

Republic of Iraq  
Federal Supreme Court  
Ref. 31 / federal /2022



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 8/6/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, 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: the President of the Commissioners Board in the Independent High Electoral Commission/ being in this capacity – his agent the legal counselor Ahmed Hasan Abid.

The Defendants: 1. the Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.  
2. Minister of Finance/ being in this capacity – his agent the legal counselor Wafa'a Jawad Hamad.

### **The Claim**

The plaintiff/being in this capacity, claimed by his agent that, based on the text of the article (93/3<sup>rd</sup>) of the Constitution, which provided for the jurisdiction of the Federal Supreme Court to (adjudication of cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the Federal Authority, the law guarantees the right of both the Council of Ministers and individuals and others to directly challenge the court), and since the defendants have violated the legal provisions of the Law of the Independent High Electoral Commission No. 31 of 2019, the plaintiff initiated this case for the following reasons: 1- The Board of Commissioners, based on the powers granted to it under

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articles (1-10-27) of the aforementioned Independent High Electoral Commission Law, has already issued its numbered decisions (1.2.3.4 for the regular minutes 16 on 16 August 2020) under which directors-generals were appointed to the Independent High Electoral Commission after being selected in accordance with legal regulations and instructions. 2. To regulate administrative and regulatory matters relating to the provision of financial allocation to the commission directors-general and the modernization of staff and structure, the first defendant has been approached by numbered letters (Kha/20/Ra.Mim/65 on 17/8/2020 and Kha/20/Ra.Mim/71 on 10/9/2020, and the letter Kha/21/170 on 9/2/2021 and Alif. Ain/228 on 10/8/2021) to issue Diwani orders to directors-general who have been approved for appointment by the decisions of the Board of Commissioners referred to in paragraph (1) above. 3. The numbered letter (Qaf/2/5/14995 on 7/9/2020) was received by IHEC Which included that director-generals are not allowed to run for office until fundamentalist approvals are obtained for nomination. 4. The first defendant issued the numbered Diwani orders numbered (272 and 273 on 5/10/2020 and 274 on 6/10/2020 and 277 on 10/10/2020) which included assigning the referred to administrate the offices they were appointed to by the Board of Commissioners, the fact that these departments have been named and the competence of those who can assume their responsibilities in terms of tuition certificate and service in the Law of the Independent High Electoral Commission. 5. The second defendant, the Minister of Finance/ being in this capacity did not take the required legal measures by allocating the job grades to the staff of the Commission and updating its staff despite the decision of the Board of Commissioners to appoint the directors-general and the Diwani orders referred to. 6. On 1 February 2022, the

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Commission received the numbered Diwani Order (82 on 2 October 2021) signed by the first defendant, which included the appointment of director-general and a director-general without allocating the chamber to which he was selected by the Board of Commissioners of the Independent High Electoral Commission, later on, the defendant's second letter was mentioned in the issue (2087 on 6 February 2022) which included informing them of the address and degree of employment held by the Director-General and the name of the department in which he worked without the other names of other directors-general. 7. The issuance of Diwani orders referred to in paragraph (4) above obliges the second defendant to take the necessary legal action regarding the appointment of directors-general and may not procrastinate in not taking such actions because no further court order is required by the first defendant. 8. The Independent High Electoral Commission Law has granted the financial and administrative powers of the Board of Commissioners as a financially and administratively independent body based on the text of the article (102) of the Constitution, and therefore the failure of the defendants and procrastination in not taking the necessary legal procedures to implement the decisions of the Board of Commissioners to appoint directors-general after several correspondences and for more than a year is a violation in the application of the Commission's law and a disruption of its administrative work. According to the aforementioned reasons, the plaintiff/ being in this capacity requested from the FSC to oblige the defendants to take the required procedures to execute the decisions of the Board of Commissioners to approve the appointment of the directors-generals because it was corresponding to the law. The case was registered with this court in the number (31/Federal/2022) and

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the legal fee for it was collected in accordance with the provisions of article (1/3<sup>rd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2005, and the defendants are informed of its petition and documents in accordance with the provisions of article (2/1<sup>st</sup>) from the same Bylaw, the deputy first defendant (Prime Minister/being in this capacity) replied to the answering draft of 7 April 2022, concluding that the subject matter of the case is not subject to appeal before this court, whose jurisdictions are defined by article (93) of the Constitution and article (4) of its law and therefore do not have jurisdiction to consider it and be challenged before other parties based on an article (7/4<sup>th</sup>) of the Law of the Council of State No. (65) of 1979 amended, this was established by the Federal Supreme Court's decisions (10, 74, and 95 federal/ 2019), as well as the lack of interest required to bring the case before this court because the names mentioned in the letter of the Independent High Electoral Commission in the number (4475) on 22 June 2022 in sequences from (1) to (3) were assigned to the positions indicated to be removed in the letter until the completion of the appointment procedures in accordance with the rules of appointment. As for sequence (4), it has been appointed according to the Diwani order No. (82) for 2021, the plaintiff, therefore, has not been found to have a direct and influential interest in his legal, financial or social status, nor has he provided evidence that actual harm has been done as a result of the failure to complete the appointment procedures and therefore has lost the conditions for initiating the case provided for in article (6/1<sup>st</sup> and 2<sup>nd</sup>) of the Court's Bylaw, in addition to the appointment of the directors-general in question, particularly since their appointment is subject to several procedures, including approaching the Supreme National Accountability and Justice

