. (Qaf 137 on 20/10/2022) to continue to manage the authority, after the Board of Commissioners reached the violations of the second defendant, in which the Federal Supreme Court dismissed his lawsuit in its decision No. (206/Federal/2022) on 10/10/2022, from which it is concluded that the Prime Minister approved and confirmed that his role has ended By appointing him as a member of the Commissioners, including the second defendant, thus, he does not have the litigation before the Media and Communications Commission for his knowledge and conviction of the validity of the procedure, which is specified in Legislation No. (65 of 2004) of the Board of Commissioners and its explicit announcement in the letter of the General Secretariat of the Council of Ministers No.

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(19260 on 12/6/2017) and the amount to the Commission, as well as what he confirmed in the letter of the Legal Department No. (33464 on 26/9/2022) linked in the response list to the aforementioned lawsuit, and this falls within the binding judicial acknowledgment of the headquarters, and since what was issued by the first defendant and what resulted from the second plaintiff was contrary to those legal legislations, where the second defendant took measures that avoided the functional context in punishing, transferring, and excluding many managers and specialists in the authority without waiting for the results of the discriminatory appeal against the administrative court decision issued No. (4398/2022 on 6/11/2022), which gave the constitutional and legal right to the Board of Commissioners to propose and exempt, the defendant is also right in issuing the Diwani order before the Supreme Administrative Court's decision, and the continuation of this situation will cause serious damage to the Authority, and the legal conditions are not available in the second defendant as he is a graduate of political science, and has never worked in the job service required by law for the position of Director General and above, which is supposed to be not less than (10) years upwards, therefore, the plaintiff requested this court to oblige the defendants to apply the Constitution and the law correctly based on the articles of the Constitution (103 and 93/3rd) thereof and Legislation No. (65 of 2004), Section IV thereof, and to cancel all the effects of these violations, including Diwani Order No. (22143 issued No. 3051/2294541 on 14/11/2022) and to issue a state order to suspend it until the outcome of the lawsuit, to remedy the negative effects on the work of the Authority to preserve the integrity of the procedures and to burden the defendants with fees and case expenses. The lawsuit was registered with this court in the number (259/Federal/2022) and the legal fee was collected based on Article (21/1st) of the Rules of Procedure of

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the Federal Supreme Court No. (1) of 2022, and the defendants are informed of its petition and documents based on the provisions of item (2nd) of the same article, and the first defendant's agent replied with the reply list dated 20/12/2022, which includes formal and substantive defenses, including the lack of interest of the plaintiff in filing the lawsuit, as the period of assigning the plaintiff the tasks of managing the presidency of the Media Commission And communications for a period of six months ended on 25/10/2022, in addition to the court's lack of jurisdiction to hear the case based on Article (93/1st) of the Constitution, the Board of Commissioners has also exhausted its competence specified in Section (8/2) of Legislative Order No. (65) of 2004 for one time appointing the Director General who succeeded the First Director (Ali Al-Khuwailidi) under the directive of the Prime Minister in the letter of the General Secretariat of the Council of Ministers No. (19260 on 12/6/2017) and under the margin of the Board of Trustees on the original book, and therefore the appointment of the Director General of the Media and Communications Commission, after the end of the term of service of the Director General who succeeded the First Director General, is the competence of the Council of Ministers, in addition to that The appointment of general directors is the prerogative of the Prime Minister under Article (8/2) of the Civil Service Law No. (24) of 1960, as amended, assigning a person he considers competent, honest, and capable of managing the institution is one of his constitutional duties under Article (78) of the Constitution as he is directly responsible for the general policy of the state, the second defendant replied with the reply dated 5/12/2022, which concluded that it is not among the court's competences to consider the subject matter of the case, as the same subject of the appeal before the court was previously decided under the decision of the Personnel Justice Court No. (4398/2022) on 6/11/2022,

