

Republic of Iraq  
Federal Supreme Court



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 29/1/2024 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, Ayoub 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:

Plaintiff in the lawsuit (278/Federal/2023): Raad Diaa Noman.

Plaintiff in the lawsuit (279/Federal/2023): Ahmed Mizban Diwan.

Plaintiff in the lawsuit (280/Federal/2023): Iyad Ajaj Ayed.

Plaintiff in the lawsuit (281/Federal/2023): Ahmed jabar hassan.

Plaintiff in the lawsuit (282/Federal/2023): Jabbar Ali Azez.

Plaintiff in the lawsuit (283/Federal/2023): Ahmed Abdulah Mohamed.

Plaintiff in the lawsuit (284/Federal/2023): Safaa Lafta younis.

Plaintiff in the lawsuit (285/Federal/2023): Jassim Hanoun Nassir.

Plaintiff in the lawsuit (286/Federal/2023): Mahmud Mansour Abdulah.

Plaintiff in the lawsuit (287/Federal/2023): Murtaza Karim Ali.

Plaintiff in the lawsuit (288/Federal/2023): Abdulah Fadhil Hussain.

Their agents the barristers are / Salar Abdul Sattar Mohammed and Hassan Abdul Razzaq Hassan.

Defendants:

1. The Prime Minister / being in this capacity – His agents the legal advisers Abbas Majeed Shabib and Qasim Suhaib Shakur.

2. Secretary-General of the Council of Ministers / being in this capacity – His agent the legal adviser Haider Ali Jaber.

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**The Claim:**

The plaintiff's agents in the lawsuit (278/Federal/2023) claimed that the Iraqi Council of Representatives had previously issued the Independent High Electoral Commission Law No. (31) of 2019 in force, Article (25/3<sup>rd</sup>) of which stipulates provided that ((The current Directors-General (confirmed and assigned) with their grade and financial allocation (Director General) shall be transferred outside the staff of the Commission to state institutions, and those who wish to be referred to retirement as an exception to the provisions of the Unified Retirement Law No. (9) of 2014, as amended)) in implementation of the provisions of the law and Article (25) thereof, office Order No. (2) 2020 issued by the General Secretariat of the Council of Ministers was issued, and it included the transfer of the two general directors in the Independent High Electoral Commission at that time to various other government institutions, and after their client started his new position because he is among the general directors working in the Commission, different official letters and positions were issued by the defendants' departments, The Legal Department of the General Secretariat of the Council of Ministers issues the official letters with the issue (Qaf/2/5/75/42/2755) on 27/12/2020 to the Federal Public Service Council and some other ministries asking it not to object to the transfer of one of the transferees, including their client, because the movable does not have a first-class job title or less, and the transfer of general managers falls within the work of the Council of Ministers according to Article (2/12<sup>th</sup>) of the Rules of Procedure of the Council of Ministers and Cabinet Resolution No. (71) of 2011, and therefore because the

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transfer is under the law, the objection to the transfer is not within the competence of the Federal Service Council, at other times, the aforementioned department issued another official letter entitled to the Property Claims Authority issue (2/5/42/1123) on 19/4/2021, indicates that those transferred from the High Commission under the office Order No. (2) and sequence (1, 20) each of them assumes his duties (acting Director General) for not meeting the conditions of appointment, This contradiction in the position in the letters issued by the defendants' departments entails that their clients are considered acting directors general and not authentic, while the law under Article 25 created new legal positions for each acting director general and considered him authentic, While the law under Article (25) created new legal centers for each acting director general and considered it original, because the origin of any law is a proposal from the Council of Ministers it is accompanied by the ratification of the Council of Representatives, and therefore the vote on Article (25) of the Commission Law is a provision for voting on the general directors in their original capacity and the end of the capacity of assignment, and any official letter or office order issued otherwise it is contrary to the law according to the text of Article (26) of the Independent High Electoral Commission Law, and since Article (93/3<sup>rd</sup>) of the Constitution entrusted the court with jurisdiction to adjudicate cases which arise from the application of laws and that the defendants' departments did not take into account the application of the text of Article (25) of the Commission Law, and considered that the legal text refers to the assignment and not originality, while the Council of Representatives, according to its letter No. (97) on 9/6/2020, considered