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Commission and the Integrity Commission, to establish the existence of the criterion of competence, integrity and professionalism and the absence of a criminal record, and that the completion of these procedures requires sufficient time for the purpose of obtaining the answer of those entities so that they can be presented to the Council of Ministers, and that the appointment of Director General Muhannad Fadhil Abbas on the basis of the provisions of Cabinet Resolution No. (341 for the year 20) 21) Under Diwani Order No. (82) issued by the Office of the Prime Minister in the number (3785) on 2/10/2021 after the completion of the proceedings above is only evidence that the Council of Ministers is going forward in appointing Directors-General (subject of the case), Diwani numbered orders (272, 273 and 277) were issued to assign the names mentioned in the commission's previous letter in sequences (1-3) to positions indicating to their names on the basis of the powers of the Prime Minister contained in article (78) of the Constitution, for the purpose of enabling the Independent High Electoral Commission to its functions and competences and in accordance with the law, but the dissolution of the Iraqi Council of Representatives on 7/10/202, the continuation of the Council of Ministers' functions to conduct day-to-day affairs and in accordance with the provisions of article (42) of the Bylaw of the Council of Ministers No. 2 of 2019, which included that appointment to or exemption from senior positions in the state is not part of the day-to-day conduct of matters, prevented the aforementioned from being brought before the Council of Ministers for the purpose of approving their appointment and will be re-established once the new government is formed on the basis of the provisions of the law on it and all that has been submitted is the request of the first defendant's agent to dismiss the plaintiff's/ being in this capacity case. Formally

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and objectively and to burden him with fees, expenses and advocacy fees. The second defendant's agent (Minister of Finance/ being in this capacity) replied by the answering draft of 7/3/2022 that under paragraph (1<sup>st</sup>) of the instructions of the staff number (23) of 1979, the Ministry of Finance approves staffing in all ministries and departments as required to carry out the services and work required and appoint staff in certified grades to carry out the work of those functions exclusively. The general principle required that leadership positions (Director-General) should not be appointed unless they had a degree in ministry law or the entity not associated with a ministry or the instructions for the occupancy of the post and that the issue of the appointment of directors-general was the prerogative of the Council of Ministers, not the Council of Commissioners. They can take the vacant job grades instead of those whose services have been transferred based on the provisions of article (3<sup>rd</sup>) of the article (25) of the Independent High Electoral Commission Law, of which article (9) specifies the offices associated with the Board of Commissioners, namely, the General Secretariat of the Commissioners and managed by an employee with the grade of Director General and under the Diwani Order (272) on 5 October 2020 (Ali Faisal Dahham Suhail) was assigned the functions of Secretary-General of the Council of Commissioners, and the Department of Political Parties and Organizations affairs and is managed by an employee with the grade of Director-General according to the Diwani order (273) on 5/10/2020, (Hayman Tahseen Saeed) has been assigned as a Director-General of which. Under article (15) of the same law, the Board of Commissioners selects assistants to the head of the electoral administration as follows: Deputy Head of the Electoral Department for Technical Affairs, managed by an employee with the grade of

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Director General and under diwani order (274) on 6 October 2020, Muhannad Fadhil Abbas was assigned the functions of Assistant Head of the Electoral Administration in question, and assistant head of the Electoral Department for Administrative and Financial Affairs and is managed by an employee with the grade of Director-General and under the Diwani order (277) Ali Saleh Jaafar Ataish was assigned the functions of deputy head of the electoral administration mentioned - No Diwani orders were issued for their appointment as Director-General incumbently, and in this regard the Budget Department took the necessary measures under its numbered letters (24,981 on 20/10/2020 and 22761 on 27/10/20/ 2020, 24647 and 24,653 on 18 October 2020) including requesting the Independent High Electoral Commission to provide them with the address and job grade before assigning the researched to the functions of Director-General, after the issuance of the Diwani Order Issue (82) on 2/10/2021, which included the appointment of (Muhannad Fadhil Abbas, Director General of the Commission), the letter of the Said Department (2087) was issued on 6 February 2022. To provide it with the job address he held before he was appointed Director-General and in the same procedure as before the Diwani orders so that it could transfer the services of the referred to them to the Commission with the degree and job address and then the Director-General of the Department nominated for its occupation, and from all of the above it is clear that all the measures were taken regarding the researched about them, in addition, articles (9/2<sup>nd</sup>) and (15/1<sup>st</sup> and 2<sup>nd</sup>) of the Commission Law have set (4) career grades with a degree (Director-General - High/Beh), while the Commission proposed staff for 2020 has included (29) the job of a vacant Director-General and (6) occupied grades, contrary to the Budget Law 2021 and the