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which included the cancellation of the decision of the Board of Commissioners No. (2022/Qaf/49 on 24/4/2022) and the reinstatement of (Ali Hussein Abdul Qader Al-Moayyad) as head of the Authority, therefore, he requested the dismissal of the plaintiff's lawsuit because its subject had already been decided. After completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3rd) thereof and the parties were informed of it, and on the appointed day, the court was formed, so the plaintiff's attorney, lawyer Saif Maher Ibrahim, and the first defendant's agent, the legal counsel, Haider Ali Jaber, and the second defendant's agent, the director of the legal department, Ali Yousef Ahmed, attended and began to conduct the public presence pleading, the plaintiff's agent repeated what was stated in the lawsuit petition and requested judgment according to what was stated therein, the first defendant's agent answered requesting the dismissal of the lawsuit on behalf of his client for the reasons stated in his response and explanatory regulations linked to the lawsuit papers, the second defendant's agent replied requesting the dismissal of the lawsuit on behalf of his client for the reasons stated in his answering draft linked to the case papers, and each party repeated his previous statements and requests, and where there is nothing left to be said, the end of the argument has been made clear, 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 a lawsuit before this court against the two defendants (the Prime Minister and Ali Hussein Abdul Qadir, head of the executive body of the Media and Communications Commission / being in their capacity) to demand that they be obliged to apply the

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Constitution and the law correctly based on the provisions of the Constitution of the Republic of Iraq of 2005 in Articles (103 and 93/3rd) thereof and Legislation No. (65 of 2004), Section 4th thereof, and to cancel all the consequences of their violation. Including Diwani Order No. (22143) issued No. (3051/2294541 on 14/11/2022) and the issuance of a state order to suspend it until the outcome of the lawsuit, to remedy the negative effects on the work of the Commission and preserve the integrity of the procedures, and to charge the defendants fees and expenses of the lawsuit based on the violation of the matter under challenge to the provisions of the Constitution of the Republic of Iraq for the year 2005, especially the provisions of Article (103) thereof, which stipulates that (First: The Central Bank of Iraq, the Financial Supervision Bureau, the Media and Communications Commission, and the Diwans of Endowments are financially and administratively independent bodies, and the law regulates the work of each body. Second: The Central Bank of Iraq shall be responsible to the Council of Representatives, and the Financial Audit Bureau and the Media and Communications Commission shall be linked to the Council of Representatives) and the fourth section of Legislative Order No. (65 of 2004) relating to the details of the organizational structure of the Commission in the Media and Communications Commission following the detail referred to in the lawsuit petition. issued by No. (259/Federal/State Order/2022) dated 7/12/2022 for the reasons referred to therein, as for the lawsuit challenging the validity of Diwani Order No. (22143) issued by the Prime Minister's Office No. (3051/2294541 on 14/11/2022), which includes (reassigning Mr. Ali Abdul Qader Almoayyed to head the Executive Body of the Media and Communications Commission), the Federal Supreme Court finds the following:

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- 1- Article 103 of the Constitution of the Republic of Iraq of 2005 stipulates that: "First: The Central Bank of Iraq, the Financial Supervision Bureau, the Media and Communications Commission, and the Diwans of Endowments are financially and administratively independent bodies, and the law regulates the work of each body. Second: The Central Bank of Iraq shall be accountable to the Council of Representatives and the Financial Supervision Bureau, and the Media and Communications Commission shall be linked to the Council of Representatives). This means that the Constitution in force has allocated the Media and Communications Commission with a special provision based on financial and administrative independence, and the Commission shall be linked to the Council of Representatives, provided that the law regulates its work, but the aforementioned law has not been issued since the date of entry into force of the Constitution of the Republic of Iraq in 2005 until this moment.
- 2- The Media and Communications Commission operates based on its founding law represented by Legislative Decree No. (65 of 2004), which stipulates in section (4th) the organizational structure of the Commission, and stipulates that (the Commission consists of a board of commissioners, one of whose members is appointed as chairman of the board, and the Commission consists of a director general, a hearing committee, a board to appeal judgments, an inspector general and several advisory boards), Paragraph (2/Alif) of the aforementioned section stipulates that (the Director General shall be the head of the executive body of the Commission, and shall be responsible for all its operations, including the preparation and submission of the Commission's budget, except those operations allocated to the Board of Commissioners under this order. The term