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all the transferred general directors in authenticity, Therefore, the plaintiff's agent asked this court to rule that the letter of the General Secretariat of the Council of Ministers is invalid issue (Qaf/2/5/42/1123) on 19/4/2021 and its nullity and cancellation, And the judgment to oblige the defendants in addition to their function by adopting the legal text of Article (25), paragraph (3<sup>rd</sup>) of the Independent High Electoral Commission Law No. (31) of 2019, which includes the transfer and appointment of their client as a general director in authenticity according to the office order No.(2) of 2020, And charge them fees, expenses and advocacy fees. After registering the case with this court No. (278/Federal/2023), collecting the legal fee thereon, and informing the defendants of its petition and documents in accordance with the provisions of Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the defendants' agents replied with the answering draft dated 26/12/202, its conclusion: The appeal falls outside the jurisdiction of the court in accordance with the provisions of Article (93/3<sup>rd</sup>) of the Constitution, and the plaintiff's request falls within the jurisdiction of the Personnel Justice Court because the plaintiff is entrusted with the position and was not appointed by the Council of Ministers based on the powers vested in the Council under Article (8<sup>th</sup>) of the Civil Service Law No. 24 of 1960 as amended, The Cabinet Law No. 20 of 1991, in addition to the fact that the plaintiff was transferred to the post of Director General, and that this came in implementation of the provisions of Article 25/3<sup>rd</sup> of the Commission Law, which stipulates ((Third: The current general managers (installed and assigned) shall be transferred their grade and financial allocation

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(Director General) outside the staff of the Commission to state institutions, and those who wish to be referred to retirement as an exception to the provisions of the Unified Retirement Law No. (9) of 2014, as amended)), This text includes a reference to the transfer to the directors-general (confirmed and assigned) and that it is legally required for the Council of Ministers and the General Secretariat of the Council of Ministers to implement the provisions of the law on the transfer of those charged with their rank (undersecretary) to state institutions. If the legislator wished otherwise, he would have expressly stipulated that, and the text of Article (25/3<sup>rd</sup>) relates to the mechanism for dealing with those who occupy the Director General of Asala or an agency in the Independent High Electoral Commission before the law comes into force through transfer or retirement, The plaintiff's argument that the text of the above-mentioned article has established a legal status for him by virtue of the law and has become an authentic director-general has no basis in law, and does not serve as a basis for claiming confirmation and equality between the director-general in person or agency, the aforementioned text has also approved the employment status of the authentically confirmed or assigned persons, which means that it must be adhered to, and if the plaintiff considers that he is appointed originally, it is contrary to the law, as the mechanism for appointing everyone who is at the rank of general manager is with the approval of the Council of Ministers based on the provisions of Article (8<sup>th</sup>/2) of the Civil Service Law No. (24) of 1960, as amended, under which the appointment of general directors takes place based on a proposal from the competent minister and the approval of the Council of Ministers, as

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it stipulates that (the following conditions shall be taken into account in recruitment: 2-... Except for those who are appointed or reappointed to the following positions that are carried out by presidential decree issued upon a proposal from the competent minister and the approval of the Council of Ministers. Jim. General Manager) this was confirmed by Article (2/twelfth) of the Rules of Procedure of the Council of Ministers No. (2) of 2019, which stipulates 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), as for the letter of the Council of Representatives No. (97) on 9/6/2020, the Law of the Council of Representatives and its formations No. (13) of 2018 specified the legislative and oversight duties of a member of the Council of Representatives, and the involvement of members of the Council of Representatives in the interpretation of laws has no basis in law, especially since the State Council Law No. (65) of 1979, the aforementioned Council was entrusted with the tasks of expressing opinion and advice, and what was stated in the aforementioned letter represents the legal point of view of the Chairman of the Legal Committee in the aforementioned Council and not the will of the Council of Representatives, especially since the court's decision No. (195/Federal/2023) on 12/11/2023 included drawing the constitutional boundaries of each of the three authorities, including the legislative

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authority, and it cannot direct the executive authority with actions that are not considered one of its tasks, the Constitution of the Republic of Iraq for the year 2005 has balanced the requirements of the separation of the legislative and executive powers of the assumption of their respective functions in the field originally specified for them, and there is no contradiction between the two letters of the General Secretariat of the Council of Ministers - the subject of the lawsuit - since the transfer of the aforementioned two is the prerogative of the Council of Ministers and the General Secretariat of the Council of Ministers under the text of Article (25/III) of the Commission Law, and it is obligated to implement it and not to ministries, independent bodies or bodies not associated with the Ministry of Objection to the implementation of the provisions of the law, A decision was issued by the Personnel Court in Case No. (3499/M/2023) on 12/7/2023 that included the meaning that the general directors transferred as an agency to other ministries retain the same degree, and that counting them as general managers (authenticity) requires the issuance of a decision by the Council of Ministers in accordance with the provisions of Article (8) of the Civil Service Law No. (24) of 1960, Therefore, this mechanism is not fulfilled, so the Director-General transferred to the ministries retains his rank as an agency, so the defendants' agents requested the dismissal of the lawsuit and the plaintiff to be charged fees, expenses and attorney's fees. After completing the procedures required by the Court's Rules of Procedure, a date for the pleading shall be set in accordance with Article (21/3<sup>rd</sup>) thereof, the parties shall be informed of it, and on the specified day, the court was formed, and the plaintiff's attorney and the second defendant's