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Commission Act, and therefore the Commission must delete all job grades (Director-General/High/Beh), by referral to retirement or service transferring according to the article (25) of the same law, and this is what the Department of Budget has identified in its numbered letter (5551) on March 9, 2022, for this reason, the defendant's second agent requested a dismissal of the case from her client's department. After completing the procedures required by the Court's Bylaw, a date for the case was set based on an article (2/2<sup>nd</sup>) of it, both parties were notified. On a set day, the Court has been convened, and the agents of all parties attended. The public in presence argument proceeded, and the agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it. The agent of the first defendant requested to reject the case for the reasons listed in his answering draft. The agent of the second defendant answered and requested to reject the case for the reasons listed in her answering draft. Each agent of the parties repeated their previous sayings and previous requests. Whereas nothing was 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 Chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in this capacity filed this case before this court against the defendants both the Prime Minister and the Minister of Finance/ being in their capacity and requesting that they take the necessary measures to implement the decisions of the Board of Commissioners to approve the appointment of directors-general, where the Independent High Electoral

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Commission has already appointed a number of directors-general of the Commission after it has been Selected in accordance with legal regulations and conditions based on unhr's authority in the articles: (10 and 27) of Law No. (31) of 2019 of the Independent High Electoral Commission Law, the Commission has corresponded the General Secretariat of the Council of Ministers under the numbered letter (Kha/20/Ra.Mim/65). (17 August 2020) to present the names of those appointed by the Board of Commissioners for the purpose of ratification and issuing Diwani orders. The General Secretariat of the Cabinet/ legal department had replied according to its letter (Qaf/2/5/14995) on (7/9/2020) that the subject of appointing the aforementioned names is under study, then the Diwani order numbered (272) dated 5/10/2020 has been issued to assign Ali Faisal Dahham by the duties of the Secretary-General of Board of Commissioners in the Independent High Electoral Commission; also issuing the Diwani Order No. (273) on (5/10/2020) which included the assignment of Hyaman Tahseen Hameed by the duties of the Director-General of political organizations and parties affairs in the IHEC. Also, the Diwani order numbered (274) on (6/10/2020), which includes the assignment of Muhannad Fadhil Abbas as deputy head of the Electoral Department for Technical Affairs of the Independent High Electoral Commission and the Diwani Order numbered (277) on (10/10/2020) 0) Which includes the exemption of Mateen Hassan Ali from the duties of deputy head of the Electoral Department for Administrative and Financial Affairs and assigned Ali Saleh Jaafar to the duties of deputy head of the Electoral Department for Administrative and Financial Affairs in the Independent High Electoral Commission and issued the order Diwani numbered (82) on (2/10/2021) which included the appointment of Muhannad Fadhil

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Abbas as Director-General of the Independent High Electoral Commission. For the above, this Court finds that the Independent High Electoral Commission has sent the names of those appointed by the Board of Commissioners to the General Secretariat of the Council of Ministers to approve their appointment only based on articles (10/9), (23) and (27) of the Independent High Electoral Commission Law No. (31) for the year (2019) and that the task of the Council of Ministers is to approve the appointment after the availability of financial allocations from the second defendant, the Minister of Finance/ being in this capacity, moreover, the request to oblige the defendants, the Prime Minister and the Minister of Finance/ being in their capacity to take the necessary measures to implement the decisions of the Board of Commissioners of the Independent High Electoral Commission, has no basis in the law, so the plaintiff's case is missing its legal basis from the law. Therefore, the Federal Supreme Court decided to reject the case of the plaintiff, the chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in this capacity, and to burden him with fees, expenses, and advocacy fees for the two agents of the defendants legal counsel Haidar Ali Jaber and the official jurist Wafa Jawad Hamad an amount of 100 thousand dinars distributed between them in accordance with the law. The decision has been issued unanimously, decisive, and binding for all powers according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and article (5/2<sup>nd</sup>) 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 8/Dhul Qeda/1443 Hijri coinciding 8/June/2022 AD.

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**Signature of  
The president  
Jasem Mohammad Abbood**