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of service of the Director-General shall be four years and may be reappointed only once. After the termination of the term of office of the first Director-General of the Commission, or after his dismissal from duty for some reason before the end of the specified period of service, the Board of Commissioners shall appoint a Director-General to occupy this position after the first Director-General), this text inferred from several things, including:

First- The Chairman of the Executive Body of the Media and Communications Commission is the Director General of the Commission. Second- The appointment of the Director General is made by the Board of Commissioners only once after the termination of the service of the first Director General. Third- The aforementioned text and the law as a whole do not specify how to appoint the head of the executive body, who is at the rank of director general, after a replacement director is appointed to the first, especially since Legislative Order No. 65 of 2004, under which the Media and Communications Commission was established, was issued by the Coalition Provisional Authority on 20 March 2004, that is, before the entry into force of the Constitution of the Republic of Iraq of 2005, which gave the Media and Communications Commission financial and administrative independence under Article 103 thereof and regulates its work by law to ensure this independence, in particular, Legislative Order No. 65 of 2004 does not guarantee the independence of the Commission stipulated in the Constitution, which means that the matter needs legislative intervention in application of the provisions of the Constitution, especially since section 13 of the aforementioned legislative order stipulates that "this order shall enter into force from the date of its signature and shall remain in force until

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the Iraqi Transitional Administration develops legislation that repeals and replaces it."

- 3- Whereas Legislative Decree No. (65 of 2004) did not regulate how the Director General is selected, the head of the executive body and the body that undertakes it, except once after the end of the service of the first Director General, as he is selected at that time by the Board of Commissioners based on the text of paragraph (2/Alif) of Section (4th) of the aforementioned legislative order, which means that the Board of Commissioners may not choose the Director General to head the executive body after that time, nor terminate his services, whereas the aforementioned text specifies the functional grade of the head of the executive body as (Director General), which means that it is not possible to recommend his appointment to the aforementioned job grade by the Council of Ministers based on the text of Article (80) of the Constitution of the Republic of Iraq for the year 2005, which defines the competencies of the Council of Ministers, and among those competencies, stipulated in paragraph (5th) thereof, which stipulates: (Recommending to the Council of Representatives, approving the appointment of undersecretaries of ministries, ambassadors and holders of special grades...), on the basis of the foregoing, the Council of Ministers does not have the authority to recommend to the Council of Representatives the appointment of the Director General, the head of the executive branch in the Media and Communications Commission, as it is not one of the senior positions that require the approval of the Council of Representatives.
- 4- The Council of Ministers, represented by its President, is one of the federal authorities stipulated in Article 47 of the Constitution and is thus subject to the provisions of the Constitution, and its powers and powers are restricted by the provisions of Article 80 thereof, but it

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enjoys discretionary power in the application of some of those competencies, especially those stipulated in paragraph (5th) of the same article related to recommending to the Council of Representatives the approval of appointment to senior positions, as far as the mechanism by which the nomination and selection of the person who holds the said position are made. and withdrawal, and means the discretionary power of the Council of Ministers in this area: His freedom to choose between the available alternatives that compete with each other to provide different solutions in the same subject, and to compare them according to logical bases, to provide the most appropriate for the public interest, and the most appropriate to meet its requirements and preserve its values, provided that this is done in accordance with the principle of constitutional legitimacy, and based on the foregoing, each authority, including the executive authority, must work within the framework of the principle of legality and the rule of law, even if its discretion is used to accomplish its tasks, and thus Its use of its discretion is not absolute, but is restricted to the limits of the control exercised over it by constitutional institutions, including the Federal Supreme Court, in the application of the provisions of Article (93/3rd) of the Constitution.