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attorney appeared, and his attorney, Qassim Suhaib, appeared on behalf of the first defendant, and the public presence pleadings began, the Court noted that the cases numbered (279, 280, 281, 282, 283, 284, 285, 286, 287 and 288/Federal/2023) heard by it on the same day, for the unity of the subject matter and to shorten the time and effort, the court decided, based on the provisions of Article (76/2) of the Civil Procedure Law No. (83) of 1969, as amended, to unify the aforementioned cases and consider the lawsuit (278/Federal/2023) as the original, The plaintiffs' agents in the aforementioned cases repeated their requests, the defendants' agents answered and requested the dismissal of the lawsuit for the reasons mentioned in the reply sheet linked to the case papers, and the parties repeated their previous statements and requests, and after the court completed its checks, 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 plaintiffs in the lawsuit numbered (278 and its units 279, 280, 281, 282, 283, 284, 285, 286, 287 and 288/Federal/2023) Each of (Raad Diaa Noman, Ahmed Mizban Diwan, Iyad Ajaj Ayed, Ahmed Jabbar Hassan, Jabbar Ali Aziz, Ahmed Abdullah Mohammed, Safaa Lafta Younis, Jassim Hanoun Nasser, Mahmoud Mansour Abdullah, Murtaza Karim Ali and Abdullah Fadel Hussein) have all challenged the letter of the General Secretariat of the Council of Ministers No. (Q/2/5/42/1123) issued on 19/4/2021, Entitled to the Property Claims Authority / Office of the Chairman of the Authority, which referred to

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Diwani Order No. (2) issued under the letter of the General Secretariat of the Council of Ministers No. (Q/2/5/21281) on 22/11/2020, as far as the plaintiffs are concerned, the aforementioned letter included that the assignment of the aforementioned in the aforementioned office order, the departments indicated against each of them shall be by proxy for not meeting the conditions of appointment specified by law, the plaintiffs believe that Article (25/3<sup>rd</sup>) of the Independent High Electoral Commission Law No.(31) of 2019, has created a new legal status for each acting director general and his appointment is considered original, it stipulates that ((the current directors-general (confirmed and assigned) with their grade and financial allocation (general manager) outside the staff of the Commission shall be transferred to state institutions, and those who wish to be referred to retirement as an exception to the provisions of the Unified Retirement Law No. (9) of 2014, as amended)), The origin of every law is a proposal by the Council of Ministers, as the vote of the Council of Representatives on the aforementioned Article (25) is a ruling to vote on the general directors in their original capacity and the end of the capacity of assignment, and the plaintiffs concluded that they asked this court to rule that the letter of the General Secretariat of the Council of Ministers No. (Qaf/2/5/42/1123) on 19/4/2021 mentioned above is incorrect and oblige the defendants /in addition to their jobs to adopt the text of Article (25/3<sup>rd</sup>) of the Independent High Electoral Commission Law No. (31) of 2019, upon the scrutiny of the letter above and the office order No.(2) issued by the General Secretariat of the Council of Ministers on 22/11/2020, and what was stated in the statements and defenses of the plaintiffs and

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the defendants, the Prime Minister and the Secretary-General of the Council of Ministers, being in their capacity through their agents, implying that the transfer of plaintiffs from the Independent High Electoral Commission to state institutions under the office Order (2 of 2020) came as a result of Article (25/3<sup>rd</sup>) of the Independent High Electoral Commission Law Decree No. (31) of 2019, which ruled for the transfer of general managers (confirmed and assigned) with their grades and financial allocation to state institutions, and that the transfer of plaintiffs came in application of the aforementioned article, especially since the text of Article (8/2) of the Civil Service Law No. (24) of 1960, as amended, drew the mechanism for appointing the Director General, This shall be done by the proposal of the competent minister and the approval of the Council of Ministers on the appointment, and the Federal Supreme Court finds article (25/3<sup>rd</sup>) includes with its provisions the confirmed directors general and their assignees, therefore, in the absence of anything that prejudices the authenticity of the letter - the subject of the challenge - the plaintiffs' claim must be dismissed, Therefore, the Federal Supreme Court decided to dismiss the plaintiffs' lawsuit (Raad Diaa Noman, Ahmed Mizban Diwan, Iyad Ajaj Ayed, Ahmed Jabbar Hassan, Jabbar Ali Aziz, Ahmed Abdullah Mohammed, Safaa Lafta Younis, Jassim Hanoun Nasser, Mahmoud Mansour Abdullah, Murtaza Karim Ali and Abdullah Fadel Hussein) for lack of prejudice to the validity of the letter of the General Secretariat of the Council of Ministers No. (Qaf/2/5/42/1123) dated 19/4/2021 and charging them fees and expenses and the advocacy fees for the defendants' agents/ being in their capacity an amount of one hundred

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thousand dinars distributed among them in accordance with 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 the year 2005, and Articles (4 and 5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005 which was amended by the law No. (25) of 2021. The decision has been made clear on 17/ Rajab/ 1445 Hijri Corresponding to 29/January/2024 A.D.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

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