- 5- Based on the provisions of Article (8/2) of the Civil Service Law No. (24) of 1960, as amended, the general managers are appointed upon the proposal of the competent minister and the approval of the Council of Ministers, as Article (8) mentioned above stipulates that (the following conditions shall be taken into account in recruitment:... Except for those who are appointed or reappointed to the following positions that are carried out by a presidential decree issued on the proposal of the competent minister and the approval of the Council of

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Ministers... c. General Manager), this was confirmed by Article (2/12th) of the Internal Regulations of the Council of Ministers No. (2) of 2019 published in the Iraqi Gazette No. (4533) on 25/3/2019, which stipulated that (the Council shall exercise in accordance with the provisions of the Constitution and the laws in force thereunder, the following tasks: Twelfth: Approving the appointment of general directors and their rank in accordance with the law and the system of senior civil servants in accordance with the Constitution and the relevant legislation in force thereunder, and referring them to retirement at their request), but the Council of Ministers He did not exercise his constitutional duties in appointing the Chief Executive Officer of the Media and Communications Commission, who is at the rank of Director General, whereas the Prime Minister is directly responsible for the general policy of the State in accordance with the provisions of Article (78) of the Constitution of the Republic of Iraq of 2005, and in order to ensure the continuation of the regular and steady functioning of public utilities and to prevent their cessation in a manner that affects the public interest and to address the case of the failure of the Council of Ministers to exercise its authority to appoint general directors, and based on the Prime Minister's direct responsibility for the implementation of the general policy of the State, so he assigned the head of the executive body and until the appointment of an original head of the executive body of the Media and Communications Commission with the rank of Director General incumbently by the Council of Ministers, and the purpose of the appointment by assignment in the field of public office lies in allowing the Prime Minister to prevent the disruption of public utilities, and enable him to choose honest and competent scientifically and personally to practice leadership administrative

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work away from haste and inaccuracy. The Prime Minister has the authority to assign whomever he deems appropriate to exercise this task until the appointment of the principal and since the Diwani Order No. (22143) issued by the Prime Minister's Office No. (3051/2294541) on 14/11/2022 included the reassignment of the second defendant Ali Hussein Abdul Qader Al-Moayyed to head the executive body of the Media and Communications Commission, it is at the level of Director General according to the aforementioned detail, which means that the appealed Diwani order does not prejudice its validity because it was issued within the limits of the powers and powers of the Prime Minister in implementing the general policy of the State and until a new law is enacted for the Media and Communications Commission that guarantees its financial and administrative independence and determines the body that selects the head of the executive body in it in application of the provisions of Article (103) of the Constitution of the Republic of Iraq for the year 2005, noting that granting the Board of Trustees of the Media and Communications Commission a salary and allowances of an agent Minister according to the letter of the General Secretariat of the Council of Ministers / Legal Department No. (S/2/5/90/40066) on 31/12/2009 and granting the Chairman of the Media and Communications Commission a reward equivalent to the salary and allowances received by the Deputy Minister under the letter of the General Secretariat of the Council of Ministers No. (S/2/5/680) on 11/1/2021, does not mean that any of them enjoys the status of undersecretary, especially, the head of the executive body, being at the rank of Director General, based on the provisions of Legislative Decree No. (65) of 2004. In view of the foregoing, the plaintiff's claim shall be subject to dismissal because there is nothing that

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prejudices the validity of the appealed Diwani order, and for the foregoing, the Federal Supreme Court decided to rule as follows:

1. Dismissal of the plaintiff Mohamed Abdel Sada Captain's lawsuit challenging the validity of Diwani Order No. (22143) issued by the Prime Minister's Office No. (3051/2294541) on 14/11/2022 containing (reassigning the second defendant Ali Hussein Abdel Qader Al-Moayyed to head the executive body of the Media and Communications Commission).
2. The plaintiff shall burden the fees, expenses, and attorney fees of the defendant's agents, in addition to their positions, the legal advisor Haider Ali Jaber, and the Director of the Legal Department, Ali Yousef Ahmed, an amount of (one hundred thousand) dinars equally. 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 edited in the session dated 26/Shaabab/1444 Hijri coinciding with 19/March/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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